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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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CONTINUED FROM I

SECTION B: TENSIONS BETWEEN OAU MEMBER STATES ARISING FROM INTERNAL CONFLICTS:

THE LEGAL CONCEPT OF POLITICAL REFUGEES

The international law on asylum is of comparatively recent genesis, having taken its present form after the end of the Second World War<sup>(1)</sup>. Traditionally, asylum existed in favour of political offenders, but it could include anyone unjustly persecuted for reasons of opinion, race or religion. This assumption has its basis to some extent, in Article 14 of the Universal Declaration of Human Rights of 1948 which proclaims that "...everyone has the right to seek and enjoy in other countries asylum from persecution<sup>(2)</sup>..." Despite the fact, the question of the right of asylum could be connected with the fundamental problems of the status of the individual in international law<sup>(3)</sup>. Accordingly,

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(1) A distinction is made between territorial and extra-regional asylum. As, however, there is no consensus of opinion on the question of extra-territorial asylum, and as international customary law does not generally recognise the right of states to protect fugitives in places like embassies or ships, we shall refrain from dealing with this aspect here.

(2) Panhuys, H.F. van et al., Op. Cit, p.248

(3) According to the classical theory of international law, states were the only possible subject of the law of nations and any direct relationship between that law and the individual was denied. In recent years, organisations whose aims were to protect the individual from the state, sprang up soon after the First World War. Subsequently, treaties were concluded safeguarding the rights of minority groups. War criminals were persecuted and punished by international tribunals after the Second World War and Human Rights were solemnly proclaimed by the UN.



states have, under certain circumstances, the right to protect individuals seeking refuge within their border, from being extradited to a foreign power<sup>(4)</sup>. In practice, however, no such procedure could take place if the seeker of asylum did not gain at least temporary physical presence within the borders of the country of asylum<sup>(5)</sup>. Sometimes, for a variety of reasons, refugees are subsequently expelled to a third state willing or obliged to take them. Nonetheless, this way, under certain circumstances, can be regarded as a form of assistance to the refugees. Therefore, it must not be taken for granted that the temporary presence of refugees within the territory of a state implies a granting of asylum<sup>(6)</sup>. Thus, there can in fact be no question of status without admission, nor can admission take place without the physical presence of the applicant. On this principle, refugees not admitted are not granted the benefit of the protection which asylum affords, and no right may be derived from the mere physical presence. This could, however, be based mostly on the fundamental rule of traditional international law, that individuals could lay no claims of this kind against state sovereignty<sup>(7)</sup>. Consequently, it remains up to the states to admit or deny

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(4) Whiteman, Marjorie, Digest of International Law, Volume 6, 1963, pp.799-804

(5) Krenz, Frenk, The Refugee as a Subject of International Law ICLQ, Volume 15, 1966, p.103

(6) Bassiouni, Cherif M., International Extradition and World Public Order, Ocean Publication Inc., New York, 1974, p.133

(7) Ibid pp. 370-375

admittance to the seeker of asylum. Despite the fact, modern international law has developed a shift on this subject which reveals a unity of purpose and a common behaviour in this field<sup>(8)</sup>. However, a tendency towards a certain uniformity can now reasonably be expected. The elaboration, conclusion and application of a number of international instruments regarding refugees has already contributed a good deal towards this end. Accordingly, there are no grounds on which an asylum seeker would have to be expelled because of a lack of legal provision, allowing him admission and protection<sup>(9)</sup>. It would appear that the international community has accepted the humanitarian principle that people persecuted because of their political belief are not to be returned to their country of origin. This recognition established the logical corollary to this principle, usually the existence of an individual right to asylum. Nonetheless, states have, so far, found it difficult to recognise the existence of such a right<sup>(10)</sup>. Accordingly, refugees not admitted are not granted the benefit of protection which asylum provides. States' practice has demonstrated that individuals who have well-founded fears of being persecuted on account of their race, religious, political and social beliefs have often been granted asylum<sup>(11)</sup>. The granting of asylum

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(8) Castel, J.G., International Law, Butterworths, Toronto, 1976, p.519

(9) Ibid pp.519-520

(10) Ibid pp.525-526

(11) Bassiouni, Cherif M., Op. Cit, pp.97-113

has never been made the subject of a conventional settlement. The pre-war refugee treaties did not provide for the admission of refugees to the contracting states, but these treaties have been superseded by the 1951 convention relating to the status of refugees which is now the most universally-accepted instrument for refugees<sup>(12)</sup>. Despite this fact, provisions were made for the admission of refugees as envisaged in the 1951 convention, but were rejected by the participating representatives. They only agreed to include the provisions of Article 31(1) which prohibits the imposition of penalties on refugees because of their illegal entry to the territories of the contracting states<sup>(13)</sup>. Subsequently, an agreement was reached on the admission of refugees by the conference of plenipotentiaries which was envisaged as a recommendation in the final act<sup>(14)</sup>. In this respect, the participants agreed to receive refugees into their territories within the framework and spirit of international co-operation, in the hope that refugees may find asylum and subsequently the possibility of re-settlement<sup>(15)</sup>. The question of the duty of states not to expel asylum seekers was included in the 1951 convention which obliges the contracting states not to expel or return a refugee in any manner whatsoever to any state where his

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(12) Weis, P., The 1967 Protocol Relating to the Status of Refugees and Some Questions on the Law of Treaties, BYBIL, Volume 42, 1967, pp.39-41

(13) Kreng, Krenk, E., Op. Cit, p.106

(14) Ibid p.107

(15) Weis, Paul, The International Protection to Refugees, AJIL, Volume 48, 1954, p.197

life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion<sup>(16)</sup>. Under the terms of this Article, expulsion and return of a refugee to his country of origin applies to states to the extent that they share a common frontier with the country of origin. Under these circumstances, the 1951 convention only regulates the status of refugees once they have been found eligible to the status and have been admitted to residence. This meant no more than the granting of asylum to, and the protection of, certain refugees who were recognised by the contracting states as a consequence of events that occurred before January 1st, 1951<sup>(17)</sup>. Despite the fact, this limitation was subsequently removed by the 1967 Protocol adopted for this purpose<sup>(18)</sup>. It is noteworthy that since the conclusion of the 1951 convention, hundreds of thousands of refugees have sought and been given the right to asylum. In fact, special administrative machinery was established in all the contracting states in order to deal with the arrivals of refugees who were found eligible under the definition of Article I of the 1951 convention<sup>(19)</sup>.

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The duty of states not to expel asylum seekers at their borders was initially embodied in Article 3(2) of the 1933 convention relating to international status of refugees. This position obliged the contracting states in any case not to refuse entry to refugees at their frontiers.

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Weis, Paul, Op. Cit, pp.195-196

(18)

Ibid pp. 57-62

(19)

Krenz, Frenk, Op. Cit, p.107

Subsequently, substantial developments have occurred in the direction of recognising the right of refugees to admission to a particular country in international instruments. In this respect, the Universal Declaration of Human Rights proclaims that everyone has the right to seek and enjoy, in other countries, asylum from persecution<sup>(20)</sup>. This means individuals would be allowed to seek asylum, and once admitted, they would be free from expulsion but they have no right to be admitted<sup>(21)</sup>. Once the asylum seeker has been admitted, there are certain rights and duties to which he is entitled in accordance with the law of the country of refuge. Accordingly, the asylum seeker's status is governed by the fact he now falls under the territorial jurisdiction of the receiving state<sup>(22)</sup>. As an alien, the refugee is entitled to the benefit of the minimum rules of treatment, otherwise the refugee cannot claim rights which are not granted by legislation to foreigners, such as permission to work, assistance under public and social schemes, free education and the like<sup>(23)</sup>. As far as the

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(20) The original draft of Article 17 then Article 12 of the Universal Declaration of Human Rights was as follows:-  
"...Everyone has the right to seek and be granted in other countries asylum from persecution..." This wording was, however, considered too radical and the words "...be granted..." were amended to read "...enjoying..." meaning that individuals would be allowed to seek asylum, and once admitted, to be free from expulsion but had no right to be admitted.

(21) Weis, Paul, Op. Cit, pp.198-199

(22) In general, international law is silent on the question of the political rights of refugees in their country of residence. By their very nature, political refugees incline towards a regrouping in the country of refuge. The attitude of some states for instance, Switzerland, is stricter in this matter than others. It would seem that in general refugees have no right to engage in political activities going beyond the nature of freedom, such as freedom of speech.

(23) Weis, Paul, Op. Cit, p.200

question of the political rights of refugees is concerned in their country of residence, customary international law is silent on this question. In this respect, the attitude of states is stricter in this matter than others. It would seem that in general, refugees have no right to engage in political activities going beyond the normal freedom, such as freedom of speech<sup>(24)</sup>. Consequently, receiving states may incur international responsibility if they support the subversive activities of exiles, directed against the governments of other states. Finally, the consular authorities of the state of origin remain competent to enter into contact with the subject of its state<sup>(25)</sup>. Nonetheless, the refugee may refuse such contact and the receiving state has the right under its territorial jurisdiction to take appropriate measures to have his wishes respected<sup>(26)</sup>. Under these circumstances, the UN conference on consular relations which took place in Vienna in 1963 could not reach an agreement on the provisions relating to refugees<sup>(27)</sup>. It adopted a

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(24) Krenz, Frenk, Op. Cit, p.109

(25) Under customary international law, nationals abroad remain under the supremacy of their home-state. According to rules of private international law, their personal status is governed by the law of the country of either nationality or legal domicile. The law is vague on this point and it all depends on the arrangements made by the individual states.

(26) Weis, Paul, Op. Cit, pp.202-203

(27) Ibid p.204

resolution which declared that the position of refugees was not to be prejudiced by any provision in this convention<sup>(28)</sup>. Accordingly, the personal status of refugees is governed by the laws of the country of asylum and they are to be exempted from exceptional measures. In this respect, the practice of states has revealed that the most favoured national treatment has been accorded to refugees in respect of permission to establish and join non-political and non-profit making associations and trade unions as well as in matters relating to the right to engage in wage-earning employment<sup>(29)</sup>. They also provide identity papers to any refugee in their territory who does not possess valid travel documents<sup>(30)</sup>. In any event, the provisions of the 1951 convention became national law and the asylum seeker is thereby placed in a position to claim his right before the competent tribunal and municipal authorities. However, the UN is extremely anxious to promote an international standard of treatment of refugees which would place the protection of refugees under the international community as a whole.

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(28)

Ibid p.205

(29)

Stockton, Charles, Outlines of International Law, George Allen, London 1914, pp.260-269

(30)

Weis, Paul, Op. Cit, pp.205-207

THE IMPLICATION OF AFRICAN REFUGEES ON REGIONAL DISPUTES:

The twentieth century has witnessed the eruption of a massive migration of refugees which has been hindered by restrictive immigration policies. These movements have been caused by war, large scale social upheaval, nationalism and authoritarian political regimes which have compelled large masses to emigrate in order to seek security in both neighbouring or distant countries. The initial tragedy of this kind occurred in consequence of the Balkan War of 1912-1914, where tens of thousands of Bulgars, Greeks and Turks were displaced from their homes<sup>(1)</sup>. Subsequently, the two World Wars and the peace settlements that followed, caused the most formidable displacement of population ever experienced in Central Europe and Palestine<sup>(2)</sup>. Consequently, the International Refugees Organisation and its successor, the Office of the UN High Commission for Refugees were established in order to deal with the problems of disruption and dislocation of these populations<sup>(3)</sup>. The problem of refugees in the post-war years were for sometime an essentially European and Middle Eastern one. Nonetheless, since the beginning of the nineteen-sixties, which

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(1) Weis, Paul, Op. Cit, pp.193-194

(2) Ibid p.200

(3) Maynard, D.P., The Legal Competence of the UNHCR, ICLQ, Volume 31, 1982, pp.415-416



coincided with the upheaval of decolonisation, one wave after another of African refugees has occurred, which directed the central focus of international concern<sup>(4)</sup>. Subsequently, the number of refugees in Africa has increased rapidly during the seventies and early eighties and African refugees posed the largest refugee problem the world has had to face. Actually, Africa is now the home of millions of refugees; it is estimated that over a third of the world's total refugees are in black Africa<sup>(5)</sup>. This continuous increase in the number of African refugees poses serious social, economic and political problems for African states. It is essential to distinguish between refugees originating from African-dependent territories and those driven by violence and uncertainty in independent African states<sup>(6)</sup>. On the one hand, the intensification of the struggle for independence in the colonial territories, thus witnessed a dramatic upsurge in the number of refugees. Despite the peaceful process

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(4) Following the outbreak of a revolt in African colonial territories, thousands of refugees fled to a number of African countries. Refugees from Portuguese Guinea sought a haven in Senegal; Angolans fled to the Democratic Republic of the Congo; Mozambican refugees fled to Tanzania and Zambia and most recently, thousands of Eritreans have taken refuge in the eastern region of the Sudan. By 1981, official estimates placed the number of refugees in Africa at close to four million.

(5) Adepoju, Aderanti, Dimension of the Refugee Problem in Africa, Africa Affairs, Volume 81, 1981, p.21

(6) Cervenka, Zdenek, The Unfinished Quest for Unity, Friedmann, London, 1977, p.70

of decolonisation in most of the colonial territories of Africa, various nationalist movements attained their independence by resorting to force on a large scale<sup>(7)</sup>.

The intransigence of some colonial powers compelled nationalist movements to follow a strategy of armed resistance which has been supported by the OAU<sup>(8)</sup>.

As a result, the colonial regimes have retaliated with repressive measures in order to put down these movements and thus to deter potential popular uprisings. This has led to the uprooting of considerable numbers of populations who have had to flee from their respective countries and seek refuge in African independent states<sup>(9)</sup>. This is the underlying reason for the flight of refugees from dependent territories in order to search for security, educational and economic opportunities as well as bases for operations from which to engage in armed resistance in order to attain their independence. On the other hand, the most delicate situation is posed by refugees from

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The sole exception of the Algerian civil war, Namibia, Portuguese African territories, Rhodesia and South Africa, the national liberation movements have launched guerrilla wars in an effort to end colonial regimes.

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Cervenka, Zdenek, Op. Cit, p. 71

(9)

Adepoju, Aderanti, Op. Cit, pp.22-23

independent African states who are victims of inter-ethnic tensions, political persecution or from unfavourable economic and social conditions<sup>(10)</sup>. The one-party system which the majority of African states have adopted, often provides a tempting opportunity to drive opponents to establish a party in exile in neighbouring countries whose interests or policies could be furthered by the overthrow of the party in power<sup>(11)</sup>. Moreover, African governments usually look on political opposition as a form of disloyalty and have equated opposition with treachery or sedition<sup>(12)</sup>. This has led to the breakdown of law and order which compelled their opponents to employ illegitimate means to express their dissatisfaction with such policies of their governments. Therefore, refugees in Africa fall into two categories: those who are politically conscious and those who, for the most part, are passive and are merely seeking an escape from violence and uncertainty<sup>(13)</sup>.

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(10) At three different conferences held during 1962 and 1968 in France, Sweden and the United States, experts in the field met to discuss and exchange views on the subject of African refugees. The focus of these conferences ranged from the causes of the population movements and their impact on recipient states, to the methods devised by the UNHCR in conjunction with non-governmental organisations and individual states to integrate refugees into their new settings. The participants, however, tended to view refugees as the result of instability within African states and tensions between them.

(11) McKeon, Nora, African States and the OAU, JIA, Volume 42, 1966, p.391

(12) The deteriorating situation has also been caused largely by a series of political crises that erupted in several African states, notably Angola, Chad, Ethiopia, Somalia, Uganda and Zaire.

(13) Adepoju, Aderanti, Op. Cit, pp.23-24

Those refugees who are entirely passive do not always remain unconscious to events taking place in their homelands. As long as they are not permanently settled, they remain susceptible to the appeals propagated by the politically conscious refugees. Thus, the passive refugees often provide support to those who are politically conscious and constitute a ready-made source of new recruits for agents of subversive activities<sup>(14)</sup>. Parallel to the distinction between types of refugees, there is another matter related to the attitude of the receiving states. There are those governments which offer asylum for essentially political reasons by which they encourage and support the political opponents in their subversive activities. They may also encourage passive refugees to engage in subversion against their home governments. The others simply provide asylum on humanitarian grounds and endeavour to curtail attempts by refugees to bring about internal change in their countries of origin<sup>(15)</sup>. These states usually hesitate to grant admission to those politically conscious refugees for fear that in granting them asylum they would conduct subversive activities against their homes of origin. Under these circumstances, inter-state tensions have, in fact, developed which have led to conflict situations<sup>(16)</sup>.

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(14) Matthews, Robert O., Refugees and Stability in Africa, JIO, Volume 26, 1971, p.67

(15) Krishnan, Maya, Op. Cit, pp.218-219

(16) African refugee situation worsens as new crises emerge or they escalate, as in Chad or as existing ones deteriorate as in the Ethiopian/Eritrean conflict. The political situations in southern and Central Africa; the disturbance in the Horn of Africa; in Nigeria; the trouble in Shaba province of Zaire and the recently renewed confrontation in Chad are all examples of the high, unpredictable causes of refugees increasing in number in Africa.

Consequently, the humanitarian attitude of the countries of asylum, together with the existence of refugees on its territories, may be seen as a threat or a danger to the country's security from which the refugees have fled<sup>(17)</sup>. Accordingly, the willingness of one state to receive refugees from another is considered as an intrusion by the former into the domestic affairs of the latter. The refugees in a sense are regarded as agents of separation between the two states concerned. The suspicion of insecurity has given rise to tensions which have served to exacerbate relations between OAU member states<sup>(18)</sup>. At the same time, when it is known that the host state is supporting the efforts of the refugees to return to their own country, the threat to the government of origin looms even larger. Consequently, receiving

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Sander, AJGM, Op. Cit, pp.122-123

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In spite of a pledge by the Ivory Coast and Senegal to extradite any exiled Guineans found violating the OAU principle of non-intervention, the presence of thousands of Guineans in these two countries has created considerable concern in Conakry. The obvious suspicion of Guinea's insecurity and poverty, have, because of these refugees, given rise to tensions between Conakry on the one hand and Dakar and Abidjan on the other. Tunisia's granting of political asylum to Colonel Tahar Zbini, charged by Algeria with leading an unsuccessful plot against the late President Hourai Boudedienne in December 1967, was interpreted in Algeria as an act of hostility. Although Zbini subsequently left for Europe, Tunisia's action brought about a set-back in its border negotiations with Algeria. Finally, even though Sudan now strongly denies giving active support to Eritrean refugees living in the Eastern Sudan, their presence near the frontier has served to exacerbate relations between the two countries.

refugees from one state to another has precipitated hostilities between two or more countries. Ghana as a recipient of refugees from neighbouring countries, was placed continuously at odds with Cameroon, the Ivory Coast, Niger, Nigeria, Togo and Upper Volta<sup>(19)</sup>. Likewise, the Sudan became involved in a series of bilateral disputes with Ethiopia<sup>(20)</sup>. Relations between Burundi and Rwanda were also strained when refugees, with the support of the Burundi government, sought to restore the deposed monarchy in Rwanda<sup>(21)</sup>. Meanwhile, the rising tide of political instability in several OAU member states increased the extent of continued outside intervention in the domestic affairs of these states. As a result, the OAU requested its member states to take all necessary steps to prevent the refugees from becoming a source of tension. It recommended restrictive controls on their freedom of movement at the borders<sup>(22)</sup>. Nonetheless, the presence of refugees may be perceived by the state of origin as a threat to its security<sup>(23)</sup>. Therefore, as long as

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(19) Mayers, David B., Op. Cit, p.133

(20) Likewise, the Congo (Kinshasa) became involved in 1964 and 1965 in a series of bilateral disputes with Burundi; the Congo (Brazzaville), the Sudan and Uganda; Malawi's relations with Tanzania and Zambia were severely strained by the assistance allegedly given by the latter to elements opposed to the governments of origin.

(21) Andemicael, Berhanykum, Op. Cit, pp.62-63

(22) Welch, Cloude, The OAU and Human Rights Towards a New Definition, JMAS, Volume 19, 1981, pp.401-403

(23) Despite Sekou Touré's efforts to curb Nkrumah's subversive activities from Guinea and his repatriation of 35 Ghanaians living there, the fact that the late President of Ghana continued to live in Conakry was interpreted as a potential threat to the new regime in Ghana. Similarly, as long as certain Nigerian refugees remained in Accra, relations between Ghana and Nigeria would never be entirely restored to normality.

certain refugees from one state remained in another, relations between these states would never be entirely restored to normality. The refugees usually established their bases close to the borders of their country of origin and far from the capital of the host state. In this respect, the host country has been drawn into tensions with neighbouring countries by the refugee's subversive activities and by the support of its own citizens who remained beyond the reach of its central authority<sup>(24)</sup>. This may be attributed to a weak sense of nationhood and irreconcilable divisions within the host state in which tribal and other dissident groups have been able to take advantage of this situation to act contrary to the interests of the central government. Moreover, it is very difficult to distinguish the refugees from the people amongst whom they settle, where communications are extremely difficult and in parts, non-existent, which precludes close surveillance by the host government<sup>(25)</sup>. Therefore, it is the inability of the host government to extend its authority to the outer limits of its own borders and control refugees, as well as its own citizens<sup>(26)</sup>. Large numbers of Tutsi refugees from Rwanda evoked a sympathetic response from the people among whom they settled in Burundi. The refugees scattered over large remote areas with poor communication, thus it

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(24) Smock, David, Eritrean Refugees in the Sudan, JMAS, Volume 20, 1982, p.453

(25) Stovens, Richard, The 1972 Addis Ababa Agreement and the Sudan's Afro-Arab Policy, JMAS, Volume 14, 1976, pp.528-529

(26) Polhemus, Higbie J., Op. Cit, pp.300-301

was very difficult for the host country (Burundi) to prevent those refugees who are politically conscious to recruit guerrilla fighters among the refugees, in order to attack their own country of origin<sup>(27)</sup>. Usually, the host state undertakes to proscribe subversive activities against neighbouring countries, but its efforts have not been wholly successful<sup>(28)</sup>. This failure has partly resulted from a willingness of the host state to close its eyes to what was going on in its territory. On the other hand, however, the rugged geography of the frontier region, the immense length of the borders and the natural sympathy of the border populations of the host state for the insurgents, have made it virtually impossible for the host government to seal off its borders<sup>(29)</sup>. Under these circumstances, the country of origin has usually undertaken measures in order to eliminate this threat. Thus, this has often led to clashes or skirmishes between the armed forces of the two neighbouring countries<sup>(30)</sup>. Unfortunately, these

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(27) The Ugandan Minister of Information informed the OAU Council of Ministers at Lagos in February 1964 that his country was no longer able to deal with Rwanda's refugees. Despite Kampala's efforts to prevent those refugees from carrying out any illegal acts, they abused Uganda's hospitality by forming groups to invade Rwanda.

(28) For instance, the efforts of the Sudanese government to prevent Chadian and Eritrean insurgents from organising and launching attacks on their respective countries. Despite its undertaking to proscribe subversive activities against Chad and Ethiopia, the Sudanese government has not been wholly successful. The immense length of the borders in question and the natural sympathy of the Sudan's border population for the insurgents, have made it virtually impossible for the Sudanese government to seal off its borders.

(29) Matthews, Robert O., Op. Cit, p.72

(30) Ibid p.73



clashes or skirmishes have prevented attempts to maintain positive goals of peace and to promote the development of a pattern of co-operation and integration between regional human groups. These positive goals envisaged in Article 1(3) of the UN Charter provide for a universal respect for the principle of equal rights and self-determination of peoples on international co-operation to solve economic, social, cultural and humanitarian problems and on the promotion of respect for human rights and for fundamental freedom for all, without distinction as to race, sex, language or religion<sup>(31)</sup>. Unfortunately, the attempts of African states to maintain these positive goals of peace and to promote regional co-operation have been confronted with the stubborn resistance of the sovereign states to regional intrusion on its domestic affairs. African states are naturally reluctant to give in to the dictates of other African states or to regional organisations. They are only prepared to adopt policies involving a loss of sovereignty when these policies can be viewed as an overwhelming necessity, or as a means of strengthening national independence<sup>(32)</sup>. Thus, African states have perceived regional co-operation to be restricted to dealing with the symptom rather than the root of these positive goals. Consequently, African peace-making often assumes the form of short-run stability in which the

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

(32) Matthews, Robert O., Op. Cit, p.72

responsibility is limited to prevent or refrain incidents of organised violence. Accordingly, measures are devised to alleviate this threat but not to cure the rooted elements which have caused the refugee problem<sup>(33)</sup>. This attitude seems to be regarded as a potential threat to regional peace and security. It has been admitted that the most important legal right for refugees is the right of non-expulsion, or the right of asylum. This right has been secured under the provisions of the 1951 convention in which the contracting states undertake not to expel a refugee lawfully in their territories, except for overriding reasons of national security or public order<sup>(34)</sup>. Nonetheless, the 1951 convention is limited to refugees resulting from events prior to 1951, but this limitation has been removed by a protocol adopted in 1967<sup>(35)</sup>.

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(33) Cervenka, Zdenek & Legum, Colin, The OAU in 1972, Africa Contemporary Record, 1972-1973, pp. A47-A50

(34) Krenz, Frenk, Op. Cit, p.127

(35) Weis, Paul, Op. Cit, pp.57-62

In this respect, African states conceived the need for something to be done for the refugees as a whole, but not much has been achieved. So far, the question of the classification of refugees has not yet been satisfactorily settled<sup>(36)</sup>. It has been agreed that there are humanitarian considerations, but there is a demand to eliminate the abuse of hospitality of the host state by refraining from any subversive activities on the part of neighbouring states, or any others, as provided by Article III of the OAU Charter<sup>(37)</sup>. This

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(36)

On the one hand, there are refugees who are conscious participants in domestic crises and who, because of internal conditions in their country of origin and their particular beliefs, find it necessary to continue the liberation struggle from outside their own countries. There are also freedom fighters from Namibia, the Republic of South Africa and territories still under colonial rule who fall into this category, as do political refugees from independent African states, who are guilty of sedition. Since these individuals are actively involved in hastening the liberation of their countries from colonial or neo-colonial rule, they are not legally considered refugees. On the other hand, there are the passive victims of the underlying processes of decolonisation and modernisation, fearing for their very lives. These refugees have sought asylum in neighbouring states in the hope, at least initially, of returning to their homes and their belongings. Nonetheless, these refugees do not always remain entirely passive to the events taking place about them.

(37)

OAU Charter and Rules of Procedures, Article III(5),  
Op. Cit, pp.10-11

concern has also been embodied in a resolution of the OAU Assembly of Heads of State adopted at the second ordinary session which took place in Accra, Ghana in 1965<sup>(38)</sup>. The resolution proclaimed the OAU member states' desire and readiness to give all possible assistance to refugees from any OAU member states on a humanitarian and fraternal basis. At the same time, it also declared that the OAU member states have pledged themselves to prevent refugees living on their territories from carrying out, by any means whatsoever, any acts harmful to the interest of other states of the OAU. It also requested the OAU member states never to allow the refugee situation to become a source of regional disputes among them. Moreover, the OAU Assembly set up a special commission in order to deal with refugee problems<sup>(39)</sup>. The commission was also charged with the responsibility of drawing up certain principles and rules to govern the treatment of refugees. These aims were largely met by the OAU convention which regulates the specific aspects of refugee problems in Africa, concluded in Addis Ababa on September 6th, 1969<sup>(40)</sup>. The convention was carefully drafted to compromise between the recognised need to alleviate the misery of the refugees and not to allow them to become

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(38) Brownlie, Ian, Op. Cit, pp.17-24

(39) Ibid p. 16

(40) The OAU Convention Concerning the Specific Aspects of Refugee Problems in Africa, Published by the Information Division, OAU General Secretariat, Addis Ababa, Ethiopia, 1976, pp.1-2

a source of friction among the OAU member states. The convention defines the refugee as "...every person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and unable, or owing to such fear is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it..."<sup>(41)</sup> The convention has also extended the term refugee "...to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality..."<sup>(42)</sup>. The convention also enumerated the circumstances under which its provisions cease to apply to an individual claiming refugee status but who has been guilty of acts contrary to the purposes and principles of the UN and the OAU Charters<sup>(43)</sup>. This definition would include any

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<sup>(41)</sup> Ibid p.3

<sup>(42)</sup> Ibid p.3

<sup>(43)</sup> Article I of the OAU Convention covering the specific aspects of Refugee Problems in Africa provides that "...the provisions of this convention shall not apply to any person with respect to whom the country of asylum has serious reasons for considering that:- (1) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes; (2) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (3) he has been guilty of acts contrary to the purposes and principles of the OAU; (4) he has been guilty of acts contrary to the purposes and principles of the UN..."  
(The OAU Convention, Article I(5))

acts of subversive activities on the part of the OAU member states or other states which would nullify the right of asylum and the protection from extradition to the state claiming the refugee's return<sup>(44)</sup>. These provisions were designed to eliminate any tension or friction between the country of origin and the host state. In this respect, Article III provides that "....every refugee has duties to the country in which he finds himself which require in particular that he conform with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any member states of the OAU....<sup>(45)</sup>"

"Signatory states undertake to prohibit refugees residing in their respective territories from attacking any state member of the OAU by any activity likely to cause tension between member states, any in particular by use of arms through the press or by radio....<sup>(46)</sup>" Finally, Article VI provides that "....member states shall issue to refugees lawfully staying in their territories travel documents in accordance with the UN convention relating to the status of refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require. Member states may issue such a travel document to any other refugees in their territory....<sup>(47)</sup>" This right would allow a refugee

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<sup>(44)</sup> Article I of the OAU Convention, Op. Cit, p.4-5

<sup>(45)</sup> Ibid p.6

<sup>(46)</sup> Ibid p.7

<sup>(47)</sup> Ibid p.8

to travel so that he can pursue his studies or seek employment. In practice, however, neither the UN nor the African conventions relating to the status of refugees are applied universally. The problem arising here is the inescapable fact of the sharp ideological divisions among states. Therefore, granting asylum to a refugee is, to a large extent, coloured by consideration of public policy. Consequently, in the absence of internationally recognised documents, refugees are often unable to exploit their potential to the full<sup>(48)</sup>. The OAU convention came into force on June 20th, 1974 when Algeria as the fourteenth OAU member state, deposited its instrument of ratification<sup>(49)</sup>. However, the provisions of this convention have little effect on the situation in Africa which has increasingly assumed a disturbing dimension in terms of number, composition of the persons involved, the cause of regional disputes and limited success obtained thus far

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(48)

Ghana issued Commonwealth passports to refugees from southern Africa, which contained details of the refugee's identity, provided pages for visas and included a return clause. Tanzania on the other hand, offered refugees identity papers which, because they do not include the automatic right to return, caused immigration difficulties in other countries and gave refugees less security than the Ghana documents did. Similarly, the Central African Republic and Zambia have issued identity cards to persons with refugee status, but these papers only allow for internal freedom of movement within the country of issue. They are less useful for travel abroad. In the case of the large numbers of rural refugees, simply issuing identity cards is sufficient, since for the most part this group of refugees neither wishes, nor is able to travel internationally.

(49) Cervenka, Zdenek, Op. Cit, p.73

in the search for a permanent solution. Consequently, the Summit of the OAU Assembly took place at Port Louis, Mauritius in July 1976 and discussed the situation, adopting a resolution to deal with the most disturbing aspects of the refugees<sup>(50)</sup>. It also called upon all OAU member states to declare a general amnesty which would enable many of the refugees to return to their homes<sup>(51)</sup>. Under this general amnesty, there were three possible options open to all refugees, as follows:-

- (1) Voluntary repatriation,
- (2) local integration in the country of first asylum,
- (3) resettlement in another country<sup>(52)</sup>.

It should be noted that African states have generally favoured the first of these resolutions, that of repatriation by consent. Despite the regional efforts and the universal support for the principle of repatriation, very few refugees have chosen this solution. This may be attributed to the fact that an unequal situation would face a refugee in his country of origin, where he must fend for himself, while in the country of asylum he is provided with considerable assistance in installing himself there. It is also, however, the condition of instability that led to the displacement of refugees in the first instance, this apparently tending to persist and thus precluding repatriation. Moreover, the refugees, once

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(50) Africa Contemporary Record, 1976-77, pp. C16-C17

(51) Ibid p. C17

(52) Ibid p. C17



settled among people with whom they are closely related, may hesitate to return even if conditions at home have slightly changed for the better. Under these circumstances, once repatriation is ruled out, at least in the short-run, consideration should be given to the permanent settlement of refugees in their countries of asylum. Unfortunately, most African states are already confronted with overwhelming demands on their limited resources. Therefore, the countries of asylum are usually unable to solve this problem alone<sup>(53)</sup>. It should be mentioned here that this is not meant to belittle the efforts of the OAU member states which for the most part, bear the major portion of the expense and responsibility for resettlement. The UNHCR has extended considerable assistance to many African states confronted with a problem of refugees in order to elaborate programmes for their resettlement<sup>(54)</sup>. This assistance is based on voluntary contributions extended by the UNHCR in conjunction with a number of international bodies such as the Red Cross and the World Food Programme. These programmes intended to provide the refugees with basic needs, such as food, water, clothing, some form of shelter, medical supplies, seeds, as well as essential educational services. In addition to these programmes, the UNHCR undertakes a further step referred to as The Initial Land Settlement.

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(53) ACR, 1969-70, Op. Cit, p. C169

(54) Ibid pp. C189-C190

Accordingly, the refugees would be encouraged to clear the land and plan crops and eventually become self-sufficient. Finally, the settlement of these refugees would be consolidated and integrated with the local community of the country of asylum in an overall African regional plan<sup>(55)</sup>. The implementation of these programmes would ensure the benefit of both the local population and the refugees, at the same time minimising the friction between these two communities. The question of how best to utilise these people and their newly acquired skills has come increasingly to the fore. This question was among other matters of legal, economic and social aspects of African refugees discussed and tackled by the OAU Council of Ministers at its October 1967 meeting which took place in Addis Ababa<sup>(56)</sup>. It decided to set up, within the OAU Secretariat General, a bureau responsible for the education and placement of individual African refugees. In addition, to provide an inventory of available places for refugees in universities and technical schools and to act as a broker between refugees and African states needing skilled personnel<sup>(57)</sup>. Despite the OAU efforts, African states are unable or unwilling to treat the root causes of African refugee problems. As a matter of fact, they have shown a concern to prevent

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(55) Ibid pp. C170-C172

(56) Africa Contemporary Record, 1971-72, p.C7

(57) The Bpear OAU, Published by the Press and Information Department of the OAU General Secretariat, Addis Ababa, Ethiopia, 1969, pp.1-5

refugees from becoming a threat to the peace and security of the African continent. This desire has resulted in sub-regional efforts to deal with these problems. In this respect, in April 1966 the Heads of State of the Congo (Kinshasa), Ethiopia, Kenya, Somalia, the Sudan, Tanzania, Uganda and Zambia and ministerial representatives of Burundi, Malawi and Rwanda held a good neighbour Summit at Nairobi<sup>(58)</sup>. At the conclusion of this conference, the participants signed a treaty dealing with the need for the host states to control the activities of refugees within their borders<sup>(59)</sup>. It also provided that any refugee taking advantage of the hospitality of the host country to indulge in subversive activities or agitation against their country of origin, were to be refused assistance. Subsequently, a series of sub-regional summits took place at Kampala in December 1967 and at Dar-es-Salaam in May 1968, affording these states the opportunity to discuss and consider their differences in order to find peaceful settlements to their disputes<sup>(60)</sup>. Finally, the

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<sup>(58)</sup> Matthews, Robert O., Op. Cit, p.79

<sup>(59)</sup> For instance, the agreement of March 1971 concluded between Ethiopia and Sudan provided for inter alia: "... (1) taking all necessary measures in order to put an end to all forms of subversive activities directed against the other including such activities as may take place across their common border; (2) prohibiting the activities of all subversive organisations; (3) disarming all rebel elements and dismantling their camps; (4) expelling all rebel and dissidents leaders as there may be by the governments concerned and taking the necessary measures to prevent the return of such leaders; (5) taking all necessary measures to encourage the voluntary repatriation of refugees and providing all facilities to official representatives to visit refugee camps; (6) removing refugee camps to a distance of at least 50 miles from the common border..."

<sup>(60)</sup> Matthews, Robert O., Op. Cit, p.79

tensions caused by the presence and activities of refugees in various host states led to the conclusion of bilateral and multilateral agreements<sup>(61)</sup>. These agreements have in the main, envisaged the generally recognised and accepted principles governing refugee status including that of voluntary repatriation and the intention to co-operate in the elimination of subversive activities. They also embodied provisions providing for the deportation or extradition of any refugees involved in carrying out activities that harmed the security of the country of origin. They also regulated the immediate cause of tension on the border in which the host country expressed its willingness to move the refugees from the frontier while in turn, the country of origin undertakes not to violate the former's territorial sovereignty when it pursued local insurgents. Finally, these bilateral or multilateral treaties often established joint ministerial commissions to deal effectively with incidents that may arise in the future<sup>(62)</sup>. Unfortunately, agreements of this kind are not always observed. Consequently, border tensions did recur along the frontiers such as that between Ghana and its neighbouring countries and that between Burundi and Rwanda which would be considered as follows:

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After the assassination of Togo's President Olympio on June 13th, 1963, the Heads of State of thirty independent African states who met in Addis Ababa at the Summit Conference in May 1963, not only condemned these subversive activities, but also specifically included in the fifth principle of the OAU Charter "...unreserved condemnation in all its forms of political assassination as well as subversive activities on the part of neighbouring states or any other states..."  
(OAU Charter and Rules of Procedures, Article III(5),  
Op. Cit, pp.10-11)

(62) Matthews, Robert O., Op. Cit, p.79

REFUGEE PROBLEM BETWEEN GHANA AND ITS NEIGHBOURS:

The one state in Africa that was most often alleged to have interfered in the domestic jurisdiction of its neighbouring states was the Ghana of Nkrumah. The latter pursued a realm of policies which opposed African states of contrasting ideological complexions or political interests. In this respect, Nkrumah established training camps for political dissidents from other independent African states whose policies and ideologies did not conform with those of Nkrumah. He extended facilities to freedom fighters from Nigeria, Togo<sup>(1)</sup>, Niger, Cameroon, Senegal, the Ivory Coast, Upper Volta, Congo (Kinshasa) and Burundi<sup>(2)</sup>. Nonetheless, it was to be Ghana's nearest neighbouring states namely, the Ivory Coast, Niger, Togo and Upper Volta which took the lead in raising the dispute in the forum of the OAU<sup>(3)</sup>. There were a number of political quarrels or ideological differences which caused the tension between Ghana and its neighbouring states that frequently led to mutual charges of subversive activities. These unfriendly relations between these states directly affected the function of the OAU for a number of years. This tension was originated in the re-activation of the Council of Entente which was initially formed in May 1959 by the Ivory Coast, Niger, Dahomey and Upper Volta<sup>(4)</sup>.

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(1) Krishnan, Maya, Op. Cit, pp.218-219

(2) Tandom, Yashpal, The OAU as an Instrument and Forum of Protest, The University Press, Oxford, 1976, p.1179

(3) Ibid p.1179

(4) McKeon, Nora, Op. Cit, p.398

The Council was the design of Houphouet-Boigny, President of the Ivory Coast who, since his break with the French Communist Party in 1950-51, had consistently favoured close collaboration with the Western European powers on the international scene<sup>(5)</sup>. Subsequently, Togo joined the Council which had been the object of Nkrumah's territorial aspiration<sup>(6)</sup>. Under these circumstances, Entente states had condemned Nkrumah's welcome to political dissidents from these states and his offering them training camps in Ghana for the purpose of overthrowing the governments in their countries of origin. This resulted from Nkrumah's implication in the 1963 Togo coup and the abortive attempted assassination of the President of Niger in April 1965<sup>(7)</sup> by a number of political dissidents allegedly trained in Ghana<sup>(8)</sup>. As a result of these rising tensions with Ghana as well as their sharp differences with the other OAU member states over the Congo crisis<sup>(9)</sup>, these states felt insecure. Consequently, they decided to re-establish

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(5) Ibid p.398

(6) Ibid p.399

(7) The threat which the President of Niger called the Seige of Africa by communism. Niger in particular had been the object in October 1964, of attack by Sawaba commandos allegedly trained and supplied by Ghana.

(8) Tandom, Yashpal, Op. Cit, p.1179

(9) On the Congo the majority of the (OCAM) regarded Tshombe as the head of the legal Congolese government. The group was far from unanimous as to the type and degree of support to offer to Tshombe and certain states like Congo (Brazzaville) and Dahomey were openly hostile to him.

the Organisation Commune Africaine et Malgache (OCAM) which was abolished as a political organisation after the establishment of the OAU<sup>(10)</sup>. These states felt that the OAU had been unable to meet their needs. Accordingly, they re-activated the political side of the OCAM as a sub-regional instrument in order to maintain solidarity among themselves, and for confronting the most urgent task, Nkrumah's subversive activities against their governments<sup>(11)</sup>. Under these circumstances, the tensions between Ghana and these states remained unsolved until the first half of 1965, the date set for the second ordinary summit of the OAU Assembly in Accra, Ghana<sup>(12)</sup>. The first ordinary session of the OAU Assembly which took place in Cairo in July 1964 accepted Nkrumah's invitation to hold the second ordinary session of the Assembly in Accra, Ghana. This invitation brought the tension between Ghana and its neighbouring states into the open. It was important to Nkrumah's prestige and to the stability of his regime that the summit of the OAU Assembly scheduled for Accra in 1965 be successful. Consequently, the Entente states took advantage of this opportunity by raising a series of grievances against Ghana and threatened to boycott the second summit of the OAU Assembly<sup>(13)</sup>. At this stage,

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(10) Cervenka, Zdenek, Op. Cit, p.75

(11) Some members of this organisation feared that a sub-regional organisation of French-speaking states with political overtures would menace the action of the OAU, while Senegal remained faithful to the format of the OCAM in the hope of persuading Guinea and Mali, her partners in the exploitation of the Senegal River, to rejoin the group of the former French West African States.

(12) Polhemus, Higbe J., Op. Cit, p.193

(13) Mayers, David, Op. Cit, p.131

Ethiopia and Liberia endeavoured to mediate in order to persuade the boycotters to attend, but their attempts at mediation were unsuccessful<sup>(14)</sup>. Subsequently, Nigeria requested the OAU Council of Ministers to hold an extraordinary meeting in Lagos in order to hear the accusation against Ghana and this was acceptable to all states in dispute<sup>(15)</sup>. The Entente states presented dossiers on subversive actions allegedly perpetrated by Ghana, but the latter denied the charges and claimed that its training camps were for African nationalists who were fighting in South Africa and other non-independent African states<sup>(16)</sup>. Under these circumstances, the OAU Council initially decided to examine the charge against Ghana and persuade Nkrumah to give assurances to halt intervening in the domestic affairs of his neighbouring states<sup>(17)</sup>. Accordingly, it established a sub-committee consisting of Ethiopia, Gambia, Mali, Nigeria and Tunisia to implement the Council's decision<sup>(18)</sup>. The five-nation sub-committee engaged in

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(14) Ibid p.132

(15) Tandom, Yashphal, Op. Cit, p.1180

(16) Andemicael, Berhanykum, Op. Cit, pp.86-87

(17) With the Rhodesian crisis looming up, the majority of the OAU member states were reluctant to support the OCAM member states and cause a rift among the OAU member states. The handling of the Rhodesian crisis made unity more essential than ever before. Beside Nkrumah's firm stand on Rhodesia, granted him respect in the OAU forums.

(18) Tandom, Yashphal, Op. Cit, p.1179



negotiations with Ghana and elicited commitments from Nkrumah to the effect that he would expel all refugees residing in Ghana who were considered undesirable by their countries of origin. He also agreed to stop the formation of political organisations whose aims were to oppose any regimes of the OAU member states<sup>(19)</sup>. The report of the sub-committee was received with relief by the OAU Council of Ministers. Subsequently, the Chairman of the OAU Council of Ministers and the Secretary General visited Ghana. At the conclusion of their visit, they expressed satisfaction with the measures being taken towards the success of the summit of the OAU Assembly<sup>(20)</sup>. The Secretary General also declared later in Addis Ababa on August 24th, 1965 that Ghana had taken great pains to fulfil its pledge<sup>(21)</sup>. Moreover, eight days before the summit was due to begin, President Nkrumah travelled to Bamako, Mali to meet President Houphouet-Boigny of the Ivory Coast, Diori of Niger and Yameogo of Upper Volta, in order to give them his personal commitment of their safety in Ghana<sup>(22)</sup>. Nonetheless, the three Presidents, together with five other heads of the OCAM member states, boycotted the summit of Accra<sup>(23)</sup>. Consequently, the refugees who had been deported from Ghana were allowed to return<sup>(24)</sup>. Therefore, the root of the dispute

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(19) Meyers, David B., Op. Cit, p.133

(20) Ibid p.133

(21) Tandon, Yashpal, Op. Cit, p.1180

(22) Ibid p.1180

(23) Cervenka, Zdenek, Op. Cit, p.75

(24) Polhemus, Higbe J., Op. Cit, pp.196-197

centering around the subversive activities continued. It was not eliminated until the coup of February 1966 which brought to power a military government pledged to repudiate Nkrumah policies<sup>(25)</sup>. It should be noted that Nkrumah seemed to have made unprecedented concessions in order to placate his neighbouring states. He had taken a backward step in renouncing all protection to political refugees from states that he had consistently regarded as less than fully independent states. Nonetheless, they refused to come to Accra to attend the summit of the OAU Assembly. The clue to their attitude was likely to be found in the way in which the OAU handled the disputes. The OAU Council of Ministers acted strictly pragmatically which was a disappointment for the OCAM member states. The Council considered the threat posed by the re-activation of the OCAM to the OAU interest as greater than the threat to the security of the states concerned. Despite the fact, the Lagos meeting of the OAU Council did extract concessions from Nkrumah in order to placate the OCAM member states, but this was done more in order to salvage the unity of the OAU than to ensure the security of the OCAM states. The concessions that were extracted from Ghana were really

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(25) After the overthrow of Nkrumah, who had all along denied complicity in the initiation of subversive activities in neighbouring states, the National Liberation Council threw open to the world a secret African freedom fighters' training camp in the jungles of Ghana. It was also stated that Chinese instructors assisted to train African saboteurs in the camps, from South Africa, Rhodesia and other African independent states, in the handling of weapons and explosives under the Nkrumah regime. Nkrumah was deposed when he was on his way to Peking.

short-term only. There was no guarantee that once the summit of the OAU Assembly was over, Nkrumah would not resume the policy of providing a base for dissidents from neighbouring states. Moreover, the machinery that was set up by the OAU Council at the Lagos meeting, namely the five-nation sub-committee, was established for a temporary purpose of obtaining commitments from Nkrumah rather than a permanent supervision machinery on the latter's future subversive activities<sup>(26)</sup>. It was notable that the sub-committee did not even seriously investigate the charges against Ghana which were contained in the dossiers submitted to the Council by the Ivory Coast, Niger and Upper Volta<sup>(27)</sup>. Furthermore, the OCAM states also failed to obtain specific condemnation of Nkrumah's subversive activities by the OAU<sup>(28)</sup>. Consequently, when the entirely temporary basis of the formula became apparent to the OCAM states, they discerned that the concessions made by Ghana were politically insignificant.

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(26) Tandon, Yashpal, Op. Cit, p.1180

(27) Ibid p.1179

(28) Polhemus, Higbie J., Op. Cit, p.196

BURUNDI-RWANDA REFUGEE PROBLEM:

This is the other major dispute which involved charges of aiding refugees in attempts to overthrow the government of their country of origin. Burundi and Rwanda had highly similar political and social structures<sup>(1)</sup>. In both, the population consisted of two major ethnic groups - the Hutu Bantu agriculturalists who constituted 85% of the population and the dominant Tutsi who constituted 15%<sup>(2)</sup>. Both had been well-established Kingdoms prior to the European colonial presence. In each, the minority Tutsi had established political and economic ascendancy over the majority Hutu population<sup>(3)</sup>. In the early colonial era, both countries became part of the German East Africa. After the First World War, the two countries became Belgian Mandated territories. After the establishment of the UN, following the Second World War, they became the Belgian Trusteeship of Burundi and Rwanda<sup>(4)</sup>. The minority groups ruled in both countries through a centralised administration based around the Tutsi monarchy. In 1959, the Rwandese Hutu through a successful revolution, forced the Tutsi king and thousands of his followers to flee the country, many of them crossing the border to Burundi<sup>(5)</sup>. On June 27th, 1962, the UN General Assembly decided in agreement with the

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(1) Meyers, David B., Op. Cit, pp.133-134

(2) Andemicael, Berhanykum, Op. Cit, p.62

(3) Polhemus, Higbe J., Op. Cit, p.188

(4) Ibid p.189

(5) Ibid p.198

administering power to terminate the Trusteeship agreement of December 1946 in respect of Rwanda and Burundi on July 1st, 1962 on which date the two states would emerge as two independent and sovereign states<sup>(6)</sup>. Rwanda became independent under a Hutu-dominated republican government while simultaneously, Burundi became an independent constitutional Kingdom with the traditional Tutsi in power<sup>(7)</sup>. The contrasting regimes, combined with the presence of thousands of Tutsi refugees from Rwanda in Burundi, made the tension between the two states inevitable. Under these circumstances, Tutsi refugees armed and supported by Burundi, formed terrorist organisations that carried out raids across the border into Rwanda<sup>(8)</sup>. Consequently, relations between the two states became severely strained and the union of common services, customs and monetary systems inherited at independence, was terminated<sup>(9)</sup>. subsequently, relations worsened when Rwandese troops in pursuit of terrorists crossed the border and retaliated against Tutsi in Burundi. Against this background, the Burundi government requested both the Secretaries General of the UN and the OAU<sup>(10)</sup> to interfere in putting an end

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(6) Whiteman, Marjorie M., Digest of International Law, Volume 21, 1963, p.213

(7) Polhemus, Higbe J., Op. Cit, p.189

(8) Ibid p.189

(9) Meyers, David B., Op. Cit, p.134

(10) The Provisional Secretary General of the OAU sent identical telegrams to the foreign ministers of both states expressing his concern over the deterioration in relations between Burundi and Rwanda and urging them to settle their differences peacefully, within the framework of the OAU and in accordance with Article III(4) of the OAU Charter which adjures peaceful settlement of disputes by negotiation, mediation, conciliation and arbitration.

to Rwanda's provocation<sup>(11)</sup>. Both Secretaries General appealed to Burundi and Rwanda to do all in their power to find a mutually acceptable solution to their differences. In addition, the UN Secretary General despatched the officer-in-charge of the UN operation in the Congo as his personal envoy in order to assess and endeavour to find a mutually acceptable solution to the dispute<sup>(12)</sup>. After examining the situation, he held consultations with the two governments. Subsequently, he reported to the UN Secretary General that neither government wished to have UN observers or commissions of inquiry to be stationed on its territory. Therefore, he submitted a set of recommendations to the two governments in order to be the basis for an eventual settlement to the disputes<sup>(13)</sup>. They contained the following elements:-

(1) Burundi was to take appropriate measures to curb the subversive activities and agitations among the refugees.

(2) The refugee burden on Burundi was to be alleviated through mutually acceptable measures such as resettlement or voluntary repatriation to Rwanda.

(3) Rwanda was to take all appropriate measures to halt renewed retaliation against its Tutsi population.

(4) Both countries should maintain regular contact with the UN Secretary General's special envoy<sup>(14)</sup>.

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(11) Andemicael, Berhanykum, Op. Cit, p.64

(12) Meyers, David B., Op. Cit, p.135

(13) Andemicael, Berhanykum, Op. Cit, p. 63

(14) Ibid p. 64

It should be mentioned here that the OAU was also requested to assist in the settlement of this dispute only six months after its establishment. At the same time, it was already burdened with the task of conciliating the border dispute between Algeria and Morocco<sup>(15)</sup>. Therefore, the OAU was unable to apply any prompt action beyond the appeal of its Secretary General. He felt that it was clearly the duty of the UN to assist in these refugee problems. Nonetheless, he maintained the position that he would be as helpful as possible in the situation of this kind to assist the two member states<sup>(16)</sup>. Consequently, the OAU Secretary General requested the UNHCR and the relevant specialised agencies of the UN, to provide emergency assistance to the refugees and to other victims of the conflict<sup>(17)</sup>. Actually, the relief and refugees resettlement activities of the UN's various agencies, especially the UNCHR were instrumental in calming the conflict. Meanwhile, the OAU Council of Ministers discussed the refugee problems in Africa with particular reference to the Rwanda refugees, at its second ordinary session which took place in Addis Ababa in February 1964<sup>(18)</sup>.

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(15) Cervenka, Zdenek, Op. Cit, pp.70-73

(16) Polhemus, Higbe J., Op. Cit, p.190

(17) ACR, 1969-70, Op. Cit, p. C169

(18) At Addis Ababa, the Rwandan Minister of Posts, Telecommunications and Transport submitted to the Council of Ministers a note which protested against terrorism and infiltration of armed bandits from Burundi. Rwanda's allegation was denied by Burundi. The Council decided to submit the dispute to the Commission of Mediation, Conciliation and Arbitration. However, the Commission's jurisdiction in the case was optional and Burundi preferred not to resort to the Commission.

It set up a ten-nation Commission which included Burundi and Rwanda, in order to examine and investigate the refugee situation and to make recommendation to the OAU<sup>(19)</sup>. It became clear to the Commission that there were two aspects to the dispute; one the maintenance of refugees, and the other the threat of conflict coming from the refugee activities. The Commission preferred initially to deal with the second aspect, the threat of conflict. In this respect, it made a series of recommendations, including one to the effect that bilateral negotiations commence between the countries of origin and asylum, as well as recommending that refugees be settled as far as possible from the border of their country of origin<sup>(20)</sup>. Unfortunately, Burundi is a poor, over-populated country also plagued by government instability and it was unwilling and unable to relocate the refugees and control their subversive activities<sup>(21)</sup>. Moreover, the two countries were not able to reach a mutually acceptable solution to their dispute. Furthermore, the situation was complicated in October 1965 when an abortive coup d'etat in Burundi which was carried out by a group of Hutu military officers and politicians, also provoked a sporadic uprising among Hutu peasants<sup>(22)</sup>.

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(19) Polhemus, Higbe, J., Op. Cit, p.190

(20) Ibid pp.191-192

(21) Refugees were scattered over large, remote areas with poor communications, and who were desirous of taking revenge against Rwanda. Large numbers of Tutsi refugees, who evoked a sympathetic response among the people with whom they settled. Thus, it was very difficult for the host country, Burundi, to prevent the Tutsi guerrilla fighters, recruited among the refugees from attacking Rwanda.

(22) Andemicael, Berhanykum, Op. Cit, p. 64



Consequently, the Burundi government retaliated when a large number of Hutu prominent politicians and labour leaders were executed. This led to international condemnation<sup>(23)</sup>. Nonetheless, neither the UN nor the OAU played any significant role at this stage in the crisis. Under these circumstances, Rwanda was deeply concerned about the situation in Burundi and had opened its border for any incoming refugees. Also, it did not request any intervention by either the UN or the OAU<sup>(24)</sup>. At this stage, the conflict became somewhat intertwined with the civil war in the Congo in which Rwanda supported Tshombe's government and was in turn allied with the more conservative African states. In contrast, Burundi assisted the rival Congolese liberation movements and in turn was allied with the more radical African states. Therefore, the dispute remained unsolved until the Congo civil war ended and the OAU became more interested in ending the conflict between Burundi and Rwanda. During 1966 there was a complete impasse as a consequence of a series of conflicts and mutual accusations of border violations reported to the OAU<sup>(25)</sup>. Subsequently, in September 1966 Rwanda complained before the third ordinary session of the OAU Assembly which took place in Addis Ababa, Ethiopia<sup>(26)</sup>. It drew the Assembly's attention

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(23) Ibid p. 64

(24) Ibid p. 64

(25) Meyers, David B., Op. Cit, p.136

(26) Ibid p. 136

to the dangerous situation which resulted from the activities of refugee organisations based in Burundi, which had carried out subversive activities against Rwanda. A similar complaint had been made by Burundi before the Assembly<sup>(27)</sup>. Under these circumstances, the Assembly requested President Mobutu of Zaire to extend his good offices between the two states. The reason behind the choice of President Mobutu was the tripartite agreement of August 1966 concluded between the three states, namely, Zaire, Burundi and Rwanda on mutual security, trade and cultural affairs<sup>(28)</sup>. The three states agreed in this agreement to expel from their respective territories, individuals or groups of individuals who might be suspected of subversive activities against the governments of the contracting states<sup>(29)</sup>. In response to the OAU Assembly's request, and in the spirit of the Kinshasa agreement, President Mobutu succeeded in bringing the Presidents of Burundi and Rwanda together at Goma, Zaire in March 1967<sup>(30)</sup>. At this meeting, Mobutu made a successful attempt to persuade the two leaders to reduce the conflict between their countries by disarming the refugees on both sides of the border<sup>(31)</sup>. Subsequently, at the fourth

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(27) Andemicael, Berhanykum, Op. Cit, p. 65

(28) Matthews, Robert O., Op. Cit, p.79

(29) Ibid p. 81

(30) Andemicael, Berhanykum, Op. Cit, p. 64

(31) The heads of the three states issued, at the conclusion of their summit, a statement recognising the generally accepted principles governing refugee status, including that of voluntary repatriation and declared their intention to co-operate in the elimination of subversive activities.

ordinary session of the OAU Assembly which took place in Kinshasa in November 1967, Mobutu reported on his efforts which had been endorsed by the Assembly which requested him to continue his efforts<sup>(32)</sup>. Under these circumstances, events in Burundi helped to reconcile the conflict between the two states. A Tutsi soldier deposed the monarchy, declared a republic and stated his desire to improve relations with his neighbouring states<sup>(33)</sup>. Under this atmosphere, the OAU Secretary General visited Burundi and Rwanda in order to attempt to reconcile the two member states<sup>(34)</sup>. Following this visit, bilateral ministerial meetings were held in January and February 1968 at which they agreed to open diplomatic relations<sup>(35)</sup>. They also agreed that all refugees who wished to return to their homes could do so, but they had to give up their arms within a month. They established a special committee to study refugee problems and recommended appropriate measures against gun-running among refugees. Finally, they agreed that the two heads of state would meet regularly to discuss mutual co-operation between the two states<sup>(36)</sup>. Despite these efforts, Burundi was unable to relocate large numbers of refugees. This served to maintain a certain level of tension in the area, but there were no further large scale incidents. The problem of settling the refugees was still extremely difficult. In April 1972, a Hutu uprising in Burundi

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(32) Meyers, David B., Op. Cit, p.136

(33) Ibid p. 136

(34) Ibid p. 136

(35) Ibid p. 137

(36) ACR, 1969-70, Op. Cit, pp. B128-B129

provoked massive executions which were condemned by the international community<sup>(37)</sup>. Consequently, the UN Secretary General was entrusted to take appropriate measures to prevent further loss of life and to alleviate human suffering. Therefore, his efforts were focussed on mobilizing massive humanitarian aid and to ensure that such assistance reached all the victims in Burundi<sup>(38)</sup>. However, the role of the OAU was limited to one of expressing satisfaction with the UN humanitarian assistance. It had little success in dealing with this conflict. It had never attempted the difficult and potentially explosive role of verifying the charges of subversive activities alleged by one member against the other. Even if evidence of subversive activities were found, the OAU had no sanction to impose and might be embarrassed by this clear violation of its Charter. At the same time, refugees constitute a bi-faceted problem of humanitarian support and security. The OAU lacks the resources necessary to support refugees. Its main contribution to this aspect is to bring collective African pressure on international organisations dealing with refugee problems in order to extend the necessary financial assistance<sup>(39)</sup>.

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(37) Andemicael, Berhanykum, Op. Cit, p. 65

(38) The assistance usually involved providing the refugees with basic needs. These included food, water, clothing, some form of shelter and services. It also referred to initial land settlement. So far, two large rural settlements have been set up for refugees, each comprising a number of villages. Each group of settlements had over 60,000 refugees within a year, representing the largest organised refugee settlement in Africa.

(39) The recent international conference on assistance to refugees in Africa, was held in Geneva in April 1981. There were three other conferences on the same subject held during 1967 and 1968 in France and Sweden at which was also discussed and exchanged, views on the subject of the threat to the stability of Africa by the refugees.

In respect of the security matter and the threat of subversive activities by the refugees against their country of origin, the OAU has endeavoured to encourage the host country to control refugee activities. Under customary international law as well as the OAU Charter, member states are obliged to refrain, not only from fomenting civil wars and rebellions in other member states, but also from extending assistance to political refugees in their territories. The OAU member states are now facing the problem of subversive activities carried out by political refugees from the territory of the host state for the purpose of overthrowing the regime in their country of origin. Under existing circumstances, charges of subversive activities by neighbouring states and denial of such charges, have become the order of the day in Africa. Against this background, the OAU Charter envisaged several related principles, sovereignty, equality of all member states, respect for sovereignty, territorial integrity and the inalienable right to independence and unreserved condemnation of political assassination and subversive activities<sup>(40)</sup>. Moreover, the OAU Assembly of Heads of State at its second ordinary session, found it necessary to adopt a declaration on the problem of subversive activities<sup>(41)</sup>. In the declaration, the OAU member states undertake solemnly in conformity with Article III(5) of the OAU Charter:-

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

(41) Ibid pp. 10-11

"....(1) not to tolerate any form of subversive activities originating in foreign powers and carried out with or without the collaboration of an African state;

(2) to refrain from conducting press and radio campaign against any African states;

(3) not to create dissention with or among member states by fomenting or aggravating racial, religious, linguistic, ethnic or other offences;

(4) to observe strictly the principle of international law with regard to all political refugees who are nationals of any member states of the OAU....(42)»

Since the OAU's formation, refugees have posed a growing and multi-faceted problem for the African states. In recent years, the refugee situation in Africa has increasingly assumed a disturbing dimension in terms of number, composition and tension. The deteriorating situation has been caused largely by a series of political crises that erupted in several African states. Accordingly, the internal aspects of political instability have played a prominent role in the contemporary refugee situation in Africa<sup>(43)</sup>. In addition, to the external aspects driven from minority racist regimes in Southern Africa and to a large extent from the continued

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(42) Brownlie, Ian, Op. Cit, p.17

(43) During the writing of this section, more than a million Ghanaians are being expelled from Nigeria, along with all other illegal immigrants of Togolese, Beninois, Upper Voltan and Chadian origins. The expulsion order of the immigrants was announced by the Nigerian Interior Minister on January 24th, 1983. The repatriation of Ghanaians is complicated by the fact that their own country closed its land border in September 1982 in an effort to stop smuggling.

extra-regional intervention in domestic affairs of the OAU member states by foreign powers. The involuntary movements of large numbers of people in Africa constitute a tragedy of major proportions. For the refugees, it involves deprivation, personal distress and psychological uncertainty. For the country of asylum, it creates a series of problems at a time when its limited resources and skill are already overtaxed. There are many other aspects to the refugee situation in Africa but not least, the problem of regional tensions and disputes which may ensue between the state of origin and the state of asylum. There is also the possibility that the state of asylum may seek to employ the political refugees as an instrument for subverting the regime of the state of origin which would heighten the tension to regional crisis level. Likewise, the situation is problematical in that even if the country of asylum adopted a friendly attitude, the very existence of refugees on its soil may be regarded as a threat by the country of origin. Moreover, there is a danger that the political refugees may seek to use the territory of the host state as a base for overthrowing the regime of the state of origin, regardless of the friendly attitude of the host state. Furthermore, the presence of large numbers of refugees may exacerbate tensions along already sensitive frontiers. Under these circumstances, the OAU has endeavoured to prevent regional tensions and potential African refugee problems. Nonetheless, the OAU lacks the resources

necessary to solve the refugee situation in Africa. In respect of the effectiveness of the OAU in solving regional tensions, it is necessary to distinguish between normalisation of relations between member states and final settlement of regional disputes. In respect to the former matter, the OAU was able to act as an effective instrument for resolving inter-state tensions without solving the main causes of the dispute. Regarding the settlement of regional disputes between its member states, the OAU has pursued a combination of methods, both direct and indirect with varying degrees of success. The direct method involved the channelling of appeals to the member states in dispute to solve the dispute by conducting direct negotiation in order to find a mutually acceptable solution. It has often established a mediation commission or the designation of an individual mediator. The indirect method involved, is one of providing a forum for bilateral contact between the leaders of states in dispute. It also involved the development of mediatory initiative on the part of individuals or groups of individuals of African statesmen.



GUINEA VERSUS GHANA (DETENTION OF DIPLOMATS):

BACKGROUND TO THE INCIDENT AND THE OAU EFFORTS IN  
ACHIEVING PEACEFUL SETTLEMENT

On February 24th, 1966 President Nkrumah of Ghana was overthrown in a coup d'etat which was staged whilst he was on his way to Peking<sup>(1)</sup>. The coup created a major uproar in most African radical states where the coup was described as part of an imperialist plot directed against the people of the entire African continent<sup>(2)</sup>. In contrast, the conservative African states, particularly Niger, Ivory Coast, Togo and Upper Volta immediately recognised the military regime headed by General Ankrah. Most of the conflicts between African states are thus due in large measure to the division of its states into two camps and their inability or unwillingness to resolve their differences within the framework of the OAU Charter. The radical states do not consider Africa an autonomous system of inter-state relations. Therefore, events in some African states are seen as a reflection of outside interference. However, relations between Ghana and Guinea deteriorated, as the latter state had given asylum<sup>(3)</sup> to Nkrumah and seemed prepared to

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<sup>(1)</sup> Krishnan, Maya, Op. Cit, p.225

<sup>(2)</sup> Guinea, Mali, Tanzania and UAR not only refused to recognise the new regime in Ghana, but also offered Nkrumah active support to regain power. These states also initiated a move to reconvene a conference of revolutionary states of Africa to discuss the situation in Ghana.

<sup>(3)</sup> On March 2nd, 1966 Ghana's deposed President Nkrumah was given a state welcome with a 21-gun salute when he arrived in Guinea's capital, Conakry from Moscow. Subsequently, the Guinean President made a dramatic announcement on March 3rd, 1966 offering the Presidency of the Federation of Guinea and Ghana to Nkrumah and determined to assist him to regain power in Ghana.

assist him in organising a counter-coup<sup>(4)</sup> which introduced a new potential for conflict between the two states. There were also other factors which contributed to this conflict. The most direct factor was the intense continuous hostility demonstrated by Guinea towards the military regime in Ghana. In this respect, Guinea had not only given shelter to the ousted Ghanaian President after he had become a man without a country, but it carried out a policy of grave provocation against the new regime in Ghana<sup>(5)</sup>. It had also been stated that Guinean troops were preparing to move into Ghana and this would have required their passing through Ivory Coast in order to overthrow the military regime in Ghana. However, the Ivory Coast affirmed that it would not allow its territory to be used as a basis for an act of aggression, launched against an OAU member state<sup>(6)</sup>.

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(4) President Sekou Toure announced that he was mobilizing troops to be sent to Ghana with the least possible delay. He said that the troops would free the people of Ghana from the dictatorship of the military traitors. He justified his intervention on the grounds of the existence of the Ghana-Guinea-Mali Union which was approved by the national assemblies of the three states.

(5)

When Nkrumah arrived in Conakry he stated "...I have come here on purpose to use Guinea as a platform to tell the world that very soon I would be in Ghana..." He declared that he would overthrow the military leaders and teach them the lesson they deserve.

(6)

Skurnik, W.A.E., Ghana and Guinea 1966 - A Case Study in Inter-African Relations, JMAS, Volume 5, 1967, p.379

The Guinean threat did materialise and it created a major regional split among West African states. It was notable that there was no distinction between the inflammatory language used by Nkrumah and by the Guinean government<sup>(7)</sup>. The latter stated that it must consider itself in a state of war with the military regime in Ghana. It also determined to halt the criminal action of the imperialists and crush all subversive elements<sup>(8)</sup>. However, the immediate factor that had led to the conflict between Guinea and Ghana was the question of the Ghanaian nationals<sup>(9)</sup>. The Ghanaian ambassador and his family were arrested by Guinean authorities. At the time, the ambassador and his family were taken off a plane at Conakry Airport whilst returning to Ghana. He was placed under house arrest<sup>(10)</sup>. Subsequently,

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(7) Both sources called the military leaders imperialist puppets and murderers and incited the Ghanaian people to revolt and oust them. Nkrumah was also allowed to address the people of Ghana on a regular broadcast over Guinea national radio, inciting them to revolt against the new regime.

(8) Matthews, Robert O., Inter-State Conflicts in Africa, JIO, Volume 24, 1970, p.344

(9) There were about a hundred Ghanaians, seventy of whom had been members of the security squad which had accompanied Nkrumah on his trip to China. They were wanted in Ghana for questioning and presumably faced arrest the moment they set foot on Ghanaian soil. In addition, there was a contingent of twenty-eight Ghanaian students just returned from Moscow. Ten of these students had expressed a desire to return to Ghana while still attending police training courses in the Soviet Union. The students appeared to have been detained in military camps after they arrived in Guinea. Subsequently, nine were allowed to return to Ghana.

(10) Meyers, David B., Op. Cit, p.344

the Guinean authorities also arrested the Ghanaian embassy staff. Moreover, the Guinean government confiscated Ghanaian property in Guinea and allowed Nkrumah to withdraw Ghanaian public funds lodged in Guinean banks. Furthermore, it bestowed upon Nkrumah the co-Presidency of Guinea which was also an action that would be interpreted in Ghana as an insult<sup>(11)</sup>. The final factor which contributed to the conflict between the two states "....is expressed by an African proverb that if you cannot find the master, beat his dog and the master will come...."<sup>(12)</sup> In this respect, the immediate objective of Ghana's arrest of Guinean diplomats was to prompt the OAU to come and take action in freeing the Ghanaians. At the same time, this action would serve the additional purpose of showing Guinea's hostility in a regional forum. The OAU would then be used to put pressure on Guinea to cease subversive activities against Ghana. In addition to the consideration by Ghana's military government that the consistently hostile attitude of Guinea was extraordinary enough as to justify extraordinary counter-measure<sup>(13)</sup>. Therefore, it had recognised the adverse consequences that the action was contrary to international norms as observed among

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(11) Skurnik, W.A.E., Op. Cit, p.373

(12) Ibid p.374

(13) Polhemus, Higbie, J., Op. Cit, p.198

the international community. However, before taking such action, the new regime in Ghana endeavoured to initiate efforts at mediation through the OAU, but was unable to secure any action from its institutions<sup>(14)</sup>. Consequently, the Ghanaian military regime turned to retaliatory action in order to strike back at Guinea for its active support for Nkrumah and detention of its nationals. Thus, this action came up with the convening of the seventh ordinary session of the OAU Council of Ministers which took place in Addis Ababa in October 1966 to precede the third ordinary session of the OAU Assembly of Heads of State<sup>(15)</sup>. The Guinean delegation to the OAU Council of Ministers was en route to Addis Ababa aboard a Pan-American Airways jet which made a scheduled landing at Accra<sup>(16)</sup>. The delegation, which had remained on board was removed from the plane and detained by the Ghanaian authorities who announced that the delegation would not be allowed to leave until the members of the Ghana embassy in Guinea were released<sup>(17)</sup>.

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(14) Andemicael, Berhanykum, Op. Cit, p.88

(15) Meyers, David B., Op. Cit, p.360

(16) Nineteen Guineans left Conakry for Monrovia, Liberia where they boarded a Pan-American Airways plane for Lagos, Nigeria. The Guinean delegation was scheduled for Addis Ababa, Ethiopia where it was to represent Guinea at the meeting of the OAU Council of Ministers. The four diplomats were the Guinean Foreign Minister, the Ambassador to Tanzania, the former Resident Minister in Accra and the Secretary General of the Foreign Ministry. The other fifteen Guineans were students on their way to Lagos.

(17) The Guinean delegation detained included fifteen Guinean students en route to Lagos who were transported to an army camp near Accra and placed under house arrest.

The Guinean reaction was swift and they insisted that the United States was entirely responsible for the arrest of the Guinean nationals<sup>(18)</sup>. Thus, this reaction left the field open for ad hoc third party efforts to secure the release of the diplomats and to resolve the broader differences between Ghana and Guinea. In this respect, a unilateral initiative was made prior to the opening meeting of the OAU Council of Ministers by Nigeria, Liberia and Ethiopia<sup>(19)</sup>. They had despatched missions to Accra and Conakry. Simultaneously, the UN Secretary General appealed to both states in dispute, but all these efforts at mediation were unsuccessful to reconcile the two states<sup>(20)</sup>. Accordingly, there was concern at the conference site that many delegations might boycott the meeting of the OAU Council of Ministers in sympathy with Guinea. Therefore, the Council at a special meeting decided to send a three-member mission of ministers to Conakry and Accra in an effort at mediation<sup>(21)</sup>

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(18) As a result, the American Ambassador to Guinea was placed under house arrest for nearly 24 hours in Conakry. Moreover, anti-American demonstrations took place throughout Conakry where the Ambassador's residence and the embassy were vandalised. The Guinean government also withdrew Pan-American's landing rights into Conakry.

(19) The Emperor of Ethiopia despatched his Minister of Justice as his personal envoy to Accra in an attempt to secure the release of the detainees. He subsequently flew to Conakry and Dakar where he conferred with President Senghor and requested his assistance. The outcome of these negotiations was concerned largely with the question of some one hundred Ghanaians residing in Conakry. This had been the immediate excuse for the arrest of the Guineans.

(20) Skurnik, W.A.E., Op. Cit, p.371

(21) Andemicael, Berhanykum, Op. Cit, p.88

The mission again failed in Ghana to secure the release of the delegation but was at least able to return from Guinea with the conclusion that there was no evidence of Ghanaians held there against their will<sup>(22)</sup>. Consequently, it was not until the Summit Conference of the OAU Assembly of Heads of State meeting for its third ordinary session in Addis Ababa, that a settlement to the dispute was found<sup>(23)</sup>. The OAU Assembly held an informal meeting where it was agreed that the heads of state of Ethiopia, Egypt and Liberia would meet with General Ankrah, who was in attendance at the Summit, in order to find a solution that would free the Guinean diplomats<sup>(24)</sup>. The three leaders persuaded the Chairman of the Ghanaian Liberation Council that he should release the Guinean diplomats rather than be responsible for the failure of the Summit, and that in return they would see to it that Ghanaians wishing to return home would do so. Accordingly, the Guinean diplomats were released. Nonetheless, General Ankrah proved unable

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The mission was composed of the Kenyan Vice-President, the Foreign Minister of Congo (Kinshasa) and the Minister of Information of Sierra Leone. The mission was informed in Conakry that it would be allowed to interview Ghanaians living in Guinea and that any who desired it, would be immediately repatriated to Ghana. The mission interviewed eighty-one of the eighty-five Ghanaians and all of those interviewed signed statements expressing their wish not to return to Ghana at this time. The Ghanaian military government refused to accept the mission's report, claiming that the Ghanaians had so testified only because of fear of Guinean retaliation.

(23)

Polhemus, Higbie J., Op. Cit, p.201

(24)

Meyers, David B., Op. Cit, p.144

to get any OAU discussion concerning Guinea's hostile acts<sup>(25)</sup>. Consequently, relations between Ghana and Guinea remained antagonistic and tense throughout the period of military rule. Despite the fact, the OAU Assembly entrusted the President of Liberia to extend his good offices in order to resolve the outstanding differences between the two states in dispute. Accordingly, President Tubman remained sporadically active. As a result of his efforts at mediation, thirty-five of the former security personnel returned to Ghana via Liberia<sup>(26)</sup>. It was notable that the downfall of Nkrumah as President of Ghana was not a minor event, considering his influence in many African states. Despite the fact, the OAU was able to avoid an ideological division over the Ghana-Guinea situation and resolved it in an impartial manner. Nonetheless, the role of the OAU Council of Ministers was inconclusive regarding the proper steps to be taken, and it was further divided by the suggestion that the Ghanaian delegation be barred from attending the Conference<sup>(27)</sup>. Unfortunately, the

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(25) McKeon, Nora, African States and the OAU, JIA, Volume 42, 1966, p.406

(26) Meyers, David B., Op. Cit, p.145

(27) The OAU could deal with less divisive disputes. The difficult matter in the Guinea-Ghana dispute was the prompt resurgence of the old ideological division which Africa had sought to neutralise by establishing the OAU. Eleven of the then thirty-three member states, Egypt, Algeria, Tanzania, Somalia, both Congo states, Mali, Sudan, Mauritania, Kenya and Sierra Leone were described by the Guinean government as having adopted a helpful attitude. The others remained silent or offered their good offices for mediation without taking sides.



Council has often adopted a habit of shelving major decisions and passing them to the Assembly of Heads of State. Thus, this practice might threaten to turn the OAU into a facade rather than an active instrument of co-operation. The Council was conceived to provide a permanent safety-valve for tension which might arise among member states. The abstention of the Council on a number of important decisions led to undermine the OAU's ability to function on a regional basis. Consequently, there must be compliance with decisions taken at Council level, and member states must ensure that the decisions of the Council be afforded as much attention as would the decisions of the Assembly of Heads of State. Following the brief review of this incident, it is necessary to set the stage for the legal consequences. The international legal position is obvious: detention of diplomats constitutes a flagrant violation of international principles concerning the diplomatic privileges and immunities. In this respect, the Ghanaian government had violated these principles as had previously the Guinean government<sup>(28)</sup>. These acts were in violation of the Vienna Convention on Diplomatic Relations signed on April 18th, 1961 to which both states are signatories<sup>(29)</sup>. Article 29 of the

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(28) The Vienna Convention deals with the subject of diplomatic relation and immunities in a comprehensive and general manner. The conference held under the UN auspices and the mandate assigned to it by the UN General Assembly was that of adopting the international customary law that had grown up concerning diplomatic intercourse and immunities. A set of forty-five draft articles on the subject prepared by the International Law Commission formed the basis of the 1961 Vienna Convention.

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

1961 Vienna Convention stipulates that "....the person of diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention...."(30)"

Also mentioned explicitly is the inviolability of a diplomatic agent in transit through a country to which he is not accredited. Article 40 stipulates that "....if a diplomatic agent passes through or is in the territory of a third state which has granted him a passport visa if a visa is necessary while proceeding to take or to return from his post or when returning to his own country, the third state shall accord him inviolability and such other immunities as may be required to secure his transit or return...."(31)"

As a matter of fact, the Guinean diplomats were in transit at Accra International Airport, Ghana, and since they did not plan to leave the aircraft, required no visa<sup>(32)</sup>. Detention of the Guinean diplomats is also in violation of the OAU General Convention on Privileges and Immunities. It provides that "....representatives of the OAU member states to the principal and subsidiary bodies and to conferences convened by the OAU shall while exercising their function or during their travel to and from the place of meeting be accorded immunity from personal arrest or detention...."(33)" It should be mentioned here

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(30) Ibid p.160

(31) Ibid pp.162-163

(32) Skurnik, W.A.E., Op. Cit, p.379

(33) Polhemus, Higbie J., Op. Cit, p.199

that Ghana unlike Guinea had not ratified the General Convention<sup>(34)</sup>. Despite the fact, it would seem that the Convention is legally binding since it had been adopted by the OAU Assembly of Heads of State and the ratification is only a matter of realising it in practice. Since the resolution adopted by a two-thirds majority of the member states, the General Convention then is binding on all member states of the OAU. It would also appear that Ghana did not seek to argue this point. Indeed, Ghana justified its action as a retaliation against previous Guinean violation of these international norms, especially the detention of the Ghanaian Ambassador<sup>(35)</sup>. As a matter of fact, this retaliatory action was contrary to international principles enshrined in the UN Charter.

"....To maintain international peace and security and to that end....<sup>(36)</sup>" "....the party 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 choice....<sup>(37)</sup>" In this respect, the OAU General Convention on Privileges and Immunities also provides that "....all differences arising out of the

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(34) Ibid p.199

(35) Meyers, David B., Op. Cit, p.360

(36) Panhuys, H.F. van et al., Op. Cit, p.24

(37) Ibid p.33

interpretation or application of the present Convention shall be referred for arbitration to the OAU Commission of Mediation, Conciliation and Arbitration unless in any case it is agreed by the parties of a certain dispute to have recourse to another mode of peaceful settlement...<sup>(38)</sup> In fact, international norms can only be satisfactorily applied if their provisions are respected by all states at all times. It would appear that Ghana sought to have its dispute with Guinea solved peacefully within the framework of the OAU Charter. Nonetheless, Guinea denied Ghana's charges and refused to participate in any meeting of the OAU until its officials had been released<sup>(39)</sup>. The Guinean refusal left the field open for ad hoc third party efforts. To this effect, Ethiopia, Liberia and Nigeria despatched missions in an effort to secure the release of the diplomats and to resolve the broader differences between the two states in dispute<sup>(40)</sup>. It was also reported that the UN Secretary General had extended his good offices in connection with the release of the Guinean diplomats. Despite these efforts, Guinea continued to deny Ghana's charges and placed the blame for the incident on the United States government and Pan-American Airways, and demanded the transportation of its officials to their destinations<sup>(41)</sup>. The argument advanced by Guinea to

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(38) Polhemus, Higbie J., Op. Cit, p.307

(39) McKeon, Nora, Op. Cit, p.307

(40) Andemicael, Berhanykum, Op. Cit, p.88

(41) Skurnik, W.A.E., Op. Cit, p.370

justify its position was that its officials had no prior knowledge that the Pan-American jet would stop in Accra<sup>(42)</sup>. Despite this argument, Article 40(4) of the Vienna Convention stipulates that "...the obligation of third states under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs and to official communications and diplomatic bags whose presence in the territory of the third state is due to force majeure....<sup>(43)</sup>" Therefore, international convention exonerated the United States government and Pan-American Airways from any legal responsibility towards Guinea in connection with the incident at Accra. Article I of the 1944 Chicago Convention on International Civil Aviation to which Guinea is a signatory, also makes it clear that "...the contracting states recognise that any state enjoys complete and exclusive sovereignty in air space above its territory...<sup>(44)</sup>". Thus, this would imply that the competent authorities of the contracting state have the right to visit landing and departing aircrafts of other contracting states and also

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The Guinean officials boarded a regular twice-weekly Pan-American flight, originating in New York and stopping at Dakar, Monrovia and Accra and terminating in Lagos. Moreover, the National Guinean Airway is the official Pan-American agent in Conakry. Hence, flight schedules and information were available to the Guinean officials.

(43)

Panhuy, H.F. van et al., Op. Cit, p.163

(44)

Ibid p.440

implies that such visits may be followed by detention or arrest of passengers and crew by public authorities. Accordingly, the Ghanaian authorities were acting in conformity with the provisions of the Chicago Convention and exercising its legal right as a sovereign state when it arrested the non-diplomatic passengers. Whether this was a wise act is of course another question. Consequently, the United States government should not be held responsible for action by a third state. Likewise, it had no legal right to interfere in a dispute between two sovereign African states. As far as the responsibility of Pan-American Airways was concerned, the Chicago Convention makes no mention of the duty of an airline to transport passengers against the opposition of the government of a nation. At any event, detention or arrest of diplomats of one nation by the authorities of another for any reason, is not permitted by the Vienna Convention and is in violation of the principles of international law.

GUINEA VERSUS IVORY COAST (SEIZURE OF DIPLOMATS):

BACKGROUND TO THE INCIDENT AND THE OAU EFFORTS IN  
ACHIEVING PEACEFUL SETTLEMENT

The tension in West Africa following the coup d'etat in Ghana also affected relations between Guinea and the Ivory Coast. In addition to that, there were ideological differences between their respective Presidents which had begun before independence<sup>(1)</sup>. Nonetheless, the danger of direct conflict between Guinea and the Ivory Coast had remained limited, until the Ghanaian coup in 1966 when tensions throughout the West of Africa rose greatly. Since the Ivory Coast lies between Guinea and Ghana, the announcement by Guinea of its intention to invade Ghana induced the Ivory Coast to mobilize troops on the common frontier with Guinea<sup>(2)</sup>. Even after the immediate threat of armed confrontation had passed, tension between the Ivory Coast and Guinea remained high and culminated in an incident similar to that between Guinea and Ghana<sup>(3)</sup>.

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(1) Meyers, David B., Op. Cit, p.146

(2) President Sekou Tourè of Guinea announced on March 10th, 1966 that he was mobilizing troops to be sent to Ghana with the least possible delay. Soon afterwards, Guinea's troops supported by heavy equipment began moving towards the frontier of Ivory Coast, which separates Ghana and Guinea. However, Ivory Coast affirmed that it would not allow its territory to be used against its friendly neighbour. With the refusal of Ivory Coast to give passage to Guinean troops through its territory, it may be expected that subversive activities would be engineered from Guinea, perhaps with the assistance of other African states who stated their determination to overthrow the military regime in Ghana.

(3) The Ivory Coast authorities arrested and detained the Foreign Minister of Guinea and permanent representative of Guinea to the UN and members of Guinea's delegation to the fifth emergency special session of the UN General Assembly, who were in transit on a KLM plane on their return journey from the UN General Assembly session at the time the plane was forced to make an unscheduled landing at Abidjan.

In May 1967, Guinea arrested several citizens of the Ivory Coast residing in Guinea and captured an Ivory Coast fishing trawler, alleging that its crew were planning to kidnap the former Ghanaian President Nkrumah<sup>(4)</sup>. Under these circumstances, the Ivory Coast initially tried to initiate efforts at mediation through the OAU, but was unable to secure any action from its institutions<sup>(5)</sup>.

As a result of the OAU's inability to make an effort at mediation, President Tubman of Liberia, who had good relations with the leaders of Guinea and Ivory Coast, extended his good offices in an effort to reconcile the two states in dispute, but was unsuccessful<sup>(6)</sup>.

Consequently, the Ivory Coast turned to a reprisal action to strike back at Guinea for the detention of its nationals and property. On June 26th, 1967 the Ivory Coast authorities detained Guinean officials returning from the fifth emergency special session of the UN General Assembly as well as Guinean citizens serving with the Universal Postal Union, together with their families<sup>(7)</sup>. The Ivory Coast authorities explained that its action was a retaliatory act and that the Guineans would be held until the Ivory Coast citizens in detention in Guinea were released<sup>(8)</sup>. Simultaneously, both states publicly

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(4) Andemicael, Berhanykum, Op. Cit, p.89

(5) Meyers, David B., Op. Cit, p.360

(6) Andemicael, Berhanykum, Op. Cit, p.89

(7) Whiteman, Marjorie M., Digest of International Law, Volume 13, 1963, p.129

(8) Meyers, David B., Op. Cit, p.360



exchanged mutual charges of subversive activities going back as far as 1965<sup>(9)</sup>. Under these circumstances, Guinea went directly to the UN in an effort to secure the release of its officials and citizens<sup>(10)</sup>, thus its efforts at the UN had also been supported by a number of African states and the OAU Secretary General<sup>(11)</sup>.

At the same time, the Ivory Coast Government requested the UN Secretary General to assist in an exchange of persons detained by both states<sup>(12)</sup>. Despite the UN Secretary General's refusal to link the two affairs, he despatched a personal envoy to both states but was unsuccessful in his efforts to free the detainees in both countries<sup>(13)</sup>. Accordingly, the UN Secretary General endeavoured to encourage the OAU to use its good offices in this dispute<sup>(14)</sup>. Consequently, the OAU Assembly at

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( 9) McKeon, Nora, Op. Cit, p.406

(10) On June 30th, 1967 President Sekou Tourè of Guinea informed the UN Secretary General, of illegal arrest and detention by the Ivory Coast authorities on June 26th, 1967 of the Guinean delegation to the fifth emergency special session of the UN General Assembly. The delegation consisted of Dr. Lansana Beavogui, Minister for Foreign Affairs and Mr. Achkar Marof, Permanent Representative of Guinea to the UN, as well as Mr. Montalouv Joseph ITU staff member of Guinean nationality.

(11) Krishnan, Maya, Op. Cit, p.225

(12) Andemicael, Berhanykum, Op. Cit, p.90

(13) The UN Secretary General despatched Jose Polz-Bennett, then Under-Secretary for Special Political Affairs as his personal envoy to the Presidents of Guinea and the Ivory Coast. He was subsequently joined by I.S. Djermakoye, then Under-Secretary for the Department of Trusteeship and Non-Self-Governing Territories.

(14) Andemicael, Berhanykum, Op. Cit, p.90

its fourth ordinary session which took place in Kinshasa, requested that the host, President Mobutu, make efforts to release the detainees in both states<sup>(15)</sup>. Accordingly, he made great efforts to get the heads of the Guinean and the Ivory Coast delegations to sit together and discuss their dispute, and avoid acrimonious debate at the UN General Assembly. At this time, the OAU efforts were successful. The detainees were released before the issue was discussed officially at the UN General Assembly. Both leaders announced that they were doing this in the interest of African unity<sup>(16)</sup>. Despite the conflict being taken directly to the UN, its final settlement had come through the mediation of an OAU-designated statesman. Following the brief review of the incident, it is necessary to set the stage for the legal consequences. Initially, Guinea addressed a letter to the UN Secretary General charging the government of the Ivory Coast with flagrant violation of the UN Convention on Privileges and Immunities and the Vienna Convention on Diplomatic Relations<sup>(17)</sup>. Actually, detention of diplomats was in violation with international conventions to which the Ivory Coast is a signatory. The latter action had provoked international repercussions and even affected the responsibility of the UN Secretary General. In this

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(15)

Meyers, David B., Op. Cit, p.147

(16)

Ibid p.148

(17)

Panhuys, H.F. Van et al., Op. Cit, p.128 and 156

connection, Ambassador Ackhar, Chairman of the Special Committee on the Policies of Apartheid was invited by the UN Secretary General in conformity with the UN General Assembly request envisaged in Resolution 2202A(XXI)<sup>(18)</sup>. He was consulted by the UN Secretary General in connection with a seminar on Apartheid which was scheduled to take place on July 24th, 1967<sup>(19)</sup>. Accordingly, the Guinean diplomats were covered during their return journey from the UN General Assembly session by the immunities provided for in Article IV(11) of the UN Convention on the Privileges and Immunities<sup>(20)</sup>. Whilst the Guinean nationals working with the Universal Postal Union were covered during their journey by the privileges and immunities of the UN Specialised Agencies<sup>(21)</sup>. It should be noted that the Ivory Coast is a signatory to these conventions. However, the UN Secretary General informed the government of the Ivory Coast that ignoring these diplomats' immunities, constituted a grave precedent. It was also in violation

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(18) Whiteman, Marjorie M., Op. Cit, p.129

(19) Ibid p.130

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

(21) Ibid p.128

with the general principle of international law enshrined in Article 40 of the Vienna Convention with respect to the inviolability of diplomatic agents when travelling abroad in the exercise of their official duties<sup>(22)</sup>. Under these circumstances, the Ivory Coast approached the UN Secretary General for assistance in bringing about the release of its citizens who had been detained in Guinea, but he chose to ignore the link between the two incidents. Despite the fact, he endeavoured to use his good offices in the case of the Ivory Coast nationals detained in Guinea. However, he reported to the UN Security Council on the situation between Guinea and the Ivory Coast in order to keep it fully informed of matters which might lead to international friction<sup>(23)</sup>. Since no progress was made after a month of intensive efforts by the UN Secretary General, Guinea requested him to include the situation on the agenda of the UN General Assembly<sup>(24)</sup>. Accordingly, the issue was placed on the agenda of the twentieth session as an additional item<sup>(25)</sup>. It was an important question of

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(22) The rule adopted at the 1961 Vienna Conference reflects the view of governments that the duty of a third state requires only that a member of a diplomatic mission or a member of his family transiting through a third country to or from his post, be treated with dignity and that his onward travel not be impeded. For that reason, the diplomatic agent was accorded personal inviolability as may be required to facilitate his transit.

(23) Whiteman, Marjorie M., Op. Cit, p.130

(24) Andemicael, Berhanykum, Op. Cit, p.90

(25) Whiteman, Marjorie M., Op. Cit, p.130

principle which had arisen concerning the privileges and immunities specified in Article 105 of the UN Charter and Section II of the UN Convention on the Privileges and Immunities<sup>(26)</sup>. Failure to reaffirm the relevant provisions could set an undesirable precedent. Therefore, the UN Secretary General considered it timely to reaffirm those provisions and called upon all member states to ensure that their representatives to the principal and subsidiary organs of the UN and to conferences convened by the UN, enjoy immunities from arrest or personal detention during their journey to and from the place of UN meetings<sup>(27)</sup>. In any event, before the debate took place in the UN General Assembly<sup>(28)</sup>, the Secretary General received on September 25th, 1967, an official communication from the Ivory Coast to the effect that

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(26) Panhuys, H.F. van et al., Op. Cit, p.130

(27) Whiteman, Marjorie M., Digest of International Law, Volume 7, 1970, p.127

(28) The General Assembly adopted a resolution on the question of diplomatic privileges and immunities, deploring all departures from the rules of international law governing diplomatic privileges and immunities of the UN. It urged member states to take every measure necessary to secure the implementation of the rules of international law governing diplomatic relations and in particular, to protect diplomatic missions and to enable diplomatic agents to fulfil their tasks in conformity with international law. The resolution also urged states which have not yet done so, to ratify or accede to the Vienna Convention on Diplomatic Relations of April 18th, 1961. The resolution further urged member states of the UN which have not yet done so, to accede to the Convention on the Privileges and Immunities of the UN adopted by the UN General Assembly on February 13th, 1946. (GA Resolution 2328 (XXII) December 18th, 1967)

it was on that day releasing the Guinean diplomats. This was the outcome of an earlier decision by Guinea to set free the Ivory Coast nationals detained there<sup>(29)</sup>. The Guinea-Ivory Coast dispute was initially handled by the UN rather than the OAU. This was the consequence of Guinea's strong protest that the UN should be held responsible for the release of its officials because the meeting from which they were returning was convened by the UN. In addition to this, it was concluded that the Ivory Coast had violated Section 11 of the UN Convention on the Privileges and Immunities to which the latter state is a signatory<sup>(30)</sup>. The UN Secretary General had thus asserted that in the interest of the proper functioning of the UN, he would have no other choice but to lodge a strong protest against such violation and to contemplate the means which were open to remedy the situation<sup>(31)</sup>. The direct interest of the UN in this conflict was therefore obvious, by the fact that the UN encouraged the intercession by the UN Secretary General. Accordingly, the OAU renounced its role, but after the unsuccessful efforts made by the UN, it then stepped in to encourage settlement through the good offices of an African statesman. The OAU made great efforts to reach a settlement of the dispute before the

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(29) Meyers, David B., Op. Cit, pp.147-148

(30) Whiteman, Marjorie M., Op. Cit, p.130

(31) Meyers, David B., Op. Cit, p.360

UN General Assembly started debating the situation between two of its member states. This was in consequence of avoiding an acrimonious debate concerning the violation of the UN Convention on Diplomatic Privileges and Immunities by two member states of the OAU. The conflict had two dimensions: an incident constituting some form of retaliation, and an underlying history of political and ideological differences expressing itself in subversive activities. The respective roles of the UN and the OAU and the nature of their collaboration is based on Chapter VIII of the UN Charter concerning regional arrangements<sup>(32)</sup>. The immediate consequences of this conflict were based on the extent to which each organisation was directly affected by the incident. Thus, the Guinean officials detained by the Ivory Coast, being of special concern to the UN had to be handled initially by the latter organisation. Subsequently, the OAU was, by its Assembly of Heads of State, to take up the conflict which was mediated by a designated statesman. The immediate problem of this conflict was settled, but as far as the political and ideological differences were concerned, neither the UN nor the OAU attempted to

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

resolve them. Nonetheless, the two organisations have sought to halt further subversive activities by issuing similar declarations that underlined the principle of non-interference in domestic affairs<sup>(33)</sup>. Finally, the collaboration which had existed between the UN and the OAU during the settlement of this conflict, had largely conformed to the principle of regional arrangements. This has confirmed the principle that all regional disputes should initially be sought through the OAU to the extent that it is able to provide effective settlement to such disputes. However, the nature and extent of the UN role in the settlement of African regional disputes would depend upon the degree of success that the OAU may gain in settling these disputes.

The common cause of these conflicts described in this category, are the domestic instabilities that plagued both of the states involved, as well as the intervention by other African states in these internal disorders. It has already been mentioned that disorder resulted from the challenging of the legitimacy of the political authority in power. However, neighbouring states have chosen, for reasons as varied as humanitarian,

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The Accra session of the OAU Assembly thus found it necessary to adopt a declaration on the problem of subversion. In the declaration, the OAU Assembly undertook solemnly, in accordance with Article III(5) of the OAU Charter, not to tolerate any subversive activities between African states and to oppose collectively any form of subversion originating in foreign states and carried out with or without the collaboration of an African state. Two months later, upon the initiative of African, Asian and Latin American states, the UN General Assembly proscribed all forms of subversion when it adopted a declaration on the inadmissibility of intervention in the domestic affairs of states.



ethnicity, ideology and religion, to support the political refugees in their struggle either to secure a change of regime or to achieve their separate independent state. The assistance that African states have given to opposition groups from another state has been the cause of friction between OAU member states. It was notable that following the overthrow of Nkrumah, Ghana's relations with most of its neighbouring states were gradually restored to normality. Nonetheless, the downfall of Nkrumah was not looked upon as a blessing in disguise, but rather as a neo-colonialist threat to their continued existence. However, the coup had led to a deterioration in relations between Guinea on the one hand, and Ghana and the Ivory Coast on the other. Despite the reconciliation of these disputes by the OAU, relations between Guinea, Ghana and the Ivory Coast have remained impervious to all efforts by African statesmen to normalise relations between them. One of the central concerns of the OAU has been to resolve disagreements between its member states peacefully. The amicable settlement to all African regional disputes is deemed necessary in order to maintain the autonomy of African regional arrangements. It is understood that prolonged and violent regional disputes could only weaken the united front of Africa and hasten the introduction of extra-regional intervention. In an effort to maintain peace and security, African states have developed, over an era, a set of norms and regional institutions to guide their relations and curb the outbursts of regional conflicts. Article III of the OAU Charter provides a set of norms to govern relations between its member states. They are - the sovereign

equality of all member states, non-interference in the internal affairs of other member states, respect for sovereignty and territorial integrity of each state and for its inalienable right to independent existence and peaceful settlement of disputes by peaceful means<sup>(34)</sup>.

The second principle of non-interference is envisaged again, more precisely and explicitly in Article III(5) which provides for unreserved condemnation of political assassination in all its forms as well as of subversive activities on the part of neighbouring states or any other state<sup>(35)</sup>.

It has already been mentioned that evidence of Nkrumah's interventionist activities, along with the knowledge that the political refugees from neighbouring states were obtaining substantial support and assistance, resulted in an Entente-led campaign to bring an end to subversion. Despite the absence of these states from the OAU Summit which took place in Accra, Ghana, in protest of Nkrumah's interventionist activities in their state's domestic affairs. The OAU Assembly passed a resolution reaffirming the OAU principle of non-interference and condemning any state that allowed refugees to carry out subversive activities against their state of origin. Despite the fact, the OAU has not made the progress expected towards achieving its aims. The OAU member states are beset by the twin dangers of nationalism and regionalism. Most OAU member states

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(34) Brownlie, Ian, Op. Cit, pp.2-3

(35) Ibid p.3

are beset by border disputes, deep-rooted internal political strife and the nagging problems of disease, poverty and refugees on a massive scale. However, the OAU has achieved a little progress in the settlement of regional disputes<sup>(36)</sup>. At the same time, the member states are extremely slow in practice to submit their disputes to the OAU machinery. This could be attributed to the OAU approach to peaceful settlement of regional disputes and the typical approaches employed by the OAU in settling regional conflicts, one has already been adopted in order to pass resolutions that clearly outline proper and proscribed behaviour. The seizure of diplomats did not, however, call for such action, this being forbidden under international law. These acts were also in violation of the 1961 Vienna Convention and the UN and OAU Conventions on the Privileges and Immunities<sup>(37)</sup>.

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Unable to take prompt action to present regional disputes, a number of African leaders suggested considering ways and means in which the OAU would be able to react immediately on occasions when neither the Council of Ministers nor the Assembly of Heads of State were in session. Some member states proposed the establishment of a special permanent body empowered to act for the OAU when the principal organs were not in session. Some member states suggested giving the OAU Secretary General authority to mediate in regional disputes. Unfortunately, neither of these suggestions received substantial support and both were quickly forgotten.

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Panhuy, H.F. van et al., Op. Cit, p.156

Nonetheless, the OAU has exerted a considerable influence in assisting settlement of these disputes. The existence of the OAU has served to hold the lid on things. It has also provided a forum whereby the states in dispute were frequently able to meet and dispel any misunderstanding that existed between them, and where the other member states were able to bring pressure to bear on the conflicting parties. The effectiveness of the OAU in settling regional disputes has thus rested less on its role as a mediator than on its capacity as a forum. Despite the elaborate machinery evolved by the OAU to deal with regional disputes between its member states, the most successful technique of conflict settlement in Africa has involved the mediation of heads of state who are widely respected and trusted by both parties in dispute. In fact, the OAU has, on several occasions, limited its efforts to request some African leaders to initiate mediation or to pursue such a role as he may already have begun. Unfortunately, the Secretary General of the OAU neither possesses the institutional authority nor has developed the reputation for fairness which would enable him to play a vital role in the settlement of regional disputes. This was in consequence of, and in part by default of, the Secretary General and, in part as a result of the significance of regional disputes in continental policies. Consequently, African leaders have frequently found themselves cast in the role of mediators.

CHAPTER IV:

THE OAU ROLE IN INTERNAL CONFLICTS  
WITHIN ITS MEMBER STATES

THE OAU AND THE CONCEPT ON NON-INTERFERENCE IN  
DOMESTIC JURISDICTION:

As stated earlier, the history of pan-Africanism from 1958 onwards, was a struggle for the maintenance of the principle of non-interference in domestic jurisdiction as a cardinal value of African inter-state relationship. However, in the debate on this concept at the founding conference of the OAU, the fear prevailed among some member states that the organisation might arrogate to itself the right to interfere in the domestic affairs of member states whom they regard as neo-colonialist<sup>(1)</sup>.

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In spite of the fact that the assassination of President Olympio of Togo occurred five months before the founding Summit of the OAU in May 1963, Nigeria proposed intervention by the Inter-African and Malagascy Organisation (Monrovia Group). It requested the convening of the latter organisation in Lagos in February 1963 in order to consider the legality of the new regime in Togo. The Conference debated whether automatic recognition be accorded to the provisional government in Togo without taking into account the suspension of the constitution or dissolution of the national assembly and the abrogation of the electoral laws of the Republic of Togo. It considered, in addition, whether recognition be accorded without taking into account the external influences and the military constraints which contributed to bringing the new regime to power. The Conference failed to reach a conclusion on the issue of recognition but recommended the setting up of a five-nation commission to enquire into the circumstances of the coup. This, however, was disbanded five weeks later. It was also notable that none of the states participating followed the implied suggestion of severing relations with Ghana.

At the same time, there was also a fear of external intervention by acts of subversion originating in African states acting as accomplices of foreign states hostile to the unity and independence of the state concerned<sup>(2)</sup>. Consequently, the working papers tabled by the Ethiopian delegation called for the strongest safeguards to protect the hard-won independence, sovereignty and territorial integrity of member states and urged resistance to neo-colonialism in all its forms, including political and economic interference<sup>(3)</sup>. Accordingly, Article II of the OAU Charter provides for defence of territorial integrity and for joint co-operation on defence and security<sup>(4)</sup>. It is in reality preoccupied with external subversion, while giving the impression that it is condemning intervention by other member states. According to Article II, each member state has a solemn and sacred duty to respect the right enjoyed by all other member states in conformity with international law. The member states also pledge to refrain from any subversive activities against neighbouring states or other states. Moreover, the Article also envisages, inter alia, of the right of a state to defend its territorial integrity, to exercise within its boundary, exclusive jurisdiction

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(2) Tandon, Yashpal, Op. Cit, pp.1153-1154

(3) Okoye, Felix Chuks, Op. Cit, pp.124-127

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

over all domestic affairs and to freely determine political, economic and cultural standards without interference and intervention<sup>(5)</sup>. Therefore, the conclusion to be drawn from the provisions of the OAU Charter is that interference by other member states is not frowned upon, while at the same time, there is complete opposition to external intervention. According to Article II(c), the OAU shall promote international co-operation having due regard to the UN Charter and the Universal Declaration of Human Rights<sup>(6)</sup>. Accordingly, this Article could be considered as being a reminder that the OAU founding members conceived of their organisation as being a regional arrangement within the terms of Article 52(1) of the UN Charter<sup>(7)</sup>. As concluded in an earlier Chapter, the OAU is a regional organisation of the UN under the provisions of Article 52(1)<sup>(8)</sup>. Consequently, the OAU Charter cannot detract from the right conferred by the UN Charter in connection with non-interference in domestic jurisdiction of member states. Thus, it is necessary to discuss the definition which the UN has given to the concept of non-interference in domestic jurisdiction of member states envisaged in Article 2(7). It provides that "....nothing contained in the present Charter shall authorize the UN to intervene

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(5) Ibid p. 3

(6) Ibid pp. 2-3

(7) Bowett, D.W., The UN and Peaceful Settlement. International Disputes, the Legal Aspect, Europa Publications, London, 1972, pp.189-192

(8) Andemicael, Berhanykum, Op. Cit, pp. 233-236

in matters which are essentially within the domestic jurisdiction of any state....<sup>(9)</sup> The provisions established two restrictions, one upon the competence of the UN and the second on the member states. Firstly, intervention by the UN in domestic affairs of its member states is prohibited. Secondly, the individual members are under an obligation to refrain from interfering in domestic affairs of other member states<sup>(10)</sup>. The League of Nations in fact had a different wording, but the essential content of Article 2(7) of the UN Charter has been deduced from Article 15(8) of the LN Covenant<sup>(11)</sup>. Article 15(8) maintained that the Council of the League had no jurisdiction in the case of a dispute which had arisen from matters which were solely within the domestic jurisdiction of a party to the dispute<sup>(12)</sup>. There can be little doubt about the existence of matters which by their very nature are solely within the domestic jurisdiction of a state. There is no matter which cannot be regulated by a rule of customary or contractual international law<sup>(13)</sup>. Therefore, if a matter is regulated by a rule of international law, it is no

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

(10) Kelson, Hans, The Law of the UN, Stevens & Sons, London, 1950, p.770

(11) It runs as follows "...if the dispute between the parties is claimed by one of them and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report and shall make no recommendation as to its settlement..." (Kelson, Hans, Op. Cit, p.771)

(12) Ibid p.771

(13) Ibid p.772



longer solely within the domestic jurisdiction of the member states. Accordingly, the language adopted by the UN Charter resulting in a limitation of UN competence is less rigid than that maintained in Article 15(8) of the LN Covenant<sup>(14)</sup>. Thus, the UN has adopted definition of intervention which in the accepted technical sense, can be conceived of as dictatorial mandatory interference intended to exercise direct pressure upon the political independence of the state concerned<sup>(15)</sup>. However, this approach does not rule out action by way of discussion, investigation, study, enquiry and recommendation falling short of intervention. In this respect, the power to conduct these activities is expressly conferred only upon the UN Security Council and only for the purpose of determining whether the continuance of a dispute or a conflict is likely to endanger international peace and security<sup>(16)</sup>. Thus, this approach is identical to the ICJ's interpretation of the domestic jurisdictional clause in its advisory opinion in the Certain Expense Case<sup>(17)</sup>. It declared that in regard to action taken by the UN which was appropriate for the fulfilment of one of its stated purposes, the presumption is that such action is not

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(14) Bowett, D.W., Op. Cit, pp.180-183

(15) Kelsen, Hans, Op. Cit, p.769

(16) Ibid p.772

(17) The Certain Expense Case, Advisory Opinion of July 20th, 1962, ICJ Report, pp.176-177

ultra vires the organisation<sup>(18)</sup>. At all events, the concept of non-interference in matters of domestic jurisdiction may be of great importance with respect to the function of the organisation under Chapters IX and X which authorizes the UN to promote international co-operation<sup>(19)</sup>. Accordingly, it is hardly possible to fulfil these functions without interfering in matters of domestic jurisdiction. Hence, the UN has usually asserted jurisdiction over extremely wide areas, including those of Human Rights<sup>(20)</sup>. Consequently, it is essential to consider the OAU in its relationship to the UN in view of what has been mentioned above. Despite this fact, the limiting factor on intervention in domestic jurisdiction could not come from the UN practice, but would have to be inherent in the practice and the provisions of the OAU Charter. The latter makes a similar distinction envisaged in Article III, but the obligation of non-interference in domestic jurisdiction is only imposed upon member states and not upon the organisation itself<sup>(21)</sup>. Despite this fact, the OAU

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(18) Ibid p.179

(19) Panhuys, H.F. van et al., Op. Cit, pp.36-40

(20) The UN General Assembly on April 20th, 1949 adopted Resolution 272(111) on this question in which it expressed its deep concern at the grave accusation made against the governments of Bulgaria, Hungary and Romania regarding the suppression of Human Rights and fundamental freedoms in their countries. The Secretary General of the UN was authorized to investigate the situation in these countries but the governments of Bulgaria, Hungary and Romania refused to co-operate. Consequently, the UN General Assembly decided to submit the matter to the ICJ for an advisory opinion. (International Status of South West African Opinion, 1950, ICJ Report, pp.176-177)

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

Assembly of Heads of State has chosen to interpret Article III restrictively to favour inaction<sup>(22)</sup>.

Unfortunately, with the non-interference provision of the OAU Charter construed in absolute terms to exclude any active role in internal conflicts, the OAU is severely handicapped in handling threats to the general peace and security of the African continent, arising out of internal conflict. In contrast, the UN has been able to take up issues such as the racist policies of South Africa and to handle the Congo crisis and other situations that would originally be regarded as falling within the domestic jurisdiction of member states<sup>(23)</sup>.

It is also worthwhile to question whether the organisation should interfere in a civil war resulting from a power struggle between factions, not for the right to form a separate state, but for the control of the machinery of government. This in fact is a classic form of civil war and is undoubtedly an internal matter<sup>(24)</sup>. In this respect, what about the legality of a government coming to power by a military coup? Such a situation was initially raised in the OAU forum in connection with the overthrow of President Olympio of Togo, who was killed in the course of the coup on January 13th, 1963<sup>(25)</sup>. At that time the OAU was not in existence,

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(22) Komonu, Onyenoro, Op. Cit, pp.371-372

(23) Ibid p.372

(24) Akinyemi, Bolaji, Op. Cit, pp.379-381

(25) Cervenka, Zdenek, Op. Cit, pp. 76-77

but preparations for the founding Summit in May 1963 were already well on the way. It should be noted that Ghana was suspected of having engineered the coup because of its strained relations with Togo over the harbouring of Ghanaian political refugees<sup>(26)</sup>. However, the Togo coup reverberated at the founding Summit in May 1963, which condemned political assassination and subversive activities as incompatible with the OAU Charter<sup>(27)</sup>. Nonetheless, the futility of the principle of recognising a government coming to power by military coup was soon exposed by a series of coups of which the one in Togo was only the beginning. Conspicuously, the legality of these governments which came to power was never questioned, except after the overthrow of Ben Bella of Algeria in 1965, Nkrumah of Ghana in 1966 and Obote of Uganda in 1971<sup>(28)</sup>. Even in these three cases legality gave way to reality.

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(26) Ibid p.78

(27) Sanders, AJGM, Op. Cit, pp.122-123

(28) When Idi-Amin deposed President Obote on January 25th, 1971, military coups were no longer unusual events. By that time 13 member states of the OAU were governed by the military, who had seized power unconstitutionally. The OAU was confronted with the Ugandan coup when two delegations arrived at the 16th session of the Council of Ministers of February 16th, 1971 in Addis Ababa. One of the delegations represented General Amin and the other, the deposed President Obote. Under these circumstances, the Council of Ministers was unable to resolve the question of Ugandan representation. Consequently, the meeting adjourned and referred the matter to the OAU Assembly of Heads of State scheduled for June 1971.

Accordingly, legality requires the character of permanence and its acceptance by other members of the international community is merely a matter of time. It has also been argued that recognition is a political and not a legal act which is accorded by states for political or economic reasons of their own, or simply because there is nothing they can do about it<sup>(29)</sup>. As has been pointed out, the series of compromises reached in drawing up the OAU Charter at least left the issue of intervention in usurpation of power unresolved<sup>(30)</sup>. Moreover, it has been asserted that the non-interference provisions of the OAU Charter are interpreted in absolute terms to prohibit intervention in those issues. Despite this, there is evidence to suggest that the OAU practice does not regard Article III(2) as absolutely prohibitive<sup>(31)</sup>. For instance, the civil wars and the legality of these governments coming to power by military coup was not treated as a purely internal conflict because these situations were being fuelled with arms or financial assistance supplied by outsiders, to at least one of the factions<sup>(32)</sup>. In the case of the Nigerian civil

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(29) Cervanka, Zdenek, Op. Cit, pp.77-78

(30) The OAU position on this matter was revealed only after the conclusion of the OAU Council's meeting by the Zambian delegation. He said that it was agreed by the heads of the delegations attending the Conference of the OAU Council that the attendance by the Ghanaian representatives did not amount to recognition by the OAU of the new regime in Ghana. It was also agreed that if another Ghanaian delegation arrived, the matter would be reconsidered with a view to excluding both delegations.

(31) Bolaji, Akinyemi, Op. Cit, p.397

(32) Komonu, Onyenoro, Op. Cit, p.372

war, the Federal Government of that country insisted that the war was a domestic affair<sup>(33)</sup>. Nevertheless, from the outset, the OAU took notice of this view and discussed the war at its annual summit in Kinshasa, Zaire, in 1967<sup>(34)</sup>. The OAU Assembly asserted its competence on the basis that a civil war has ceased to be an internal matter when third parties interfere to such an extent as to upset the equilibrium between the protagonists and determine the outcome. Accordingly, the OAU adopted a resolution to set up a consultative committee consisting of six heads of state, in connection with the Nigerian Civil War in order to bring about a mutually acceptable national reconciliation<sup>(35)</sup>. Previously, the Congo crisis was not only considered as an internal conflict being fuelled with external arms supply, but as a conflict which posed a series of threats to the peace and security of Africa as a whole<sup>(36)</sup>. Therefore, the OAU established an

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(33) The Nigerian-Biafran war had purely internal origins, but it ceased to be an exclusively internal affair when Britain, France and the Soviet Union became involved in the conflict. Therefore, a civil war ceases to be an internal matter when third parties interfere to such an extent as to upset the balance between the protagonists, and determine the outcome. By following a policy of non-interference in such cases, the OAU is in effect allowing the outcome of the conflict in the African continent to be determined by the action and wishes of non-African powers.

(34) Andemicael, Berhanykum, Op. Cit, p.79

(35) Ibid p.79

(36) Ibid p.67

ad hoc commission in connection with the Congo crisis in order to bring about a mutually acceptable national reconciliation. As to the problem of governments coming to office through illegal seizure of power, there is no definite conclusion which can be drawn from these episodes because of all the coups that have taken place, only three have been the subject of OAU discussion. It should be emphasised that the reason why the OAU discussed the three issues was because two rival delegations turned up at the Conference<sup>(37)</sup>. In the other coups, no such situation arose. Nonetheless, the important point to note is that the three cases considered by the OAU have become precedents. Consequently, it has thus been shown how the OAU became involved in issues of civil wars and coups d'etat which, it could be argued, come within the domestic jurisdiction of member states. In spite of this, the OAU did not consider that action taken on these issues could be seen as intervention in the domestic jurisdiction of its member states. However,

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After the coup in Ghana on February 24th, 1966, a Ghanaian delegation was despatched to represent the new regime at the 5th session of the OAU Council of Ministers in Addis Ababa. Its credentials were questioned by Mali, Guinea, Tanzania and Egypt, all of whom objected to its presence. After a lengthy debate, the meeting decided to accept the Ghanaian delegation as a full participant adding a rider that this was not to imply recognition of the new regime. Subsequently, another delegation sent by the deposed President Nkrumah, arrived at the Conference. When the head of the Ghanaian military delegation rose to speak, he was stopped by the Chairman of the Political Committee. Consequently, the Chairman of the Council convened a plenary meeting at which a number of delegations announced they had been instructed by their governments to withdraw from the session (Guinea, Mali, Egypt, Somalia, Algeria, Kenya, Tanzania) in protest at Ghana's continued presence. The meeting was then adjourned indefinitely to allow tension to abate.

it would be difficult to argue that denying the new regime in Togo the right to participate in the inaugural conference of the OAU and the refusal of seating to the Idi-Amin delegation at the 1971 OAU Council of Ministers' meeting, did not constitute intervention in domestic jurisdiction<sup>(38)</sup>. As stated earlier, the UN approach to Article 2(7) of its Charter is determined by the ICJ-sanctioned rule that anything which would further the realisation of the organisation's purposes, could not be ultra vires<sup>(39)</sup>. This principle, therefore, should be applied to the OAU. In the preamble to the OAU Charter, there is the reaffirmation of the inalienable right of all peoples to control their destiny<sup>(40)</sup>. A common determination is also enshrined in the preamble to promote understanding among African peoples and co-operation among African states in response to the aspiration of African peoples for brotherhood and solidarity in a larger unity, transcending ethnic and national differences<sup>(41)</sup>. There is also reaffirmation of African adherence to the principles of the UN Charter and the Universal Declaration of Human Rights which provide a solid foundation for peaceful and positive co-operation among states<sup>(42)</sup>. Moreover,

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(38) Cervenka, Zdenek, Op. Cit, p.77 and p.80

(39) The Certain Expense Case, Advisory Opinion of July 20th, 1962, p.168

(40) Brownlie, Ian, Op. Cit, p.2

(41) Ibid p.2

(42) Ibid p.2



Article II(d) provides for the eradication of all forms of colonialism in Africa<sup>(43)</sup>. Accordingly, it is hardly possible to fulfil these purposes and functions without interfering in matters of domestic jurisdiction. In this respect, matters such as form of government, acquisition or loss of citizenship, treatment of minorities, questions of tariff or immigration may be subject to international agreement. The fact that these matters are normally regulated by a rule of customary international law does not mean they are matters within domestic jurisdiction of member states. If they are so, then anything which might further the realisation of the OAU purposes could be considered by the organisation.

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(43) Ibid p.3

EAST AFRICAN MILITARY MUTINIES OF 1964:

The initial example of OAU involvement in internal conflict of a member state was unusual. The initiative for an OAU role came, not from other member states, but from the government of the afflicted country itself. Consequently, the OAU's willingness to act in a situation that was primarily a domestic matter within the jurisdiction of a member state, has altered the view that the non-interference provisions of the OAU Charter constitute an absolute prohibition. This came in the aftermath of the January 20th, 1964 East African military mutinies<sup>(1)</sup>. In this respect, troops of the 1st Battalion of the Tanganyika Rifle stationed at Colilo Barracks on the outskirts of Dar-es-Salaam rose against their British officers<sup>(2)</sup>. They also marched into the capital to present their demands for higher pay and total Africanisation of the officer corps, to senior officials of the government<sup>(3)</sup>. At the same time, the mutineers removed the British officers and took them into custody. The following day reports confirmed that the mutiny had sparked off rioting and looting and that at least 17 civilians had been killed<sup>(4)</sup>. It was also confirmed that

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(1) African Report, Volume 9, No.2, February 1964, p.21

(2) Polhemus, Higbie J., Op. Cit, p.206

(3) The delegation was received by the Minister of Home Affairs and by the Minister of Defence and External Affairs. The latter Minister was subsequently transported to the barracks for further negotiations. Nonetheless, he demurred at the mutineers' demands on the grounds that presidential approval would be required to implement the changes required.

(4) Polhemus, Higbie, J., Op. Cit, p.206

President Nyerere with most of his cabinet ministers, had gone into hiding<sup>(5)</sup>. Consequently, the mutineers were able to establish control over key points in Dar-es-Salaam and there was good reason to suspect more extensive political effects. Subsequently, the mutiny was quickly followed by similar outbreaks in Uganda and Kenya<sup>(6)</sup>. It would appear that the military uprisings in these East African countries flowed from dissatisfaction with the slow pace of Africanisation of the officer corps and with the low rate of pay. It was also evident in the Tanganyikan situation that the mutiny might have been caused by the despatch of 300 police to assist the new revolutionary government of Zanzibar<sup>(7)</sup>. In any event, the mutineers required rapid, effective response by the governments concerned to restore law and order. Under these circumstances, there was need for external aid to restore and keep law and order. The Ugandan and Kenyan

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(5) President Nyerere broke his silence to broadcast very briefly to the nation in Swahili on the crisis which had occurred. Subsequently, he toured the capital for four hours to dispel rumours that he was a prisoner of the Tanganyikan army.

(6) The Kenyan government, fearing that army dissatisfaction might soon manifest itself in Kenya, filed a precautionary request with the British High Commissioner in Nairobi for the reinforcement and availability of British troops in the event of an emergency. In Uganda, the Minister of the Interior was held hostage by two companies of the 1st Battalion of Uganda Rifles until he agreed to sign an order increasing army pay. However, the Ugandan government took the view that this incident was not a mutiny on the Tanganyikan pattern, but rather an example of misbehaviour by a few newly-recruited troops. As a precautionary measure, it requested British military assistance in order to insure against the spread of the disturbance to other units.

(7) Polhemus, Higbie J., Op. Cit, p.206

governments quickly requested the assistance of British forces, who were already on hand in the two countries to put the mutinies down<sup>(8)</sup>. In this respect, the British government said it was prepared to allow its forces to remain in the three countries as long as the governments concerned required their presence to maintain law and order while their own forces were being trained<sup>(9)</sup>. Both Uganda and Kenya accepted the offer<sup>(10)</sup>. The government of Tanganyika was at first reluctant to avail itself of the forces available in two British ships standing off the Tanganyikan coast<sup>(11)</sup>, but after four days of negotiations with the mutineers, which failed to produce a settlement and when the situation seemed to be deteriorating, the Tanganyikan government followed the example of the governments of Uganda and Kenya in seeking British assistance<sup>(12)</sup>. British troops landed early in the morning of January 25th. By the end of the day, the mutineers had been disarmed and placed in custody and the mutiny had collapsed<sup>(13)</sup>. The Tanganyikan government was

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( 8) Meyers, David B., Op. Cit, p.171

( 9) Ibid p.170

(10) African Report, Op. Cit, p.22

(11) Polhemus, Higbie J., Op. Cit, p.208

(12) Ibid p.207

(13) Brigadier Patrick Shollo Douglas, whom the mutineers had ousted as Commander of the Tanganyikan army earlier in the week (replaced by Lieutenant Elisha Kauana as Commander of the Tanganyikan Rifles) led the assault. Three Africans were killed in the engagement. An estimated 30 soldiers fled to the bush. By noon, 450 commandos had moved into the capital to protect strategic points. Meanwhile, British paratroops dropped onto two inland camps. One unit overpowered mutinous soldiers of the Second Battalion and the other disarmed mutineers at Nachingwea near the Mozambique border.

then confronted with the problem of what to do next, because it did not want a lengthy British presence<sup>(14)</sup>. This was in consequence of some criticism raised by a number of African leaders who accused the three governments of having re-introduced troops from the former colonial power. In particular, President Nkrumah of Ghana accused them of having fallen prey to neo-colonialism<sup>(15)</sup>. This compelled President Nyerere to seek the replacement of the British troops with forces from African states. Consequently, on January 27th, the situation in Tanganyika became an OAU concern when President Nyerere requested an emergency meeting of the Council of Ministers to discuss the situation created by the mutinies in East Africa<sup>(16)</sup>. He also requested the Council to consider replacement of the British troops by forces from African states<sup>(17)</sup>. It was evident at that meeting that the Council was concerned not to allow deliberation of a domestic matter to become a form of interference. Accordingly, President Nyerere of Tanganyika

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(14)

Meyers, David B., Op. Cit, p.173

(15)

Ibid pp.171-172

(16)

President Nyerere sent telegrams to all heads of African states suggesting an emergency meeting of African Foreign and Defence Ministers to consider what implication the events in Tanganyika might have for African unity and non-aligned policies. He was also concerned that the situation in his country might affect the morale of the African liberation movements in the remaining non-independent territories, since the headquarters of the OAU co-ordinating committee for the Liberation of Africa is in Dar-es-Salaam.

(17)

African Report, Op. Cit, p.24

restricted his speech to events in his own country, respecting the decisions of Kenyan and Ugandan governments that occurrences in their countries did not require OAU consideration<sup>(18)</sup>. Under these circumstances, the OAU Council restricted its discussion to the Tanganyikan situation and to Nyerere's plan for the replacement of British troops by forces from African states<sup>(19)</sup>. During the debate, Ghana's delegation tabled a proposal that the OAU Council should consider the establishment of an African High Command of the type Nkrumah had proposed at the founding Summit of the OAU in May 1963<sup>(20)</sup>, but the delegation was reminded that this matter was not on the agenda and should not be considered<sup>(21)</sup>. Eventually, the Council established a 12-nation committee to consider alternative methods of replacing British troops in Tanganyika by some form of African force<sup>(22)</sup>. The final resolution adopted by the Council noted the decision to replace British troops by troops from one or more OAU member states within two to three months. It also endorsed the Tanganyikan plan that the despatch of African troops be accomplished through bilateral arrangements between Tanganyika and the individual governments supplying military assistance. The initial agreements were to run for six months but could be extended if retraining of the Tanganyikan forces was not

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(18) Meyers, David B., Op. Cit, p.171

(19) African Report, Op. Cit, p.24

(20) Polhemus, Higbie J., Op. Cit, p.208

(21) Ibid p.208

(22) African Report, Op. Cit, p.24

completed by then. The African troops thus provided would be under the command, direction and control of the Tanganyikan government. Finally, all details of cost and replacement procedures would be decided between Tanganyika and the states furnishing the troops<sup>(23)</sup>. On the basis of the OAU Council's resolution, Tanganyika requested Ethiopia, Nigeria and Algeria to provide troops to serve primarily as a reserve for local police, while local troops remained in barracks<sup>(24)</sup>. The involvement of the OAU in the Tanganyikan mutiny could be seen, therefore, as a success for both the organisation and for the state concerned. The OAU had successfully served as a pan-African vehicle for arranging military assistance to help solve a serious internal problem of a member state. The point which stands out in this first involvement of the OAU in one of its member's internal problems, was the great care that was taken during the handling of the process. The entire proceedings were controlled by the Tanganyikan government. In fact, the main reason which compelled the OAU to consider an internal matter in one of its member states was the realisation that most of its members achieved independence with a remarkably low level of defence capability which had direct

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(23) On March 20th, 1964 a bilateral agreement was signed between Tanganyika and Nigeria for the loan of troops with recent experience in UN peace-keeping operations in the Congo. A few months later, a 60-man Ethiopian air force training contingent also arrived in Dar-es-Salaam. The expenses for the Nigerian and Ethiopian contingents were both met bilaterally by the donor and host governments. There were no expenses for the OAU.

(24) Meyers, David B., Op. Cit, p.173

implications to the continent's international relations. It was obvious that most African states lacked the traditional tools which nations possess to maintain their internal peace and security. Most of them were fundamentally dependent in security matters on their former colonial masters<sup>(25)</sup>. They had retained security pacts with these powers and regarded these pacts as the basis of their national security. But, such pacts have been seen as affecting the development of military co-operation within the region. It has been demonstrated that extra-regional sources of military assistance have helped African states in their hour of need<sup>(26)</sup>. This has reduced any perception of the necessity to establish African collective security arrangements at regional level. Indeed, regional security policy would serve not only to support the states structure and to maintain domestic order, but would strengthen inter-African relations. Recently the view has been taken that regionalism is the only alternative to outside assistance<sup>(27)</sup>. Therefore, increased interest in the security activities of regional organisation has been seen in the establishment of the OAU. In this respect, at the OAU's founding Summit, African leaders showed considerable awareness of the security concerns of their states<sup>(28)</sup>. Consequently,

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(25) Crocker, Chester A., Military Dependence: The Colonial Legacy in Africa, JMAS, Volume 12, 1974, p.285

(26) Ibid p.284

(27) Meyers, David B., Op. Cit, p.118

(28) Ibid p.199



consideration was given to potential problems of internal disruption. Accordingly, the OAU Charter envisaged that among the purposes for which the member states formed the organisation, was the defence of their sovereignty, their territorial integrity and political independence<sup>(29)</sup>. In order to bring this about, African states agreed that co-operation for defence and security was necessary. Despite this, provisions for collective defence which the OAU Charter enshrined, are very weak. This is the consequence of considerable differences in outlook on the question of defence and security. There was more concern with the possibility of interference by one member in the internal affairs of another than with the threat of interference by an extra-regional state<sup>(30)</sup>. As already stated, the majority of African states maintain good relations with their former colonial power and are dependent upon them for security and defence. Under these circumstances, the OAU Charter says very little about specialised institutions for security<sup>(31)</sup>. At the founding Summit of the OAU,

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(29) The OAU Charter presumably commits the organisation to defend the territorial integrity of its members, even against threats of purely internal origin. Technically, the OAU at the behest of the member state affected, has an obligation to interfere to suppress an internal disruption. Consequently, the participation of the OAU in the settlement of an internal conflict which might threaten the break-up of a member state is necessary.

(30) Akinyemi, Bolaji, Op. Cit, pp.393-394

(31) African inability to participate effectively in major strategic issues affecting the continent, is a continuing reflection of military dependence. Similarly, African armed forces have hardly begun to play their natural role as an instrument in the evolution of African power balance and conflict patterns. The OAU system has protected the inherited colonial order and impeded the emergence of the kinds of groupings and alliances which will be required in the African security system. This led to continuing direct external influence on African governments, which is a major factor in such restraint.

Ghana proposed the establishment of a Common Defence System with an African High Command, in order to ensure the stability and security of Africa<sup>(32)</sup>. At the same time, Ethiopia proposed a more modest Defence Board composed of each member's chief of staff and empowered to make recommendations to the OAU Assembly of Heads of State. Unfortunately, there was no support for either of these proposals<sup>(33)</sup>. It was evident that this was the consequence of fear and mistrust among African states over the sharing of military information. The only specialised defence structure that was established was a Defence Commission, one of the five specialised commissions responsible to the Council of Ministers<sup>(34)</sup>. The OAU Charter mentioned nothing about its purposes or responsibilities. It deliberately left these functions to be worked out at some future time. Two meetings were held by the Defence Commission following the OAU's founding Summit and if nothing else, it demonstrated the difficulty of reaching any more than the most minimal agreement on security issues. It was agreed only that the commission would serve as an organ of consultation, preparation and recommendation for the collective or self-defence and the maintenance of security of member states<sup>(35)</sup>. Thus, general unwillingness to institutionalise collective defence, and to establish a force or permanent advisory and co-ordinating

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(32) Polhemus, Higbie J., Op. Cit, p.208

(33) Meyers, David B., Op. Cit, p.120

(34) Ibid p.120

(35) Krishnan, Maya, Op. Cit, pp.210-213

body remained entrenched during the following years. Recently, there was a proposal to establish an African Defence Organisation that would have been entirely voluntary and would not have compromised national sovereignty and political independence. Member states that chose to participate could designate forces for service in the Defence Organisation<sup>(36)</sup>. These forces would only be called upon at the request of a member state with the approval of the donor state and the OAU Council of Ministers. This proposal was rejected by the OAU Council of Ministers and also by the Assembly of Heads of State<sup>(37)</sup>. Consequently, the OAU is still no better prepared to assist its member states in defence against external aggression or internal disruption than it was at the founding Summit. Obviously, the existence of a regional organisation with power to assist members in defence and security would decrease dependence on the former colonial powers. Nonetheless, most OAU members found difficulty in identifying the contribution that the OAU could make in assisting members who had been the victims of external aggression or lack of internal security. The reason for this conclusion is the lack of trust in military co-operation among OAU member states and the general shortage of resources available to most African states. In addition, there is a lack of shared interest in a real sense of continental community. Moreover, most African armies are small and are particularly deficient in logistic capabilities, especially air transport. These problems make inter-state co-operation in the field of defence and security, very difficult.

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(36) Meyers, David B., Op. Cit, p.120

(37) Ibid p.120

## THE CONGO CIVIL WAR

### BACKGROUND TO THE CRISIS:

Belgian colonial policies in the Congo had set the stage for the longest and most complex civil war in Africa. The Belgian administration had no intention of granting independence to the Congo in the foreseeable future. Accordingly, it had done very little to develop Congolese capabilities. The colonial administration was highly centralized with directions coming from the Belgian King and Parliament to the local administration. In addition, all positions of responsibility were held by the Belgian nationals and the Congolese were permitted to participate only in minimal capacities<sup>(1)</sup>. Moreover, the establishment of political parties was prevented by restrictions on the right of association<sup>(2)</sup>. Furthermore, the colony's budget had to be approved by the Belgian Parliament, since the Congolese had no political institution of their own<sup>(3)</sup>.

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(1)

Dishier, Albert P., The Congo Economic Crisis, Africa, Special Report, Volume 5, November 6th, 1960, p.6

(2)

Ibid p.2

(3)

Wigny, Pierre, Belgium and the Congo, International Affairs, Volume 37, 1961, p.274

Consequently, the policies pursued by the colonial power were obviously designed to prepare the Congo for a very slow evolutionary process of decolonisation<sup>(4)</sup>.

Nonetheless, several factors converged to ignite interest in independence on the part of the Congolese. The period of decolonisation reached its height in 1960 when sixteen newly independent African states joined the UN<sup>(5)</sup>. In this respect, fervour towards eradicating colonialism was so strong among African peoples that no colonial power could afford to oppose this sentiment<sup>(6)</sup>. In addition, there was a shift in political power towards the third world because of the increasing number of Afro-Asian states in the UN<sup>(7)</sup>. Consequently, both the United States and the Soviet Union were pursuing policies to win the support of the African states.

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(4) The Belgian colonial administration pursued a system of development in the scene, in that it insisted on raising the living standard and then rapidly developing a ruling elite. Otherwise, it assumed that its task was to work for economic and social development rather than political development of the Congolese people. Nonetheless, the management of business was firmly in the hands of the Europeans and the colony's budget had to be approved by the Belgian Parliament. Therefore, the policy pursued by the colonial power was clearly not designed to prepare the Congolese to administer their own country. Thus, policy conceived a combined rule of Belgian and Congolese by which a middle class would emerge. At the same time, the King of Belgium would also be the King of the Congo. Therefore, there was still a great deal of time before independence.

(5) Newcome, Hanna et al., UN Voting Patterns, JIO, Volume 24, 1970, p.101

(6) Ibid pp.120-121

(7) Cohen, Andrew, The New Africa and the UN, JIA, Volume 36, 1960, pp.476-481

Thus, these immediate consequences had led the Belgian government to re-evaluate the policy, thereby committing itself to the Congo's independence<sup>(8)</sup>. In this respect, a meeting of round-table of Belgian and Congolese leaders was scheduled for January 1960 in order to determine the Congo's future<sup>(9)</sup>. The Belgian government agreed to terminate colonial rule by June 30th, 1960<sup>(10)</sup>. This sudden end of the colonial administration was a result of the Belgian government's inability to gain internal support for a policy to control the Congo through force. In addition, the French success in the establishment of a community with its former colonies inspired the Belgian government to pursue the same endeavours. In the meanwhile, during the round-table discussion, most of the provinces in the Congo were totally outwith Belgian control and an agreement of some kind had to be secured with the Congolese leaders<sup>(11)</sup>. Moreover, the success of the National

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(8) The Congolese leaders emerged as nationalists and party leaders in consequence of the election held at the close of 1957. This process was also strengthened by the attendance of Lumumba at the Pan-African Conference held in December 1958 in Accra, Ghana. Moreover, the presence of a large Congolese delegation at the World Fair in Brussels contributed to a re-evaluation of the Belgian policy. Furthermore, the Leopoldville riot of January 4th, 1959 and the arrest of political leaders made them national heroes which led the Belgian government to commit itself to Congo's independence.

(9) O'Donovan, Patrick, The Precedent of the Congo, JIA, Volume 37, 1961, p.183

(10) African Report, Volume 6, February 1961, pp.2-3

(11) O'Donovan, Patrick, Op. Cit, pp.183-184

Progressive Party (Partie Nationale du Progres) in the election of December 1959 had encouraged the Belgian government that a moderate party would form the first Congolese government<sup>(12)</sup>. Consequently, Belgium conceived that the Congo would contrive to rely on her in running the government after independence<sup>(13)</sup>. To this effect, the Belgian government concluded a Treaty of Friendship with the Congolese government which regulated policy areas, such as defence, foreign affairs, currency, telecommunications and financial arrangements<sup>(14)</sup>. In contrast, the Congolese expectations regarding independence were different. They perceived that independence would answer all their problems, but the colonial policies remained the same in the administrative control, taxes, and the presence of many Belgian army officers<sup>(15)</sup>. Consequently, the discontent was particularly great among the members of the Congolese armed forces<sup>(16)</sup>. This came to the crunch when

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(12) Africa, Special Report, Volume 5, November 1960, pp.2-3

(13) The Belgian government handed over power on June 30th, 1960 to a Congolese government headed by Kasavubu as President and Lumumba as Prime Minister, and incorporated most of the major political groups in the Congo. Subsequently, Kasavubu dismissed Lumumba on September 5th, 1960 which marked the break-up of the Leopoldville government.

(14) Belsem, Van A.A.J., Some Aspects of the Congo Problem, JIA, Volume 28, 1962, pp.42-45

(15) Africa, Special Report, Volume 5, November 1960, pp.6-7

(16) Wigny, Pierre, Op. Cit, p.279

the Belgian commander called the Congolese non-commissioned officers together and wrote on the blackboard - ".....After Independence = Before Independence....."(17). Accordingly, the Congolese soldiers mutinied against their Belgian Officers. The mutiny erupted on July 5th, 1960 and spread quickly throughout the Congo<sup>(18)</sup>. Consequently, the Belgian government despatched paratroopers into the Congo without the prior consent of the Congolese government, as required by the Treaty of Friendship<sup>(19)</sup>. This action was justified by the Belgian government on the grounds that it was necessary to protect its nationals and maintain law and order<sup>(20)</sup>. On the other hand, the Congolese government perceived the move as an attempt to establish a neo-colonial regime and was regarded as an act of aggression against its territorial integrity and its political independence<sup>(21)</sup>. Accordingly, it requested military aid from the UN in order to prevent a threat to international peace and security. The UN Security Council

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(17)

McNemar, Donald W., The Post-Independence War in the Congo, edited by Falk, Richard A., International Law of Civil War, The Johns Hopkins Press, Baltimore, Maryland, 1971, p.251

(18)

Ibid p.251

(19)

Belsem, Van A.A.J., Op. Cit, p.42

(20)

McNemar, Donald W., Op. Cit, p.273

(21)

Ibid p.278



authorized the establishment of a UN peace-keeping force and the despatch of such forces within twenty-four hours to the Congo<sup>(22)</sup>. In the meantime, the central government headed by Kasavubu and Lumumba and incorporating most of the political groups in the Congo, collapsed on September 5th, 1960<sup>(23)</sup>. Thus, this constitutional crisis marked the break-up of the Congolese government. The followers of Lumumba fled to Stanleyville, where they consolidated their power and claimed the right to control the entire Congo. But, Lumumba remained at his official residence in Leopoldville under UN protection. On November 27th, 1960 he left UN protection in order to join his supporters in Stanleyville but was captured by Leopoldville troops on December 1st, 1960. Subsequently, he was transferred to Katanga where he was killed<sup>(24)</sup>. On the other hand, Tshombe declared on July 11th, 1960 shortly after the mutiny, the independence of the province of Katanga<sup>(25)</sup>. Under these circumstances, Belgium

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(22) The UN peace-keeping force went into the Congo at the request of the Kasavubu-Lumumba government. The ONUC was established by a Security Council resolution of January 14th, 1960 which was passed with abstention by the U.K., France and Nationalist China. The force involved 93,000 men from 34 countries (32 African and two Asian countries, India and Indonesia) with an average strength of about 15,000 troops. The total cost of the military operation from July 1960 through June 1964 was \$411 million.

(23) This resulted from the development between Kasavubu and Lumumba over who had the authority to fire, which led to the collapse of their joint government. Lumumba remained at his official residence in Leopoldville under UN protection. He left UN protection on November 27th, 1960 to join his supporters at Stanleyville but was captured by Leopoldville troops on December 1st, 1960. He was subsequently transferred on January 17th, 1961 to Katanga where he was murdered.

(24) Belsem, Van A.A.J., Op. Cit, pp.49-50

(25) Ibid p.97

attempted to persuade the followers of Lumumba to call in the Belgian troops. When they refused, it granted Tshombe's request for assistance<sup>(26)</sup>. The latter, with Belgian military aid and with control of 45% of the Congo state revenues coming from Katanga, was able to maintain independence until January 21st, 1963<sup>(27)</sup>.

There were thus three separate regimes in the Congo making the primary struggle during this time, for the establishment of a central government<sup>(28)</sup>. In this atmosphere, the UN peace-keeping force went into the Congo and was involved in technical assistance programmes and in reconciliation efforts. Nonetheless, the main task of the ONUC was to restore law and order and to secure the withdrawal of Belgian troops. In this political vacuum, and absence of a clearly recognised government, the UN declined to recognise any factions as legitimate and at the same time endeavoured to work toward the establishment of a central government<sup>(29)</sup>. To this end a conciliation

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(26) Higgins, Rosalyn, Op. Cit, p.212

(27) McNemar, Donald W., Op. Cit, p.279

(28) The three protagonists were the central government in Leopoldville, the Tshombe government in Elisabethville, Katanga and the Gizenga government in Stanleyville. The situation had continued until the Lovanium Parliament of August 1961 by which all splinter groups participated in the National government under Adoula and Gizenga, a follower of Lumumba, serving as the first vice-premier. The Adoula government remained in power until July 9th, 1964 when Tshombe, who had previously headed the secessionist regime in Katanga (ended on January 14th, 1963) came back from his exile in Spain to head the central government.

(29) Higgins, Rosalyn, Op. Cit, p.279

commission was established and was active during this period in obtaining agreement among the factional groups in order to reconvene the Congolese Parliament.

Consequently, the convocation took place on June 25th, 1961 at the University of Lovanium by which time the internal vacuum had ended<sup>(30)</sup>. All the political groups participated at the meeting and formed, on August 2nd 1961, the Adoula government<sup>(31)</sup>. Despite the fact, Tshombe refused to attend the meeting and the following stage set for ending the secession of Katanga<sup>(32)</sup>. To this end, as soon as the central government took office, it began pursuing a policy designed to reintegrate Katanga. At the same time, the UN Security Council requested that the UN operation in the Congo (L'Opération des Nations Unies dans le Congo - ONUC) remove foreign mercenaries from the Congo since many of them were located in Katanga. As a result of this move, the ONUC clashed with the Katangan gendarmarie in three rounds of fighting in the province<sup>(33)</sup>. Nonetheless, the ONUC was able to repatriate a number of non-Congolese personnel from the Katangan gendarmarie<sup>(34)</sup>. This did not accomplish the task,

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(30) McNemar, Donald W., Op. Cit, p.254

(31) Higgins, Rosalyn, Op. Cit, pp.65-66

(32) McNemar, Donald W., Op. Cit, p.255

(33) Mercenaries were an important part of Katanga's fighting units and proved a source of continual international contention. Tshombe recruited five hundred to bolster his fighting force. The UN attempted to remove these foreign fighters. The ONUC repatriated 273 non-Congolese personnel in August 1961, but subsequent efforts were successful.

(34) Sohn, Louis B., Cases on UN Law, The Foundation Press, New York, 1967, p.753

therefore further efforts were unsuccessful, and produced considerable fighting. Thereupon, the UN Secretary General reached the legal conclusion that the UN efforts were designed not to remove foreign personnel, but rather to end the independence of Katanga. Unfortunately, the Katangan gendarmerie claimed victory over the ONUC and the fighting ended in a ceasefire<sup>(35)</sup>. Subsequently, in December 1961, a new round of fighting broke out when the ONUC took steps to ensure freedom of movement and to restore law and order in the province. This round of fighting ended when Adoula and Tshombe met at Kitona and concluded an agreement to reintegrate Katanga into the Republic of the Congo<sup>(36)</sup>. Nonetheless, the two leaders were unable to implement the reunification agreement in consequence of different positions of interpretation. The negotiations reached a point of standstill whereupon the new UN Secretary General, U-Thant, proposed a plan of national reconciliation<sup>(37)</sup>. The plan was designed as the basis for setting up a new constitution, integrating the army and unifying the economy<sup>(38)</sup>. In spite of this

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(35) Higgins, Rosalyn, Op. Cit, pp.232-233

(36) Sohn, Louis B., Op. Cit, p.746

(37) Ibid p.747

(38) This was followed by the Secretary General's announcement that such economic sanctions were in accord with this plan and requested Belgium to exert pressure on the Union Miniere to cease payment of revenue to the Tshombe government. The mining concern provided Tshombe with 80% of the \$100 million in revenue received during the first year of secession. The decision not to pay the money to the Katanga regime was an extremely important factor in ending the secession by the ONUC on January 14th, 1963.

effort at mediation by the UN Secretary General, Tshombe continued Katanga's independence. Consequently, U-Thant requested, on December 14th 1962, that the UN Security Council should impose sanctions on the Tshombe regime<sup>(39)</sup>. In any event, before the economic sanction could be put into effect, a final round of fighting between the ONUC and the Katangan gendarmerie broke out. The ONUC occupied strategic points in the province, whereupon Tshombe proclaimed on January 14th, 1963 that the Katanga secession was ended<sup>(40)</sup>. Consequently, he accepted U-Thant's plan which marked the reunification of the Congo and the end of the post-independence civil war. In spite of the end of the post-independence civil war, the Congo still faced continuing conflict. When the ONUC withdrew on June 30th, 1964, a third of the Congo's territory was under the control of the rebels (Congo National Liberation Army<sup>(41)</sup>). The legal question involved in the Congo civil war was extremely complex. This was evident from the brief review of events. The civil war involved not only control of the central government, but also relations with the former colonial power, foreign intervention and the right of parts of the country to secede. Both East and West endeavoured to establish influence in this developing nation thereby playing a vital role in the conflict. The presence of a UN peace-keeping force also introduced a new dimension into an internal conflict. The combination of all these legal questions presented unique and important legal considerations.

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<sup>(39)</sup> Higgins, Rosalyn, Op. Cit, pp.242-243

<sup>(40)</sup> Ibid p.243

<sup>(41)</sup> Andemicael, Berhanykum, Op. Cit, p.66

FOREIGN INTERVENTION:

The relationships of foreign countries to the parties involved in the Congo civil war raised an extremely important question, namely that the withholding or extension of assistance by several countries could be decisive in determining the outcome of a conflict. There was also the corollary that intervention would produce counter-intervention and an internal conflict would be transformed into an international war. As far as the Congo civil war was concerned, outside states were not committed to any of the Congolese factions until the Belgian intervention occurred<sup>(1)</sup>. Consequently, this led to the conclusion that other states were no longer constrained to remaining aloof. As a matter of fact, the Congo was considered to be an important African country and therefore, foreign powers were anxious to play an active role in its civil war. The East and West had a general interest in Africa and especially in the Congo, but each bloc had an even greater interest in avoiding a confrontation<sup>(2)</sup>. By involving the UN, each bloc endeavoured to prevent gains by the other, while avoiding the policy of a unilateral commitment<sup>(3)</sup>.

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(1) It intervened without prior consent of the Congolese government in conformity with the Treaty of Friendship concluded between Belgium and the Congo after its accession to independence. However, the deaths of a dozen Congolese in the Belgian bombardment of Maladi, from which Europeans had been evacuated, and the declaration of Katanga's secession, convinced the Congolese that Belgium was attempting to take control of the country once more.

(2) Whiteman, Marjorie, Digest of International Law, Volume 5, 1963, p.314

(3) Ibid p.462

Thus, unilateral efforts would be considered before the multilateral operation of the UN which endeavoured to insulate an internal conflict from external intervention. As stated earlier, shortly after reaching independence, the Congolese soldiers mutinied against Belgian officers<sup>(4)</sup>. The hostile acts were primarily directed at Belgians remaining in the Congo<sup>(5)</sup>. Accordingly, the Belgian government was under pressure to interfere in order to re-establish law and order. The paratroopers despatched into the Congo on July 10th, 1960 were deployed in 26 areas throughout the country<sup>(6)</sup>. This move entirely changed the nature of the situation in the Congo and affected the positions of the factions in the conflict. The Belgian troops went into the Congo without prior request from the Congolese government in conformity with the Treaty of Friendship between the two states<sup>(7)</sup>. It provided that "....all military intervention by Belgian forces stationed in Congo bases can take place only on the express command of the Congolese Minister of National Defence...."<sup>(8)</sup>. This action led the Congolese to conclude that Belgium was pursuing attempts to establish neo-colonialism in their country. In this respect, the Congolese government

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(4) McNemar, Donald W., Op. Cit, p.251

(5) Higgins, Rosalyn, Op. Cit, p.211

(6) O'Donovan, Patrick, Op. Cit, p.184

(7) Whiteman, Marjorie M., Op. Cit, p.522

(8) McNemar, Donald W., Op. Cit, p.272

declared that the Belgian action constituted an act of aggression against the Congo's territorial integrity and political independence. At the same time, it requested military assistance from the United States, but the American administration advised that it should seek aid from the UN<sup>(9)</sup>. On the other hand, the Belgian government justified its action on the grounds of fulfilling a duty to protect its nationals<sup>(10)</sup>. Nonetheless, the Belgian position was weak on the basis that it failed to seek Congolese consent in conformity with a specific treaty obligation. In addition, the Belgian military action shifted the character of the mutiny to an extreme civil crisis and seduced the movements of secession in the Congo<sup>(11)</sup>. It also jeopardised Belgian relations in general with all African states and especially with the national government of the Congo. Finally, it led to the characterization of the conflict as a threat to international peace and security, thereby justifying the necessary measures to be taken by the UN in order to restore international peace and security.

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( 9) O'Donovan, Patrick, Op. Cit, p. 185

(10) Higgins, Rosalyn, Op. Cit, p. 211

(11) Belgian intervention was effected without the consent of the Congolese government. Its sympathy was also being extended to Tshombe who had declared the secession of Katanga on July 11th, 1960. The Belgian government was firm to point out that Tshombe should be supported as the only stable and pro-Western element in the Congo. It also wanted the mineral resources of Katanga to remain under Belgian and Western control. Therefore, Belgian troops were put at the disposal of Tshombe and requested by him to restore law and order. They engaged in functions that clearly went beyond the protection of its nationals - on the contrary, it was directly endangering the lives of Belgian citizens.



The UN assistance was initially extended to the Leopoldville government as the national authority in control of the country<sup>(12)</sup>. Nonetheless, the authority of the Leopoldville government was subsequently challenged by the Stanleyville government and the seceded provinces. Despite this fact, many states whose embassies were located in Leopoldville, recognised the latter government and due to this, gained special advantages to communicate with other countries through diplomatic channels<sup>(13)</sup>. Leopoldville used this instrument and broke diplomatic relations with Belgium. It also expelled the staff of the Soviet embassy from the country in consequence of its having extended aid to the Lumumba regime and engineered a plot against it. Moreover, in November 1960, it broke relations with the UAR and Ghana<sup>(14)</sup> because of assistance extended to Lumumba. The Leopoldville government did not hesitate to sever diplomatic relations as a means of eliminating support for its opponents and of registering public disapproval. Under these circumstances, a shift of diplomatic support towards the Leopoldville government was witnessed on the part of the Communist countries and radical African states.

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(12) O'Donovan, Patrick, Op. Cit, p.185

(13) McNemar, Donald W., Op. Cit, p.274

(14) These radical states were in favour of strong and forceful measures by the UN peace-keeping force. When the ONUC refused to assist Lumumba to end Katanga's secession, they withdrew their troops from the ONUC and their representative from the UN Conciliation Commission. They feared that endorsement of secession in an African state might boomerang against their socialist oriented one-party rule. On the other hand, the conservative African states were opposed to the UN intervention. They favoured the secession of Katanga. Most of these states are small, thereby "swamped" in the centralized regime in the Congo, a potential threat to their national existence. Consequently, the attitude of African states towards the civil war in the Congo had led to the conclusion that there was a clear divergence of approach among them on the issue of intervention in a civil war in an African state. The Casablanca group approved UN intervention while the Monrovia group favoured a policy of strict neutrality.

In this respect, these states recognised the regime of Lumumba at Stanleyville as the national government of the Congo<sup>(15)</sup>. When Lumumba was murdered in February 1961, these states continued to recognise the Stanleyville government headed by Gizenga and continued to supply it with military aid. The UN did not recognise any faction during this period as the national government of the Congo. Accordingly, the Congo seat in the UN was disputed by two rival delegations, one designated by Kasovubu and the other by Lumumba<sup>(16)</sup>. As stated earlier, the West assisted the Leopoldville government and consequently, the United States government refused to grant the delegations of Lumumba and Tshombe visas to enter the country. Consequently, these latter delegations were prevented from presenting their cases before the UN<sup>(17)</sup>. Nonetheless, the East continued to extend aid to Lumumba who took a stance compatible with that of the Communist states. At the same time, Western aid to Kasavubu was extremely important in the struggle for power control<sup>(18)</sup>.

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(15) Krishnan, Maya, Op. Cit, p.220

(16) Higgins, Rosalyn, Op. Cit, pp.266-267

(17) McNemar, Donald W., Op. Cit, p.274

(18) After the constitutional crisis and subsequent power struggle between Kasavubu and Lumumba, the Soviet Union took Lumumba's part. It did not accept Hammarskjold's decision that Kasavubu had the authority to dismiss Lumumba and that the UN must recognise this. When the ONUC took action after the constitutional crisis to assist Kasavubu in the maintenance of law and order, the Soviet Union insisted that the ONUC was improperly intervening in domestic affairs of the Congo. Simultaneously, it was claimed that the UN was not sufficiently supporting Lumumba who was head of the valid government in Soviet eyes. After the death of Lumumba in February 1961, several countries recognised the Stanleyville government. These were the USSR, Communist China, Mongolia, Albania, Yugoslavia, Cuba, Indonesia, Iraq, the UAR, Guinea, Mali, Morocco, Ghana and the Algerian provisional government.

It was very difficult to determine precisely how much military and economic assistance the Leopoldville government received, but it was clear that the United States was the major contributor<sup>(19)</sup>. Under these circumstances, the UN Security Council requested all states to halt aid to the Congo outside the UN framework<sup>(20)</sup>. Nonetheless, the Soviet Union extended assistance when Lumumba requested military aid in order to continue his military campaign. This was in consequence of an unsuccessful effort to persuade the ONUC to carry out his plan for ending the secession of Katanga<sup>(21)</sup>. The Soviet Union justified its unilateral aid on the grounds that the UN resolutions did not contain any provisions in any way to restrict the right of the Congolese government to request assistance directly from the governments of other countries. Nonetheless, the UN did not accept the argument of the Soviet Union and took the position that the giving of such aid was inconsistent with the multilateral effort which had already been undertaken<sup>(22)</sup>. Accordingly, an Afro-Asian resolution introduced in the UN Security Council, provided that no aid for military purposes be despatched to the Congo except as a part of the UN framework. Unfortunately, the resolution was not passed because the Soviet Union exercised its veto and for the first time split with the third world states<sup>(23)</sup>. Subsequently, a

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(19) McNemar, Donald W., Op. Cit, p.274

(20) Whiteman, Marjorie, Op. Cit, p.529

(21) Higgins, Rosalyn, Op. Cit, pp.248-249

(22) Ibid p.248

(23) McNemar, Donald W., Op. Cit, p.276

similar resolution was adopted on September 20th 1960 by the UN General Assembly. It was passed by a vote of 70 to nil with France, South Africa and the Communist bloc abstaining. It called upon all states to halt the direct or indirect provision of arms or other materials of war and military personnel and other aid for military purposes to the Congo during the temporary period of military assistance through the UN<sup>(24)</sup>. Despite the fact, the Soviet Union continued to defend its argument for granting aid, and launched a bitter attack on the UN Secretary General, but it did refrain from despatching any more military aid<sup>(25)</sup>. On the other hand, the Belgian government was active in providing military aid to the Leopoldville government even after the break in diplomatic relations<sup>(26)</sup>. In this respect, a resolution condemning Belgium failed in the UN Security Council as a consequence of a French veto<sup>(27)</sup>. Nonetheless, the UN Secretary General considered the Belgian aid to be in violation of the UN General Assembly resolution which banned unilateral military aid during the temporary period of military assistance through the UN<sup>(28)</sup>. As far as

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(24) Brownlie, Ian, Op. Cit, p.514

(25) Higgins, Rosalyn, Op. Cit, pp.256-257

(26) It sent military advisors and supplied equipment at the request of the Kasavubu government. In December 1960, it assisted the troops of Kasavubu's government in moving through Ruanda-Urundi to attack Bukavu, the capital of Kivu province.

(27) McNemar, Donald W., Op. Cit, p.276

(28) Ibid p.276

the extent of foreign involvement was concerned, it was extensive in the secession of Katanga. In proclaiming Katanga independent, Tshombe requested all states to recognise the right of Katangan people to self-determination<sup>(29)</sup>. But, all states declined to respond to his request, even Belgium. Nonetheless, the latter granted Tshombe's request for assistance<sup>(30)</sup>. At all events, the Katangan leaders continued earnestly in their attempts at the diplomatic recognition which was necessary to give the province legal and political stature as a state. But their argument was weakened by the well-established international norm that states or colonies with established boundaries and fixed populations should have their independent sovereign states<sup>(31)</sup>. Moreover, the consensus among the majority of states that self-determination should be limited to cases of colonialism and peaceful secession<sup>(32)</sup>. Therefore, there can be no such thing as self-determination for a province within the political unit of a state. Furthermore, Katanga was heavily dependent on outside support, but certain states considered Tshombe's regime as one of the Congolese factions in effective control of a part of the Congo's territory<sup>(33)</sup>.

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(29)

Ibid p.278

(30)

Belsem, Van A.A.J., Op. Cit, p.48

(31)

Delupis, Ingrid, Op. Cit, pp.17-18

(32)

Buchheit, Lee C., Op. Cit, pp.97-100

(33)

McNemar, Donald W., Op. Cit, p.279

Therefore, these states assisted Katanga by maintaining communication routes, protecting its borders, serving as places of refuge and allowing the recruiting of mercenaries<sup>(34)</sup>. As far as the economic measures were concerned, Katanga faced no financial difficulties, as the government received revenues from taxes, dividends and duties paid by the Union Miniere<sup>(35)</sup>. This enterprise took the position that its taxes on revenue would be paid to the provincial government as the de facto legal authority in the area<sup>(36)</sup>. As a matter of fact, the revenue received from the company was extremely important in assisting Tshombe to maintain independence for about two years. Tshombe was also assisted by the Belgian government which provided him with advisors and established a technical mission immediately after he declared independence. In addition, it extended extensive military aid to Tshombe. Unfortunately, its troops in Katanga went far beyond the protection of its nationals by occupying key posts in the province, disarming and expelling troops unfriendly to the Tshombe regime. They also trained the Katangan gendarmerie and maintained law and order in the province. When they

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(34) While no states accorded diplomatic recognition, several states such as the Western powers, Rhodesia, South Africa and the Francophone states maintained unofficial relations with the Tshombe regime in Katanga. Tshombe launched a major diplomatic campaign for support in these states and established offices in New York, Brussels, Paris and in several capitals of the Francophone states.

(35) McNemar, Donald W., Op. Cit, p.279

(36) Higgins, Rosalyn, Op. Cit, p.243

withdrew from the Congo completely, in accordance with the UN Security Council resolution, they left their military equipment for the Tshombe gendarmarie. Despite the withdrawal of its troops, it continued to supply military aid to Katanga which assisted Tshombe to maintain an effective military force, capable of defending the independence of the province against external challengers<sup>(37)</sup>. There were also the mercenaries who were an important part of Tshombe's fighting units, which proved a source of international contention. Tshombe managed to recruit five hundred white mercenaries in South Africa, Rhodesia and Western European countries in order to strengthen his fighting force<sup>(38)</sup>. The UN hardly attempted to evacuate these foreign fighting personnel out of the Congo. In this respect, a UN Security Council resolution adopted on February 21st 1961, urged that measures be taken for the immediate withdrawal and evacuation from the Congo of all foreign military and paramilitary personnel not under UN command<sup>(39)</sup>. Subsequently, the UN went further in authorizing the ONUC for this purpose, to use the requisite amount of force to repatriate the mercenary personnel<sup>(40)</sup>. It was a very difficult task for the

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(37) Belsem, Van A.A.J., Op. Cit, p.48

(38) Yasuf, Abdul-Qawi, Mercenaries in the Law of Armed Conflict, The New Humanitarian Law of Armed Conflict, edited by Cassese Antonio, Eohtorinale Scientifica, Napoli, 1979, p.113

(39) Brownlie, Ian, Op. Cit, p.516

(40) Ibid p.518

ONUC to remove the mercenaries and resulted in fierce fighting between the UN troops and the Katangan gendarmarie<sup>(41)</sup>. In fact, Tshombe was not willing to dispense with their services voluntarily since his power was largely dependent upon them. At all events, after the passing of the February 21st 1961 resolution by the UN Security Council, both Belgium and France offered to withdraw the passports of their nationals continuing to serve in Katanga<sup>(42)</sup>. With the ending of Katanga's secession, the policy of external intervention shifted drastically. The reunification of the Congo marked the end of the post-independence civil war and the UN took the position that its mandate had been fulfilled. Accordingly, any further rebel activities were considered strictly a domestic matter in which the ONUC should not be involved.

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(41) Higgins, Rosalyn, Op. Cit, pp.219-220

(42) McNemar, Donald W., Op. Cit, p.280



APPLICATION OF THE LAWS OF WAR TO THE CONGO CIVIL WAR:

During the course of the Congo civil war, the aims of the parties were not total devastation of the enemy, but rather the achievement of certain goals. The common interest of both sides was using force to pursue their aims, but not so as to intentionally kill civilians or prisoners. Consequently, restraints on the conduct of war had been maintained in order to promote humanitarianism and avoid undesirable destruction<sup>(1)</sup>. In fact, many international norms of war have been codified in a number of treaties, the most general formulation being the Geneva Convention of 1949<sup>(2)</sup>. Accordingly, the law of war has been developed in the context of international wars, but there was now common interest in its application to civil wars. Since the establishment of the UN, wars fought within states have become more prevalent than had been realised. Increased destruction and human suffering have occurred in civil wars, thus demanding the application of laws of war to internal struggles<sup>(3)</sup>. Consequently, the

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(1) McNemar, Donald W., Op. Cit, p.256

(2) Bond, James E., The Rules of Riot, Internal Conflict and the Law of War, Princeton University Press, New Jersey, 1974, pp.80-84

(3) As a matter of fact, the UN have not been able to mobilize a coherent world response to civil war conflicts in which the two supreme powers find themselves on opposite sides. There is then no machinery to obtain a fair interpretation of the facts associated with a variety of claims and counterclaims asserted, in relation to civil war conflicts. Unfortunately, states have been inconsistent with regard to the relevant legal questions. It must be consistently borne in mind that states act out of self-interest.

Conference held at Geneva in 1949 for the purpose of codifying the laws of war in the four Geneva Conventions considered their application to civil war for the first time<sup>(4)</sup>. Accordingly, Article 3 of each Convention introduces a minimum standard to be applied in cases of armed conflict not of international character<sup>(5)</sup>.

Previously, it was essential for a state to recognise the state of war before Conventions on the laws of war came into effect<sup>(6)</sup>. The situation was changed after the conclusion of Geneva Conventions in which Article 3 of each made the provisions applicable, irrespective of recognition by outside states<sup>(7)</sup>. They also permit the involvement of humanitarian bodies such as the Red Cross without predetermining the question of recognition<sup>(8)</sup>.

This is clear from the term "...armed conflict not of an international character...." which is clear cut as an inclusion of civil wars in the Geneva Convention. This

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(4) Friedman, Leon, The Law of War, A Documentary History, Volume 1, Randon House, New York, 1972, p.525

(5) Ibid p.526

(6) In fact, difficulties arose during the course of the deliberations of the Convention concerning the applicability of Article 3 to civil war situations. Eventually, the participants agreed to include civil war situations in the Convention by which they adopted the term "...armed conflict not of international character..." The term pointed out an obvious intention to apply provisions of humane treatment to conflicts within states, without defining exactly which events would be covered.

(7) Friedman, Leon, Op. Cit, p.526

(8) Ibid p.526

was the obvious intention of the drafters to extend provisions of humane treatment to conflicts within states without exactly defining which struggle could be covered<sup>(9)</sup>. With reference to the Congo crisis, the existence of armed conflict between factions of organised armies controlling territory, certainly fulfilled the condition for the application of Article 3 of the Geneva Conventions. This would include the provisions of Article 3 of each Convention in connection with protection for individuals not engaged in the hostilities. This would also include members of the armed forces who laid down their arms and those placed hors de combat by sickness, wounds, detention or any other relevant cause<sup>(10)</sup>. To this end "....the following acts are and shall remain prohibited, murder or torture, the taking of hostages, outrages upon personal dignity and the passing of sentences without judicial guarantee...<sup>(11)</sup>" The second paragraph of Article 3 provides that "....the wounded and sick shall be collected and cared for and that humanitarian bodies may offer their services...<sup>(12)</sup>" Moreover, Article 3 requests the parties in a conflict to endeavour to bring into effect by means of special arrangements, all or part of the other provisions of the present Conventions applicable to their conflict<sup>(13)</sup>. These provisions

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( 9) Ibid p.526

(10) Ibid p.526

(11) Ibid p.526

(12) Ibid p.526

(13) Ibid p.526

of Article 3 of Geneva Conventions were strengthened by the conclusion of similar provisions in the Hague Convention of 1954<sup>(14)</sup>. They provide that restraints shall be applied by states in reaction to rebellion within their territory. Accordingly, states accept a significant limit on their domestic jurisdiction<sup>(15)</sup>. As stated earlier, the Congo conflict produced the condition for the application of Article 3 of the Geneva Conventions and other relevant international provisions. Therefore, the participants in the conflict were bound in every way by these international provisions. It was notable that the Congo Republic had not yet signed the Conventions because the Republic had been in existence for only one month when the civil war began. Consequently, the Congo had not become a signatory to the Conventions and therefore, the provisions were not operative in the conflict. However, the International Committee of the Red Cross (ICRC) took the position that the Congo as a former Belgian colony was a party to the Conventions in conformity with the law of state succession<sup>(16)</sup>. There is no doubt that the Geneva Conventions of 1948 created real rights that

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(14)

Baily, Sydney, Prohibitions and Restraints in War, Oxford University Press, London, 1972, p.58

(15)

Ibid p.59

(16)

O'Connell, P.P., Op. Cit, pp.93-96

survived changes of sovereignty. Consequently, accession of newly independent states to the Geneva Conventions can be admitted as implied by virtue of the signature of the former colonial power<sup>(17)</sup>. Thus, the Congo was regarded as being bound by those Conventions since Belgium had ratified the Conventions in 1952<sup>(18)</sup>. At all events, the government of the Congo transmitted a declaration on February 20th, 1961 to the ICRC reaffirming the adherence of the Republic of the Congo to the Conventions<sup>(19)</sup>. Therefore, the position of the Congo's government during the course of hostilities made the situation clear that the Congo would be regarded as party to the Conventions. On the other hand, Tshombe also informed the ICRC on February 22nd, 1961 that his government in Katanga would adhere to the principles envisaged in the Geneva Conventions. At the same time, he had given authorization to the delegate of the ICRC to visit places of detention in the province<sup>(20)</sup>. Despite the fact, Katanga was not an independent state

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The development of international law on a wide range of multilateral and bilateral treaties in case of change of sovereignty, has been attained. A distinction came to be drawn between multilateral conventions of a law-making or legislative character which it was alleged continued to affect a successor state. The practice of African states to multilateral conventions of the UN has shown that most African states in fact claimed to be parties to a number of conventions by virtue of their colonial signatures.

(18)

O'Connell, P.P., Op. Cit, pp.9-11

(19)

McNemar, Donald W., Op. Cit, p.259

(20)

Ibid p.260

but its officials responded positively to the appeal of the ICRC to uphold the principles of the Geneva Conventions. As far as the UN peace-keeping force in the Congo was concerned, this question might need special legal consideration<sup>(21)</sup>. The fighting between the ONUC and the Katangan gendarmarie added a new experience in which a UN peace-keeping force became involved in regular combat. In this respect, three arguments have been expounded which proved that UN peace-keeping forces are not bound by the laws of war. The first argument contends that the UN is not a signatory to the Geneva Conventions. Consequently, it is not bound by Conventions to which it is not a party. Nonetheless, there is nothing in the Geneva Conventions to suggest that they should not be equally binding to an international force under UN command. To this effect, Article II states that ".....although one of the powers in conflict may not be a party to the present Convention, the powers who are parties thereto shall remain bound by it in their mutual relations. They shall, furthermore, be bound by the Conventions in relation to the said power if the latter accepts and applies the provisions thereof....<sup>(22)</sup>" Accordingly, a UN peace-keeping force in conflict with a party to the Convention would also become subject to the Geneva Conventions through Article II. The second argument

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<sup>(21)</sup> A normal role of the UN in civil war situations is to endeavour to reinforce the exclusion of third parties and to offer good offices for mediatory, buffering or a settlement role between the parties to a civil war conflict.

<sup>(22)</sup> Friedman, Leon, Op. Cit, p.525

contends that the UN peace-keeping forces in the Congo were national contingents seconded to the UN for that particular operation. It is obvious that the troops during the course of the secondment must be placed at the disposal of the UN as long as they are engaged in carrying out the mandate entrusted to them. Nonetheless, the troops are regarded as national units subject to the military rules and regulations of their respective countries. Accordingly, the UN does not have the means to enforce the laws of war. Nonetheless, the UN did assume international responsibility in the Congo in the case of claims against the ONUC which were submitted to the UN Command Headquarters and in turn, the latter did present demands and protests on behalf of the contingents to the government of the Congo<sup>(23)</sup>. Thus, the UN has assumed international responsibility for the UN peace-keeping forces and could thereby further assume the competence to enforce the laws of war. The third argument contends that since war is now prohibited in conformity with the provisions of the UN Charter, any conflict thereby in which the UN becomes involved would

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According to Article 14 of the Congo UN Status Agreement "...the Commander shall have general responsibility for the good order and discipline of the force. He may make investigations, conduct inquiries and require information, reports and consultations for the purpose of discharging this responsibility. Responsibility for disciplinary action in national contingents provided for the force rests with the Commanders of national contingents. Reports concerning disciplinary action shall be communicated to the Commander who may consult with the Commander of the national contingent and if necessary through the Secretary General with the authority of the particular state concerned..."  
(Higgins, Rosalyn, Op. Cit, p.23)

be a war of aggression. Consequently, the position in that limitation should not be imposed upon the UN in conformity with the laws of war in order to repel an illegal aggression. This conclusion was expounded during the course of the Korean civil war by a number of international jurists. They argued that the UN enforcement action in Korea was different from that of a war between two states. They based their argument on the principle of sovereignty as the condition required in order to apply the laws of war to a conflict situation<sup>(24)</sup>.

Nonetheless, they have emphasised the necessity for the UN not to ignore all the laws of war, but to select such provisions as may be seen to fit its purposes<sup>(25)</sup>.

At all events, the three arguments failed to distinguish between the manner in which a war is conducted and the aims of the parties to the war. In fact, as soon as a de facto war occurs, then there is a need for specific limitation and restraints in respect of the victims of the conflict<sup>(26)</sup>. Such rules as those founded on

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(24) O'Donovan, Patrick, Op. Cit, p.182

(25) It may be desirable to encourage specific humanitarian procedures whereby claims that are unconnected with the military dimension of the conflict are made on behalf of the international community. Therefore, it is necessary to enforce them against all parties to the civil war even the UN peace-keeping forces.

(26) The rationale for the Geneva Conventions does not rest on the nature of a particular war. Some of the laws of war, such as those relating to occupation and economic settlement, may not apply in all types of conflicts, but the humanitarian norms are just as necessary and applicable whether the suffering is caused by hostility between states or whether between international or regional organisations and an aggressor.



humanitarian principles are just as requisite and their application is necessary whether the suffering is caused by hostilities between a UN peace-keeping force and an aggressor, or between states. Therefore, the UN should not be exempted from these requirements. As far as the Congo civil war was concerned, the UN operation did not constitute an enforcement action as contemplated by Article 43 of the UN Charter<sup>(27)</sup>. In fact, the ONUC had been despatched to maintain law and order and to prevent civil war in the Congo thereby the UN troops were bound by the laws of war. Consequently, the Congo UN-status Agreement stipulated that "....the force shall observe the principles and spirit of the general international conventions applicable to the conduct of military personnel...."<sup>(28)</sup> Accordingly, the application of the laws of war in the Congo was observed by all parties in which humanitarian principles prevailed in several areas. As far as the treatment of prisoners was concerned, Article 3 of the Geneva Conventions stipulates that "....members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause shall in all circumstances be treated humanely...."<sup>(29)</sup> It also explicitly prohibits "....violence to life in particular murder of all kinds, mutilation, cruel treatment and torture...."<sup>(30)</sup> In

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<sup>(27)</sup> Higgins, Rosalyn, Op. Cit, p.76

<sup>(28)</sup> Ibid pp.55-60

<sup>(29)</sup> Friedman, Leon, Op. Cit, p.642

<sup>(30)</sup> Ibid p.642

this respect, prisoners in the Congo civil war were detained under reasonable conditions and exchanged or released during the course of hostilities<sup>(31)</sup>. The ICRC regularly visited captives representing all factions in the struggle in order to ensure that prisoners were given treatment in conformity with the Geneva Conventions. After these visits took place, the ICRC submitted reports to the detaining factions thereby improvements had been made in a number of prisons<sup>(32)</sup>. Despite these requirements, no major complaints had been made by the ICRC which concluded that adequate prison standards were being maintained. At the same time, the ICRC were engaged in efforts to release prisoners. In this respect, many prisoners in Katanga taken by both sides, were subsequently exchanged. The ONUC released the Katangan troops at the end of 1961 and, subsequently the Katangan authorities reciprocated by freeing the UN contingents. Finally, the September Cease-fire Agreement of 1962 provided for the mutual exchange of prisoners held by both sides<sup>(33)</sup>. Despite these facts,

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(31) The provisions of the Geneva Conventions of 1949 were generally observed in the Congo civil war. Most prisoners of war were well treated. The protection of civilians and their property as provided in the Conventions were also observed by all parties to the conflict and the UN forces. Nonetheless, the Congolese Army was responsible for many violations of the Geneva Conventions relating to the protection of civilians.

(32) McNemar, Donald, Op. Cit, p.263

(33) Higgins, Rosalyn, Op. Cit, pp.412-416

violations did occur and strong protests had been lodged by the ICRC to the accused party in the struggle. On April 28th, 1961 the Congolese National Army (Armie Nationale Congolaise) captured a number of the Ghanaian troops of the ONUC, disarmed them, herded them together and executed them<sup>(34)</sup>. The second violation occurred on November 11th, 1961 when the Congolese National Army (ANC) attacked a number of Indian troops of the ONUC, arrested them and subsequently shot them. The officers in charge of the ANC reported that they could not control their soldiers during the course of the incident<sup>(35)</sup>. On the other hand, the Liberian troops of the ONUC disregarded the proper treatment of prisoners when they loaded a number of Balula tribesmen into unventilated railroad cars. The prisoners suffocated during the course of transportation from Kasai province, where they were captured, to the UN prison<sup>(36)</sup>. Despite these acts of violation by both sides, the majority of prisoners received adequate treatment and subsequently were exchanged. As far as the protection of civilians is concerned, the Geneva Conventions made distinction between those who are actively involved in combat and those who are not<sup>(37)</sup>. Nonetheless, they prohibit measures of such a character which might cause the physical suffering or extermination of protected persons in the hands of the parties involved in the conflict<sup>(38)</sup>.

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(34) Ibid pp.315-317

(35) Higgins, Rosalyn, Op. Cit, pp.354-355

(36) McNemar, Donald W., Op. Cit, p.265

(37) Friedman, Leon, Op. Cit, p.642

(38) Ibid p.642

In the course of the Congo civil war a number of civilians were killed but their numbers did not reach such proportions as to obliterate the distinction between military personnel and civilians<sup>(39)</sup>. As far as the fighting between the ONUC and the Katangan gendarmerie was concerned, few civilians in densely populated areas lost their lives during the course of hostilities. However, a considerable number of civilians lost their lives both as a result of tribal struggle and of starvation<sup>(40)</sup>. Unfortunately, most of these tribal deaths were civilians, victims of massacres. These events occurred in August 1960 after Lumumba's military campaign against the secessionist provinces of Katanga and South Kasai. When Lumumba's troops recaptured the capital of South Kasai on August 26th, 1960, they engaged in a wholesale slaughter of the Baluba tribe<sup>(41)</sup>. Consequently, the UN Secretary General despatched a strongly-worded protest to the Congolese government stating that unarmed persons were deliberately slaughtered simply on the grounds that they belonged to the Baluba tribe. He also expressed the seriousness of these massacres by articulating them as constituting a most flagrant violation of elementary human rights. Moreover, he characterised the act as crimes of genocide since it appeared to be directed toward the extermination of a specific ethnic group, namely the Baluba<sup>(42)</sup>.

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(39) The UN presence contributed to the effectiveness of the laws of war. It also contributed to the effective functioning of the ICRC which helped to enforce the integrity of international normative restraints.

(40) McNemar, Donald W., Op. Cit, p.266

(41) Higgins, Rosalyn, Op. Cit, pp.333-335

(42) McNemar, Donald W., Op. Cit, p.226

Moreover, another event occurred at the close of 1960 in Northern Katanga which caused great physical suffering. In this instance, the Baluba tribe roamed the area, killed tribal chiefs and terrorized the public. Consequently, Tshombe despatched his gendarmarie to re-establish his authority and control the area. The troops advanced into the hostile Baluba region, burning villages and murdering civilians as they went<sup>(43)</sup>. As far as the political prisoners are concerned, the Geneva Conventions envisaged that under the laws of war, political prisoners may be executed for treason by the state<sup>(44)</sup>. Nonetheless, they must be given a fair trial by a regularly constituted court, offering all the judicial guarantees which are recognised as indispensable by civilized peoples<sup>(45)</sup>. As stated earlier, Lumumba was captured by Leopoldville troops and subsequently was transferred to Katanga where he was executed without fair trial.

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(43) Ibid p.266

(44) Friedman, Leon, Op. Cit, p.642

(45) Ibid p.642

Unfortunately, retaliatory killings were carried out by all factions in the Congo civil war. This constituted a flagrant violation of the laws of war<sup>(46)</sup>. This approach served to eliminate political prisoners taken from opposing forces, thereby denying them the basic right of fair trial. Moreover, Article 34 of the Geneva Convention on civilian persons stipulates that "....the taking of hostages is prohibited...."<sup>(47)</sup>.

In violation of these provisions, the National Liberation Army took, in November 1964, a considerable number of European hostages and threatened to execute them if the Congolese army advanced to the territory controlled by the Stanleyville regime. Unfortunately, this illegal act had led to the American-Belgian military operation which caused severe deterioration in relations between African states and the Western countries<sup>(49)</sup>. As far as

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Lumumba was the most important political prisoner in the Congo. After his capture by the National Congolese Army, he was manhandled and severely injured. The UN Secretary General called upon the Congolese government to treat Lumumba humanely and requested that the ICRC send its representative to visit him at Thysville. On July 17th, 1961, Lumumba was transferred from the prison at Thysville to Katanga where he was executed. Lumumba's death triggered a series of retaliatory killing of political prisoners. On February 9th, 1961 seven Lumumba prisoners were transferred from Leopoldville to Bukwanga where they were tried for crimes against the Baluba nation by a traditional court of Baluba chiefs. Six were executed and one imprisoned. In retaliation to these acts, fifteen political prisoners from the Leopoldville government were shot on February 22nd, 1961 by an army firing squad in Stanleyville.

(47) Friedman, Leon, Op. Cit, p.652

(48) Tandon, Yashpal, Op. Cit, p.1160

(49) Cervenka, Zdenek, Op. Cit, p.91

the protection of non-military targets was concerned, the question caused controversy in the Congo civil war. According to Article 19 of the Geneva Convention on the wounded and sick "....fixed establishment and mobile medical units of the Medical Services may in no circumstances be attacked by the parties to the conflict....<sup>(50)</sup>" In this respect, the Belgian government informed the UN Secretary General on December 8th, 1961 that hospitals had been attacked by mortars aimed at them which resulted in the wounding of hospital staff and in heavy damage. The UN Secretary General responded that the hospitals shelled as a consequence of a mercenary observation post being situated on its roof. The other hospitals had only been hit by some shells aimed at the main base of the Katangan gendarmerie, two hundred metres away<sup>(51)</sup>. In any event, the most flagrant violation of the law of war occurred in connection with non-military targets i.e. the killing of three Red Cross personnel on the outskirts of Elisabethville<sup>(52)</sup>. Consequently, a joint commission was established by the ONUC and the ICRC in order to investigate the incident, but its report

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(50) Friedman, Leon, Op. Cit, p.532

(51) Higgins, Rosalyn, Op. Cit, pp.238-241

(52) On December 12th, 1961 an Indian-piloted Canberra jet flying for the UN staged an attack on a hospital at Shinolabwe on the outskirts of Elisabethville. Three bodies of the Red Cross aides were found on December 23rd, 1961 buried a few yards from their burnt-out ambulance. The ambulance was marked with the protective emblem of the Red Cross.

was not made public. Nonetheless, the ONUC paid reparation to the ICRC for the injury it had caused, without admitting any legal or financial obligation<sup>(53)</sup>. At the same time, misuse of the Red Cross emblem caused a complication in connection with the protection of non-military targets. According to Article 21 of the Geneva Convention on the wounded and sick "....the protection to which fixed establishment and mobile medical units of the Medical Service are entitled shall not cease unless they are to commit outside their humanitarian duties, acts harmful to the enemy...."<sup>(54)</sup> In this respect, the ONUC made a number of accusations that the Katangan troops employed vehicles painted with the Red Cross symbol in order to transport troops of the gendarmarie for the purpose of sniping at UN personnel. Consequently, it was very difficult to determine which medical units had been used in this manner by which they lost their protection in conformity with the laws of war<sup>(56)</sup>.

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(53) McNemar, Donald W., Op. Cit, p.268

(54) Friedman, Leon, Op. Cit, p.532

(55) McNemar, Donald W., Op. Cit, p.269

(56) A heavy air attack against the Union Miniere in Elisabethville in December 1961 raised the question of whether the company could be considered a non-military target or not. The Tshombe government claimed that the company was a civilian property and should not have been bombarded. However, it was suspected that the company was supplying Tshombe's gendarmarie with arms and equipment and was providing working papers for the mercenaries. This conclusion became obvious when the UN troops occupied the company after having been under mortar attack from the ground. Despite the fact, the company was not formally a part of the Katangan military bases but it forfeited its right to protection as a non-military target in conformity with the laws of war when the grounds of the company were used to fire upon the UN troops.



THE ROLE OF ONUC AND UN EFFORTS AT  
NATIONAL RECONCILIATION:

The initial limitation on the UN intervention in the Congo is domestic jurisdiction by which states usually endeavour to shield internal struggle from international and regional involvement. Normally, states hesitate to sanction such involvement for fear of establishing precedents for future actions within their own territories. Nonetheless, when an internal struggle reached the stage of being fuelled by outside states committed to particular factions in the strife, then the situation ceased to be a domestic matter. As far as the Congo civil war was concerned, the Belgian intervention transferred the definition of the struggle to a threat to international peace and security. Accordingly, the UN involvement in the Congo became necessary in conformity with Article 34 of its Charter<sup>(1)</sup>. Despite the fact, UN action must be undertaken with the consent and support of its member states. However, it was a difficult task for the UN to maintain the continuing support of its member states, particularly those permanent members of the Security Council, throughout a prolonged civil war which proved formidable. As it became apparent that the UN operation was compatible with the interest of some members and inconsistent with the interest of others, the support for the operation disappeared. This was obvious in the position of the USSR when its representative turned against the operation and bitterly attacked the UN Secretary General<sup>(2)</sup>.

<sup>(1)</sup> Higgins, Rosalyn, Op. Cit, p.60

<sup>(2)</sup> Ibid pp.244-245

At all events, the UN operation in the Congo was launched on the initiative of the Secretary General, who informed the Security Council of the request for military assistance from the Congolese government<sup>(3)</sup>. The Security Council adopted a resolution which was supported by the two super powers while the U.K., France and China abstained. It made no reference to the legal basis under which the UN was acting<sup>(4)</sup>. Subsequently, debate on the legal basis for the operation had concluded that it was not an enforcement action but rather internal security measures under Article 40 of the UN Charter<sup>(5)</sup>. Therefore the operation did not constitute a sanction or an enforcement action as contemplated by Article 42 and 43 of the UN Charter. The ONUC was not established as a means of taking action against Belgium as an aggressor. It was rather as an effort, at the invitation of the government concerned, to counter the threat to international peace and

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(3) The UN operation in the Congo was undertaken on the Secretary General's initiative when the latter informed the Security Council about the request of the Congolese government for military aid in order to prevent a threat to international peace and security. Hammerskjold acted under Article 99 of the UN Charter which envisages that "...the Secretary General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security..."

(4) The original resolution of July 14th, 1960 only called for the withdrawal of Belgian troops and authorized the Secretary General to provide military and technical assistance to the Congolese government. This was in consequence of the urgency of the situation and the difficulties involved in reaching agreement among the permanent members of the Security Council. Therefore, the Council did not lay down in its resolution even the legal principles on which the ONUC should act, as the General Assembly had done in the case of the UNEF. Moreover, it left to the Secretary General the matter of organising the force, including the appointment of its supreme commander.

(5) Cervenka, Zdenek, Op. Cit, p.297

security and to maintain law and order. However, there was another argument which indicated that the situation in the Congo was considered as a threat to international peace and security. Accordingly, the legal basis of the operation was best regarded as Article 40 of the UN Charter which allows provisional measures to be taken in order to deal with the threat to international peace and security<sup>(6)</sup>. In so far as the operation was based on Article 40, the principle of non-intervention in matters of domestic jurisdiction enshrined in Article 2(7) does not apply in cases of enforcement action under Chapter VII. It also continues to be relevant to the application of provisional measures under the same Chapter. At the same time, another legal question arose as to whether or not the resolution of the Security Council was binding upon member states since enforcement measures were not involved. In so far as the operation was based on Article 40 resolutions were binding. In this respect, the resolution of September 17th, 1960 specifically referred to Article 25 and 49 of the UN Charter, thereby, member states had agreed to accept and carry out decisions of the Security Council<sup>(7)</sup>. However, the original

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(6) Panhuy, H.F. van et al., Op. Cit, p.26

(7) Resolution S/4526 paragraph (5) stated that "...calls upon all members in accordance with Article 25 and 49 of the Charter to accept and carry out the decisions of the Security Council and to afford mutual assistance in carrying out measures decided upon by the Security Council..." (Brownlie, Ian, Op. Cit, p.513)

resolution of the Security Council on July 14th, 1960 called for the withdrawal of Belgian troops. It also authorized the Secretary General to provide the Congolese government with military and technical assistance<sup>(8)</sup>.

In response to the changing circumstances, five Security Council and five General Assembly resolutions later expanded and clarified the mandate<sup>(9)</sup>. Accordingly, the preamble to these resolutions contained the general tasks of the ONUC in the Congo. A major part of the threat to international peace and security was the disorder within the Republic of the Congo. Therefore, the ONUC was despatched to assist the central government of the Congo in the restoration and the maintenance of

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The costs of the military and technical assistance were covered by the UN in essentially the same manner as the UNEF. In 1961 the expenses of the ONUC averaged approximately \$10 million per month, of which about 83% was for direct expenses and about 17% was for reimbursement to the governments providing contingents. The budgets for 1962-63 were of the same order. The sums were assessed upon member states after deduction for voluntary contribution and waiving of reimbursement by states providing aircraft services. The General Assembly expressly decided that the expenses were expenses of the UN, subject to legal binding assessment of member states under Article 17 of the UN Charter. Nonetheless, they were to be kept separate as being essentially different in nature from expenses under the regular budget. However, some member states refused to accept this decision and pay the corresponding amounts assessed upon them. Accordingly, the General Assembly decided to submit the matter to the ICJ for an advisory opinion.

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McNemar, Donald W., Op. Cit, p.288

law and order. Thus, this committed the UN to support the country as a unit and oppose secessionist movements<sup>(10)</sup>. It was also designed to secure the withdrawal of Belgian troops and to prevent outside intervention. In these respects, the ONUC met these responsibilities by protecting civilians and property from unlawful acts, disarming law breakers and retraining the National Congolese Army (ANC). However, in the course of training the ANC, a difficult question arose as to whether the ONUC should disarm the ANC who had been involved in the mutiny. The ONUC chief of staff from Ghana made a strong case for disarming such troops<sup>(11)</sup>. But, the UN acting officer in charge of the UN operation, took the position that the ONUC had no authority to disarm the military personnel of a government in need of UN assistance<sup>(12)</sup>. The main task of this operation was to prevent the occurrence of a civil war in the Congo. Consequently, the ONUC efforts

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(10) An extensive military operation took place during the final phase of the ONUC action in Katanga in December 1962 and January 1963. The ONUC initially cleared the Katangan road blocks in Elisabethville and seized the key positions in that city. Subsequently, it advanced towards, and occupied other cities in Southern Katanga. One of the actions carried out during this phase was the first experience of UN peace-keeping forces in strictly combat conditions in the field. By January 21st, 1962 the UN forces had under control, all important key centres held by the Katangan gendarmarie, who as an organised fighting force, had ceased to exist. Consequently, Tshombe ended the secession and security forces of the central government gradually moved into the province.

(11) McNemar, Donald W., Op. Cit, p.288

(12) Ibid p.288

concentrated on securing the immediate evacuation from the Congo of all foreign military, paramilitary and advisory personnel not under the UN command, and all mercenaries. To this end, the ONUC undertook, in August 1961, an operation in Katanga designed to remove nationals who were supporting the military efforts there<sup>(13)</sup>. This was done in conformity with the Security Council resolution of February 21st, 1961 and at the request of the reunited central government of the Congo<sup>(14)</sup>. The operation was initially, partially successful, but resulted in fierce hostilities between the ONUC and Katangan gendarmarie<sup>(15)</sup>. Subsequently, another Security Council resolution went further in authorizing the use of requisite measures of force necessary for detaining and deporting foreign personnel and mercenaries<sup>(16)</sup>. Therefore, the ONUC continued its efforts to evacuate the outside military personnel until the end of Katanga's secession. As far as technical aid was concerned, the ONUC assisted in the running of the country and re-establishment of an effective administration throughout the Congo<sup>(17)</sup>. The

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(13) Sohn, Louis B., Op. Cit, pp.753-754

(14) Higgins, Rosalyn, Op. Cit, p.128

(15) McNemar, Donald W., Op. Cit, p.289

(16) Resolution S/5002 adopted on November 24th, 1961, paragraph 11(5) stated that "...authorises the Secretary General to take vigorous action including the use of requisite measure of force if necessary for the immediate apprehension, detention, pending legal action and for deportation of all foreign military and paramilitary personnel and political advisors not under the UN command and mercenaries as laid down..." (Brownlie, Ian, Op. Cit, p.518

(17) Panhuys, H.F. van et al., Op. Cit, pp. 183-188

initial effort was aimed at re-establishing a central government, whereupon a conciliation commission was set up by the Secretary General's Advisory Committee on the Congo shortly after the constitutional crisis<sup>(18)</sup>. It consisted of representatives of all African states and the four Asian countries that were supplying troops. It was empowered to prepare a study on the ways and means of reconstituting a parliamentary government in the Congo<sup>(19)</sup>. It proposed the expansion of parliamentary support for the Leopoldville government. Consequently, the ONUC arranged a parliamentary meeting and endeavoured to ensure the participation of all political leaders in order to re-establish a reunified central government<sup>(20)</sup>. Subsequently, it engaged in active efforts at mediation in order to negotiate a settlement between the re-established central government headed by Adoula and Tshombe for reintegrating Katanga. Consequently, Adoula and Tshombe met at the UN military base at Kitona where an agreement was reached between them which provided for reintegrating Katanga<sup>(21)</sup>. Nonetheless, the agreement

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(18) The Tunisian representative at the Security Council proposed that a UN conciliation commission be established by the Advisory Committee on the Congo, to assume a more positive role, particularly in regard to achieving peace and national reconciliation. It should also be entrusted to work towards the re-establishment of parliamentary institution and the creation of mutual confidence among the Congolese leaders.

(19) McNemar, Donald W., Op. Cit, p.293

(20) Panhuys, H.F. van et al., Op. Cit, pp.166-170

(21) Higgins, Rosalyn, Op. Cit, pp.422-423

was not implemented and therefore, the UN Secretary General proposed, on August 20th 1962, a plan for national reconciliation as a basis for reunification of the Congo<sup>(22)</sup>. The UN Secretary General again endeavoured to bring Adoula and Tshombe together in order to discuss the plan and to reach a mutually acceptable solution. The plan proposed a federal constitution, division of basic revenue with half going to the central government and half to the local government of Katanga. It envisaged the unification of currency, integration of the armies, while foreign representation would be the responsibility of the central government. It also provided for a general assembly and inclusion of all political groups in the central government<sup>(23)</sup>. However, the plan would be a temporary arrangement until a permanent one could be reached. In fact, all these principles proposed in the plan had been enshrined in the previous agreement reached between Adoula and Tshombe. But, the concrete condition in the plan was that the Secretary General presented it in a non-negotiable form for acceptance or rejection by both Adoula and Tshombe. It was also established that it must be carried out by a deadline<sup>(24)</sup>. At all

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(22) Ibid p.437

(23) McNemar, Donald W., Op. Cit, p.297

(24) Ibid p.298



events, both Adoula and Tshombe accepted the plan, but again it was not implemented. Consequently, the Secretary General stated on December 10th, 1962 that economic sanctions were in accord with the plan if Tshombe did not take serious steps in the direction of implementing the plan. To this end, he requested that the Belgian government exert pressure on the Union Miniere to cease payment of revenue to the Tshombe regime<sup>(25)</sup>. At the same time, the ONUC was instructed to secure freedom of movement throughout the entire province of Katanga. Despite the fact, this action was taken only after the ONUC had come under fire<sup>(26)</sup>. Consequently, the ONUC action was justified as self-defence and as necessary for the establishment of freedom of movement. To this end, the ONUC pursued the gendarmarie until they held all the important centres throughout the province<sup>(27)</sup>. With the ONUC in control of the province, the mercenaries fled to Angola and Tshombe announced the termination of secession<sup>(28)</sup>. Despite the end of Katanga's secession, the Congo still faced the problem of rebel activities. However, the threat to international peace and security

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(25) Tshombe faced no economic difficulties as his regime received revenue from taxes, dividends and duties paid by the Union Miniere. The company concern took the position that its taxes on revenue would be paid to the provincial government as the de facto legal authority in control of the province. Since the company provided Tshombe with 80% of the capital he needed, the cessation of payment was extremely important in forcing Tshombe to accept the plan.

(26) Higgins, Rosalyn, Op. Cit, p.439

(27) Ibid p.445

(28) Andemicael, Berhanykum, Op. Cit, p.75

ceased by the evacuation of all foreign military personnel. Therefore, the ONUC did not stay on to deal with rebel activities, but this also was a consequence of financial and political pressure on the UN<sup>(29)</sup>. In fulfilling its functions, the ONUC followed the general principle governing the activities of the UN peace-keeping forces elsewhere. The rules thus in operation of UN Emergency Forces established in the Middle East were considered as precedents which would be followed<sup>(30)</sup>. Nonetheless, the ONUC in the Congo was dispersed throughout the territory, racked by internal conflict, which proved to be quite different from the UNEF in the ME, the latter having had patrolled borders between the Arab states and Israel. Accordingly, rules governing the force had to be interpreted in a different context, but must be upheld as the basis which might govern the activities of the ONUC<sup>(31)</sup>. In this respect, the Security Council resolution set up the ONUC as a subsidiary organ of the Council under the command of the Secretary General<sup>(32)</sup>. He was empowered

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(29) Sohn, Louis B., Op. Cit., pp.763-787

(30) Higgins, Rosalyn, UN Peacekeeping 1946-1967, Documents and Commentary, Oxford University Press, London 1969, pp.260-263

(31) In fact, the UNEF in the ME was established at a special session of the UN General Assembly convening under the Uniting for Peace Procedures. Consequently, this led to the argument to assume that the constitutional basis for UNEF thus lies in the Uniting for Peace Resolution adopted during the Korean situation. As a matter of fact, the resolution was adopted in order to guarantee future UN action, even when veto of a permanent member prevents agreement in the Security Council. The other possible legal authority for the UNEF might be based on the argument that everything that is not explicitly prohibited in the Charter is permitted.

(32) The UNEF was designed as a subsidiary organ of the UN General Assembly under Article 22 of the Charter. Consequently, the General Assembly authorized the appointment of the supreme commander of the force. In this respect, it was he, in consultation with the UN Secretary General, who was entitled to recruit officers for the force.

to make up the force on the basis of the UNEF precedent by excluding troops from any country sitting as a permanent member on the Security Council<sup>(33)</sup>. In fact, he established the force largely on the contributions of African states, but at the same time, rejected the proposal for an all-African force<sup>(34)</sup>. Consequently, national units were strictly under UN command thereby they were not free to receive instructions from their national government<sup>(35)</sup>. The Secretary General concluded an agreement with the Congolese government covering the rights and all aspects of the ONUC<sup>(36)</sup>. It was obvious that consent of the host state was essential, but the activities of the ONUC were separated from those of the national authority. Therefore, the activities of the ONUC were not subjected to the direction of the Congolese government<sup>(37)</sup>. Thus, this legal conclusion was reached in consequence of the split view maintained by the UN Secretary General and Lumumba after the constitutional crisis. Lumumba took the position that he had invited the UN into the Congo thereby the ONUC should co-operate with him in ending the secession of Katanga<sup>(38)</sup>. When the Secretary General

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(33) Higgins, Rosalyn, Op. Cit, p.277

(34) McNemar, Donald W., Op. Cit, p.290

(35) Sohn, Louis B., Op. Cit, pp.716-719

(36) Higgins, Rosalyn, Op. Cit, p.70

(37) Ibid p.72

(38) In the early months of the UN's military assistance, Lumumba and Kasavubu insisted that the original mandate of July 1960 obliged the ONUC to assist the central government to end the secession of Katanga. In this position they were strongly supported by the Soviet Union and by many states of the Afro-Asian group.

did not accept this view, Lumumba requested the withdrawal of the ONUC from the Congo<sup>(39)</sup>. Thus, the request raised the legal question of whether the operation was dependent on the continuing consent of the host state or not. In fact, the original resolution envisaged that such ongoing consent was necessary by declaring that UN assistance would be given until the national security force might be able to meet their task<sup>(40)</sup>. Nonetheless, subsequent resolutions emphasised the discretion of the Secretary General in terminating the operation<sup>(41)</sup>. As far as freedom of movement was concerned, the ONUC followed such established rules as the UNEF precedent, but this right was quickly challenged in connection with entry into Katanga. Consequently, the ONUC used force, but only in self-defence and in order to maintain positions already held in the airports and other key centres, thus securing the freedom of communication and transportation<sup>(42)</sup>. Apart from these acts, the ONUC remained impartial in connection with the outcome of the internal struggle. To this end, the Security Council resolution of August 9th, 1960 emphatically declared that the ONUC would not be a party to, or

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(39) McNemar, Donald W., Op. Cit, p.291

(40) Brownlie, Ian, Op. Cit, pp.510-511

(41) Resolution S/4526, paragraph (1) stated that  
"...confirms the authority given to the Secretary General by the Security Council Resolution S/4887 of 14 of July and S/4405 of 22 July 1960 and requests him to continue to carry out the responsibility placed on him thereby..."  
(Brownlie, Ian, Op. Cit, p.512)

(42) Higgins, Rosalyn, Op. Cit, p.435

in any way intervene in or be used to influence the outcome of the internal conflict<sup>(43)</sup>. This approach was designed to avoid intervention in domestic jurisdiction and to maintain sustainable support for the operation. Accordingly, the ONUC had undertaken active efforts to prevent the threat to international peace and security and avoided imposing a political solution to the crisis. To this end, the UN finalized recognition of any factions after the constitutional crisis as the government of the whole country but it had undertaken active efforts at mediation to re-establish the control authority headed by Adoula's government. Finally, it denounced Katanga's secession and supported the reunification of the country.

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Brownlie, Ian, Op. Cit, p.512

THE OAU ROLE AND EFFORTS AT NATIONAL RECONCILIATION:

Since the advent of the sixties revolt against colonialism in Africa became of the highest regional interest<sup>(1)</sup>. Despite the fact, a regional organisation did not exist at the beginning of the Congo crisis, but when it occurred, the nations of the continent came together in a series of regional meetings<sup>(2)</sup>. Consequently, African leaders met in August 1960 at Leopoldville, a meeting at which Lumumba requested them to support his plan for a military campaign against Katanga<sup>(3)</sup>. However, they did not agree on regional operations, but they accepted the UN efforts. Subsequently, this unity collapsed after the constitutional crisis. Therefore, polarized into groups known as the Casablanca and Monrovia groups over the question of whether to back Kasavubu or Lumumba. In spite of the fact, both groups opposed the secession of Katanga and supported the UN operation, but they adopted different stances over who would rule as the national government. The radical African states met at Casablanca

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(1) Carrington, C.E., Decolonization, the Last Stages, JIA, Volume 38, 1962, p.29

(2) No regional organisation in Africa existed when the civil war in the Congo began, but Lumumba initiated a meeting of the leaders of thirteen independent African states to consider joint action against Katanga. This request was rejected. Subsequently, African states divided into two groups, one supporting Lumumba and later the regime of his followers at Stanleyville, and the other backing Kasavubu. Since the establishment of the OAU in May 1963, it has been more effective in furthering bloc policies rather than preventing or settling regional disputes, as has been tragically demonstrated after the withdrawal of the UN troops from the Congo.

(3) McNemar, Donald W., Op. Cit, pp.223-224

in January 1961 and supported the Gizenga government in Stanleyville, while the Monrovia group proclaimed its support for the central government and reaffirmed its faith in the UN, at its meeting in Monrovia in May 1961<sup>(4)</sup>. Despite this split, African states managed to unite in establishing the OAU at Addis Ababa in May 1963<sup>(5)</sup>. Once this regional organisation was established, member states exerted greater and more active efforts at national reconciliation in the Congo. As stated earlier, with the end of the Katanga secession on January 14th, 1963, the UN decided to withdraw the ONUC, but the last members of the troops left the Congo on June 30th, 1963<sup>(6)</sup>. Despite the end of Katanga's secession, the turmoil in the Congo which had broken out in 1960, had never really ceased. Bitter rivalries among the Congolese politicians and widespread dissatisfaction among the people still remained<sup>(7)</sup>. The situation deteriorated extensively

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(4) Ibid p.285

(5) Cervenka, Zdenek, Op. Cit, p.84

(6) McNemar, Donald W., Op. Cit, p.297

(7) In March 1963, the period of relative stability in the Congo came to an end as insurgency broke out in several areas of the country. The rebellion was initially launched in the Congo by the National Liberation Army which had been organised by the political opponents of the Adoula government. This was in consequence of the declining ability of his government to absorb or provide outlets for opposition. At the beginning of October 1963, a number of political leaders who had been associated with the Lumumbist alliance in 1960 and the Gizenga government in Stanleyville in 1960-61, fled to the Congo (Brazzaville) where they established the Council of National Liberation.

after the withdrawal of the ONUC, to such an extent that the outbreak of sporadic disturbances precipitated the imposition of a state of emergency in the country<sup>(8)</sup>.

Under these circumstances, the Lumumbist members of the Congolese Parliament had deserted and formed a government-in-opposition called "The National Liberation Council."

By June 1964, the latter had liberated wide areas of upper Congo, North Katanga, Mascena and Kwila and established their headquarters in Stanleyville<sup>(9)</sup>.

At this stage, the central government was headed by Adoula who felt that he could no longer cope with the situation and subsequently resigned. He was replaced on July 10th, 1964 by Tshombe, who had been called by President Kasavubu from his exile in Spain<sup>(10)</sup>. The appointment of Tshombe as Prime Minister accentuated the ideological factor in the situation to such an extent that it escalated the situation into a full scale civil war, with considerable intervention from outsiders. This coincided with the third ordinary session of the OAU Council of Ministers scheduled to begin in Cairo on July 13th, 1964, to be followed by the first ordinary session of the OAU Assembly of Heads of State. The Council decided to despatch a formal request to President Kasavubu calling upon him not to send Tshombe with the Congolese delegation which would represent the Congo at the Summit of the OAU Assembly of Heads of State<sup>(11)</sup>.

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( 8 ) Young, Crawford, Rebellion and the Congo, edited by Robert Rotberg and Mazuri Ali, New York, 1970, pp.970-971

( 9 ) Ibid pp.972-973

(10) Ibid p. 974

(11) Krishnan, Maya, Op. Cit, p.220



Subsequently, several heads of state emphasized that they were not prepared to sit at the Summit of the OAU Assembly with Tshombe<sup>(12)</sup>. When the Assembly opened, the President of the Malagasy Republic argued that the exclusion of Tshombe constituted interference in the Congo's internal affairs and was in violation of the OAU Charter. Accordingly, the OAU Assembly closed without having discussed the Congo situation<sup>(13)</sup>.

Subsequently, the situation was further complicated when Tshombe sent for the Katangan gendarmarie who had been waiting in Angola. Moreover, he recruited, once more, white mercenary personnel from South African, Rhodesia and Europe. Furthermore, Tshombe made a successful deal with the United States for military aid<sup>(14)</sup>.

At this stage, the situation was set for the second Congo civil war which caused concern to all African states. In the normal course of international relations,

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(12) Subsequently, in October 1964 the second non-aligned Conference took place in Cairo and the Congo was invited to participate in the Conference. However, the political committee of the foreign ministers decided not to recognise Tshombe as a member of the Congolese delegation. The President of the UAR transmitted an appeal on October 3rd, 1964 to the Congolese President to attend the Summit himself instead of deputing Prime Minister Tshombe. On October 4th, 1964 the Congolese delegation protested against this appeal by walking out of the Conference. It also called the appeal an act of interference in its country's domestic affairs. Despite the appeal, Tshombe arrived at Cairo where he was detained by the Egyptian authorities and prevented from attending the Conference.

(13) Krishnan, Maya, Op. Cit, p.220

(14) Tandon, Yashpal, Op. Cit, p.1156

Tshombe's request for foreign military aid would not have been regarded as the OAU's concern. The latter's Charter recognises such rights normally afforded to its member states, including the right to seek foreign military aid<sup>(15)</sup>. But, the situation in the Congo was described as one of civil war, therefore, the OAU could make a good case for seeking to prevent unilateral foreign aid. There was a clear precedent in the UN efforts from 1960 to 1963 when the Security Council requested all states to halt aid to the Congo outside the UN framework<sup>(16)</sup>. Under these circumstances, the OAU Council of Ministers was called into emergency session on August 22nd, 1964, this taking place in Addis Ababa in order to discuss the Congo situation<sup>(17)</sup>. The Council initially debated a Ghanaian proposal for a political conference of all Congolese leaders, including the leaders of the Stanleyville regime<sup>(18)</sup>. It was also agreed that an ad hoc commission

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

(16) Brownlie, Ian, Op. Cit, pp.514-515

(17) Polhemus, Higbie, J., Op. Cit, p.214

(18) The proposal also envisaged the establishment of a special committee of mediation composed of representatives of Algeria, Ethiopia, Ghana, Nigeria and Sudan to make preparations for the political conference. It was also responsible for the suspension of a cease-fire and the neutralization of all the armies in the Congo. Moreover, the proposal recommended the convening in Addis Ababa of a conference of leaders of the main political parties including Kasavubu and Tshombe. In the meantime, the OAU would organise a general election and the OAU peace-keeping force would be responsible for the maintenance of law and order and to assist the provisional government.

be established in order to undertake efforts at national reconciliation<sup>(19)</sup>. Moreover, it called for an immediate withdrawal of all foreign personnel and all mercenaries<sup>(20)</sup>. However, Tshombe who had participated in the deliberation of the Council, assured the OAU member states that the Congolese government was ready to dispense with the services of mercenaries with the proviso that they would be replaced by a contingent of African troops<sup>(21)</sup>. But, African states were concerned that if troops were despatched to the Congo, they might be required to fight the Congolese national movements, such as the National Liberation Council. In this respect, Tshombe argued that the NLC was a group of rebels and that, therefore, it was the duty of the central government to foil their plot, if necessary with foreign military aid. He also defended the Congo's relations with the United States and Belgium in the supply of military aid as a strictly domestic affair<sup>(22)</sup>. However, the Tshombe thesis

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(19) The ad hoc commission consisted of ten states under the Chairmanship of Prime Minister Kenyatta of Kenya who was entrusted to implement the following mandate:-

(1) to assist and encourage the efforts of the Congolese government in the restoration of national reconciliation,

(2) to assist normalize relations between the Congo and its neighbouring states, especially Burundi and the Congo (Brazzaville).

However, with reference to the second mandate, all the parties emphasised their readiness to facilitate the commission's efforts. Therefore, the commission was successful in normalizing relations with the states concerned, but the commission's efforts in connection with the first mandate met with a lot of difficulties.

(20) Hoskyns, Catherine, Case Studies in African Diplomacy, Oxford University Press, Dar-es-Salaam, 1969, p.19

(21) Ibid pp.15-16

(22) Ibid p. 18

was not acceptable to the OAU who saw the necessary problem as being identical to that of foreign intervention. However, none of the OAU member states recognised the government of the National Liberation Council at Stanleyville but also rejected the description of such a government as a rebellion<sup>(23)</sup>. Consequently, the OAU adopted two approaches, one designed to obtain a consensus among its member states and to raise moral and political status of the NLC to that of an authority in effective control of a part of the Congo's territory in order to prevent foreign intervention in the Congo. The latter, designed to lower the image of the central government headed by Tshombe which employed a large number of mercenaries from South Africa and Rhodesia. Accordingly, a large number of normally moderate African states were to join the ranks of the radicals to identify the internal situation in the Congo as a legitimate concern to the OAU. Therefore, the OAU avoided direct condemnation of Tshombe's right to seek foreign military aid in order to have a wide consensus among its member states. Instead, the OAU Council called upon foreign powers to cease intervention in the Congo's domestic affairs and requested the Congolese government to expel all mercenaries from the country<sup>(24)</sup>. It was obvious that the Congolese government was unlikely to accept this decision unless the OAU could assure it

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(23) Tandon, Yashpal, Op. Cit, p.1156

(24) Meyers, David B., Op. Cit, p.179

that the NLC had ceased to receive military aid from outside countries. The other alternative which might be acceptable to the Congolese government was the idea of an OAU peace-keeping force in order to assist its troops to restore law and order in the whole country. However, the Council also decided to encourage the ongoing efforts of the ten-nation ad hoc commission in order to find an acceptable solution through national reconciliation<sup>(25)</sup>. Despite this, the ad hoc commission headed by President Kenyatta of Kenya failed in its efforts at mediation between the Congolese government and the NLC. Consequently, the commission decided to stop foreign intervention before carrying out its efforts at national reconciliation. Therefore, a delegation was despatched which was headed by the Kenyan foreign minister, to the United States in order to persuade its administration to halt the supply of military aid to the Congo<sup>(26)</sup>. It was clearly inconceivable that the mission could succeed in stopping American military aid, unless arrangements were made simultaneously to halt military assistance reaching the NLC from Communist states<sup>(27)</sup>. Moreover,

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(25) Krishnan, Maya, Op. Cit, p.222

(26) Tandon, Yashpal, Op. Cit, p.1159

(27) At its first meeting, the ad hoc commission attempted to halt foreign intervention and decided to send a special delegation to Washington to request an end to the American military involvement in the Congo. As a result, the American State Department announced that it would not discuss the military aid in the absence of the representative within the OAU mission representing the Congolese government.

the Congolese government made a strong protest that such a mission was a manifestation of regional intervention in its domestic affairs<sup>(28)</sup>. Accordingly, the United States administration advised the OAU ad hoc commission that it could not receive the mission without the participation of the Congolese government<sup>(29)</sup>. However, the mission was not received by President Johnson, but as a matter of courtesy, the Secretary of State received it<sup>(30)</sup>. Subsequently, on September 30th, 1964 the mission issued a statement detailing the American promise for support in bringing about Congolese national reconciliation. The question of military aid to the Congo was not discussed owing to the American stance that a similar mission should have been despatched to the Communist states also to stop military aid to the NLC<sup>(31)</sup>. Under these circumstances, the OAU efforts to stop foreign intervention also failed, thereby producing the most explosive situation yet to evolve. Consequently, the civil war was revived by the rivalry between East and West with the NLC representing the aspiration of the East, and Kasavubu and Tshombe those of the West. However, the military aid provided by the Communist countries to the NLC was small in comparison to the massive military aid given to the Congolese government<sup>(32)</sup>. Therefore, the

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(28) Meyers, David B., Op. Cit, p.178

(29) Tandon, Yashpal, Op. Cit, p.1159

(30) Ibid p.1159

(31) Cervenka, Zdenek, Op. Cit, p.88

(32) Tandon, Yashpal, Op. Cit, p.1160

situation in the Congo deteriorated rapidly to such an extent that the Congolese government requested the convening of an emergency meeting of the OAU Council of Ministers. It wanted such a meeting to be held in order to bring pressure on neighbouring states to stop assisting the NLC. It also wished the OAU to accept its priorities to end the rebellion by securing military support and then attempting national reconciliation. The moderate African states accepted this proposal, but the radicals felt that the OAU's initial concern should be the removal of the mercenaries and the ending of foreign military aid. However, the Council met on September 5th, 1964 to consider the external and internal aspects of the crisis and its repercussions both on neighbouring states and on the regional scene at large<sup>(33)</sup>. Eventually, the Council adopted a resolution intended as a compromise, affirming the OAU competence to find a peaceful solution to all conflicts which affect peace and security in Africa. It appealed to the Congolese government to halt immediately the recruitment of mercenaries and expel all those already in the country, in order to facilitate the OAU solution. It also called for an immediate cessation of hostilities and requested all political leaders to seek national reconciliation<sup>(34)</sup>. Nonetheless, the Council did not establish any more machinery to assist attaining a cease-fire and supervising the expulsion of mercenaries, but

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(33) Andemicael, Berhanykum, Op. Cit, p.67

(34) Okoye, Felix Chuks, Op. Cit, pp.150-151

entrusted these tasks to the ad hoc commission. However, the commission sought to carry out its mandate with respect to national reconciliation, thereby endeavouring to persuade Tshombe to sit with the representative of NLC to find a mutually acceptable solution. But, Tshombe rejected the commission's broad interpretation of its mandate by arguing that it would constitute intervention in Congolese domestic affairs<sup>(35)</sup>. With the intensification of differences between the OAU commission and the Congolese government, the situation began to deteriorate. Consequently, some radical African states began to assist the rebels openly, because they saw in Tshombe a neo-colonial agent<sup>(36)</sup>. Under these circumstances, the OAU commission recommended a ceasefire between the warring rebels and the central government's troops, but the rising success of the mercenary-led Congolese army over the insurgents, considerably lessened the chances of a ceasefire. Consequently, the rebels attempted to stem the tide of war running against them by capturing a considerable number of foreigners and detaining them as hostages in order to secure military concessions<sup>(37)</sup>.

The intent was clearly to put pressure on the United States

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(35) Andemicael, Berhanykum, Op. Cit, p.68

(36) McKeon, Nora, Op. Cit, p.397

(37) The conditions of the Europeans living in the territory controlled by the Gizenga regime in Stanleyville changed drastically when it became apparent that the employment of white mercenaries had reversed the fortunes of the war in favour of the Congolese army. The announcement by the Stanleyville government that it would execute an American missionary doctor accused of espionage and of being a major in the United States army, added to the tension. When the United States offered to negotiate in Nairobi on the status of the Americans held among the European hostages in Stanleyville, it was only to gain time to complete preparation for the joint action with Belgium.



and other Western powers to persuade Tshombe to cease hostilities. Under these circumstances, the attention of the OAU commission was focussed on a new task resulting from the desperate act of the rebels. The Chairman of the OAU commission, President Kenyatta, offered his good offices and arranged a meeting in Nairobi on November 23rd, 1964 between the American Ambassador in Kenya and the representative of the NLC<sup>(38)</sup>. The purpose of the meeting was to mediate between the American stand, which demanded an unconditional release of the hostages, and the NLC's stand which demanded, in exchange, military and political concessions<sup>(39)</sup>. On the second day of the negotiation, the United States, with the prior consent of the Congolese government, furnished the necessary transport and landed Belgian paratroopers in Stanleyville<sup>(40)</sup>. The operation weakened the NLC's control of the city and allowed the Congolese army to enter more easily than might otherwise have been the case. As the crisis reached a new height, the OAU ad hoc commission met on November 27th, 1964 and recommended that the Congo crisis be brought before the UN<sup>(41)</sup>. The Chairman of the commission felt humiliated

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(38) Hoskyns, Catherine, Op. Cit, p.15

(39) Ibid pp.33-37

(40) Extract from Tshombe's letter to the American Ambassador Goolby in the Congo on November 21st, 1964 "...the government of the Democratic Republic of the Congo has accordingly decided to authorize the Belgian government to send an adequate rescue force to carry out the humanitarian task of evacuating the civilians held as hostages by the rebels and to authorize the American government to furnish necessary transport for this humanitarian mission..."  
(Hoskyns, Catherine, Op. Cit, p.35)

(41) Polhemus, Higbie J., Op. Cit, pp.238-240

at having his efforts toward a negotiated settlement prematurely frustrated by the joint military action. However, the United States denied that it was a military solution and justified the action as a humanitarian purpose for securing the evacuation of civilians held as hostages by the rebels<sup>(42)</sup>. Despite the humanitarian purpose of the operation, the means used were undeniably military. In the light of the aftermath of the Stanleyville operation, it would appear that the NLC suffering was one from which it would never recover. It lost hundreds of its troops as well as its headquarters in Stanleyville and it had allowed the Congolese army, with the help of mercenaries, to carry out a military campaign to a victorious conclusion. By March 1965, the NLC were badly routed in the Northern Congo<sup>(43)</sup>. Thus, with the OAU member states divided and the commission deadlocked, President Kenyatta urged that the Congo crisis be brought before the UN Security Council<sup>(44)</sup>. Meanwhile the United States and Belgium informed the UN Security Council on December 1st, 1964 of the completion of the rescue mission and the departure of the paratroopers from the Congo<sup>(45)</sup>. At the same time, 22 states, 18 of them African, requested an emergency meeting of the Council in order to consider urgently the situation created by the Belgo-American operation<sup>(46)</sup>. The OAU described the

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(42) Tandon, Yashpal, Op. Cit, p.1163

(43) Ibid p.1163

(44) Meyers, David B., Op. Cit, p.179

(45) Hoskyns, Catherine, Op. Cit, pp.36-37

(46) Ibid pp.50-51

operation as a flagrant intervention in African affairs and a threat to the peace and security of the African continent. Subsequently, the Congolese government requested, on December 10th, 1964, the convening of an emergency meeting of the Security Council in order to examine the charge of flagrant interference in its domestic affairs by some African states as well as by the USSR and Communist China<sup>(47)</sup>. In the meantime, an emergency session of the OAU Council of Ministers was held in New York in order to co-ordinate African efforts in the debate of the Security Council. Nonetheless, African states were divided in their stand towards the legality of the Congolese government's request for such action<sup>(48)</sup>. The conservative African states took the view that the Tshombe government was the legal authority of the Congo, but they viewed the Belgo-American operation as an act of interference in African affairs<sup>(49)</sup>. Despite the consensus among African states that the operation was an act of interference, they lost by being forced to conform to the language of their protest at the Security Council<sup>(50)</sup>. The Western powers stood in defence of their action and were ready with their veto

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(47) Andemicael, Berhanykum, Op. Cit, pp.69-70

(48) The Nigerian representative to the UN dismissed African complaints in the Security Council as inadmissible on the grounds that the Belgo-American action had a proper legal basis because it had been authorized by the sovereign government of the Congo.

(49) Krishnan, Maya, Op. Cit, p.224

(50) After a long debate, the two African states of the Security Council, Morocco and the Ivory Coast, introduced a joint draft resolution incorporating the majority opinion of the Security Council members. The draft provided a sound basis for a compromise resulting from consultation between the sponsors of the draft and other members of the Security Council. Consequently, the resolution was adopted.

to resist any strong condemnation of their operation. Thus, it was impossible for the OAU to acquire a resolution of the Security Council which might have condemned the Belgo-American action as an act of aggression. Accordingly, the resolution adopted on December 30th, 1964, made no reference to the Stanleyville operation and simply called on all states to refrain from intervening in the domestic affairs of the Congo<sup>(51)</sup>. Neither the action of the United States and Belgium nor those attributed to some radical African states, the USSR and Communist China, were specifically condemned. However, the resolution maintained that the OAU efforts at national reconciliation should be encouraged in order to find a peaceful solution to the crisis<sup>(52)</sup>. Accordingly, the OAU Council of Ministers resumed its peace efforts on March 4th, 1965 in order to assist the Congolese government to achieve national reconciliation in conformity with the Security Council resolution. It appealed for a ceasefire in the Congo and proposed a round-table conference for the Congolese political leaders in order to find an acceptable solution<sup>(53)</sup>. However, the OAU member states were still deeply divided along political and ideological matters and therefore, the OAU were not able to resolve the crisis. Consequently, the Council of Ministers adjourned on March 9th, 1965 agreeing only to refer the Congo question to the OAU Assembly of Heads of State<sup>(54)</sup>. Despite the failure of

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(51) Brownlie, Ian, Op. Cit., pp.524-525

(52) Ibid p.525

(53) Cervenka, Zdenek, Op. Cit., p.92

(54) Ibid p.92

the OAU peace efforts the crisis remained unsolved until new developments occurred which completely changed the situation. In this respect, Tshombe's triumph was subsequently over-shadowed by the deterioration of his alliance with President Kasavubu who was doing his utmost to restrict Tshombe's political influence. Eventually, President Kasavubu forced Tshombe to resign on October 13th, 1965 and asked his Foreign Minister to form a new government<sup>(55)</sup>. Nonetheless, Tshombe still remained on the political scene and endeavoured to rally support against President Kasavubu, but his era came to an end in November 1965 when General Mobutu overthrew President Kasavubu and assumed power<sup>(56)</sup>. Consequently, Tshombe went into self-imposed exile in Spain<sup>(57)</sup>. Finally, the Congo question was dropped from the OAU agenda when President Mobutu offered to expel the mercenaries and to seek reconciliation with neighbouring states<sup>(59)</sup>. At all events, the OAU was unable to bring peace to the Congo and could not restore its civil crisis. Above all, this

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(55) Andemicael, Berhanykum, Op. Cit, p.73

(56) Ibid p.74

(57) Despite the fact, Tshombe did not abandon hope of a return to power. Subsequently, on June 20th, 1967 there were rumours about a new concentration of the former Katangan gendarmarie in Angola. On June 30th, 1969 the aircraft in which Tshombe was travelling from Ibiza to Mallorca was forced to land in Algeria and he was imprisoned by the Algerian authorities. Subsequently, it was reported that he had died in prison.

(58) Most of the mercenary corps left by Tshombe, had been provisionally retained as an integral part of the Congolese national army. By the beginning of July 1967, responding to the long-standing appeal of the OAU, President Mobutu had dismissed all mercenaries except two units, but they were subsequently disbanded after their revolt against the Congolese army.

(59) Cervenka, Zdenek, Op. Cit, p.94

was due to foreign intervention and rivalry between the East and West. The OAU was unfortunate enough to be hit with a series of problems which could have shaken even an older and more solidly established organisation. The Congo crisis represented an internal conflict of a nation torn by civil war at the very centre of the continent, headed by a leader who was considered as controversial by a number of African states and an army led by white mercenaries. These combined factors created an extremely explosive situation which was a difficult test for the newly-established organisation. Therefore, the OAU proved powerless to create and enforce harmony when a considerable number of member states were in basic disagreement.

THE NIGERIAN CIVIL WAR

THE IMMEDIATE ORIGINS AND LEGAL CONSIDERATIONS  
OF THE CRISIS:

The Nigerian Civil War was perhaps the second gravest civil war which confronted the OAU since its establishment in May 1963. The roots of the conflict stretch deep into the tribal culture and religious history of the region<sup>(1)</sup>. Nigeria contains within its borders four major ethnic groups: the Hausa and Fulani in the north; the Yoruba in the west and the Ibo in the eastern part of the country<sup>(2)</sup>. Each group was separated from the others by differences of culture, religion and language, which made them uneasy political factions even during the period of colonial rule. The Hausa and Fulani in the north are primarily Moslems, while the majority of the Ibos profess Christian beliefs and the Yorubas contain a mixture of Moslem and Christian allegiances. Adding to the problems arising from the cultural diversity, they are geographically isolated from each other. Moreover, there were even differences in educational and economic development of the regions

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(1) The Nigerian civil war had been attributed to a number of factors, the country's heterogeneous ethnic composition, cultural diversity, vast size, difficulties of transport and communication, varied administrative practices and controversial political and constitutional arrangements. As a result, smouldering ethnic hostilities initially erupted during the early 1950's when the western region threatened secession if the capital, Lagos, were not retained within its political orbit.

(2) Buchheit, Lee C., Op. Cit, p.162

marked by a more rapid progress of the eastern-western areas in comparison with the northern region. In addition to the four ethnic groups, there are numerous smaller tribal groups distinguishable both in language and in culture from the dominant groups<sup>(3)</sup>. Under these circumstances, it was not surprising that the political union of such a highly pluralistic society was, from the beginning, a very fragile creation. When the British introduced a scheme in 1914 for the political amalgamation of the south and north, the latter seriously preserved the right to secede, to protect its own interests<sup>(4)</sup>. Subsequently, a federal constitution was adopted in 1959 which was a reaction to the colonial solution to the problem (i.e. political amalgamation), and solved the northerners' fears of southern domination. Thus, the north was allowed to remain far bigger than the rest, a superiority in size that was far beyond its dreams, and by which it was able to translate the electoral system into political domination of the whole federation<sup>(5)</sup>. At all events, the formation of a coalition government from the Northern People's Congress and the National Council of Nigeria and the Cameroon (NCNC) at the end of 1959, convinced the British government that the Nigerian political system could work together in independence<sup>(6)</sup>.

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(3) Smock, Audrey Chapman, The N.C.N.C. and Ethnic Union in Biafra, JMAS, Volume 7, 1969, p.21

(4) Tumuno, Tekena N., Separatist Agitation in Nigeria Since 1964, JMAS, Volume 8, 1970, p.563

(5) Post, K.W.J., Is There a Case for Biafra? JIA, Volume 44 1968, p.28

(6) Ibid p.29



Despite this fact, the first five years of independence showed that the colonial system was unable to withstand the centrifugal pressure of the political facts. Thus, the parliamentary institutions of government and values associated with them, such as a free election and the right of opposition, had been used in a quite different way for the manipulation of ethnic features. The political elite which had evolved in post-independence, took advantage of the system for its own power and profit and did not hesitate to use any weapon for its purpose. The final political fact involved the undermining of the Nigerian political system by the redistribution of the finance between the regions<sup>(7)</sup>. The latter derived between 75% of their revenue from federal payments, therefore, each local government endeavoured to employ every possible way of pressure on the federal government<sup>(8)</sup>. As a result of these conflicting elements, Nigeria was pushed to the brink of chaos by the end of the general elections of December 1964. Following bitter electoral campaigning, the main political parties in the eastern and western regions decided to boycott the elections because of the new census which gave the northern region a clear majority<sup>(9)</sup>.

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(7) It was a special grievance of the eastern region that it had only received about 60% of the rents and royalties from the oil produced there. In the case of development capital there were no fixed guidelines for the distribution between the main regions.

(8) Post, K.W.J., Op. Cit, p.30

(9) Andemicael, Berhanykum, Op. Cit, p.77

As a result, civilian rule was ended on January 15th, 1966 by a bloody military coup caused by a group of junior officers, most of whom were Ibos. It resulted in the assassination of the federal Prime Minister, two regional Prime Ministers, the federal Minister of Finance as well as many senior northern officers. The young officers were ideologically committed to a united Nigeria and claimed that the coup was carried out in order to remove governmental corruption<sup>(10)</sup>. Nonetheless, the northerners perceived that most of the young officers involved were Ibos and most of the politicians and senior officers killed in the course of the coup, were northerners. In fact, the new regime did not persecute the officers who were responsible for the killings during the coup. Moreover, most of the advisors to the new regime were Ibos, which created antagonism in the northern region<sup>(11)</sup>. At all events, the situation seriously deteriorated after the establishment of a provisional military government under the highest ranking Ibo officer, Major General Johnson Aguigi-Ironsi<sup>(12)</sup>. Moreover, the federal system was superseded by a unitary regime. This was strongly opposed by the northerners, who regarded the measures as a scheme for Ibo domination<sup>(13)</sup>. Under these circumstances, rioting broke out in the northern and southern regions in protest against the unification decree which was

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(10) Merris, E. Zukerman, Nigerian Crisis, Economic Impact on the North, JMAS, Volume 8, 1970, p.87

(11) Ibid p.101

(12) Buchheit, Lee C., Op. Cit, p.165

(13) Andemicael, Berhanykum, Op. Cit, p.79

considered as tantamount to Ibo domination of the country.

Unfortunately, the rioting escalated into anti-eastern sentiment in the northern region in which a wave of violence resulted in the deaths of hundreds of Ibo residents there<sup>(14)</sup>.

In this atmosphere, a group of northern officers carried out on July 29th, 1966, a counter-coup, killed General Ironsi, together with a number of high-ranking Ibo officers.

Subsequently, they called upon Lieutenant Colonel Yakub Gowon, a northerner, to form a federal military government<sup>(15)</sup>.

As soon as the latter took office he called for the convening of an ad hoc conference on the Nigerian constitution, in order to hold a referendum to determine a widely acceptable federal system. Accordingly, the representatives of the main regions met in Lagos at which the northern delegation tabled an initial memoranda containing proposals for the reconstruction of the federal constitution. It suggested that Nigeria should be an association of the existing regions and such other states as might be formed subsequently, with a right to secede completely and unilaterally<sup>(16)</sup>. However, the conference adjourned on September 29th, 1966 without reaching agreement, because of a re-introduction of northern predominance over the country or alternatively, in a secession of the north from the other regions<sup>(17)</sup>.

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(14) The country-wide rioting erupted in the north, bringing in its wake the massacre of at least 10,000 easterners residing in that province and the expulsion of many times that number, during the period September-October 1966.

(15) Meyers, David B., Op. Cit, p.183

(16) General Gowon stated that the coup would result in either a re-establishment of northern predominance over the country, or alternatively, in a secession of the north from the other regions. In the event, he was dissuaded from proclaiming the secession of the north by American and British diplomatic pressure.

(17) Buchheit, Lee C., Op. Cit, p.166

Unfortunately, in the course of the conference's adjournment, the worst outbreak of anti-eastern violence recurred in the north resulting in the massacre of a large number of Ibos residing in that province. Subsequently, the rest of the Ibos were expelled from the northern region and thereupon, the country drifted further into anarchy<sup>(18)</sup>. Under these circumstances, the ad hoc constitutional committee urgently reconvened, but it had been decided that in the absence of the eastern delegation, the committee would remain adjourned indefinitely<sup>(19)</sup>. In an attempt to reconcile the eastern region which was deeply aggrieved by the treatment of its citizens in the north, General Gowon met, on January 4th 1967, with the four military governors of Nigeria at Aburi, Ghana. The meeting was held under the auspices of General Ankrah, the head of the military revolutionary council of Ghana at which the federal structure was discussed, including the issue relating to the recognition of Gowon as supreme commander and head of the government<sup>(20)</sup>. On the other hand, the eastern delegation proposed the permitting of its region to control its own security, broad local power and some compensation for the loss of life and property of Ibos in the northern region. However, the negotiations ended on a hopeful note with agreement apparently having been reached on a number of issues<sup>(21)</sup>.

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(18) Post, K.W.J., Op. Cit, p.30

(19) Buchheit, Lee C., Op. Cit, p.167

(20) Andemicael, Berhanykum, Op. Cit, p.79

(21) Ibid p.79

Nonetheless, there were subsequent differences by which Gowon and Ojukwu dissented sharply in public over the interpretation of the Aburi agreement. General Gowon maintained that the issue of governmental structure had been resolved in favour of an effective federal authority which Ojukwu interpreted to envision a kind of confederation<sup>(22)</sup>. Consequently, mutual accusations of a deliberate breach of the agreement were launched by each side and culminated in the eastern region's refusal to pay revenues to the federal government, complaining that the Ibos had not received the promise of compensation<sup>(23)</sup>. In retaliation, the federal government imposed on May 27th, 1967 economic sanctions and issued a decree for decentralizing the country and creating twelve states out of the former regions. The eastern region was divided into one Ibo and two minority-run states<sup>(24)</sup>. Under these circumstances, Colonel Ojukwu, the governor of the eastern region met on May 27th with the regional committee of representatives in order to consult them on the latest development. Subsequently, he declared on May 30th, 1967 the eastern region as an independent, sovereign state in the name of Biafra<sup>(25)</sup>. The federal government of Nigeria

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(22) Buchheit, Lee C., Op. Cit, p.167

(23) Andemicael, Berhanykum, Op. Cit, p.79

(24) Ibid p.79

(25) Clearly, the act of secession on the part of Biafra was a reassertion of the right to self-determination, a right which its inhabitants might be deemed to have exercised already in 1960 at the moment of Nigerian independence. The argument applied only if Biafra could not establish itself as a special case not be taken as a precedent for any further disintegration. This was in fact what was claimed on its behalf explicitly. The grievance giving rise to Biafra's demand for secession was regarded as sufficiently exceptional and enough to warrant its acceptance as a special case. Such treatment had convinced them that the only safeguard for their livelihood, property and their way of life, was a separate state of their own.

regarded the declaration as an act of rebellion and responded by mobilizing its troops and warning all states not to interfere in its domestic affairs<sup>(26)</sup>. However, the UN did not at any time consider the issue and sought to refer the matter to the OAU. The reason for this hesitation was that the UN simply refrained from discussing the Nigerian question in the absence of overt military intervention by outside states. In the case of military aid, the UN Secretary General held that the supply of arms and military equipment to the parties in the conflict was simply beyond the scope of the UN competence<sup>(27)</sup>. Despite this fact, he had the power under Article 99 of the UN Charter allowing him to bring matters to the attention of the Security Council which, in his opinion, may threaten the maintenance of international peace and security<sup>(28)</sup>. On the other hand, the OAU was in a difficult position. Initially, the federal government held firmly that any intervention even in the form of a discussion at the OAU, would be in violation of the domestic jurisdictional clause envisaged in Article III(2) of the OAU Charter<sup>(29)</sup>.

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(26) Meyers, David B., Op. Cit, p.183

(27) The UN's organs did not play any direct peace-making role in the Nigerian conflict, but the role played by the UN and its specialized Agencies with regard to the humanitarian aspect of the crisis, was of great significance. The UN Secretary General encouraged the specialized Agencies such as UNICEF and the WFP to channel large scale relief operations for the victims of war, through the help of the ICRC which co-ordinated the aid being distributed to governmental and non-governmental agencies.

(28) Goodrich, Leland M. et al., Op. Cit, pp.588-593

(29) Brownlie, Ian, Op. Cit, pp.2-3

However, from the outset the OAU was against any further balkanization of the African continent thereby Biafrans were unlikely to find any sympathy in that quarter. In contrast, the reactions of individual members of the world community to the Nigerian civil war were mixed. Five states chose to recognise the Republic of Biafra as a sovereign member of the community of nations. The first to do so was Tanzania on April 13th, 1968, followed by Gabon, the Ivory Coast, Zambia and Haiti<sup>(30)</sup>.

Nonetheless, in the absence of collective international recognition, there was little to prove that Biafra did exist as a state in international law. In fact, the term state has no exact definition, but the essential characteristics of a state in international law are envisaged in the Montevideo Convention of 1933 on the rights and duties of states. It was concluded between the United States and certain Latin American states which required that for a state to be a member of the community of nations, it should possess the following qualifications:-

(1) a defined territory; (2) government; (3) capacity to enter into relations with other states<sup>(31)</sup>.

In dealing with the requirement to mean that a state must have recognised capacity to maintain external relations with other states. It would appear that there is no other way of obtaining this recognised capacity than by

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(30) Ijalaye, David A., Note and Comments, Was Biafra at any Time a State in International Law, AJIL, Volume 65, 1971, p.55

(31) Whiteman, Marjorie M., Digest of International Law, Volume 12, 1963, pp.223-224

the granting of formal recognition by existing members of the community of nations. However, recognition forms an integral part of that statehood which manifests itself before an entity can claim to have attained it in international law. This case can be illustrated by the Rhodesian situation in which Great Britain refused to concede the validity of the unilateral declaration of independence<sup>(32)</sup>. Thus, Rhodesia was unable to possess the capacity to enter into relations with other states. Nonetheless, the situation of Biafra was different from that of Rhodesia, the Republic of Biafra being recognised by five states of the community of nations. But, in spite of the recognition of the five states, Biafra's status was still controversial. In this respect, Nigeria responded by withdrawing its diplomatic representatives from the capitals of those states and holding that they were contrary to Article 2(7) of the UN Charter and Article III(2) of the OAU Charter<sup>(33)</sup>. In fact, whenever part of an existing state breaks away to form another independent state, recognition is always controversial so perhaps that was why no state came forward to recognise the Republic of Biafra. In any event, the four African states and Haiti which recognised Biafra did not establish formal diplomatic relations with it<sup>(34)</sup>.

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(32) Fawcett, J.E.S., Security Council Resolution on Rhodesia, BYBIL, Volume 41, 1968, pp.113-115

(33) Andemicael, Berhanykum, Op. Cit, p.79

(34) Ijalaye, David A., Op. Cit, p.555



As a matter of fact, the formal establishment of diplomatic relations is not a requisite corollary of recognition. In fact, the humanitarian considerations were clearly brought out in the granting of recognition by the five states<sup>(35)</sup>. There were no other reasons given by the recognizing states. Most of the declarations announcing the granting of recognition stressed the ferocity of the Nigerian-Biafran conflict and saw little basis for any future political unity of the federation. In this respect, France called for a peaceful settlement of the conflict on the basis of the right of peoples to self-determination. It noted that the suffering of the Biafrans had shown their determination to affirm themselves as a people<sup>(36)</sup>. There was speculation that the reference to such international principle meant that France might prepare to give Biafra formal recognition, but France never did so. In fact, the recognition of a new state is the free act by which one or several states take note of the existence of human society politically organised, of a fixed territory, independent of any other existing state capable of observing the principles of international law, thus indicating their intention to consider it as a member of the community of nations. Despite the fact,

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(35) Most of the declarations announcing the granting of recognition stressed the ferocity of the Nigerian-Biafran conflict and saw little basis for any future political unity of the country. The first to do so was Tanzania, on April 13th, 1968 which accused other African states of having callously watched the massacre of tens of thousands of people for the sake of upholding the territorial integrity of Nigeria. Subsequently, it was followed by Gabon, the Ivory Coast, Zambia and Haiti.

(36) Buchheit, Lee C., Op. Cit, p.170

the act of recognition is still by and large political in nature, by which it is the prerogative of an independent sovereign state<sup>(37)</sup>. Nonetheless, the act produces legal consequences in the sense that it endows an entity with rights and duties under international law. Accordingly, such acts of recognition must in any way be judged in conformity with the rules of international law. Therefore, states are not deemed free to grant, or refuse recognition to new states in an arbitrary manner by exclusive reference to their own political interests and regardless of legal principles. Under these circumstances, the recognition of Biafra by the above-mentioned states would appear to be unjustified in that, at the time of a real struggle was still proceeding. It was not abundantly clear that Nigeria had lost all hope or abandoned all efforts to redeem its sovereignty. Accordingly, the recognition given to Biafra was in the circumstances, premature, thus constituting an act of interference in Nigerian domestic affairs. As a matter of fact, no country including those recognising Biafra formally, granted the status of belligerency to either side in the Nigerian civil war. The reason would appear to be that the warfare was in the main on land, and foreign states were not sufficiently affected by it. In the absence of any collective international judgement on the legitimacy of the secession,

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Greig, D.W., Op. Cit, p.120

there was little to inhibit outside powers from interfering. Despite the fact, the reactions of individual states to the Biafra secession were mixed. On the one hand, France was reported to have indirectly supplied the Biafrans with arms via the Francophone states. Portugal also permitted the Biafrans to use Lisbon as a base for propaganda activities and for arranging the purchase of arms<sup>(38)</sup>. On the other hand, Great Britain as the former colonial power, felt particularly responsible for the crisis in Nigeria and sought to maintain that it would do all in its power to preserve Nigerian unity<sup>(39)</sup>. Consequently, it held that it would not suspend its sales of military weapons to the federal government of Nigeria because this would not in any measure affect the ultimate outcome of the conflict<sup>(40)</sup>. At all events, Britain was not the exclusive competitor in supplying arms to the federal government and the Soviet Union found it in its interests to sell military equipment to the federal authority<sup>(41)</sup>. In contrast, the United States imposed an embargo on the sale of American weapons to the combatants shortly after hostilities began. This policy of banning the sale of

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(38) Buchheit, Lee C.,

(39) The continued supply of weapons was also necessary to preserve British influence with the Nigerian government, particularly when the Soviet Union seemed eager to fill any vacuum in this regard. It was also to increase the faith of the other Commonwealth countries in Britain's determination to support them in time of need.

(40) Buchheit, Lee C., Op. Cit, p.171

(41) Ibid p.172

arms to either side was maintained throughout the conflict<sup>(42)</sup>. In spite of the ban, the American administration did not recognise Biafra as a sovereign independent state but generally deplored the intervention of outside powers in the conflict by the supply of arms to the combatants<sup>(43)</sup>. However, the continued supply of arms to the federal government did affect the ultimate outcome of the conflict in its favour. The military success of the Nigerian government in suppressing the Biafran resistance removed the immediate need for any further inquiry into the legitimacy of the secession. Nonetheless, the Republic of Biafra did in fact enter the community of nations for a brief period. The comparison of the Biafran secession with that of Katanga would appear to show strong arguments for Biafran legitimacy. The main grounds of these arguments could be attributed to the survey of objection to the Katangan secession which were consistently maintained by members of the community of nations. Unlike Katanga, Biafra did not attempt to divide the country virtually from the moment it became independent. The secession of Biafra occurred six years after the accession of Nigeria to independence and the economic viability of the federation was never seriously in doubt. The exceptional viability of the secession might have induced a further general break-up of the country into

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(42) Ibid p.172

(43) Ibid p.173

its ethnic components. With regard to the Republic of Biafra, it showed every sign of being able to survive as a separate state. It had a population of around 14 million, natural resources, necessary facilities, a relatively high educational level and so on<sup>(44)</sup>. With respect to the Katangan population, there were grave doubts in connection with the question of whether they possessed enough ethnic or historical identity to substantiate a claim to being a people. Contrary to the fact that the majority of Biafrans were Ibos and its cultural and historical differentiation from the other Nigerian regions was apparent<sup>(45)</sup>. Moreover, the Ibos had a colourable claim to excessive oppression at the hands of the northerners in the course of the widespread killings and expulsion of easterners residing in the northern region prior to the secession<sup>(46)</sup>. In addition, the non-Ibo tribes within the Republic of Biafra probably had as little in common with the Ibos as with other Nigerian ethnic groups. In fact, the secession was proclaimed on behalf of all the inhabitants and not just on behalf of the Ibos and those who considered themselves equally affected<sup>(47)</sup>. At each stage of the events

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(44) Ibid p.173

(45) The Nigerian regions had embraced secession in theory at one time or another. The danger of setting off further secessionist reactions was made clear at the first meeting of the ad hoc constitutional committee in 1967 when the representative of the western region indicated that if the east seceded from the federation, the west would not be far behind. If this occurred, the north would be left to confront the problem arising from a landlocked geographical position with potentially hostile neighbours blocking its access to the sea.

(46) Brick, S.K. Panter, The Right to Self-Determination, Its Application to Nigeria, JIA, Volume 44, 1968, p.262

(47) Ibid p.262

leading up to the secession, the action was taken under authorization of the consultative Assembly and Advisory Committee of Chiefs and Elders in the Eastern Region<sup>(48)</sup>.

Consequently, it was a joint secession of those bodies which passed on May 27th, 1967, a resolution mandating Ojukwu to proclaim at the earliest practicable date, the eastern region as an independent sovereign state<sup>(49)</sup>.

In the first analysis, the strongest piece of evidence supporting the Biafran claim to being a distinct people with an overwhelming desire for independence, was their determination to suffer almost three years of civil war. Despite those differences in the comparison between Biafra and Katanga, both Biafra and Katanga's secessionist attempts revealed lingering uncertainties, thereby they had been opposed by the world community. Thus, the non-recognition of the secessionist self-determination by the world community was designed to close the flood-gate to further disintegration and potential dismemberment of existing states in the globe. The consensus among states was that the right of self-determination is the right of the majority within an accepted political unit and fixed population<sup>(50)</sup>. Consequently, there can be no such thing as self-determination for every self-distinguishing ethno-cultural group living within a political unit to secede from an established state<sup>(51)</sup>.

<sup>(48)</sup> Buchheit, Lee C., Op. Cit, p.173

<sup>(49)</sup> Brick, S.K. Panter, Op. Cit, p.260

<sup>(50)</sup> Frank, Thomas M., Op. Cit, pp.697-701

<sup>(51)</sup> As a matter of political realism after independence, African states were virtually unanimous in agreeing that respect for existing European-designed boundaries should be a guiding principle in inter-African relations.

The secession from an independent state would be a dangerous precedent that would undermine the legitimacy of pluralistic states. The break-up of an existing state is a very radical solution to the political problem arising from cultural diversity, and requires exceptional circumstances to justify it. The fact of being nationally, culturally, racially and linguistically distinct is not in itself enough justification for a group to demand secession and the establishing of nation-statehood. Thus, the justification of Biafrans could not merely be that they were different ethnically or culturally from the rest of the Nigerian population, but rather on the basis that they could no longer live in peace and security<sup>(52)</sup>. Despite this fact, the OAU attitude towards the concept of secession is inherently incompatible with the goal of African unity. The break-away attempts of Biafra were, from the outset, denounced as inconsistent with pan-African unity. This was in consequence of the assumption that any other approach would lead to endless conflicts as African states found themselves under pressure to join a general revisionary march backwards to the ethnical status quo. Therefore, the OAU has insisted that each colony in the final stage of decolonisation must exercise its right

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Brick, S.K. Panter, Op. Cit, p.262

of self-determination within the confines of established boundaries. Consequently, the 1964 Summit of the OAU Assembly of Heads of State adopted by acclamation, a resolution by which member states pledged themselves to respect the borders existing, on their achievement of national independence<sup>(53)</sup>. At all events, it has been realized that while there are injustices in some instances, they could be handled better through functional arrangements between African states in a way such as regional common markets and rights of unhindered movement across frontiers.

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Brownlie, Ian, Op. Cit, pp. 360-361



THE OAU ATTITUDE TOWARDS THE NIGERIAN CIVIL WAR:

As stated earlier, hostilities between the troops of the Nigerian federal army and of Biafra started on July 6th, 1967<sup>(1)</sup>. The fighting developed into a war of international dimension. The attitude of the OAU towards the conflict was a difficult one to take. Since the Congo civil war and the unsuccessful attempts of the OAU, its member states had been extremely cautious about involving the OAU in members' domestic affairs. However, the OAU continued to avoid discussion of primarily domestic issues until the war became of such magnitude as to make its involvement extremely requisite. Nonetheless, the Nigerian federal government held firmly that any intervention, even in the form of a discussion, would be in violation of Article III(2) of the OAU Charter. On the other hand, the Biafran regime was constantly pressing for the internationalization of the conflict in order to involve international and regional organisations in the matter<sup>(3)</sup>. However, a number of African states called on July 8th, 1967 upon the leaders of both sides to halt hostilities and seek a negotiated settlement<sup>(4)</sup>,

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(1) Cervenka, Zdenek, Op. Cit, p.97

(2) Brownlie, Ian, Op. Cit, pp.2-3

(3) Meyers, David B., Op. Cit, p.184

(4) A joint appeal was made on July 8th, 1967 to the leaders of both sides by the Emperor of Ethiopia and the Presidents of Kenya, Tanzania, Uganda and Zambia. But in view of the insistence of Nigeria that the war was strictly a domestic affair it remained uncertain until the OAU Assembly met at Kinshasa on September 11th, 1967.

but the federal government maintained that the conflict was strictly an internal matter and should be solved by the Nigerians themselves<sup>(5)</sup>. Therefore, the situation remained uncertain until the OAU Assembly of Heads of State met on September 11th, 1967 for its fourth annual session at Kinshasa, Zaire. However, the meeting of the OAU Council of Ministers which always precedes that of the Assembly of Heads of State, did not propose the Nigerian crisis for the Assembly's agenda. Despite this fact, Nigeria's head of state eventually agreed to have the matter discussed with the proviso to ensure no attempt would be made to interfere in Nigerian domestic affairs<sup>(6)</sup>. The resolution adopted by the OAU Assembly was carefully drafted so as to take full account of Nigeria's preoccupation. Accordingly, it condemned the secession of Biafra and recognised the situation as an internal matter, the solution of which was primarily the responsibility of the Nigerians themselves. It also established a consultative mission of six heads of state whose task was to assure the Nigerian government of the OAU Assembly's determination for the territorial integrity, unity and peace of Nigeria<sup>(7)</sup>. The composition of the mission represented a careful equilibrium of the different attitudes towards the Nigerian conflict. The President of Cameroon was known for his sympathy with the Biafran cause.

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(5) Andemicael, Berhanykum, Op. Cit, p.79

(6) Cervenka, Zdenek, Op. Cit, p.98

(7) Buchheit, Lee C., Op. Cit, p.169

This may be in consequence of the presence of a considerable number of Ibos in Cameroon, especially in the western region which was once part of Eastern Nigeria. However, it was reported that Cameroon had co-operated with the Biafran regime in breaking the Nigerian federal blockade in the field of communications<sup>(8)</sup>. In considering Niger's attitude, the President had to bear in mind the dependence of his country on the northern Nigerian railways as a vital link between the Niger and the sea. In addition, the people of Niger have a natural affection and attachment to the population of northern Nigeria as fellow muslims and because of their common ancestry<sup>(9)</sup>. The Ethiopian and Liberian heads of state were senior African statesmen wielding great influence in African diplomatic circles<sup>(10)</sup>. Finally, the nomination of the Ghanaian President was motivated by the fact that he had been a host at the Aburi Conference of January 4th, 1967<sup>(11)</sup>. In any event, the resolution did not call for a ceasefire or suggest a compromise and did not even mention specifically good offices as part of the mission's role. However, when the mission visited Lagos on November 23rd, 1967, it was when the Biafran forces were in retreat, it did not leave them much leeway and, thereupon, General Gowon told the members of the mission that "...you were not here to mediate...."<sup>(12)</sup>.

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( 8) Cervenka, Zdenek, Op. Cit, p.99

( 9) Ibid p.99

(10) Hassouna, Hussein A., Op. Cit, pp.214-215

(11) Perham, Margery, Nigeria's Civil War, Africa Contemporary Record, 1968-69, p.7

(12) Cervenka, Zdenek, Op. Cit, p.99

Consequently, the mission supported the terms of the federal government for a return to unification and acceptance of the federal administrative structure of the country<sup>(13)</sup>. This stance unfortunately limited the role of the OAU as an effective regional organisation responsible for handling regional disputes. The only thing which it was able to do was to persuade the federal government of the need to establish contact with the Biafran regime through one of its members in order to convey to them the text of the OAU Assembly's resolution<sup>(14)</sup>. The latter maintained that any solution to the conflict must be in the context of preserving the unity and territorial integrity of Nigeria. Accordingly, the outcome of the OAU mission was a bitter disappointment for the Biafran regime. Under these circumstances, the conflict was intensified, partly as a result of the acquisition by both sides of additional arms from abroad. As the war of attrition continued, the Biafran regime began to seek mediation in a forum other than the OAU<sup>(15)</sup>. As had been discerned, the prospect for UN involvement was even less than that for OAU mediation, the Biafran regime started to explore the possibilities for mediation

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(13) Ibid p.99

(14) Andemicael, Berhanykum, Op. Cit, p.79

(15) Biafra started to explore possibilities for mediation by the Commonwealth Secretariat. By this time, the federal government had also begun to feel the need for negotiations. In this respect, both sides were thus able to agree early in May 1968 to start negotiations under the auspices of the Commonwealth Secretariat. But, neither this initiative nor the various subsequent initiatives of the British government could produce positive results.

by the Commonwealth Secretariat. Accordingly, preliminary negotiations between the representatives of the federal government and the Biafran regime took place in May 1968 at Kampala, Uganda under the co-Chairmanship of Uganda's Foreign Minister and the Secretary General of the Commonwealth<sup>(16)</sup>. The Peace Conference in Kampala discussed the issues of foreign observers, giving effective assurance of safety to the Ibo people, the conditions for ending the hostilities and the arrangements for a permanent settlement. The initiative of the Commonwealth Secretariat offered a great deal of scope for manoeuvring, thereupon it could not conciliate the fundamental disagreement between the parties in dispute. The federal government's principal condition was renunciation of secession by Biafra, before a ceasefire came into effect, but the Biafran regime insisted on an immediate ceasefire with no such condition attached<sup>(17)</sup>. Consequently, the initiative could not produce positive results. In the meantime, the war escalated, with federal troops advancing into Biafran territory<sup>(18)</sup>. This made it certain that Biafra would not survive within the frontiers set out on May 30th, 1967. Under these circumstances, the Peace Conference broke down on May 31st, 1968. The Biafran representative accused the federal delegation of exploiting its military advantage by trying to dictate, rather than to negotiate a mutually acceptable solution to the conflict<sup>(19)</sup>.

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(16) Andemicael, Berhanykum, Op. Cit, p.80

(17) Ibid p.80

(18) Cervenka, Zdenek, Op. Cit, p.100

(19) Ibid p.100

However, the advances of federal troops into Biafran territory resulted in appalling conditions for the Ibo population in the warring areas which aroused world-wide concern, and the OAU was constrained to resume its efforts<sup>(20)</sup>. Therefore, the humanitarian considerations were behind the reviving of efforts by the OAU consultative mission on July 15th, 1968 at Niamoy, Niger at which General Gowon told its members that the rebel leaders were playing politics with the whole question of human suffering to their diplomatic and military advantage. He also revealed that the rebellion was already suppressed and a unilateral ceasefire by the federal government without any prior commitment from the rebel leaders to give up secession, would offer them the opportunity to regroup, rearm and prepare for the continuation of the conflict. Moreover, he mentioned that a unilateral ceasefire on humanitarian grounds would not in any way relieve the sufferings of the innocent victims of the conflict<sup>(21)</sup>. Nonetheless, General Gowon did share some understanding with the mission's members for the Ibo fears for their safety. Therefore, he agreed to the

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The suffering of the population in the warring areas aroused public opinion in Africa and elsewhere to such an extent that many African leaders felt that the OAU should not remain inactive. There was also the shift of diplomatic initiative to the Commonwealth Secretariat. Therefore, African leaders discerned that unless the OAU resumed its initiative, it might lose prestige and influence and might become irrelevant to the major regional disputes. Moreover, the other factor was the removal of obstacles to initiating negotiations between the two sides which attracted the OAU to play a mediatory role rather than a more consultative one.

(21) Cervenka, Zdenek, Op. Cit, p.101

introduction of outside observers to ensure that federal troops would not massacre the Ibos. Despite this fact, he was firm on the terms of reference of the observers who were not to be concerned with peace-keeping operations, but should only observe and bear testimony<sup>(22)</sup>. At all events, the OAU Consultative Mission supported the federal view for the territorial integrity, unity and peace, but stressed the need for the relief operation in the distressed areas of Biafra. Accordingly, the final resolution adopted by the mission emphasised the need for the establishment of air and land mercy corridors for transporting relief supplies to the civilian victims of the war<sup>(23)</sup>. It also invited the two sides in the conflict to begin immediate preliminary talks under the Chairmanship of the President of Niger in order to seek implementation of the relief operation. Moreover, it requested them to resume peace negotiations as soon as possible in Addis Ababa, under its auspices, in order to achieve a mutually acceptable solution to the crisis<sup>(24)</sup>. In accordance with the provisions of this resolution, serious negotiations on the relief issue began at Niamoy. It was also continued at the Addis Ababa peace talks where an agreement was reached in principle, on the establishment of air and land mercy corridors for transporting relief supplies to the civilian victims of the war<sup>(25)</sup>.

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(22) Ibid p.102

(23) Andemicael, Berhanykum, Op. Cit, p.81

(24) Ibid p.82

(25) Cervenka Zdenek, Op. Cit, p.100

The Peace Conference was opened on August 5th, 1968 by the Ethiopian Emperor<sup>(26)</sup> and it soon became evident that an agreement for political settlement of the dispute was unobtainable<sup>(27)</sup>. Under these circumstances, the mutually agreed objective of setting up relief corridors became irrelevant, particularly when it also became known that General Gowon would not be able to participate personally in the peace negotiations<sup>(28)</sup>. Subsequently, federal troops launched a final offensive in September 1968 by which the remaining towns still held by the Biafran regime fell into federal hands<sup>(29)</sup>. This in turn put more pressure on the Biafran delegation at the Addis Ababa peace negotiations, but it refused to compromise. As a result, the Addis Ababa peace negotiations adjourned on September 9th, 1968 indefinitely, when it became clear that neither side was inclined to make any concession<sup>(30)</sup>. However, when the OAU Assembly of Heads of State met on September 4th, 1968 in Algeria for its fifth ordinary session, it gave emphatic support to the position of the federal government<sup>(31)</sup>. The political fate of Biafra

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(26) His efforts and the humanitarian approach to the conflict were appreciated by Pope Paul and supported by the ICRC. The latter despatched a special envoy to Addis Ababa to conduct an attempt to get the two sides to agree on a mercy corridor which would help in spreading relief supplies.

(27) Cervenka Zdenek, Op. Cit, p.102

(28) Meyers, David B., Op. Cit, p.107

(29) Cervenka Zdenek, Op. Cit, p.102

(30) Ibid p.102

(31) Africa Contemporary Record, 1968-69, p.620



appeared to be sealed when the four states which recognised Biafra could not muster any meaningful support for the Biafran cause<sup>(32)</sup>. Despite this fact, a considerable number of African leaders sympathised with the humane motives behind the recognition of Biafra by the four member states, but they rejected their thesis that "....unity achieved by conquest was worthless...."<sup>(33)</sup>. This was because of their fear of similar conflicts in their own countries where many similar tribal and ethnic problems prevailed. It was a decisive influence on all delegates at the Summit of the OAU Assembly. Consequently, the resolution adopted was in line with views of the Nigerian delegation that any solution of the conflict must be in the context of preserving the unity and territorial integrity of Nigeria. Moreover, it appealed to both sides to declare a ceasefire and to the Biafran regime to co-operate with the federal authorities in order to restore peace and unity in Nigeria. Furthermore, it called upon the federal government to declare a general amnesty and to co-operate with the OAU in ensuring the physical security of all Nigerians. Finally, it urged all the OAU member states to co-operate in the speedy delivery of humanitarian supplies to the needy<sup>(34)</sup>. As stated earlier, the OAU Assembly rejected the thesis of the four states recognising Biafra and reaffirmed its

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(32) Ijalaye, David A., Op. Cit, p.555

(33) Buchheit, Lee C., Op. Cit, p.170

(34) Africa Contemporary Record, 1968-69, p.620

policy of opposition to the secessionist self-determination. In this respect, it called upon all member states of the UN and its own, to refrain from any action detrimental to the peace, unity and territorial integrity of Nigeria<sup>(35)</sup>. This could be attributed to the strong support sustained by the host country to the federal thesis<sup>(36)</sup>. It was also attributed to the desire of most delegations to be on the winning side, and thus cement diplomatic relations with Nigeria. However, in conformity with the resolution of the Algerian Summit, the Consultative Mission pursued its peace efforts in Monrovia. The meeting opened on April 17th, 1969 and was attended by all members in addition to the participation of the OAU Secretary General<sup>(37)</sup>. But, it ended without making any progress towards national reconciliation. However, the last OAU efforts at national reconciliation in the Nigerian civil war were made at the sixth ordinary session of the OAU Assembly of Heads of State which took place at Addis Ababa in September, 1969<sup>(38)</sup>. The Assembly adopted a resolution containing similar terms

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(35) Ibid p.620

(36) Algeria strongly sustained the federal view. It did not allow a Biafran delegation to be admitted to the country. However, President Boumedienne in his opening speech, fiercely denounced plots against Nigeria aiming at disintegrating and shaking the foundation of the great African state to whose unity and cohesion we were all proud. This set the course of the conference which the majority of the delegations followed. The antagonism between the majority and the minority was such, that the President of Zambia refused nomination to become one of the Vice-Presidents of the OAU Assembly and even left the conference soon after the debate on the Nigerian civil war was completed.

(37) Cervenka, Zdenek, Op. Cit, p.105

(38) Africa Contemporary Record, 1969-70, p. C3

as the previous ones, urging both sides to halt hostilities and negotiate for a united Nigeria. The four states which recognised Biafra abstained<sup>(39)</sup>. In accordance with this resolution, the last round of peace talks between the federal government and the Biafran regime took place at Addis Ababa in December 1969<sup>(40)</sup>. Both parties were invited by the Ethiopian Emperor, but this gave rise to the question of whether the Emperor was making his initiative privately or in his capacity as Chairman of the OAU Consultative Mission. The Biafran interpretation was that it was a private initiative, but the Nigerians insisted that it was within the framework of the OAU<sup>(41)</sup>. As a result of this impasse, the talks did not take place<sup>(42)</sup> and the Biafran delegation, which had already arrived in Addis Ababa, returned home. At all events, by the end of 1969, the morale of the Biafran army was rapidly declining and desertion was rife. The famished soldiers threw away their arms and fled into the bush or into the crowds of distressed refugees<sup>(43)</sup>. On

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(39) Ibid p. C6

(40) Cervenka, Zdenek, Op. Cit, p.107

(41) This was in consequence of Biafra's refusal to have anything more to do with the OAU. It had lost faith in the OAU as a possible forum. Consequently, it attempted to secure mediation in the conflict through Switzerland, Austria, Sweden and Yugoslavia, but none of these countries made an official approach to the federal government of Nigeria. They stressed repeatedly that the OAU was the only body authorized to mediate.

(42) Cervenka, Zdenek, Op. Cit, p.107

(43) Ibid p.107

January 10th, the Biafran cabinet held a meeting at which Colonel Ojukwu informed it that he would leave the country in search of peace. He entrusted the Chief of Staff, Colonel Philip Effiong with the responsibility of administering the government<sup>(44)</sup>. Subsequently, Colonel Effiong offered, on January 12th 1970, the federal government of Nigeria, the unconditional capitulation of Biafra<sup>(45)</sup>. It has already been mentioned that the Biafran struggle for independence was waged under the banner of the right of self-determination. Without reference to the possible merit of the Biafran people's claim to the right of self-determination, the secession was from the outset, condemned as being detrimental to African interest. It was also seen as an incompatible goal with African unity and would set a precedent that could lead to further balkanization of the continent. It was true that the external involvement in the Nigerian conflict did take the form of overt military intervention as it did in the Congo crisis. Nonetheless, the supply of arms to the antagonists in the conflict clearly affected the conduct of the war. This process in some circumstances had the result of affecting the outcome of the conflict in favour of the federal government. However, the Biafran secession

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(44) Ijalaye, David A., Op. Cit, p.551

(45) Cervenka, Zdenek, Op. Cit, p.107

led to a massive civil war waged largely with foreign weapons and resulted in the death of hundreds of thousands of people. Despite this fact, the OAU treated the conflict as of purely internal origin, therefore allowing external intervention to such an extent as to upset the equilibrium between the protagonists and determined the outcome of the war. By following an approach of non-interference in such cases, the OAU was in effect allowing the outcome of African regional disputes to be determined by external actions. The OAU's commitment to the absolute preservation of the territorial status quo in Africa would make sense only if it were supplemented by a serious effort to resolve the problems that underlie and breed secession. Consequently, secessionist demands could be substantially reduced if adequate safeguards were provided for the rights and security of minorities in African states. To be instrumental in tackling the underlying causes of secession or in resolving actual secessionist conflict, the OAU needs to develop new institutional structures and procedures. A step in this direction is the revival of the Commission of Conciliation, Mediation and Arbitration to which both governments and their dissident groups would have access somewhat along the lines of the European Human Rights Commission. The OAU Secretary General must also be given some capacity to mediate in regional disputes and in major internal conflicts, especially those which potentially threaten the peace and security of Africa.

## CHAD'S CIVIL STRIFE

### THE HISTORICAL ORIGINS AND LEGAL CONSIDERATIONS OF THE CONFLICT:

Chad is a huge country, the fifth largest in Africa which achieved independence on August 11th, 1960. It was one of the four sovereign states arising out of the territory of the former French Equatorial Africa. The Republic of the Congo, the Central African Republic and Gabon are the other three. Each of the four territories had formerly been autonomous members of the French community<sup>(1)</sup>. It is a landlocked territory stretching from the Sahara desert to the tropical rain forests of the equatorial belt. The entire northern half of the country is sparsely populated desert. The southern half of Chad is mainly in the Savanna land of the extreme south where nearly half of the population lives, including most of the Sara ethnic group<sup>(2)</sup>. In fact, the complexity of the Chadian imbroglio induced by the socio-cultural context has shaped the course of civil strife. Chadian society is split down the middle between the Sudanic-Nilotic Muslims of the north and the Christian Bantu population of the south. The north-south dichotomy

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(1) Whiteman, Marjorie M., Digest of International Law, Volume 2, 1963, p.140

(2) With Ndjamona some 700 miles from the coast, indeed most imports have to travel up to 1800 miles to reach Chad. The poor communication acts as a major developmental constraint and inhibits national unification. Intense socio-economic differences sharply separate various population groups reflecting fundamental diverging patterns of social organisation and lifestyles, and deeply entrenched inter-ethnic animosities.

conceals a variety of other ethno-regional cleavages which in recent times have asserted themselves as far more significant than the Muslim-Christian split<sup>(3)</sup>. Within the huge northern part of the country, one finds at least three major ethno-regional aggregates each subdivided into a multiplicity of cultural segments. The first group is the Toubou, organised into a variety of nomadic clans, owing nominal allegiance to a paramount chief (Derbei). Their traditional habitat is the extreme north and around the Tibesti-Massif<sup>(4)</sup>. The second group is the Arabs, belonging to several small-scale nomadic or sedentary communities dispersed throughout the country. Most the the traders found in the urban centres of the south were of Arab origin and to this day, Arab elements continue to play a significant role in the economic life of the south<sup>(5)</sup>. The third group is the so-called Sahalian population, an extremely loose and arbitrary grouping, including a variety of communities spread on an east-west axis across the Sahalian belt. They comprise very different cultural traditions and types of stratification but there can be little question that their common adherence to Islam offers a considerable potential for cultural and political mobilization against the non-Muslim<sup>(6)</sup>. Despite this fact, the presence of major

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<sup>(3)</sup> DeCalo, Samuel, Regionalism, Political Decay and Civil Strife in Chad, JMAS, Volume 18, 1980, p.27

<sup>(4)</sup> Ibid p.25

<sup>(5)</sup> Ibid p.27

<sup>(6)</sup> Of the various ethnic groups of the Sahal belt, the Maba are the most numerous together with related fragments. They are the third largest group after the Arabs and the Sara. For the bulk of the population, Arabic has become the lingua franco just as Sara is the common medium of communication in the south. The Maba are semi-sedentary Muslim pastoralists and more strongly pulled to the Maghrab and neighbouring Sudan than to the south.

cultural and linguistic divisions among and within each of these groups constitutes an equally powerful source of political fragmentation. However, the ethnic configuration of the south appears far more homogeneous. There are the Sara, who constitute the numerically dominant group and the most thoroughly Christianized<sup>(7)</sup>. The birth of Sara ethnicity is a classic phenomenon of the extension of a common cultural awareness which had discretized linguistically related entities, in which there are countless parallels elsewhere in Africa. Within the Sara consciousness, sub-loyalties persist, but all are part of a wider Sara community<sup>(8)</sup>. Despite this, tensions have frequently occurred among these different levels of cultural consciousness which are a major ingredient in the politics of Sara ethnicity. Nonetheless, they shared an awareness of the threats posed to their political hegemony by the northerners<sup>(9)</sup>. This was the most powerful source of intra-Sara cohesion during the first phase of the civil strife. But, cohesion shifted more rapidly during the chaotic course of events that followed the overthrow of the Tombolbaye regime on April 13th, 1975<sup>(10)</sup>. It would appear that the shift occurred in part in the complexities of the ethnic configuration that made up the social landscape. It was also in part the dramatic changes that have taken place in the political arena since the outbreak of the rebellion in the north in 1965<sup>(11)</sup>. The systematic exclusion of northern

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(7) Lemarchand, Rene, Chad: The Roots of Chaos, JCH, Volume 61, 1982, p.414

(8) Ibid p.415

(9) Ibid p.416

(10) DeCalo, Samuel, Op. Cit, p.50

(11) Ibid p.40



elements from political participation made their recourse to rebellion almost inevitable. They had been denied political participation for 15 years since accession to independence, while the Sara were politically and economically dominant<sup>(12)</sup>. Thus, it had resulted in enormous resentment which had been building up since independence among the rural sectors of the north, over what they considered to be an intolerable domination. As a result, anti-Sara sentiment gathered considerable momentum in subsequent years of post-independence. It also escalated in the face of the countless abuse, humiliation and discrimination practices attributed to Sara rule, which eventually led to the prolonged civil strife<sup>(13)</sup>. In this respect, opposition to the Sara-dominated Tombolbaye regime was channelled in 1966 into an organised liberation movement (Front de Liberation Nationale Tchadion) initially led by Ibrahim Abatcha<sup>(14)</sup>. However, from the outset the movement was plagued by factional divisions which came to a head in 1968, following the death of Abatcha. Thus, this triggered a bitter struggle for leadership among his lieutenants, but it was temporarily resolved by the appointment of Abba Siddick as Secretary General in 1969<sup>(15)</sup>. In any event, whatever

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(12) Lemarchand, Rene, Op. Cit, p.416

(13) Ibid p.416

(14) Fronlinat was the outcome of a merger of several movements, notably Union Nationale Tchadian with Political Union Generale des Files de Tchad and the Movement Nationale du Liberation du Chad under Ahmed Moussa. Of the various liberation movements that sprang up to channel the course of the rebellion in the north, the Fronlinat was officially created when the leaders of the above-mentioned movements slipped from Sudan into Chad and formally united their movements.

(15) Lemarchand, Rene, Op. Cit, p.416

success the Frolinat initially claimed in increasing supporters, it was perhaps not so much a reflection of the strategic skills of its leadership. In fact, it was as a consequence of the appalling record of incompetence, mismanagement, corruption and brutality associated with the Tombolbaye regime<sup>(16)</sup>. However, it was the Frolinat that initially resorted to the use of force in the Chadian civil strife. It launched a series of guerrilla attacks, principally on government outposts in the rural areas of Chad in 1966<sup>(17)</sup>. As a matter of fact, the Frolinat could not hope to establish the legitimacy of its military action under internal law but under international law. In this respect, traditional international law provided for the legitimization of use of force by rebels only if the use resulted in the establishment of control over territory<sup>(18)</sup>. Nonetheless, the Frolinat asserted the flat proposition that a people suffering from oppression had the right to use force against their oppressor. Accordingly, hardships are seen as an immediate, ultimate and direct spur to rebellion against an unpopular government<sup>(19)</sup>. Therefore, rebellion in Chad stressed the hardship which individuals and groups suffered due to the denial of political participation of the northerners and to a wide measure of economic distress. Consequently,

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(16) DeCalo, Samuel, Op. Cit, p.41

(17) Ibid p.41

(18) Fraleigh, Arnold, The Algerian Revolution as a Case Study in International Law, The Johns Hopkins Press, London, 1971, pp.189-190

(19) Nkemdirim, Bernard A., Reflections on Political Conflict, Rebellion and Revolution in Africa, JMAS, Volume 15, 1977, pp.76-82

the Frolinat argued that it would not have to wait in order to establish the legitimacy of its military action until it achieved sufficient military success. At all events, it is perhaps worth pausing briefly to consider why international law deals with the problem of internal war at all, since civil war takes place largely within the territorial confines of a single state. Moreover, it is a struggle over the locus of political power and authority within that state which is a matter of domestic jurisdiction<sup>(20)</sup>. The major reason for international law's concern with problems of civil war both in the past and in the present international system, has been the need to define the rights and obligations of outside states, vis-a-vis the parties to the internal conflict<sup>(21)</sup>. Thus, it has comprised the form of legal norms concerning inter alia, the recognition of states and governments, legal characterization of the parties to a civil war as either rebels, insurgents or belligerents, aggression and intervention. The primary purpose of all of these norms has been to restrict intervention on the part of outside states<sup>(22)</sup>. In this respect, France's decision

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(20) Boals, Kathryn, The Relevance of International Law to the Internal War in Yemen, Johns Hopkins Press, London, 1971, pp.303-305

(21) Thomas, Ann van Wynen & Thomas, A.J., International Legal Aspects of the Civil War in Spain 1936-39, Johns Hopkins Press, London, 1971, pp.113-119

(22) Firmage, Edwin Brown, Summary and Interpretation, Johns Hopkins Press, London, 1971, pp.406-413

to prop up Tombolbaye's regime, militarily and politically seemed in contravention with these norms. The French intervention took the form of large scale civilian-military aid consisting of the Mission de Reforme Administrative and military technical assistants<sup>(23)</sup>. The military mission was drawn mainly from the Foreign Legion, the Marine Infantry and the Intelligence Networks of the Service de Documentation et de Contre-Espionage<sup>(24)</sup>. The French intervention gave a new lease of life to the Tombolbaye regime, but at the same time, gave the Frolinat substance to accuse the regime of being stooges of the French Imperialists. However, the administrative reform programme entrusted to the MRA was almost immediately deflected from its original objectives and was a dismal failure after only a year of its commencement<sup>(25)</sup>. At the time, the attack of rebel strongholds were accompanied by considerable brutality and unnecessary bloodshed. Nonetheless, neither the French Legion nor the Chadian army were able to do more than engage in sporadic search and destroy operations which inflicted more harm on civilians than on guerrillas<sup>(26)</sup>. Consequently, the

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(23) The French military aid was linked by major reforms in the army and public service. Among the reforms enacted, despite Tombolbaye's resistance, was the full reinstatement of Chad's major Sultans with their former powers as regards tax collection for the central government in exchange for 10% title and traditional justice. At the same time, they were held responsible for banning anti-government sentiments among the population in the north. It was notable that they had been removed from their competence in the modernization reforms of the mid 1960's.

(24) Lemarchand, Rene, Op. Cit, p.416

(25) Ibid p.417

(26) Ibid p.417

French intervention had cast further discredit on a regime whose legitimacy had already been seriously eroded by its own incompetence. Thus, the French intervention accelerated the trend towards a north-south polarization. By 1975 the north-south dichotomy was no longer an appropriate axis of reference for identifying loyalists and insurgents, but serious dissensions began to emerge within the ranks of both loyalists and insurgents, which triggered the process of fragmentation<sup>(27)</sup>. The Tombolbaye Chadization policies which required all civil servants regardless of age, rank or religion, to undergo the traditional Sara initiation ceremony (Yonda), paved the way for the civil war<sup>(28)</sup>. With the arrest of the army chief of staff General Felix Malloum in January 1975, discontent spread to the armed forces. Consequently, units of the army and gendarmarie moved, on April 13th, 1975 against the presidential palace and overthrew the Tombalbaye regime. Since then, and for the next three years, government responsibilities were entrusted to a civilian-military junta headed by Malloum<sup>(29)</sup>. Meanwhile,

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(27) DeCalo, Samuel, Op. Cit, pp.50-51

(28) Lemarchand, Rene, Op. Cit, p.417

(29) After Malloum came to power, he succeeded in working out the first abortive attempt at national reconciliation in August 1978 at Khartoum, by appointing Hassine Habre as Prime Minister. Malloum made this attempt in order to bridge differences between predominantly Moslem Arab north and the black Christian south so as to end the 12-year guerrilla war. But the alliance between the two former enemies was an uneasy one which came to an end in January 1979.

at least three rebel armies claimed the mantle of insurgency. Hassine Habre's second army later renamed Force Armée du Nationale (FAN) was in the Borkou-Enoredi-Tibest area. Abba Siddick's Forces Populaires de Liberation (FPL) were in the extreme northwest, along the Sudan border led by Mohamat Idress. Mohammed Baghlani's eastern army was in the Waddai region<sup>(30)</sup>. By 1979 the rebellion had spawned a veritable alphabet soup of factions and military tendencies. At this stage, the peace and security of the country steadily deteriorated from 1976 onwards evidenced by labour turmoil, friction with students and increased rebel activities in the north<sup>(31)</sup>. Thus, these attempted uprisings were yet another testimonial to the rapid deflation of authority, legitimacy and unpopularity of the military regime. It was against this background of military collapse on the battlefield and inability to stabilize the fighting by diplomacy that Chad's urban centres began falling to the insurgents<sup>(32)</sup>. Under these circumstances, the military regime appointed Hassine Habre, leader of the FAN (Force Armée du Nationale) as Prime Minister in a compromise worked out in August 1978 in Khartoum, Sudan, in an attempt to split the northern insurgents along existing ethnic division<sup>(33)</sup>. But, on the contrary,

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(30) African Research Bulletin, Volume 16, March 15th 1979, p.5163

(31) Ibid p.5165

(32) Ibid p.5165

(33) Ibid p.5163

the appointment sharply polarized the administration and the armed forces between the President and the Prime Minister. In fact, the inevitable tug-of-war that had developed in the capital exacerbated by conflicting external pressure from France, Libya and the movements of insurgency, resulted in virtual governmental paralysis. Thus, the crisis led to an anti-Malloum revolt by the officer corps in order to give the Prime Minister manoeuvrability in office<sup>(34)</sup>.

In this essentially internal conflict, Habre's force routed their opponents, including Malloum and his officers, who sought refuge behind a French military cordon.

Consequently, the fall of Malloum's regime and the defeat of his army in the capital was the death knell of Sara dominance<sup>(35)</sup>. However, it was not long before the temporary lull in the civil war was shattered when (Frolinat) forces heavily armed and supported by Libya, defeated the scattered government troops in Borkou-Enoredi-Tibesti (BET). With the fall of Faya-Largeau, the capital of the northern half of the country passed into rebel hands. The rebel advance continued pulverising half of the Chadian army, which led to the total collapse of central authority<sup>(36)</sup>. In fact, Habre's army suffered

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(34) Lemarchand, Rene, Op. Cit, p.436

(35) During the fighting between the President and the Premier, the French government ordered its troops in Chad not to get involved in the present fighting for power control, as it was regarded as a purely internal matter. The French troops did not interfere to balance the very delicate relations between the President's supporters and the Premier's followers. Nearly a week's fighting in the capital left Habre's men occupying most of the town, including the National Radio Station with the exception of the areas populated by the Sara, the southern ethnic group. A ceasefire was then agreed after a Sudanese initiative with the French was actively arranged

(36) DeCalo, Samuel, Op. Cit, pp.52-53

a major defeat by his immediate rival and kinsman Goukhouni, who, backed by Libya, asserted himself as the leader of (FAP) the People's Armed Forces. Consequently, Goukhouni rose to power on March 23rd, 1979 but this did not usher in peace and stability in Chad<sup>(37)</sup>. It merely reversed the role of dominance with the capital in northern hands and the Sara in the south became the centre of resistance. However, the Libyan intervention was a turning point in Chad's civil strife and must be recognised as a decisive factor in the equation of power among Chadian warlords. Thus, this has aggravated the cultural split between Arabs and Toubous in which the tug-of-war has again developed in early 1979 between the Frolinat leadership in exile in Tripoli, Libya. The leadership primarily consisted of Arabs and the operational forces on the ground, at first recruited were mainly from among the Toubou. However, the Libyan government initially supported the Toubous against Abba Siddick and subsequently backed Goukhauni against Habre<sup>(38)</sup>. At all events, the immediate result of Libyan intervention led to the intensification of factional rivalries within the Frolinat leadership. On the other hand, France proved equally ineffectual in preventing Libyan intervention which gave the Libyans a

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Liebenow, J. Gus., American Policy in Africa, The Reagan Years, JCH, Volume 62, March 1983, p.135

(38) The immediate result of Libyan interference was the territorial concession extracted from its protégé, Goukhauni, by which the Libyan government took over, in 1973, the Aenzov strip, some 2,700 square miles on the Chadian side of the Libya-Chad border.



free hand to assert themselves as the more credible arbitor in a complex civil war, for power control. Therefore, the French military presence in the north evaporated, while its economic, financial and technical assistance to the south remained. The French withdrawal from the north was followed by the opening of a Consulate in Moundon<sup>(39)</sup>. Thus, it had formalized the division of the country into two separate spheres of influence. The south, referred to as the French economic and financial protectorate, has emerged to match that of the Libyans in the north. The de facto secession of the south was made feasible by massive injections of French aid and made it highly unlikely that a viable formula would soon be found to restore unity to Chad. However, the Sara in the south have lost their representation within the central government but they do remain a powerful element in any attempt at national reconciliation. Following the review of the immediate origins to this civil war, it is necessary to set the stage for the legal consequences. In this respect, it is necessary to discuss the role of international law in regulating the conduct of civil war. The subject of the conduct of the conflict can be divided into the following areas:-  
treatment of prisoners, protection of civilians and the avoidance of non-military targets. With reference to the

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(39) Lemarchand, Rene, Op. Cit, p.436

Chadian civil war, the existence of armed conflict between factions of organised armies controlling territory certainly fulfilled the condition for the application of Article 3 of the Geneva Convention<sup>(40)</sup>. Even in the absence of specific statements by the parties to the Chadian conflict, the minimum standards could be taken as the basis for evaluating the action of the parties to the conflict. This would include the provisions of Article 3 of each Convention in connection with protection for individuals not engaged in the hostilities, and members of the armed forces who laid down their arms and those placed hors de combat by sickness, wounds, detention or any other relevant cause<sup>(41)</sup>. In addition to the 1977 Geneva Protocol on Non-International Armed Conflict which was conceived as a supplement and common development to Article 3 of the 1949 Geneva Convention<sup>(42)</sup>. However, the Protocol does not apply to all internal conflicts but only to those which are prolonged and of great intensity. Article 1 states that insurgents must be organised armed groups which are under responsible command, and exercise such control over a part of the territory of the state as to enable them to carry out sustained and concerted military operations<sup>(43)</sup>. As stated earlier, the Chadian National Liberation Movements command a force which is well trained and well

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(40) Freidman, Leon, Op. Cit, p.525

(41) Ibid p.526

(42) Cassese, Antonio, The Status of Rebels Under the 1977 Geneva Protocol on Non-International Armed Conflict, ICLQ, Volume 30, 1981, pp.417-418

(43) Ibid p.718

equipped. However, paragraph 2 of the same Article provides that the Protocol does not apply to situations of internal disturbance and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature<sup>(44)</sup>. It is therefore apparent that the Protocol has a high threshold of application and in substance, only covers these civil wars which by their scale reach a level comparable to that of the Congo and Nigerian civil wars. At all events, it has an almost exclusive humanitarian context. Therefore, it is primarily designed to protect victims of the armed conflict, those who do not take a direct part in the hostilities as well as those who have ceased to take part in the armed conflict<sup>(45)</sup>.

Consequently, at this time, the civil war in Chad was governed in relation to the treatment of prisoners of war by the provisions of the aforementioned international instruments. As far as the treatment of prisoners was concerned, it varied a great deal during the course of the war, but the application of the laws of war in Chad were observed by all parties, in which humanitarian principles prevailed in several areas. In this respect, prisoners in the Chadian civil war were detained under reasonable conditions and exchanged or released during the course of hostilities<sup>(46)</sup>. As far as the protection of civilians was concerned, a number of civilians were killed in the course of the Chadian civil war<sup>(47)</sup>. The most major

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(44) Ibid p.718

(45) McNemar, Donald W., Op. Cit, p.256

(46) African Research Bulletin, Volume 16, No.5, April 15, 1979, p.5195

(47) African Research Bulletin, Volume 16, No.4, March 15, 1979, pp.5163-65

violation occurred in August 1978 when the form of a compromise collapsed, which had been worked out in Khartoum, Sudan where both north and south were represented, through which Habre acted as Prime Minister and Malloum as President<sup>(48)</sup>. The deadlock was ultimately resolved by a trial of strength in February 1979 in which Habre with FAN was overwhelmingly victorious. Consequently, Malloum's armed forces under the command of Lieutenant Kamougne, withdrew from the capital to the south, leaving Sara civilians to the mercy of Habre's men. Upon hearing of the massacre of their kinsmen in Ndjamena, the Sara populations of Sahr and Moundon retaliated by wiping out the Arab communities in each town in the south, killing a total of at least 800<sup>(49)</sup>. Simultaneously, anti-Sara sentiment spread to non-Sara minorities of a key southern prefecture. In this respect, some 400 civilians, mostly Sara, were reported killed in February and March, 1979<sup>(50)</sup>. Moreover, a considerable number of civilians lost their lives both as a result of tribal struggles and starvation. This was in consequence of food scarcities, financial bankruptcy of the country and rampant corruption of the local warlords<sup>(51)</sup>. Furthermore, Article 34 of the Geneva

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(48) Lemarchand, Rene, Op. Cit, p.436

(49) Ibid p.436

(50) Ibid p.436

(51) Ibid p.438

Convention on civilian persons stipulates that  
"....the taking of hostages is prohibited...."(52)"  
In violation of these provisions, Habre's FAN  
captured Francoise Claustre, wife of the head of  
the MRA (Mission de Reforme Administrative) in  
Bardoi in 1974, along with several other hostages  
including a German national<sup>(53)</sup>. Unfortunately,  
this illegal act had provided Habre with a unique  
opportunity to demand a substantial ransom in the  
form of cash, armaments and medical supplies from  
the French and Germans. At the same time, Habre  
used the hostage issue to drive a deep wedge  
between the French and the Ndjamena authority.

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(52)

Freidman, Leon, Op. Cit, p.652

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Lemarchand, Rene, Op. Cit, p.417

THE OAU ATTEMPTS AT NATIONAL RECONCILIATION:

In the foregoing situation arising from internal conflict, the role played by the OAU started with the Kano accord of August 1979 which led to the setting up of the Transitional National Union Government. The Kano Conference on Chad was held under the auspices of the OAU at which a wide-ranging agreement was concluded on March 15th, 1979 laying the foundation for peace and national reconciliation<sup>(1)</sup>. The agreement incorporated a ceasefire demilitarization of the capital to a 60-mile radius. It also envisaged the establishment of a national transitional union government composed of all Chadian signatories to the agreement<sup>(2)</sup>.

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(1)

The accord established the Provisional State Council in Chad which defined the responsibilities and duties of its members until the formation of the transitional national union government as follows:-

(1) Goukhouni leader of Frolinat as official in charge of information in addition to his duties as Chairman of the Provisional State Council.

(2) Mohamed Nuri of the northern forces as official in charge of public works, transport and communications.

(3) Mohamed Salih Ahmed of the northern forces as official in charge of finance and planning.

(4) Sayyed as-Shaykh Bin Omar of Frolinat as official in charge of education and labour.

(5) Aboubakar Abdrahmane leader of the Popular Movement for the Liberation of Chad as official in charge of interior affairs.

(6) Idris Adam Mustapha of the Popular Movement for the Liberation of Chad as official in charge of health.

(7) The following present posts were given to the forces of former President Malloum - Lieutenant Colonel Kamougue as official in charge of agriculture and animal resource and Barma Ramadan as official in charge of foreign affairs.

(African Research Bulletin, Volume 16, No.1, April 15, 1979, p.5196)

(2) Signatories of the accord were President Felix Malloum, Prime Minister Hissene Habre, Frolinat Commander Goukhouni Oueddi and Aboubakar Adrahman leader of the Popular Movement for the Liberation of Chad, as well as ministers from five neighbouring countries - Niger, Libya, Sudan, Cameroon and Nigeria.

Moreover, the agreement provided for a neutral force consisting solely of Nigerian troops which would work under an independent monitoring commission made up of a Nigerian Chairman based in Ndjamena. It would also consist of two delegates from each of the participating countries and one representative from each of the Chadian signatories. Furthermore, other points in the accord were a ban on all pirate radio stations combined with guaranteed neutrality of the state radio. It enshrined a general amnesty for political prisoners, release of hostages and a pardon for exiles<sup>(3)</sup>. It was notable that the Kano accord did not deal with the future of the French troops based in Chad but it left the matter to be decided by the new Chadian transitional union government. Nonetheless, the French government stated simultaneously its intention to reach an agreement as soon as possible with Chad for the progressive withdrawal of its troops<sup>(4)</sup>. Under these circumstances, another Kano Conference was held in April 1979 to discuss the means of implementing the agreement, but the OAU attempts at national reconciliation proved utterly ineffective. Consequently, a third Conference on Chad was held in Lagos from August 12th to August 18th, 1979 in what turned out to be a replay of Kano I, once again calling for a ceasefire, demilitarization and a transitional union government<sup>(5)</sup>. The only significant

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<sup>(3)</sup> African Research Bulletin, Volume 16, No.3, April 15, 1979, p.5195

<sup>(4)</sup> Ibid p.5195

<sup>(5)</sup> Ibid p.5196

innovation was the establishment of a central commission, made up of African representatives and chaired by the Secretary General of the OAU for the purpose of supervising the ceasefire and ensuring the effective implementation of the agreement<sup>(6)</sup>. Despite this, the Lagos accord injected another source of discord among the eleven signatories, each blaming the other for this lack of co-operation. Moreover, mutual suspicion reached a level of paranoia between the President of the transitional union government and his Minister of State in charge of national defence, Hissene Habre. In this atmosphere, a full-scale battle erupted on March 22nd, 1980 in Ndjamena between FAP and FAN<sup>(7)</sup>. As the war of position between the President and his Minister of Defence dragged on, the Libyan government despatched its Islamic Legion in mid-December 1980, who shelled Habre's positions<sup>(8)</sup>. Consequently, Goukhouni's FAP marched with the Libyan troops hand in hand into Ndjamena<sup>(9)</sup>. However, in an effort to end the increasingly fierce fighting, engendered by the differences between the President and his Minister of Defence, a peace conference was held under the aegis of the OAU's ad hoc sub-committee in Lome, Togo on October 18th, 1980<sup>(10)</sup>. Unfortunately, the meeting was

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(6) Lemarchand, Rene, Op. Cit, p.436

(7) Ibid p.436

(8) Hissene Habre is Libya's bitterest enemy in Chad and it is precisely for that reason that the latter is seen by Sudan and Egypt as their most credible partner in their joint effort to counter Libyan expansion in black Africa.

(9) Liebenow, J. Gus, Op. Cit, p.135

(10) African Research Bulletin, Volume 17, No.15, 1980, p.5822



delayed in consequence of Habre's failure to appear before the Conference but eventually both Chad's protagonists did attend the meeting. The aims of the Conference were to find a mutually acceptable solution, arrange a ceasefire and despatch a neutral African force to Chad<sup>(11)</sup>. To this end a five-point plan was drawn up and debated by the sub-committee, which envisaged the following principles:-

(1) the acceptance of a ceasefire, but the date should be fixed by the conflicting parties;

(2) the sending of a neutral African force to Chad;

(3) the liberation of prisoners of war by both sides;

(4) suitable sanctions to be drawn up to be taken against whichever party violated the ceasefire;

(5) election to be organised in Chad under the supervision of the OAU<sup>(12)</sup>.

The text also enshrined the withdrawal of all armed forces outside a limit of 100 kilometres around the capital and the installation of a control commission<sup>(13)</sup>.

Although the peace proposals were accepted in principle by both the President and his Minister of Defence, nonetheless, there were radical differences in the amendments proposed by each to the OAU sub-committee. Habre's Armed Force of the North (FAN) demanded the withdrawal of Libyan forces and insisted that Goukhouni's People's Armed Force (FAP) only represent one of the government groups. Moreover, FAN also showed its

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(11) Ibid p.5822

(12) Ibid pp. 5822-5823

(13) Ibid p. 5822

disapproval over the presence of one of the sub-committee members because he had too close a relationship with Libya. Consequently, Habre refused to have any Beninis troops in the African neutral force<sup>(14)</sup>. On the other hand, Goukhouni emphasised that his government represented the legal authority in Chad while the FAN were simply a rebellion movement against the recognised government<sup>(15)</sup>. Under these circumstances, the work of the OAU sub-committee was blocked at all levels in its attempts to find a means to halt the hostilities and bring about a mutually acceptable solution to the conflict<sup>(16)</sup>. As conditions continued to deteriorate, the hostilities again erupted on December 15th, 1980 but the government troops secured the recapture of Ndjamena, the capital, after heavy fighting<sup>(17)</sup>. The force of FAN led by Hissene Habre, the rebel defence minister, fled overnight across the Chari river to Cameroon. Subsequently, he signed an agreement on December 16th, 1980 in Yaounde, Cameroon, under the OAU's auspices for a ceasefire<sup>(18)</sup>. Nonetheless, he stated that he still considered the Chad government illegal and illegitimate and pledged to continue his

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(14) Ibid p.5822

(15) Ibid p.5822

(16) The sub-committee gave the opposing sides until February 28th, 1981 to apply a ceasefire and until March 15th, to open negotiations aimed at national reconciliation under its auspices. The two sides would have the month of April in which to draft a constitution and should organise legislative and presidential elections in May and June.

(17) African Research Bulletin, Volume 12, January 15th, 1981, p.5903

(18) Ibid p.5904

struggle against it. Habre had also accused Benin of acting as a Libyan agent. However, the latter country was one of the five states who took part in the negotiation of the ceasefire which called for national reconciliation and the withdrawal of all armed forces from Ndjamena, the capital. The other African states which took part in the meeting held under the aegis of the OAU, were Sierra Leone, Togo, Congo and Guinea. The OAU also called for the withdrawal of foreign troops from the whole of Chad<sup>(19)</sup>. At all events, the fall of the capital came after nine months of fighting that ravaged the city and spread across the country, bringing the intervention of Libyan forces on the side of President Goukhouni. Unfortunately, this external intervention played a key role in the Chadian civil war which sharpened the edges of the conflict. In this respect, France, Libya, the Sudan, Nigeria and Egypt had all at one time or another, acted as appendages or allies of one faction or another. The Libyan intervention in Chad was made patently clear by the announcement of a merger of the two countries made in Tripoli on January 6th, 1981, which was initially endorsed by Goukhouni<sup>(20)</sup>. In fact, none of the other Chadian factions was prepared to accept Libya's proposed merger and its military presence in northern Chad was

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(19) Report of the Secretary General of the OAU on Chad, Addis Ababa, June 1981, pp.8-9

(20) Lemarchand, Rene, Op. Cit, p.436

too massive to resist. Therefore, the only way to bring about a Libyan withdrawal was the establishment of an OAU peace-keeping force. As conditions continued to deteriorate, the need for an alternative to the recent anarchy became all the more evident. To most African neighbours the Libyan move appeared to be an act of conquest. Therefore, Nigeria, the Sudan, Egypt and other African states assumed an active role, both inside the OAU to secure the withdrawal of Libyan troops<sup>(21)</sup>. In this respect, a brief, heated debate on the Chad civil war had taken place at the meeting of the OAU Council of Ministers held in Addis Ababa on February 23rd, 1981<sup>(22)</sup>. The said states had objected to Libyan interference in Chad but the Chairman of the OAU Council had proposed that the issue be left for discussion by the OAU Summit of the Assembly of Heads of State<sup>(23)</sup>. However, prior to the Summit, a meeting of four African heads of state seeking to resolve the crisis in Chad, took place in May 1981, in Ndjamena, Chad, but the Conference ended in failure<sup>(24)</sup>.

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(21) Liebenow, J. Gus, Op. Cit, p.125

(22) African Research Bulletin, Volume 18, No.2, March 15, 1981, p.5954

(23) Ibid p.5954

(24) African Research Bulletin, Volume 18, No.5, June 15, 1981, p.6048

The four countries which took part in the Conference were Libya, Nigeria, Sierra Leone and Chad, in the hope of finding a formula for the withdrawal of Libyan troops from Chad and the introduction of an African peace-keeping force<sup>(25)</sup>. However, the meeting ended without agreement in consequence of Libya's refusal to recognise the authority of the OAU in this matter on the grounds that only the Chadian government could ask for Libyan withdrawal<sup>(26)</sup>. Under these circumstances, the OAU Summit of the Assembly of Heads of State which took place in Nairobi, Kenya on June 24th, 1981, decided to review the proposal for an OAU peace-keeping force to replace the Libyan troops<sup>(27)</sup>. At the same time, the Assembly called upon neighbouring states of Chad to halt any act of destabilization or sabotage, the peace process being undertaken in order to reach a national reconciliation in Chad. The Assembly also entrusted its Chairman to visit Ndjamena so as to discuss assistance which the OAU might extend to Chad to rebuild its national army<sup>(28)</sup>. However, the Assembly avoided any criticism of Libya and

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(25) The expense of sending troops to a country as large as Chad was enormous. The OAU was not empowered to approach governments bilaterally. States participated in the OAU forces which might call upon foreign powers to offer logistical assistance if it was necessary. France agreed to send assistance to Senegal and Zaire, while Nigeria sounded out the United States and some European countries to extend possible logistical help.

(26) Ibid p.6048

(27) African Research Bulletin, Volume 18, No.6, July 15, 1981, p.6068

(28) The Guardian, Saturday January 16, 1982

accepted that the departure of Libyan troops was a matter for the government of Chad to decide. In any event, the Libyan withdrawal took place in the middle of December 1981 before the OAU multinational peace-keeping force could assume its duties, which gave rise to the serious threat of renewed fighting from opposition forces to the central government<sup>(29)</sup>. The withdrawal of Libyan troops went far more quickly than it had been anticipated. Subsequently, the OAU peace-keeping forces arrived by the end of December 1981 in order to replace the Libyan troops. The force would have to keep the peace, to supervise the election and to assist in the integration of the Chadian army<sup>(30)</sup>. The OAU force was placed under the authority of the OAU Secretary General who would preside over an administrative committee consisting of representatives from Benin, Congo, Guinea and Kenya<sup>(31)</sup>. The OAU peace-keeping forces in Chad were recruited from Senegal, Zaire and Nigeria but were displayed by consent of the Chadian government. Consequently, the government troops were responsible for clearing out areas into which the OAU forces would follow. However, the Chadian government held the view that the OAU forces should assist the Chadian army to suppress dissidence, but the view was rejected outright by the OAU<sup>(32)</sup>. As a result, the

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(29) The Guardian, Thursday January 21st, 1982

(30) African Research Bulletin, Volume 18, No.6, July 15th, 1981, p.6068

(31) African Research Bulletin, Volume 18, No.11, December 15th, 1981, pp.6249-50

(32) African Research Bulletin, Volume 19, No.1, February 15th, 1982, p.6303

OAU interests were at stake in Chad. In fact, this was the first time the OAU found itself alone, charged with the physical task of restoring peace and security to an African state. Under these circumstances, Habre took advantage of this situation and was able to burst out of his sanctuary in neighbouring Sudan and launched an offensive against the central government<sup>(33)</sup>. The Chadian government had complained that the OAU force was not fulfilling its task because it refused to confront Habre's attack. The passive attitude of the OAU peace-keeping force had given Habre's armed forces of the north (FAN) advantage to pursue an unstoppable westward drive right to the Chadian capital, Ndjamena which was captured at the beginning of June, 1982, forcing President Goukhouni into exile<sup>(34)</sup>. The latter was given a grant of political refuge by Cameroon which had refused to take sides throughout the civil war. Habre's victory came some 18 months after he was forced to retreat from Ndjamena with his troops, to the east of the country, under pressure from government troops<sup>(35)</sup>. However, the strict neutrality of the OAU peace-keeping forces had been praised by Habre. In a letter despatched to the Presidents of Kenya, Nigeria, Senegal and Zaire, Habre officially requested the prolongation of the mandate of the OAU peace-keeping forces. Nonetheless, the Kenyan President as the OAU Chairman, ordered the OAU forces to be withdrawn from Chad<sup>(36)</sup>. However, Habre's victory had been compared to that of Mobutu after

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(33) African Research Bulletin, Volume 19, No.7, August 15th, 1982, p.6513

(34) African Research Bulletin, Volume 19, No.6, July 15th, 1982, p.6489

(35) African Research Bulletin, Volume 19, No.2, March 15th, 1982, p.6335

(36) African Research Bulletin, Volume 19, No.6, July 15th, 1982, p.6491

the Congo coup of 1965 which ended the Congo civil war. Therefore, Habre could now offer a new deal involving national reconciliation and the forgetting of the bitterness of the prolonged civil war. However, the plight of the OAU forces had in fact been amply highlighted both by Habre's success and by the enormous financial difficulties with which it was faced. It would appear that the OAU forces would soon be out of funds. Consequently, the OAU Secretary General transmitted an unprecedented request for funding by the UN, but the latter had never financed a force that was not under its aegis<sup>(37)</sup>. With its involvement in Chad's civil war, the OAU accepted a role that the organisation's founders had envisaged for it at their first Summit in 1963<sup>(38)</sup>. Since then there have been several unsuccessful attempts at establishing an All-African Force that would be available to repel invasions of its weakest members, suppress inter-African clashes and push civil war factions to the negotiating table<sup>(39)</sup>. However, the proposal for such forces has been shelved because of the cost.

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(37) The Guardian, Tuesday January 21st, 1981

(38) Okoye, Felix Chuks, Op. Cit, pp.124-126

(39) During the writing of this article, the forces of President Habre suffered a heavy defeat on about February 23rd, 1983 after attacking Gouro on the fringe of the Aozon strip which he was intent on recovering from the Libyans. This led to Habre's forces falling back over 400 miles to beyond Abeche which was occupied by Goukhouni's troops, backed by Libyan forces in early July 1983. Habre got behind Goukhouni to recapture Oum Chalouba and the next day Abeche. Goukhouni then fell back on Faya-Largeau where he was driven out on July 30th, only to recapture it on August 10th, 1983 in a battle which was dominated by Libyan forces. Consequently, President Habre's forces, together with about 1000 French paratroops sent by President Mitterand and also perhaps up to 2700 soldiers from President Mobutu of Zaire, had taken up defensive positions based on Abeche, Sala, Moussoro and Mao.



CHAPTER V

CONFLICTS BETWEEN THE OAU AND THIRD STATES  
AND THE OAU'S EFFECTIVENESS AT REGIONAL  
COLLECTIVE DEFENCE

THE EMERGENCE OF NEW INTERNATIONAL PRINCIPLES  
CONCERNING DEPENDENT TERRITORIES:

During the debate at the Paris Peace Conference in 1919, a change was introduced in the international legal system with regard to colonialism. It was in terms of which the victorious powers were committed to observe two principles of paramount importance, the principle of non-annexation and the principle that the well-being and development of the colonial peoples form a sacred trust of civilization<sup>(1)</sup>. Thus, the principles of nationalism and self-determination were enshrined at the Paris Peace Conference and were also given serious consideration in President Wilson's Fourteen Points Programme of World Peace presented at the Conference<sup>(2)</sup>. Consequently, the Principal Allied and Associated Powers agreed not to follow the usual practice of annexing the conquered dependent territories of the defeated army<sup>(3)</sup>. In fact, they established a new system called "The Mandates" in respect of those

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(1) Goodrich, Leland et al., Op. Cit., pp.660-661

(2) Whiteman, Marjorie, Digest of International Law, Volume 1, 1963, p.605

(3) Ibid p.598

territories which were placed under the umbrella of the newly founded international organisation the "League of Nations"<sup>(4)</sup>. Therefore, the dependent territories had ceased to be under the sovereignty of states which had formerly governed them and which were inhabited by peoples not yet able to assume a full measure of self-government<sup>(5)</sup>. The territories concerned were the former German colonies which were considered to be inhabited by peoples not yet able to stand by themselves as it was envisaged in Article 22 of the Covenant of the League of Nations<sup>(6)</sup>. The latter Article designed states called mandatories entrusting them to administer the territories on behalf of, and subject to supervision by the League of Nations<sup>(7)</sup>. However, the states designated to exercise the administration were those whose armies were already in occupation. Nonetheless, the Covenant set forth guiding principles of the Mandates system enshrined in Article 22 that "....the well-being and development of the peoples in question should form a sacred trust of civilization...."<sup>(8)</sup>

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(4) Ibid pp.598-599

(5) Ibid p. 599

(6) Goodrich, Leland et al., Op. Cit, pp.660-661

(7) Togoland and Cameroon - Great Britain and France should make a joint recommendation to the League of Nations on their future. German East Africa, the mandate should be held by South Africa. The German Samoan Islands, the mandate should be held by New Zealand. The other German Pacific possessions south of the equator, excluding the German Samoan Islands and Nauru, the mandate should be held by Australia. Nauru Islands north of the equator, the mandate should be held by Japan.

(8) Goodrich, Leland et al., Op. Cit, pp.660-661

Moreover, safeguards for the performance of this trust was included in the individual mandate agreements concluded between the mandatory powers on the one hand, and the League of Nations on the other, as approved by the Council of the League<sup>(9)</sup>. In conformity with such agreements, the mandatory states were pledged to submit reports to be examined by the Permanent Mandate Commission which was set up as a subsidiary organ of the League of Nations<sup>(10)</sup>. It consisted of nationals of non-mandatory powers who served as experts and not as officials of their governments<sup>(11)</sup>. On the other hand, the inhabitants of the mandated territories were entitled to submit petitions through the administering power to the commission. Legally the mandatory powers were obliged to forward these petitions, attached with their comments if they so preferred<sup>(12)</sup>. Notably, the dependent territories were categorised in three classes A, B and C mandates, conforming to the stage of development of the people, its economic conditions, the geographical situation and other related factors<sup>(13)</sup>. However, the difference between these three categories lay in the degree of administrative control empowered to the mandatory state concerned<sup>(14)</sup>. In fact,

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(9) Whiteman, Marjorie, Op. Cit, pp.614-616

(10) Ibid p.609

(11) Sanders, AJGM, Op. Cit, p.73

(12) Whiteman, Marjorie, Op. Cit, p.611

(13) Kapleyn, P.J.G. et al., International Organisation and Integration, Volume 1A, Martinus Nijhoff Publishers, The Hague, 1981, p. 1.A.1.6.

(14) For instance, in respect of the class A mandates, the mandatory states were authorized to render administrative advice and assistance, while in mandates B and C, they were authorized to exercise an overall administrative and territorial control. In addition, in the case of C mandates, the mandatory powers were authorized to administer them as an integral part of their territories.

it was a remarkable development but the Covenant did not envisage explicit provisions for the termination of the Mandates. Therefore, neither the notion of eventual independence for the mandated territories were expressly mentioned nor implied that idea in the provisions of Article 22 of the Covenant. Despite this, the agreements of category A of former Turkish dependencies explicitly provided for eventual independence<sup>(15)</sup>, while those relating to the class B and C mandates of the former German territories were silent<sup>(16)</sup>. As far as German colonies in Africa were concerned, the Mandates system resulted in allocating these territories under the administrative control of Great Britain, France, Belgium and South Africa. The latter power was entrusted to administer South-West Africa (Namibia), under its laws, as an integral portion of its territory, owing to its geographical contiguity, subject to the safeguards mentioned above, in the interests of the native population<sup>(17)</sup>. The rest of the German colonial empire in Africa meanwhile, was placed under the form B mandates<sup>(18)</sup>. At this juncture, the administration of dependent territories other than the mandated territories,

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(15) The A mandates, Syria, Lebanon, Palestine, Trans-jordan and Iraq recognised as independent, but received the advice and assistance of the mandatory powers in its administration, until such time as it was able to stand alone.

(16) Sanders, AJGM, Op. Cit, p.74

(17) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.13.4a

(18) Tanganyika went to Great Britain with the exception of Rwanda and Burundi, which went to Belgium. Togoland and Cameroon were divided between Great Britain and France.

however, were still considered as a purely internal issue within the domestic jurisdiction of the colonial powers. Nonetheless, the colonial powers pledged under Article 23(b) of the Covenant of the League of Nations, to undertake just treatment of the native inhabitants of territories under their control<sup>(19)</sup>. Although this was an expression of good intent it produced a strong argument for claiming that the administration of the colonial territories was a matter of direct international concern. Thus, the idea of direct international concern was positively extended to colonial territories after the Second World War by the newly established international organisation "The United Nations." Consequently, the evolution that has taken place in the international legal system has weakened the authority of the colonial powers and therefore accelerated the drive towards the process of decolonisation and eventual self-determination among the colonial peoples. Meanwhile, national liberation movements had been established in many dependent territories which were struggling to preclude the re-imposition of the pre-war mandates system<sup>(20)</sup>. In addition, a number of states hostile to colonialism were actively engaged in the drafting of the Charter of the new international organisation intended to replace the League of Nations. Moreover, active opposition to colonialism

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(19)

Goodrich, Leland et al., Op. Cit, p.661

(20)

Bakhashab, Omar, Op. Cit, pp.2-4

was raised by two super powers, both of whom had not been members of the League of Nations. Consequently, the UN Charter envisaged a declaration on non-self-governing territories as well as the trusteeship system which replaced the mandates system of the League of Nations<sup>(21)</sup>. As a matter of fact, the effect of Chapter XI of the Charter was that it made the administration of all non-self-governing territories a matter of direct international concern. Accordingly, the Charter imposed certain international legal obligations upon the administering powers and provided more clearly for UN supervision<sup>(22)</sup>. At all events, the African states participated at the San Francisco Conference and were enthusiastically interested in the fate of all colonial territories. Consequently, they opposed the Charter's differentiation between non-self-governing territories and trust territories. Thus, they appealed to the Conference to observe the interests of the indigenous inhabitants in all dependent territories to the ultimate goal of self-determination. As a result, a political compromise was introduced in order to bridge the gap between the colonial and non-colonial groups within the participants of the Conference<sup>(23)</sup>. Thus, Article 73 of the Charter imposes upon the administering power to recognise the principle that the interest of the inhabitants are paramount and accepted as a sacred trust the obligation to promote the utmost well-being of the inhabitants of these territories<sup>(24)</sup>. However, the

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(21) Panhuys, H.F. van et al., Op. Cit, p.40

(22) Ibid p.40

(23) El-Ayouty, Yassin, Op. Cit, p.4

(24) Panhuys, H.F. van et al., Op. Cit. p.40

trusteeship system, designed to replace the mandates system, was given a broad interpretation aimed at extending the UN competence to include the evolution of non-self-governing territories towards self-determination. Moreover, it applies to a wider category of territories than simply territories detached from former enemy states. Furthermore, it specifies three categories of territories which have been placed under it by means of agreements being concluded between the UN and the administering powers. These territories were the mandated territories, those detached from enemy states as a result of the Second World War and those voluntarily placed under the system by states responsible for their administration<sup>(25)</sup>. In contrast, the trusteeship system does not adopt the previous divisions of the mandates system of territories according to the stage of development of the people, or to geographic, economic or other related conditions. Moreover, Article 76(b) of the UN Charter explicitly provided for the goal of self-government and eventual independence for the trust territories<sup>(26)</sup>. Furthermore, the trusteeship system introduced an extensive role for the UN

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(25) Ibid p.41

(26) The subjects dealt with in three Chapters, XI, XII and XIII devoted to non-self-governing territories, proved to be among the most difficult of all those considered by the San Francisco Conference on the UN and they were among the last on which agreement could be reached. In fact, it was not until the final week of the Conference that the agreement about the provisions of these Chapters could be reached. In the subsequent London deliberation of the Executive Committee, agreement was reached around the correct interpretation of the provisions of these Chapters.

supervision aimed at extending its competence to include the evolution of the non-self-governing territories towards self-determination<sup>(27)</sup>. However, the UN supervision was given to the trusteeship council which enjoyed greater access to the territories concerned than the Permanent Mandate Commission of the League of Nations. However, the supervision of the Trusteeship Council has been applied in practice only to the first and second categories of territories aforementioned. In any event, all the mandates which by 1948 had not achieved independence, were brought under the Trusteeship system, with the exception of South-West Africa (Namibia)<sup>(28)</sup>. In this respect, South Africa as the administering power, refused to place the territory under the system on the grounds that the mandates, and with it the international supervision over the territories had lapsed with the dissolution of the League of Nations<sup>(29)</sup>. But, South Africa's argument was rejected by the UN and proved unacceptable to the ICJ on more than one occasion<sup>(30)</sup>. Ultimately, the UN General Assembly passed in 1966, Resolution 2145 (XXI) on October 27th, 1966 by an overwhelming majority, terminating the mandate and placing the territory under the direct responsibility of the UN<sup>(31)</sup>. Subsequently, the legal validity of this

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(27) Panhuys, H.F. van et al., Op. Cit, p.43

(28) Ibid p.97

(29) Dugard, John, The South West Africa (Namibia) Dispute, University of California Press, Los Angeles, 1973, p.98

(30) International Status of South West African Opinion, 1950, ICJ, p.132

(31) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.14.4.c.



Resolution was endorsed by the ICJ in its advisory opinion on the legal consequences for states, of the continued presence of South Africa in South-West Africa<sup>(32)</sup>. Despite the fact, the Western powers in the UN Security Council maintained a policy aimed at blocking the imposition of enforcement measures against South Africa by which the latter remain in firm control of the territory<sup>(33)</sup>. Consequently, South Africa felt confident to implement the application of its widely condemned domestic apartheid policy designed to evolve independence on ethnic lines with black independence limited to the narrow confines of the homelands<sup>(34)</sup>. At all events, the most important contribution of the Trusteeship system was that it fostered similar thinking with regard to all non-self-governing territories. They were governed by Chapter XI of the UN Charter bearing the heading "....Declaration Regarding Non-Self-Governing Territories...." and applicable to all territories whose people have not yet attained a full measure of self-government. Subsequently, the UN General Assembly adopted a number of principles as a guide to determine whether a territory is or is not self-governing<sup>(35)</sup>.

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(32) Legal Consequences for States of the Continued Presence of South Africa in Namibia (SWA) Opinion, 1970, ICJ Report, pp.89-92

(33) Andemicael, Berhanykum, Op. Cit, p.129

(34) Ibid pp.132-133

(35) Mittelman, James H., Collective Decolonization and UN Committee of 24, JMAS, Volume 14, 1976, pp.41-42

Accordingly, the UN General Assembly, in conformity with Article 10, recommended member states administering such territories to submit information in accordance with Article 73(e) of the Charter<sup>(36)</sup>. The most important Resolution in this respect was Resolution 1514(XV) of December 14th, 1960 which set forth the guide for granting independence to colonial countries and peoples<sup>(37)</sup>. The Resolution envisaged a presumption that Article 73(e) of the Charter applies to every territory which is geographically separated and is distinct, ethnically or culturally, from the country administering it. The presumption was also strengthened if the territory was in a position of acquiescence to the administering power. However, it was a historic Resolution under which a new system was established, aimed at achieving orderly decolonisation. It determined that a non-self-governing territory may achieve self-determination by emergence as an independent state, by association with an independent or by means of integration in an independent state<sup>(38)</sup>. Consequently, the people of each non-self-governing territory could be allowed to choose freely which means they wish to follow<sup>(39)</sup>. However, the new system evolved in consequence of the gains made possibly by the broad interpretation of

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(36) Panhuys, H.F. van et al., Op. Cit, p.28

(37) Ibid p.291

(38) Frank, Thomas M., Op. Cit, pp.698-701

(39) Panhuys, H.F. van et al., Op. Cit, p.291

Chapter XI of the Charter. The international legal principles under Chapter XI has been cast in a looser formulation than the one under Chapter XII and XIII which deal with the Trusteeship system. Yet there is a substantive degree of difference in their respective terms of reference. In contrast to Chapters XII and XIII, Chapter XI neither explicitly refers to UN supervision nor provides for reports from the administering powers or for accepting petitions from the inhabitants of dependent territories or for visits to the territories concerned<sup>(40)</sup>. Despite this, it stipulates that information of a technical nature be submitted to the UN General Assembly<sup>(41)</sup>, but such information does not include information relating to the political conditions of the territory concerned. In this respect, a limitation was imposed to restrict the transition of information in so far as the security and the constitutional considerations of the territory concerned may require. Moreover, Chapter XI also was formulated in a sense to avoid the use of the term "independence." Furthermore, it does not explicitly mention any function on the part of the UN, but this could be implied by Article 10 and 72(e) of the Charter<sup>(42)</sup>. Therefore, the UN General Assembly may discuss and make recommendations on the administration of all dependent territories to which Chapter XI applies.

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(40) Kelsen, Hans, Op. Cit, p.550

(41) Ibid p.551

(42) Mittelman, James H., Op. Cit, p.45

In addition, it is authorized to receive political information irrespective of the name of the territory. Consequently, it might be argued that the original motive behind the formulation of Chapter XI of the Charter might have been the drafter's intention to bring it gradually into line with the Trusteeship system. Thus, it has been manifested in a number of General Assembly Resolutions relating to the type and form of information to be submitted to the UN in conformity with Article 73(e)<sup>(43)</sup>. Consequently, the process of decolonisation reached its peak in 1960 and culminated with the admission to the UN membership of sixteen independent African states<sup>(44)</sup>. Ultimately, it was time for a change in the colonial approach by which the UN was called upon to play a greater and more decisive role in the orderly transition from dependency to independence. Such calls to the UN were issued by a number of independent African Conferences, in particular the 1958 Accra Conference, the 1959 Monrovia Conference and the 1960 Addis Ababa Conference. The theme of these Conferences was to continue to exert concentrated action through all possible and peaceful means in order to complete the eradication of colonial rule in Africa<sup>(45)</sup>.

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(43) Panhuys, H.F. van et al., Op. Cit, p.291

(44) Some of this manifestation was in French Africa. The French community was being transformed into independent sovereign states which were soon to take their places in the UN. French Algeria was replaced by the name Algeria in March 1960 by General de Gaulle. By June 1960, the Belgian Congo became the Republic of Congo. In British Africa, Britain agreed to the UN call to accelerate the liberation of the remaining African colonies.

(45) El-Ayouty, Yassin, Op. Cit, p.208

Accordingly, African representatives at the UN had taken an active role to draft a resolution on the Declaration for the Granting of Independence to Colonial Countries and Peoples which was adopted by an overwhelming majority in the UN General Assembly. Thus, the declaration has become General Assembly Resolution 1514(XV) which has been quoted as the legal terms of constitutional basis in all future UN Resolutions relating to the question of colonialism<sup>(46)</sup>. It was a remarkable achievement aimed to bring about a speedy and unconditional end to colonialism in all its forms and manifestations. However, it can be divided into three parts. The first contained a condemnation of colonialism. The second envisaged an affirmation of the right of self-determination followed by the words "...inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence...."<sup>(47)</sup> The third part enumerated a number of consequences and courses of action which might follow in case of violation of these principles set forth in the other two parts of the Declaration. However, the administering powers of

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(46) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.13.3.A.

(47) Ibid p. 1.A.13.3.a.

non-self-governing territories regarded the UN General Assembly Resolution 1514(XV) as constituting a bold interpretation of Chapter XI of the UN Charter<sup>(48)</sup>.

On the other hand, the majority of the UN member states maintained that the Resolution was a fair interpretation of the spirit of Chapter XI of the UN Charter. This conflicting view was subsequently reflected on November 27th, 1961 in the course of deliberation on the Resolution on the situation with regard to the implementation of the Declaration. Despite this, the Resolution 1654(XVI) was adopted, which called upon the states concerned to take action without further delay with a view to the faithful application and implementation of the 1960 Declaration<sup>(49)</sup>. It also set up a special committee on the situation with regard to following up the implementation of the Declaration on independence and all other future General Assembly Resolutions based thereupon. The committee were empowered with a broad mandate in order to carry out its task by use of all means which it would have at its disposal within the framework and procedures set forth in the Declaration for the proper discharge of

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Obviously, the administering powers had to keep in mind the fragile fabric of Chapter XI, therefore they did not withstand a boycott. They had simultaneously submitted to the system based on this Chapter. The administering powers knew the vital importance of their co-operation with the UN in this respect. Accordingly, they took part in the frustrating process of interpretation with legalistic tools which proved to be of little effect. Consequently, the U.K., France, Belgium, Portugal and Spain took a conservative stand with regard to the Assembly's competence in the area. However, the United States sympathised with the legal position of its sister administering powers.

(49) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.13.3.6

its functions. In this respect, it was entrusted to make recommendations and suggestions on the progress and extent of the implementation of related Resolutions of the General Assembly and Security Council<sup>(50)</sup>. As a subsidiary organ of the General Assembly, it might despatch visiting missions to particular areas in order to receive petitions and hear petitioners from the territories concerned. However, the committee succeeded in adopting procedures similar to those of the Trusteeship Council including the examination of information papers prepared by the UN Secretariat on each territory and of information submitted by the administering states. However, with a view to centralizing the UN action in the sphere of decolonisation, the Committee absorbed in 1961, the Special Committee on South-West Africa (Namibia) and the Portuguese Territories in Africa. Moreover, the same happened in 1963 to the Committee on Information from non-self-governing territories by which the Decolonisation Committee assumed their functions<sup>(51)</sup>. Thus, the Decolonisation Committee was considered as the sole body of the General Assembly in connection with the remaining non-self-governing territories and other Trust territories. In fact, the Committee also became a channel of communication among the organs of the UN, international regional organisations and liberation

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(50) Ibid p. 1.A.13.3.6.

(51) Sanders, AJGM, Op. Cit, p.80

movements. In this respect, the Committee decided on August 11th, 1971 to despatch a mission to Guinea-Bissau in order to report on the situation there. The decision was taken only after extensive consultation by the Committee's Chairman with the Secretaries General of the UN and the OAU and the leader of the national liberation movement in the territory<sup>(52)</sup>. Similarly, in conjunction with the OAU Secretariat and representative of the liberation movements recognised by the OAU, the Committee worked out a programme of action with emphasis on Southern Africa which was adopted in 1970 by the UN General Assembly<sup>(53)</sup>. Moreover, the Committee invited the representatives of the national liberation movements in Africa, as recognised by the OAU, to participate in its meeting as observers whenever their territories were under consideration<sup>(54)</sup>. At all events, the Decolonisation Committee produced issues which were not foreseen by the drafters of the UN Charter in 1945. Therefore, the UN efforts at decolonisation are now governed by the principles articulated in the Declaration on Independence adopted by the General Assembly in 1960 and the Universal Declaration of Human Rights of 1948. Accordingly, the issues of colonialism and apartheid have become questions directly affecting the maintenance of international peace and security<sup>(55)</sup>. From numerous Resolutions adopted

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(52) Mittelman, James H., Op. Cit, p.50

(53) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.13.4.1.

(54) Mittelman, James H., Op. Cit, p.52

(55) As a result of the report of the Decolonisation Committee on the Policies of Apartheid in Southern Africa, the UN General Assembly passed Resolution 2506 (XXIV) of November 21st, 1969. It called for an end of suppression and persecution of persons oppressed by the policies of apartheid. It also urged that freedom of fighters taken prisoner in the course of the liberation struggle should be extended humane treatment in conformity with the Geneva Conventions of August 12th, 1949.



by the UN General Assembly and the Security Council, a general fact has emerged. It was the transfer of the colonial question which had by now been linked with the issues of apartheid from the field of a legal interpretation of the UN Charter to the field of effecting the maintenance of international peace and security. In this respect, various wars of national liberation have broken out in Africa, beginning with the Angolan uprising of 1961. It was estimated that this armed conflict stretched over a front of two thousand miles from the Indian Ocean to the Atlantic Ocean. However, it should be pointed out that since the adoption of the Declaration on Independence, a total of almost 70 million people have attained independence. This was a direct consequence of the radical recommendations submitted by the Decolonisation Committee to the General Assembly and the Security Council. These recommendations were reflected in the demand for the recognition of the legitimacy of armed struggle of colonial peoples in non-self-governing territories as a means of exercising their inalienable right to self-determination and independence. As far as the African territories were concerned, the Committee concluded that the effects of foreign economic and financial interests within the offending regimes in Southern Africa were slowing the process of decolonisation<sup>(56)</sup>.

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El-Ayouty, Yassin, Op. Cit, p.236

Thus, it led to a number of General Assembly calls on major trading partners to respect the collective will of the international community by halting commerce, trade in arms, economic and financial assistance to such regimes in Southern Africa<sup>(57)</sup>. As far as the specific action taken by the General Assembly and the Security Council was concerned, in respect of the Committee's recommendations one found substantial differences in the tone as well as the substance of Resolutions adopted by the two organs. The General Assembly passed a strongly worded Resolution describing the combination of colonialism and apartheid as a crime against humanity, whilst the Security Council, in spite of the increase of African membership, remained unable to respond to the Assembly Resolutions. It maintained that while the maintenance of international peace and security were disturbed in Southern Africa, they were not threatened<sup>(58)</sup>. Nonetheless, the Council for the first time in the history of the UN, invoked in 1966, Chapter VII of the Charter by imposing sanctions against the regime of Southern Rhodesia<sup>(59)</sup>.

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<sup>(57)</sup> For instance, the Security Council singled out in 1965 for the first time, the allies of Portugal in NATO, for criticism for their direct or indirect assistance in suppressing the African liberation movements. The Security Council also addressed itself to the issue of military bases and installations in dependent territories, condemning their presence as an infringement of the Charter of the UN and constituting a direct threat to the maintenance of international peace and security.

<sup>(58)</sup> El-Ayouty, Yassin, Op. Cit, p.237

<sup>(59)</sup> Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.9.2.d

In these sanctions the Council decided that member states should immediately sever all diplomatic, consular, trade, military and other relations and terminate any representations that they may have in the territory with the regime of Southern Rhodesia. As far as South-West Africa was concerned, the Council described South Africa's presence in the territory as an occupation which constituted an aggression and encroachment on the authority of the UN<sup>(60)</sup>. With regard to the situation resulting from the African rebellion in Southern African territories, the Council condemned the attacks against independent African states which constituted a threat to international peace and security<sup>(61)</sup>. At all events, the UN involvement in the process of decolonisation and protection of human rights in Southern Africa have helped the cause of justice and freedom. However, considerations of these two issues would be discussed in elaboration in the following sections.

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(60) Ibid p. 1.A.9.2.d.

(61) Ibid p. 1.A.9.3.c.

THE OAU AND THE ERADICATION OF COLONIALISM FROM AFRICA:

The Preamble to the OAU Charter envisaged the principle of the inalienable right of all peoples to control their own destiny<sup>(1)</sup>, while Article II(d) laid down as one of the purposes of the OAU, the eradication of colonialism from African Soil<sup>(2)</sup>. Moreover, Article III(b) declares that African states solemnly affirm their adherence to the principle of absolute dedication to total emancipation of African territories which are still under foreign control<sup>(3)</sup>. To this end, the first Resolution of the founding Summit of the OAU set up a Liberation Committee and established a special fund to be contributed on a voluntary basis by member states<sup>(4)</sup>. Subsequently, the OAU laid down practical steps to be taken by member states to achieve its objectives of eliminating the remaining vestiges of colonialism on African soil. In this respect, the issue of decolonisation was elaborated at the first ordinary session of the Assembly of Heads of State and Government which took place in July 1964 at Cairo, Egypt<sup>(5)</sup>. The Assembly adopted a Resolution on decolonisation defining the role of the OAU in the liberation of African dependent

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(1) Brownlie, Ian, Op. Cit, p.2

(2) Ibid p.3

(3) Ibid p.2

(4) Ghali, Boutros, The League of Arab States and the OAU, edited by El-Ayouty, Yassin, Preager Publishers, New York, 1975, pp.47-49

(5) Brownlie, Ian, Op. Cit, p.371

territories. It also declared that the OAU was to become the vehicle of direct moral, military and territorial support to the African liberation movements waging armed struggles in their respective territories. Moreover, it set out the terms of reference for the Liberation Committee on decolonisation which was elaborated in the Rules of Procedures of the Committee. Furthermore, it set forth the Committee's functions as follows:-

(1) "...to be responsible for the co-ordination of all assistance provided by African countries to the liberation movements;

(2) to manage a special fund set up for that purpose and to submit its own budget to the Council of Ministers for approval;

(3) to promote unity of action among the various liberation movements in order to make the best use of all assistance given to them;

(4) to offer its good offices to conflicting liberation movements for the purpose of reconciliation...<sup>(6)</sup>

Therefore, the OAU Liberation Committee took on the role of conscience of Africa in so far as the eradication of colonialism and the total emancipation of African peoples in dependent territories was concerned. The African states discussed how difficult this task was, which they had entrusted to the OAU, so they set up the special

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(6) Cervenka, Zdenek, Op. Cit, p.50

fund to be raised by voluntary contribution. It was designed to supply the necessary practical and financial aid to various African liberation movements. As stated earlier, the special fund was administered by the Liberation Committee which was started on the basis of voluntary contributions from OAU member states at the founding Summit of May 1963<sup>(7)</sup>. Subsequently, at the first ordinary session of the Assembly of Heads of State which was held in 1964 at Cairo, it was decided to levy a fixed contribution based on UN membership contributions<sup>(8)</sup>. However, the decision did not bring the expected improvement and the non-payment of contribution became a session of problems for the OAU organs. Many member states refused to contribute to the special fund because they felt that the Executive Secretariat of the Liberation Committee was misusing the funds<sup>(9)</sup>. However, it was true that

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(7) Kapungu, Leonard T., The OAU's Support for the Liberation of Southern Africa, The OAU After Ten Years, Comparative Perspectives, edited by El-Ayouty, Yassin, Praeger Publisher, New York, 1975, p.136

(8) Cervenka, Zdenek, Op. Cit, p.59

(9) In this respect, Tunisia objected at the meeting of the Council of Ministers held in November 1966 at Addis Ababa, to the very high administrative costs and to the manner in which the fund was managed. The Tunisian delegation accused the Liberation Committee of extending aid to movements of certain political ideology even when they were not carrying out liberation struggles.

there was some mismanagement but this reason was used simply by a number of member states in order to avoid paying their contributions. Consequently, the financial position of the Liberation Committee became precarious at most sessions of the Council of Ministers<sup>(10)</sup>. Thus, the burden of contributions to the special fund fell on the shoulders of a few member states whose dedication to the liberation of Southern Africa was unswerving<sup>(11)</sup>.

It must be pointed out that the frontline states bordering dependent territories accorded the liberation movements the facilities necessary for the movement of their freedom fighters and materials to and from dependent territories. However, it is not a light responsibility for a country to have an extra-territorial guerrilla force on its own territory. African states, like any other states, are very sensitive to the security situation of their countries.

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Similarly, the bulk of outside aid to the liberation movements came from the Scandinavian countries, Holland, China, the Soviet Union and East European countries. However, the Scandinavian and Dutch aid is described as humanitarian and consisted of medical and food supplies, clothing and educational facilities for the civilian population in the struggle areas and for refugees. Whilst, the Soviet, Chinese and Eastern European assistance consisted largely of arms supplies. Despite the fact, the liberation movements are cautious and do not wish to rely on supplies from the Communist bloc. However, the reason for accepting such aid was because they had been turned down by the Western powers. The latter states justified their refusal by reference to the principle of non-intervention in the domestic affairs of other states. The Scandinavian countries provided non-military aid, but declined requests for military aid, on the grounds that it would affect their neutrality and their disapproval of violence.

(11)

Legum, Colin, Op. Cit, pp.215-216

Nonetheless, they have allowed guerrilla forces to be trained on their soil and military hardware to be stored on their territories. Consequently, these states have been victims of air raids and invasions by the minority regimes in Southern Africa which justified their actions on the grounds that these states harbour guerrilla units in their territories<sup>(12)</sup>. Under these circumstances, the impression that all OAU member states are contributing to the special fund is not true because in reality, many member states do not keep to their commitments. In fact, the solution to this problem of arrears was to enlarge the membership of the Liberation Committee. The reason behind that solution was that some member states refused to pay their contributions to the special fund unless they were represented on the Committee. As it has been pointed out earlier, the Committee was established as a co-ordinating Committee in order to collect the necessary funds, and subsequently to distribute it among the liberation movements in African dependent territories. It meets bi-annually. The first meeting was designed to examine matters relating to financial and material aid, while the second was designed to discuss strategy and review the achievements and shortcomings of the various liberation movements<sup>(13)</sup>. Its main organs are the standing commission on Information, Administration and General Policy, the Standing Commission on Finance, Defence and the Executive Secretariat<sup>(14)</sup>. The

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(12) ACR, 1970-71, pp. C56-57

(13) Cervenka, Zdenek, Op. Cit, p.50

(14) Ibid pp.50-51



duties of the first Commission inter alia were to keep the OAU member states informed about the state of affairs in the dependent territories. It was also responsible for collecting information from the liberation movements and publicizing their achievements<sup>(15)</sup>. The Standing commission on Finance deals with all requests for financial assistance from the liberation movements which must be approved by the Liberation Committee. When the aid is attested, the Standing Commission on Finance pays for the purchase of all military materials<sup>(16)</sup>. Thus, the Commission acts only as a banker and is rarely involved in direct purchases. The Standing Commission on Defence assists the liberation movements to choose suitable weapons and arranges sites for training camps in the territories of OAU member states<sup>(17)</sup>. The Committee has its headquarters in Dar-es-Salaam, Tanzania. The Executive Secretariat is the central organ of the Committee, responsible for co-ordinating the work of the above-mentioned Standing Commissions. It also provides the administrative link with the OAU Secretariat in Addis Ababa and with the Council of Ministers and the Assembly of Heads of State and Government<sup>(18)</sup>. Initially, the Committee consisted of nine African states but it has been expanded to a total membership of seventeen African states<sup>(19)</sup>. It is responsible

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(15) Ibid p.51

(16) Ibid p.51

(17) Ibid p.51

(18) Ibid p.51

(19) Kapungu, Leonard T, Op. Cit, p.136

to the Council of Ministers which makes recommendations to it and reports its activities to the Assembly of Heads of State and Government<sup>(20)</sup>. Therefore, it is the Assembly that is ultimately responsible for deciding what role the Committee should continue to play in support of the struggle for the liberation of African dependent territories. However, within the Assembly there has been controversy over the Committee's role which resulted from the conflicting views between states advocating armed struggle and those supporting a peaceful approach to the problem of decolonisation. In addition, the membership in the Liberation Committee was often a subject of bitter disputes between the OAU member states<sup>(21)</sup>. As is often the case, the states with largest arrears of contributions to the special fund, administered by the Liberation Committee, have been its critics<sup>(22)</sup>.

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Cervenka, Zdenek, Op. Cit, p.47

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When Tshombe became Prime Minister of the Congo, Uganda challenged, in February 1965, the Congo membership at the Committee meeting at Dar-es-Salaam, on the grounds that he had instigated Katanga's secession attempt. Similarly, Tanzania at the 1965 Accra Summit of the OAU Assembly, opposed Malawi's membership in the Liberation Committee on the grounds that the latter was in collusion with the Portuguese authority in Mozambique, to sabotage the Committee's work. However, Tanzania threatened that if Malawi was admitted as a member, Tanzania would quit. Consequently, Malawi withdrew its candidate. The other similar incident was when Tanzania recognised Biafra in 1966 and Nigeria only allowed its representative to return to Tanzania after the reconciliation with Tanzania at the 1970 Summit Conference of the Assembly of Heads of State and Government.

(22)

Meyers, David B., Op. Cit, p.515

However, the constant criticism of the Committee made it subject to the never-ending scrutiny of the Assembly which has often changed its competence, structure and composition. In 1966 it entrusted the Council of Ministers to put an end to the autonomy of the Liberation Committee<sup>(23)</sup>. Accordingly, it restricted the Committee's competence to take independent action and placed it under the overall control of the OAU Secretariat. Moreover, it insisted upon the Committee circulating its military bulletins on the activities of the various liberation movements, as well as all its documents to the OAU member states, who had no diplomatic relations with the minority regimes in Southern Africa<sup>(24)</sup>. However, in doing so, to limit the Committee's autonomy and subject its activities to the public scrutiny of the Council's reforms, the latter failed to understand that there is a fundamental difference in character between the Committee and any other organs of the OAU. In any event, there were a number of reasons for the loss of enthusiasm in the activities of the Liberation Committee. For instance, the outbreak of the Nigerian civil war in 1967 and the campaign for dialogue with South Africa launched by President Houphouet-Boigny in 1970. This was in addition to the failure of sanctions imposed by the UN against Rhodesia and the aggravation of the overall economic situation in Africa<sup>(25)</sup>. These circumstances made some OAU member states

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(23) Cervenka, Zdenek, Op. Cit, p.55

(24) Ibid p.56

(25) ACR, 1971-72, pp.1785-86

regard the contribution to the special fund of the Liberation Committee as useless and unnecessary. Despite this, a turn for the better came at the 1972 Summit of the OAU Assembly of Heads of State which was held in Rabat, Morocco<sup>(26)</sup>. The host to the Summit, King Hassan of Morocco, extended a donation of one million dollars to the Liberation Committee's special fund. At the same time, the Summit adopted a number of important decisions concerning the Liberation Committee. The Assembly approved an increased contribution to the special fund by 50%. It also granted representatives of the liberation movements the right to attend and speak at meetings of the Council of Ministers on all matters concerning the liberation struggle and to attend the closed session of its meetings<sup>(27)</sup>. The spirit of the Rabat Summit was also evident in the recommendations on special measures to be adopted on decolonisation and the struggle against apartheid and racial discrimination. To this end the Assembly called upon OAU member states to supply those states bordering white minority regimes, with modern military equipment and aid, including men. It also decided to make the Portuguese territories the first priority in Africa's liberation struggle against colonialism in Southern Africa. Consequently, emphasis was put on speeding up the total liberation of Angola, Mozambique and Guinea-Bissau through concerted practical actions of all kinds and at all levels<sup>(28)</sup>. Thus, such special measures might imply direct military support

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(26) Cervenka, Zdenek & Legum, Colin, The OAU in 1972, ACR, 1972-73, p. A49

(27) Ibid p.50

(28) ACR 1972-73, p. C16

for the liberation movements in Southern Africa. Accordingly, African regular armies might be directly involved in the liberation struggles which constituted a major shift from the previous strategy which had been limited to moral and material support. Despite this fact, it would appear that the leaders of the liberation movements in the territories concerned did not favour the direct involvement of African regular armies in their respective liberation struggles<sup>(29)</sup>. They emphasised that their own freedom fighters were quite capable of winning their battles, but they were in need of more arms, money, equipment and shelters for training and operation camps<sup>(30)</sup>. Consequently, the principle was accepted by the OAU and embodied in all subsequent Resolutions on the liberation struggle of Southern Africa. Accordingly, the objectives and strategy have not been subject to any change which deals with the absolute dedication on the part of African states to the total emancipation of the still dependent African territories.

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(29) Andemicael, Berhanykum, Op. Cit, p.149

(30) The departure from this position occurred during the civil struggle for power in Angola by which some 10,000 Cuban soldiers fought and won battles for the MPLA. However, there were two reasons for the MPLA's decision to accept the Cuban direct involvement in its liberation struggle. The first one was the need for military advisors to train its guerrillas to use the Soviet arms, supplied to it on a massive scale. The second one resulted from South African intervention which would have upset the balance of the civil struggle for power if the Cubans had not helped. At the same time, the OAU split over the South African intervention which ruled out any possibility of an OAU joint force. Therefore, the Cubans appeared to the MPLA to be the kind of force whose presence would be justified without compromising its political stand vis-a-vis the OAU.

However, most damaging by far to the functioning of the Committee has been the disagreements between the rival liberation movements in Southern Africa. As a matter of fact, the liberation movements in all the Southern African territories had suffered from internal strains brought about by personality clashes, ambitions and differences in strategy. These strains led on the whole to polarization of the movements and each territory began to have more than one movement claiming the legitimacy and supremacy in the struggle for that territory's liberation<sup>(31)</sup>. Consequently, the Liberation Committee was faced with a situation as to which of these movements were to be regarded by the OAU as the legitimate spokesman for the aspirations of the African people in these territories<sup>(32)</sup>. The OAU recognition is essential for the liberation movements, in order to secure diplomatic advantages in dealing with international organisations and non-African states. Despite this fact, some movements maintained that the OAU would come to recognise them in time, in consequence of

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(31) Legum, Colin, Africa in the 1980's, McGraw-Hill Book Company, London, 1979, pp.45-47

(32) In South Africa there are the African National Congress (ANC), the Pan-African Congress (PAC), while in Namibia, the South West African National Union (SWANU), the South West African People's Organisation (SWAPO). In Zimbabwe there were the Zimbabwe African People's Union (ZAPU) and the Zimbabwe African National Union (ZANU). In Angola there were the Fronte Nacional de Liberatacao del Angola (FNLA), the Movimento Peopular de Liberatacao de Micambique (FRELMO) and the Comite Revolucionaris Africane de Indepolancia de Guine e Cabo Verab (PAIGC) and the Fronte Para a Libertacao e Indepencia de Guine Portuguese (FLING). All vied for legitimacy and supremacy in the liberation of their territories.

support given to various movements by some African states. Thus, this attitude of defiance by some liberation movements undermined the unifying role of the Liberation Committee. It also hindered the Liberation Committee's efforts at mediation between these rival liberation movements which consumed much of the Committee's time. However, having failed to forge unity of a common front, the Committee decided to give support to the liberation movements that seemed to be waging a genuine armed struggle inside their territories<sup>(33)</sup>. Consequently, there are no fixed rules governing the recognition, but the main criteria are the degree of support the liberation movements enjoy in their territories, and how effective they are in their struggle<sup>(34)</sup>. However, the Liberation Committee served as a liaison between the recognised liberation movements where their representatives have offices at Dar-es-Salaam and have been de facto accredited to the Committee. In this respect, visiting delegations often come directly from the front to discuss their activities with the Executive Secretary General who is appointed by the host

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(33) Legum, Colin, Op. Cit, pp.55-58

(34) The recognition accorded to the (FNLA) National Liberation Front of Angola in 1963, was withdrawn in 1964 on the grounds that its armed struggle had waned. Despite this the (FNLA) was recognised again in 1972 but with another, the (MPLA) People's Movement for the Liberation of Angola. The same fate met the National Union for the Liberation of Angola (UNITA) which was hastily recognised by the OAU at the insistence of Portugal, wishing to negotiate the transfer of power in Angola with the three liberation movements. Despite the Liberation Committee's efforts at mediation in order to establish a united front, the dispute was resolved by the military victory of the MPLA which challenged the legitimacy of the FNLA and UNITA as genuine liberation movements.

country, this post was always held by a Tanzanian. subject. He is assisted by three assistant executive secretaries who are appointed by the Liberation Committee<sup>(35)</sup>. The main task of the Executive Secretary General is to implement the recommendations of the Standing Commissions which could involve negotiations with the OAU member states about the passage of men and arms in their territories. It has also involved visits to the theatres of operation of the liberation movements which could often lead him to conduct delicate negotiations with the host countries. Moreover, he is in charge of administering the Committee's budget and preparing reports for the Council of Ministers. Furthermore, he is responsible for the safe custody of the Committee's files and for providing administrative, technical services at all the Committee's meetings and its Standing Commissions<sup>(36)</sup>. As stated earlier, the Committee deals only with the liberation movements which were accorded official OAU recognition, by which they are eligible not only for aid from the special fund, but also for representations at its meetings. In spite of the condition of recognition, the Committee called upon all national liberation movements in Southern Africa to co-ordinate their efforts by establishing common action fronts in order to strengthen the effectiveness of their struggle and the national use of the concerted aid given

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(35) ACR 1972-73, Op. Cit, p. C44

(36) Cervenka, Zdenek, Op. Cit, pp.51-52



to them. Nonetheless, the call went out and it was repeated time and time again, but the Committee's efforts fell on deaf ears<sup>(37)</sup>. At this stage, the Committee attempted to utilize the services of some of the OAU member states in order to urge the liberation movements to establish a united common front in each of the territories concerned. In this respect, the Committee set up a military commission of enquiry which consisted of representatives from Cameroon, Mauritania and Sierra Leone so as to determine, in the military field, the effectiveness of the movements which were engaged in the struggle for the liberation of Guinea-Bissau<sup>(38)</sup>. A similar commission of three was also created to forge a common front between FNLA and MPLA in Angola<sup>(39)</sup>. With regard to Rhodesia, the Committee entrusted to Ethiopia, Kenya, Tanzania, Malawi and Zambia the task of assisting ZAPU and ZANU in establishing a common front in the struggle for the liberation of Zimbabwe<sup>(40)</sup>. Despite these efforts at mediation, the Committee was unsuccessful because of the continued support given to the liberation movements by certain individual African states.

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(37) President Somera Michel of Mozambique proposed to the Committee in his address before the Committee's meeting in January 1971 at Maputo, that the correct line of action was for the OAU to recognise only one liberation movement in each territory. Indeed, had this line been adopted, the Committee could have been spared the frustrations of years of attempted conciliation between the movements in Angola as well as in Zimbabwe and to a lesser degree in South Africa.

(38) Cervenka, Zdenek, Cuba and Africa, ACR, 1976-77, pp. A84-86

(39) ACR 1972-73, pp. C28-30

(40) Ibid p. C41

The result of this attitude was that each movement hoped that the OAU would recognise it at some time, which resulted in frustrating the Committee's efforts at mediation<sup>(41)</sup>. The decisive criterion for the support of any particular liberation movement by certain individual African states was the ideological affinity in such situations which prevailed during the Angolan civil war and the Western Saharan problem<sup>(42)</sup>. Under

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(41) Kapungu, Leonard T., Op. Cit, pp.138-139

(42) For instance in Rhodesia, Zambia openly preferred and supported ZAPU while Tanzania openly preferred and supported ZANU. Similarly, Zaire openly preferred and supported FNLA in Angola while the Republic of the Congo openly preferred and supported MPLA. Even when the OAU at one stage seemed to prefer ZAPU in Rhodesia, FELIMO in Mozambique, FNLA in Angola and PIAGC in Guinea-Bissau, the contending liberation movements continued to survive through the aid given to them by these certain African states. On May 10th, 1973, the People's Front for the Liberation of Saguiet al-Hamra and Rio de Oro (POLISARIO) were established in Western Sahara. In February 1976 a conflict arose over the recognition of the POLISARIO which sought the independence of the territory under the name of the Saharan Republic. The OAU member states were split over the issue of recognition. Algeria called for recognition, while Morocco and Mauritania both threatened to withdraw from the OAU if the POLISARIO were given the status of OAU Liberation Movement. However, 17 OAU member states voted for the Algerian proposal while 9 sympathised with Morocco, and 21 abstained. The Council of Ministers decided to leave the matter to each OAU member state to recognise the POLISARIO or not, as it chose.

these circumstances, every individual OAU member state had its own preferences among liberation movements which identified themselves with its national cause<sup>(43)</sup>. At all events the polarization of the liberation movements was an assent to the regimes they were fighting by which such regimes were able to infiltrate the ranks of the liberation movements and obtain vital military information<sup>(44)</sup>. They also encouraged polarization by having agents planted in various parts of the world releasing statements purporting to have been issued by one liberation movement attacking the others contending movement<sup>(45)</sup>. These insidious attempts demoralized the liberation movements and made unity very difficult between them. However, the polarization approach

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(43) A similar kind of problem was faced by the Liberation Committee on the future of the territory of (Afars and Issas) Djibouti. The OAU recognised the Front for the Liberation of the Somalia Coast (FLCS) backed by Somalia and the Djibouti Liberation Movement (DLM) backed by Ethiopia, but not the other three movements in the territory. Those were the African People's League for Independence (APLI), the People's Liberation Movement (MPL) and the National Union for Independence (UNI). Nonetheless, they all have contacts with the Liberation Committee. The latter's main concern was to guarantee the future security and territorial integrity of Djibouti. Consequently, the Committee endeavoured to stop both Somalia and Ethiopia making their periodic claims on the territory. Accordingly, the Committee reached a mutually acceptable solution to the problem by making both states sign an understanding to guarantee and respect the territorial integrity and independence of the territory.

(44) In fact, on two occasions the colonial regimes succeeded in carrying out such policies aimed at crippling the fighting forces of the movements. In 1969 the leader of FRELMO, the Liberation Front of Mozambique, was assassinated. In 1973, the leader of PAIGC, the Liberation Front for the Independence of the Portuguese Guinea was also gunned down by hired assassins. The OAU Secretary General concluded in his report to the OAU Assembly that the two incidents proved once more that the colonial power would stop at nothing in their efforts to demoralize the liberation movements.

(45) Kapungu, Leonard T., Op. Cit, p.139

continued to be like that until 1973 when the Liberation Committee began to make some headway in the formation of a common front of some of the liberation movements. The headway started when the OAU set up an ad hoc commission composed of the Foreign Ministers of the Congo, Tanzania, Zambia and Zaire with a specific mandate to forge a common front of the Liberation movements in Southern Africa<sup>(46)</sup>. At this time, the OAU succeeded in at least making the liberation movements sign formal documents setting up common political organs and unified military commands. Despite this fact, unity of the liberation movements does not follow from formal documents signed under the threat of financial penalties. Nonetheless, there is no doubt that the OAU has endeavoured to make the African peoples in dependent territories feel that they are not alone in the struggle against foreign rule. Thus, Resolution after Resolution, Declaration after Declaration, the OAU has sought to identify the whole of Africa with the struggle for the liberation of African dependent territories. The moral and material support the OAU has given is unlimited and decolonisation of African dependent territories has become the rallying issue of the OAU.

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(46)

Ibid p.140

THE COMPATIBILITY OF THE OAU COLLECTIVE MEASURES WITH  
THE PROVISIONS OF THE UN CHARTER:

The Preamble to the OAU Charter declares that

"....the UN Charter 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...(1)" And, Article 2(1)(e) of the OAU Charter calls it one of its main purposes that

"....to promote international co-operation having due regard to the Charter of the UN and the Universal Declaration of Human Rights....(2)" It is understood that the UN Charter envisaged provisions on regional organisations in their roles in the maintenance of international peace and security and their legal powers to act on their part in self-defence. In general terms, Article 103 of the UN Charter provides that

"....in the event of a conflict between the obligations of the members of the UN under the present Charter and their obligations under any other international agreement their obligations under the present Charter shall prevail....(3)"

However, in practice the respective jurisdictional spheres of the UN Security Council and regional arrangements in the field of peace and security have often been a matter of dispute. In this respect, the first area of dispute is the peaceful settlement of regional disputes(4). The relevant

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(1) Brownlie, Ian, Op. Cit, p.2 (2) Ibid p.3

(3) Panhuys, H.F. van et al., Op. Cit, p. 46

(4) The OAU considered itself competent to deal with the unsettled crisis of civil war in the Congo in 1963, but when Belgium and the United States carried out the military operation to rescue the hostages at Stanleyville, the OAU joined its member states in making the UN Security Council consider the action as a violation of the UN Charter.

provisions of the UN Charter in this respect are Articles 33 and 52<sup>(5)</sup>. In concert with the provisions of these Articles, regional organisations should have exclusive jurisdiction up to the degree of it being unable to find a mutually acceptable solution to the dispute. The second area of difficulty which is more problematic is related to the enforcement action. The relevant provisions in this respect are Article 53(1) of the UN Charter which provides that no enforcement action shall be taken under regional organisations without the authorization of the UN Security Council<sup>(6)</sup>, and Article 54 which provides for the requirement that the UN Security Council at all times shall be kept fully informed of measures undertaken by regional organisations for the maintenance of international peace and security<sup>(7)</sup>. However, the authority of the UN Security Council in this respect has in fact been eroded through the practice of the Council accepting reports from regional organisations outlining the consequence of actions<sup>(8)</sup>. As far as the concept of collective self-defence is concerned, it would appear that Article 51 of the UN Charter provides for a legal basis upon which a regional security system can take concerted action by two or more states. The major powers were the first to interpret Article 51 as justifying the establishment of collective military defence alliances in which the concept has been given a wide meaning of mutual defence<sup>(9)</sup>. Most of these defence treaties included

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<sup>(5)</sup> Panhuys, H.F. van et al., Op. Cit., p.33 and p.36

<sup>(6)</sup> Ibid p.36

<sup>(7)</sup> Ibid p.36

<sup>(8)</sup> Akehurst, Michael, Op. Cit., pp.185-188

<sup>(9)</sup> Ibid pp.177-180

an explicit reference to Article 51 which stipulated that one party would come to the aid of another if the latter has been attacked by a third state<sup>(10)</sup>. As far as the right of self-defence is concerned, it is a matter of debate whether the right includes the power of anticipatory self-defence or not. It is understood that Article 51 of the UN Charter constitutes an exception to a general principle envisaged in Article 2(4) which prohibits the threat or use of force<sup>(11)</sup>. Accordingly, an exceptional principle of law to a general rule must be interpreted restrictively in order not to undermine the general norms. Therefore the term "...of an armed attack occurs..." which is articulated in Article 51 can only mean that an armed attack has actually taken place, as distinct from being merely imminent. Consequently, an action of self-defence can be taken without the authorization of the UN Security Council. In any event, the Council has the power to order the cessation of such action, but it is an affirmative decision which must include the concurring votes of the five permanent members<sup>(12)</sup>. Therefore, the role of

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(10) Article 5 of the North Atlantic Treaty of June 6th, 1949 provides that "...the parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently, they agree that if such an armed attack occurs each of them in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the UN will assist the party or parties so attacked by taking forthwith individually and in concert with the other parties such action as it deems necessary including the use of armed force to restore and maintain the security of the North Atlantic Area..."

(11) "...the right of self-defence according to the natural law doctrine is the right of an individual or a state to defend his person property or honour against a real or imminent attack. It is a right of the attacked or threatened individual or state and of no other individual or state..." (Kelsen, Hans, Op. Cit, p.792)

(12) Kelsen, Hans, Op. Cit, pp.239-244

the Council in this field could be hindered by the veto of any permanent member by which the provisions of the Charter in this respect have been of very limited effect. Consequently, the UN member states have decided to give a considerable impetus to regional alliances in the vital area of the maintenance of peace and security<sup>(13)</sup>. They were also forwarded on November 4th, 1950 to the UN General Assembly to adopt<sup>(14)</sup> the well-known "....Uniting for Peace Resolution...." in which it interpreted its competence within the UN collective security system as follows:-

"....if the Security Council because of lack of unanimity of the permanent members fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to make for collective measures including in the case of a breach of the peace or act of aggression the use of armed force when necessary to maintain or restore international peace and security. If not in session at the time the General Assembly may meet in an emergency special session within twenty-four hours of the request thereof. Such emergency special session shall be called if requested by the Security Council or the vote of any nine members or by a majority of the members of the UN....<sup>(15)</sup>" At the same time, the

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(13) Akehurst, Michael, Op. Cit, pp.178-180

(14) GA Res. 377 November 3rd, 1950

(15) Panhuys, H.F. van et al., Op. Cit, p.209



Assembly established a Collective Measures Committee which was given the responsibility of studying ways and means which might be useful to maintain and strengthen international peace and security<sup>(16)</sup>. Subsequently, the Committee recommended to the General Assembly that there should be mutually supporting relations between the activities of regional organisations and the collective military measures taken by the UN when the latter is engaged in such action<sup>(17)</sup>. It should be noted that the main concern of this section in the relationship between the UN and the OAU was in dealing with the colonial questions and the problem of apartheid. As stated earlier, the OAU Charter prescribes the superiority of the law of the UN Charter as it makes deferential reference to the UN Charter and the Universal Declaration of Human Rights. In this respect, a consideration would be given to the OAU practice with regard to the maintenance of international peace and security.

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(16)

Sanders, AJGM, Op. Cit, p.144

(17)

Ibid p.145

As far as the area of peaceful settlement of regional disputes is concerned, the OAU has explicitly pointed out its preference for an African solution within the framework of its Charter but without a rigid thesis of exclusive jurisdiction<sup>(18)</sup>. Accordingly, their approach conforms with the relevant provisions of the UN Charter as mentioned above<sup>(19)</sup>. The approach that African regional disputes should preferably be settled within the framework of the OAU Charter has thus far been fairly generally followed in practice. As far as the enforcement action is concerned, the OAU is also involved in action by which Article 53(1) of the UN Charter would appear to apply<sup>(20)</sup>. So far, the OAU has taken regional

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

(19) The foundation of this approach was laid down as early as 1963. The first occasion was the Algerian-Moroccan border dispute which erupted in major hostilities in October 1963. Notably, Morocco preferred bilateral negotiations, and should that fail, consideration by the UN Security Council, while Algeria sought consideration of the dispute by the OAU. However, the permanent members of the UN Security Council were able to dissuade Morocco from trying the OAU machinery. Under these circumstances, the OAU Council of Ministers met on November 15th, 1963 in extraordinary session in Addis Ababa in order to consider the dispute. It adopted a resolution confirming the unwavering determination of African states always to seek a peaceful solution to all regional disputes within the framework of the OAU. Subsequently, this approach was also confirmed on February 12th, 1964 by the OAU Council of Ministers when the latter met in extraordinary session in Dar-es-Salaam in order to consider the border disputes between Somalia and its neighbouring states of Ethiopia and Kenya. The Council declared its conviction that the solution to all African regional disputes should be sought first within the framework of the OAU Charter.

(20) Akehurst, Michael, Op. Cit, p.181

measures against colonial and settler regimes in Southern Africa by which the OAU member states have been requested to sever diplomatic and economic relations and all forms of communication with these regimes. The OAU, through its Liberation Committee, also requested its member states to provide moral and material assistance including financial aid, military training and transit facilities to African liberation movements already struggling for the liberation of their respective territories<sup>(21)</sup>. However, there is nothing to show that the UN Security Council ever authorized or encouraged the OAU to take such measures<sup>(22)</sup>. Nonetheless, the action of the OAU could not be condemned too hastily as offending the UN Charter in consequence of reference being made in the Charter to enforcement action of both military and non-military measures<sup>(23)</sup>. With regard to the enforcement action of non-military measures, it would appear to follow that such measures do not amount to enforcement action which requires the authorization of the UN Security Council<sup>(24)</sup>. Turning to moral and material assistance, including financial aid, military training and transit facilities to African liberation movements, could such measures be justified under Article 51 of the UN Charter, as a form of collective self-defence. Initially, a distinction should be made between the utilization by the OAU of the military forces of its member states and the use of force by African liberation movements with aid and

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(21) Brownlie, Ian, Op. Cit, pp.371-372.

(22) Akehurst, Michael, Op. Cit, p.183

(23) Whiteman, Marjorie M., Digest of International Law, Volume 12, 1963, p.329

(24) Andemicael, Berhanykum, Op. Cit, p.105

other indirect assistance from those states. As long as the OAU does not assume an official role so as to enforce a decision relating to the maintenance of regional peace and security. It is very difficult to assert that its indirect role could constitute enforcement action of military measures. As regards the compatibility of such aid and indirect assistance with the spirit of Article 2(4) of the UN Charter. It would appear that no armed forces of the OAU member states are being used against the territorial integrity or political independence of any states. In fact, it is the African liberation movements that are using force in their own territories with moral and material assistance, including financial aid, military training and transit facilities from the OAU. Thus, it has been discerned that moral and material aid to such movements struggling for the eradication of colonialism and the elimination of racialism could hardly be regarded as being inconsistent with Article 2(4) of the UN Charter<sup>(25)</sup>. Therefore, the OAU moral and material aid to African liberation movements struggling for the eradication of colonialism and the elimination of racialism is considered to be in conformity with the provisions of the UN Charter<sup>(26)</sup>.

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(25) Provisions are to be found in Article 1 establishing as purposes of the UN, paragraph (2) states that "...to develop 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..." (I/O Op. Cit, p.25)

(26) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.6.b.6.

It is also regarded as being compatible with the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted on October 24th, 1970 by the UN General Assembly<sup>(27)</sup>. In this respect, the Declaration specifies that "...every state has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal right and self-determination of their rights to self-determination and independence..."<sup>(28)</sup> It also adds that "...in their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter...."<sup>(29)</sup> Accordingly, if the moral and material support given to African

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(27) Ibid p. 1.A.6.6.b.

(28) Ibid p. 1.A.6.6.b

(29) When the UN General Assembly adopted the Declaration by consensus, some delegations expressed the reservation on the majority views concerning certain elaboration of the seven principles enshrined in the Declaration. One major point of difference was the meaning of support for the struggle of oppressed dependent peoples. The majority of member states maintained that where the right of peoples to self-determination, freedom and independence was suppressed by force, then the type of support being given by governments to liberation movements, directly or through regional organisations, could not be subject to that aspect of the principle of non-use of force. Consequently, this could not prohibit liberation movements from incursion into the territory of another state. On the other hand, some other states, including the Western powers, stressed that such forms of aid could not be permissible in conformity with the Declaration.

liberation movements by the OAU one equated to those enshrined in the Declaration. It could hardly be said that African states were exercising through the OAU their right of collective self-defence under Article 51 of the UN Charter. This issue would seem to arise only if the regular forces of the OAU member states were actually used to threaten or attack the territorial integrity or political independence of another state which is in violation of Article 2(4) of the UN Charter. In any event, it would also appear that the OAU does not justify its moral and material aid on the grounds of self-defence<sup>(30)</sup>. The justification which is put forward by the OAU for its moral and material aid envisaged in its Resolution on decolonisation which was adopted at the founding Conference of the OAU on May 25th, 1963<sup>(31)</sup>. It was also elaborated in the well-known 1969 Lusaka Manifesto which clearly defined the OAU responsibility to take such a necessary action in defence of humanity<sup>(32)</sup>. Therefore, reliance is placed upon the Doctrine of Humanitarian Intervention which was known as early as the seventeenth century as forming part of Customary International Law<sup>(33)</sup>. In conformity with such a doctrine, intervention by a state or group of states in the affairs of another state, is lawful if that other state is guilty of cruelties against its nationals in such a way as to deny their fundamental human rights<sup>(34)</sup>.

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(30) Akehurst, Michael, Op. Cit, p.182

(31) Cervenka Zdenek, Op. Cit, pp.50-51

(32) Manifesto on Southern Africa, Published by the Information Division, OAU General Secretariat, Addis Ababa, Ethiopia, 1976, Introductory Note

(33) Sanders, AJGM, Op. Cit, p.149

(34) Whiteman, Marjorie M., Digest of International Law, Volume 12, 1963, pp.204-215

Accordingly, the action to be taken must be objectively requisite and aimed solely at the protection of the subjects of that other state and restore their fundamental human rights. In this respect, in the opinion of African states, the situation in Southern Africa justified the humanitarian intervention taken by the OAU which took the form of moral and material assistance, including financial aid, military training and transit facilities<sup>(35)</sup>. They have also pointed out that colonialism and racialism contribute a flagrant violation of human rights and the principle of self-determination enshrined in the UN Charter. Therefore, African states feel that the doctrine of humanitarian intervention constitutes an exception not only to the prohibition of intervention in domestic jurisdiction of states, but also to the prohibition of the threat or use of force. Accordingly, the OAU acts in conformity with the belief that it requires no authorization of the UN Security Council. However, it is obvious that the OAU has never been criticized by the UN for doing so. In fact, the facilitative role of the OAU to African liberation movements was considered as being compatible with the purposes and principle of the UN Charter. It

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The intervention on the grounds of humanitarian purposes was permissible in certain cases in which the United States accepted to join Belgium in November 1964 to intervene in the Congo to rescue hostages who were citizens of at least eighteen countries. Great Britain and France intervened in the 1956 Suez Crisis which justified an exercise of right to protect British and French citizens and defend national interests of the two states. The United States intervened in the Dominican situation which was justified on the grounds of humanitarian reasons to protect the lives of United States citizens and American interests in the country concerned.

has been widely recognised as legitimate by the UN General Assembly and in certain situations by the UN Security Council<sup>(36)</sup>. To this effect, the UN General Assembly has repeatedly asked member states by an overwhelming majority of votes to extend material assistance to national liberation movements<sup>(37)</sup>. On certain occasions, the UN Security Council likewise requested member states to give such aid to the people of a colonial territory<sup>(38)</sup>. At all events, the OAU has so far considered colonialism and apartheid as a breach or at least a threat, to international peace and security. Hence, African states requested the UN Security Council to supplant the OAU action by taking compulsory measures under Chapter VII of the UN Charter. But the Security Council could only be dissuaded to order comprehensive mandatory sanctions against the Rhodesian regime and a mandatory embargo on arms against South Africa<sup>(39)</sup>. Consequently, there is no real problem

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(36) Brownlie, Ian, Op. Cit, p.391

(37) Panhuys, H.F. van et al., Op. Cit, p.290

(38) Upon the request of African states and support of the third world states, both types of measures of diplomatic and economic sanctions and assistance to liberation movements have been endorsed by the UN General Assembly in a series of Resolutions. Subsequently, African states raised the issue of those measures at the UN Security Council in order to persuade the Council to urge all member states of the UN to apply them as recommended by the UN General Assembly, but the Council sought to play the role of illusionment. Nonetheless, a few years later the Council requested the UN member states to extend moral and material aid to liberation movements in Southern Rhodesia and South West Africa (Namibia) which strengthened the authority of the UN General Assembly Resolution in this respect.

(39) Sanders, AJGM, Op. Cit, p.149



of jurisdictional conflict that would seem to arise between the OAU and the UN from the measures being taken under the auspices of the OAU Liberation Committee against minority regimes in Southern Africa. Nonetheless, it would appear that the increasing support given by the OAU to African liberation movements stems from the relative ineffectiveness of the UN in achieving the common objectives in Southern Africa<sup>(40)</sup>.

It is understood that the OAU resources are very limited and this is the reason why it has in fact been eager to involve the UN Security Council to take greater initiative regarding the issue of majority rule in Southern Africa. As a matter of fact, the absence of co-operation from the United States, the U.K. and France in the Security Council makes remote the possibility of reaching an amicable solution to the situation in Southern Africa. Consequently, the deteriorating situation in Southern Africa poses a serious challenge to the capacity of both the UN and the OAU of bringing about a peaceful settlement to the problem in the area.

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(40) There was only a real possibility of jurisdictional conflict between the OAU and the UN Security Council in the case of Rhodesia immediately after the 1965 Unilateral Declaration of Independence. The problem arose when the OAU contemplated direct use of force by its member states against the illegal regime in the spirit of Article 51 of the UN Charter, without the Security Council's authorization. Despite this fact, there was no actual armed attack against any OAU member states in order to precipitate the intervention of the right of collective self-defence. However, the OAU believed that the rebellion carried out in Rhodesia by the illegal regime was a real threat to the security of neighbouring African states, especially Zambia which had welcomed refugees and liberation movements struggling against the minority regime in Rhodesia. However, the OAU subsequently decided not to recommend such direct military action by its member states against the minority regime in Southern Rhodesia.

THE PROCESS OF DECOLONISATION IN PORTUGAL'S  
AFRICAN TERRITORIES:

In 1930 the Portuguese Parliament passed a colonial act giving the government in Lisbon the authority to make the colonial territories in Africa<sup>(1)</sup> an integral part of Portugal. In 1951 the Portuguese government made these territories overseas provinces entitled to the same form of administration as their counterparts at home<sup>(2)</sup>. However, the assimilation policy produced a small group of educated blacks and many of them were opposed to Portuguese policy in their respective countries. As no negotiation or political changes were permitted by the Lisbon government, national liberation movements were established and actively supported by the newly independent African states. In Angola, the war of liberation commenced in 1960; in Guinea-Bissau in 1961 and in Mozambique in 1964<sup>(3)</sup>. As far as the situation in Angola was concerned,

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(1) The Portuguese presence in the littoral of west and central Africa existed as early as the sixteenth century. The latter possession of Mozambique originated as trading posts established in the sixteenth century. In the eighteenth century the Portuguese zone on the coast extended from Cape Delgado in the north into the Bay of Lourenço Marques. In Guinea-Bissau the Portuguese presence was established in accordance with the Convention of May 12th, 1886 dividing the Portuguese and French colonial possessions in the area. Consequently, the Berlin Conference of 1885 recognised the Portuguese claims in the north and south which received the approval of the other major colonial powers in the area in consequence of agreements concluded in 1885 and 1891. (Brownlie, Ian, Op. Cit, pp. 297, 1025 and 1219)

(2) Sanders, AJGM, Op. Cit, p.89

(3) Ibid p.89

the 1961 uprising by the Angolan liberation movements against the integration policy, induced the Portuguese government to apply repressive measures. Consequently, the matter was brought, by the Liberian government, before the UN Security Council, but the latter was unable to adopt a Resolution in consequence of certain permanent members' opposition. Subsequently, the Council was convened in May 1961 at the request of forty-four Afro-Asian states at which it was able to adopt a Resolution without opposition. The Council described the situation as one, the continuation of which, was likely to endanger the maintenance of international peace and security. Consequently, it called upon the Portuguese government to desist forthwith from repressive measures and large scale killings<sup>(4)</sup>. Subsequently, the UN General Assembly in December 1962 condemned the attitude of Portugal which was inconsistent with the provisions of the UN Charter and concluded that the colonial war in Angola and Portugal's non-compliance with the UN Resolution, constituted a serious threat to international peace and security. It also recommended member states to halt arms supplies to Portugal which might be used to suppress the Angolan people pursuing their right towards self-determination and eventual independence<sup>(5)</sup>. Nonetheless,

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Whiteman, Marjorie M., Digest of International Law, Volume 12, 1963, pp.721-732

(5)

Brownlie, Ian, Op. Cit, pp.375-379

the Portuguese government refused to consider granting independence to its overseas provinces which it regarded as an integral part of Portugal whose future was, therefore, not negotiable with any international authority<sup>(6)</sup>. In any event, when decolonisation was discussed in 1963 at the founding Conference of the OAU, the situation in Portugal's African territories had already developed into full scale war<sup>(7)</sup>. Thus, the OAU policy on decolonisation in the latter territories between 1963 and 1974 largely followed the pattern of its policy on Rhodesia (Zimbabwe) and South-West Africa (Namibia) which reckoned upon the diplomatic offensive at the UN. Therefore, one of the initial acts of the OAU following its establishment, was to despatch a mission of four African Foreign Ministers to draw the attention of the UN to the explosive situation arising from Portugal's colonial policy<sup>(8)</sup>. Accordingly, the UN Security Council convened in December 1963 at the request of the African group at the UN to consider the situation in Portugal's African territories as a whole. The Council described the situation as seriously disturbing the peace and security in the African continent and so it called for urgent negotiation about independence between Portugal and the political parties within and outside the territories. It also recommended all member states to halt the sale and supply of arms and military aid that would enable Portugal to continue its repressive measures and large scale killings<sup>(9)</sup>.

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(6) Cervenka, Zdenek, Op. Cit, p.135

(7) Krishnan, Maya M., Op. Cit, p.212

(8) Andemicael, Berhanykum, Op. Cit, p.109

(9) Whiteman, Marjorie M., Op. Cit, pp.723-724

Despite this firm attitude of the UN, Portugal continued its non-co-operative stance and pursued the intensification of its repressive measures. Consequently, the UN Security Council convened again in November 1965 at the request of the African group at the UN, in order to reconsider the broader international implication of the situation in the territories concerned. The Council decided to broaden the arms embargo imposed upon Portugal to include a termination of the supply of any material for the manufacture and maintenance of arms and ammunition. It also called upon Portugal and the OAU member states to conduct urgent negotiations for a peaceful implementation of UN Resolutions on the granting of independence to the territories concerned. In conformity with the general mandate of the aforesaid Resolution, the UN Secretary General arranged a brief dialogue between the representatives of the concerned parties in the dispute at the UN, but the negotiations ended unsuccessfully<sup>(10)</sup>. Under these circumstances, African groups at the UN resumed their efforts at applying diplomatic and economic measures, but these attempts failed to win sufficient support in the UN Security Council from the permanent members, except the USSR. As a result, African states turned to the UN General Assembly who adopted, on December 21st 1965, Resolution 2107 (XX) recommending

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(10)

Ibid pp.724-725

not only such sanctions but also requested member states to extend moral and material support to the peoples of the Portuguese colonies for the restoration of their inalienable rights<sup>(11)</sup>. Despite this fact, several member states expressed opposition to the paragraph calling for sanctions because they believed that the UN General Assembly, unlike the UN Security Council, did have the competence under the UN Charter to impose such measures. In particular, the United States, the U.K. and France also opposed the description of the situation in the territories concerned as being an actual threat to international peace and security and thus justified the application of enforcement measures under Chapter VII of the UN Charter. Moreover, they did not accept the assumption that Portugal was using in its administering African territories, arms, equipment and military aid received from its NATO allies<sup>(12)</sup>. Nonetheless, some

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(11) Ibid p.725

(12) African states believed that Portugal could not stand the expenses of the war in Africa which was estimated in 1971 to have been over \$500 million, representing 50% of its annual budget. They accused the NATO powers of being the real prop of the Portuguese colonial war. The reason was the strategic importance of all Portugal's African territories. Angola and Guinea-Bissau between them controlled 1816 km of Atlantic coastline which was seen as an integral part of Atlantic defence. The Cape Verde islands held the key to the South Atlantic while Mozambique constituted a buffer zone for South Africa and access to the sea for Rhodesia. Angola is rich in material and represents vast raw material sources for the industries of the NATO countries. Therefore, African states believed that there was even more reason to give military support to Portugal despite growing disapproval of public opinion in the West.

progress was made in the next two years in the UN General Assembly towards the acceptance of diplomatic and economic measures against Portugal. However, this was made in consequence of a substitution of the recommendation to the UN Security Council to apply sanctions instead of the Assembly's own call upon the UN member states to take such measures. Consequently, the UN General Assembly avoided mentioning a reference to Resolution 2107(XX) in its subsequent Resolution 2507(XXIV) adopted in November 1969<sup>(13)</sup>. Therefore, the Assembly was able to secure maximum agreement by refraining from characterizing the situation as an actual threat to international peace and security. It was only able to call on more general effective steps in conformity with the relevant provisions of the UN Charter. Nonetheless, the Resolution reinstituted a stronger tone on the General Assembly's appeals to UN member states and international bodies within the UN family to extend, in co-operation with the OAU, moral and material aid to liberation movements in the territories concerned<sup>(14)</sup>. However, the appeals gained significant support and had been more widely accepted than the calls for the application of diplomatic and economic sanctions. As far as the collective measures of the OAU were concerned, for its part the OAU had endeavoured since 1965 to ensure that its own member states had strictly observed the 1964 diplomatic and economic

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(13) Whiteman, Marjorie M., Op. Cit, p.726

(14) Ibid pp.726-727

sanctions that had been imposed against Portugal. To this end, the OAU Assembly of Heads of State and Government entrusted the OAU Secretariat to establish a Bureau of Sanctions to examine the application and to make suggestions and recommendations on the progress and extent of the sanctions' implementation<sup>(15)</sup>. Despite this fact, the efforts of this organ had had relatively little influence in bringing about a total African boycott. Unfortunately, some member states did not fully comply with the OAU recommendations and few went as far as acting in defiance of the OAU recommendations by strengthening their links with Portugal in order to sabotage the OAU collective measures<sup>(16)</sup>. Under these circumstances, the OAU alternative, which had more significant pressure on Portugal, was the extension of moral and material support to liberation movements in the territories concerned. Accordingly, the OAU through the Liberation Committee, increased its financial and other military aid to the liberation movements who were in fact struggling for the liberation of their respective territories. The Committee also made arrangements with the OAU member states to permit the movements to use their territories for military training and for transit facilities<sup>(17)</sup>. In spite of increasing aid to the movements, the effectiveness of their struggles had been undermined by rivalry between factions of the

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(15) Andemicael, Berhanykum, Op. Cit, p.112

(16) Ibid p.113

(17) Krishnan, Maya, Op. Cit, p.213



movements, especially in Angola. Consequently, the Liberation Committee was entrusted with the major task of bringing about the formation of a common front for each territory under Portuguese administration<sup>(18)</sup>. At all events, the OAU support for the liberation movements was further increased which in fact induced Portugal to conduct raids within African countries bordering its colonies. Thus, the situation rapidly deteriorated from a potential threat to an actual breach of international peace and security by Portuguese incursions across international boundaries. Initially, the OAU went to the UN and sought redress through the UN Security Council which adopted a Resolution without any opposition, condemning the military incursions and urgently called upon Portugal to desist forthwith from such actions<sup>(19)</sup>. Nonetheless, a new stage was reached in November 1977 following the Portuguese attack on Guinea which turned the relations between OAU member states and Portugal into a state of undeclared war<sup>(20)</sup>.

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(18) Cervenka, Zdenek, The OAU in 1970, ACR, 1970-71, p.A35

(19) Meyers, David B., Op. Cit, pp.124-125

(20) The invasion on November 22nd, 1970 was devised by General Antonio de Spínola, Commander-in-Chief of the Portuguese armed forces in Guinea-Bissau. It was also carried out by an invading force of 350,000 troops brought by four smaller partro-boats. The troops were equipped with infantry arms and divided into groups which were despatched to attack strategic points as follows:- the army camps, the airport, the electric power station, the Presidential palace and the headquarters of PAIGC, which was destroyed. The vessels used to transport the forces were Portuguese; the crews were mostly members of the Portuguese armed forces while the invaders, who were commanded by Portuguese officers, were African dissidents.

Therefore, the operation was of such magnitude that the UN Security Council treated the situation differently from previous attacks against African states. It declared that such armed attacks against an OAU member state and indeed the continuation of Portuguese colonialism in Africa, constituted a serious threat to the peace and security of the African continent. The Council also went far beyond this condemnation by warning Portugal that in the event of any repetition of such action against OAU member states, the Council would immediately convene to consider appropriate measures in conformity with the relevant provisions of the UN Charter. Moreover, the Council requested Portugal to pay appropriate compensation for the damages that had been caused by its military incursions. Furthermore, the Council urged all member states to refrain from providing Portugal with any military or material aid enabling it to continue its repressive measures against the peoples under its domination<sup>(21)</sup>. In any event, the tough approach adopted by the Council was unacceptable to the United States, the U.K., France and Spain which abstained in consequence of their belief that the Resolution went far beyond the findings of the Special Mission. As a matter of fact, the active co-operation of these permanent members of the UN Security Council was essential if any measures recommended by the Council were to be effective.

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(21)

ACR, 1970-71, pp. C56-57

As stated earlier, the latter states advocated peaceful negotiations with Portugal and seemed to be unwilling to support any measures going beyond a voluntary partial arms embargo involving only those types of arms and ammunition used by Portuguese troops in Africa<sup>(22)</sup>. As the alternative was unacceptable to the OAU, the latter began to realise that African states could not rely on the UN Security Council alone for effective support. Consequently, the OAU concluded that the UN Security Council was unlikely to apply any sanctions in conformity with the above-mentioned Resolution. Thus, it started to intensify its own collective measures outside the framework of the UN Security Council. Accordingly, the emergency session of the OAU Council of Ministers convened on December 9th, 1970 at Lagos, which was a stormy affair, with even moderate members calling for punitive military action against Portuguese military presence in the territories concerned<sup>(23)</sup>. Under these circumstances, the situation soon developed into an extremely costly deadlock which in the long run held out no hope for the colonial power. As a result, the Portuguese colonial policy followed the pattern of increasing the repressive measures which culminated in the massacre of the total population of the Winiyama village about 25 km south-east of Tele in Mozambique.

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(22) Andemicael, Berhanykum, Op. Cit, p.114

(23) Cervenka, Zdenek, Op. Cit, p.157

The event led to a formidable blow to the Portuguese colonial policy, reflected in the world reaction at the Special Meeting of the UN Decolonisation Committee on July 20th, 1973<sup>(24)</sup>. Under these circumstances, the armed struggle in the Portuguese colonies exceeded all forms of resistance which led to the first major victory against Portugal in Guinea-Bissau, which unilaterally declared independence of the country on September 24th, 1973. The act was recognised by most members of the world community except Portugal's NATO allies and the Scandinavian countries<sup>(25)</sup>. However, the OAU was engaged in an effort to bring about UN approval of Guinea-Bissau's unilateral declaration of independence. To this end, the UN General Assembly convened on November 2nd, 1973 at the request of the African group which adopted a Resolution describing the Portuguese military presence in certain sectors of Guinea-Bissau territory as an act of aggression committed against the people of the country concerned. As African states anticipated, the veto by the United States, the U.K. and France at the UN Security Council did not make a request in the Resolution for the admission of Guinea-Bissau to the UN membership. Nonetheless, the Republic became a member of a number of UN Specialised Agencies<sup>(26)</sup>. Under these circumstances, the Portuguese armed forces discerned that Lisbon's intransigent attitudes were

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(24) Ibid p.138

(25) ACR 1972-73, pp. C10-11

(26) Cervenka, Zdenek, Op. Cit, p.138

bound to result in the loss of Portugal's stand in Africa. Consequently, the army became increasingly impatient and the situation soon developed on April 25th, 1974, into a revolt against the government of Premier Cactaro<sup>(27)</sup>. The coup d'etat resulted in a return to democratic rule in Portugal and a policy of rapid decolonisation in respect of its overseas territories in Africa. Accordingly, Portugal recognised on September 10th, 1974, the independence of Guinea-Bissau under the rule of (PAIGC) African Party for Independence of Guinea and Cape Verde<sup>(28)</sup>. As a result of the goodwill shown by the new Portuguese government, the OAU embarked on an alternative approach aimed at achieving non-violent negotiated settlements with Portugal. This approach was embodied in the 1967 Lusaka Manifesto designed to ensure a peaceful transition to independence in the Portuguese colonies and to achieve majority rule peacefully in Southern Africa<sup>(29)</sup>. Accordingly, Mozambique acceded

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General Antonio de Spínola, the Governor and Commander-in-Chief of Guinea-Bissau wrote a book called "Portugal and the Future." He assessed the Portuguese integral policy of African territories as being bound to result in a loss of Portugal's stand in Africa. Nonetheless, the author did not suggest that Portugal abandon its colonies, but proposed a federation to be formed, in which Portugal and its territories could stand on an equal footing. As a result of his book, Spínola was dismissed and arrested, but this led to an armed revolt which overthrew, on April 25th 1974, the Cactaro government. Consequently, General Spínola became Portugal's new President and Mario Soares leader of the Portuguese Socialist Party, returned from exile to become Foreign Minister.

(28) Sanders, AJGM, Op. Cit, p.89

(29) Lusaka Manifesto on Southern Africa, Published by the Information Division, OAU General Secretariat, Addis Ababa, Ethiopia, without date, pp.1-21

to independence on June 25th, 1975, followed by the independence of Cape Verde on July 5th, 1975 and Sao Tome and Principe on July 12th, 1975<sup>(30)</sup>. Whilst the transfer of power in all Portuguese territories was a smooth and orderly decolonisation process, Angola entered independence hopelessly torn apart by internal power struggles between Angolan liberation movements. The crisis continued throughout 1974 and in October erupted into a full scale civil war with all the ingredients of cold war politics<sup>(31)</sup>. Under these circumstances, the OAU decided that there should be no negotiations with Portugal about the terms of independence until a united front had been established, by bringing together the three Angolan liberation movements. Accordingly the dissension between the MPLA, FNLA and UNITA became a crucial topic in the 1974 negotiations between the OAU and the Portuguese government over Angola's independence<sup>(32)</sup>.

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(30) Legum, Colin, Op. Cit, p.216

(31) Cervenka, Zdenek, Op. Cit, pp.61-62

(32) There were additional problems because Angola's neighbouring African states, notably Zaire, the Congo Republic and Zambia were inclined to support their own favourites among the Angolan liberation movements. The OAU feared the external and regional interventions which might jeopardise its efforts at national reconciliation in order to bring a united front of the guerrilla movements. In this direction, the OAU Liberation Committee brought together the movement for the Popular Liberation of Angola (MPLA), joining it with the Front for National Liberation of Angola (FNLA) and the Union for the Total National Independence of Angola (UNITA). The Committee succeeded in getting the rival groups to unite at least for the purpose of forming a transitional government. The reason for the OAU effort was to achieve an orderly transfer of power by which they hoped to avoid the chaos and misery which had accompanied Belgium's sudden decolonisation.

In this respect, the OAU through its Liberation Committee, mobilized all available diplomatic efforts at its disposal which resulted in making the movements sign, on January 5th, 1975 the Mombasa Agreement. It laid down the rules on negotiating jointly with the Portuguese government at Penina where an agreement was reached on January 5th, 1975 setting Angola's independence day as November 11th, 1975. The latter government stipulated that the country would be run by a transitional government of both the Portuguese government and the MPLA, FNLA and UNITA which were recognised as the only legitimate movements<sup>(33)</sup>. Nonetheless, there were great differences between the three movements in ideology and rationale. They were also supported by different African states with their main backing in different parts of the country and among different ethnic groups and so the welding together of the three movements proved impossible. Consequently, hostilities broke out between the movements within days of the investiture of the coalition government and continued throughout most of 1975. In the course of the year, Kinshasa, Mombasa and Aluen ceasefire agreements were signed under the aegis of the OAU, but they were broken<sup>(34)</sup>. However, the last effort at national reconciliation by the OAU through its Liberation Committee was the meeting between the leaders of the three movements which took place in July 1975 at Nokuou, Kenya.

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(33) ACR 1972-73, p. C27-28

(34) Ibid p. C28-29

An agreement was reached providing for peaceful transition to independence, but the reconciliatory effort was shattered by the renewal of armed hostilities on the eve of the Summit of the OAU Assembly which took place in Kampala, Uganda<sup>(35)</sup>. As a result, the Assembly adopted a Resolution defining the OAU attitude towards the liberation movements. It deplored the bloody confrontations between the principal liberation movements and their non-respect for the agreement they signed at Nakuru, Kenya. It also appealed to the parties in dispute to lay down their arms. Moreover, it requested the Portuguese government to resume responsibility for the maintenance of law and order in Angola until independence on November 11th, 1975. Furthermore, it set up a fact-finding commission of inquiry and conciliation which entrusted with the OAU Defence Commission, was to give overall consideration and assessment of the possibility of establishing and despatching an OAU peace-keeping force to Angola<sup>(36)</sup>. However, the Resolution did not make any mention of foreign intervention despite the MPLA accusation that regular units of the Zaire army were fighting with FNLA. At the same time, the United States and China channelled arms supplies to FNLA through Kinshasa as part of the package of aid to Zaire. On the other hand, Soviet arms supplies were channelled to MPLA through the OAU Liberation Committee which helped to secure the delivery<sup>(37)</sup>. Under these circumstances, the fighting in Angola continued and hopes for a national reconciliation were dashed<sup>(38)</sup>.

<sup>(35)</sup> Cervenka, Zdenek, Op. Cit, p.141      <sup>(36)</sup> Ibid p.142

<sup>(37)</sup> Morison, David, African Policies of the USSR and China in 1976, ACR 1976-1977, pp.76-82

<sup>(38)</sup> At this stage, the OAU Assembly were requested to convene at an emergency session in Addis Ababa, but the Summit adjourned and requested the OAU Bureau to follow up the Angolan crisis. It would be very difficult to say that the extraordinary session of the OAU Assembly was a total failure because it did not pass any Resolution. In fact, the OAU is not a supranational organisation capable of imposing decisions of a majority or a minority.



Consequently, the conflict had become a full scale war with South Africa intervening on the side of UNITA-FNLA while the MPLA had the support of Cuban commandos<sup>(39)</sup>. Under this challenging atmosphere, the OAU Assembly met on January 10th, 1976 at an emergency session which took place at Addis Ababa. The situation in Angola occupied the meeting's discussion in which African leaders arrived at the conclusion that the consensus that all three Angolan movements had an equally valid claim to share in the government of independent Angola which had collapsed for two reasons<sup>(40)</sup>. Initially, the struggle for power had had international repercussions which had affected inter-African relations. The presence of South Africa's regular troops on the side of the FNLA-UNITA coalition had stirred African hostilities against South Africa<sup>(41)</sup>. The latter had also caused damage to the integrity of the FNLA and UNITA as true national movements entitled to participate in an Angolan government of national unity.

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(39) Cervenka, Zdenek, Cuba and Africa, ACR 1976-77, p. A84

(40) ACR 1976-77, Op. Cit, p. C5

(41) The UN Security Council convened on March 31st, 1976 at the request of Kenya to consider the African charges against South Africa which committed an act of aggression and interference in the domestic jurisdiction of Angola. The Council adopted a Resolution condemning South Africa's intervention in the internal affairs of Angola. It also demanded South Africa to halt utilizing Namibian territory as a base for carrying out provocative or aggressive acts against Angola. Moreover, it called upon South Africa to pay full compensation for the damage and destruction inflicted on the state and for the restoration of equipment and material which its invading troops had seized.

Secondly, the engagement of 12,000-strong Cuban commando units and the massive arms supplies by the Soviet Union, had turned the conflict into a full scale war. As a result of these two reasons, the OAU belief in a government of national unity, a coalition of MPLA, FNLA and UNITA, which would steer the country to independence, became very slim. Under these circumstances, the situation soon developed into an extremely costly deadlock which in the short term held out no hope for South Africa FNLA-UNITA forces. The Cuban troops took part in the Angolan civil struggle, equipped with Soviet arms supplies which were despatched to Angola at an unprecedented scale, and turned the war in favour of the MPLA. By January 1976, the Cubans were able to stop the advance of South African and UNITA forces in the south and the MPLA captured FNLA headquarters in the north at Camona and pushed its troops back behind the frontiers of Zaire<sup>(42)</sup>. At all events, South Africa's intervention<sup>(43)</sup> damaged the integrity of FNLA and UNITA and so MPLA was in an extremely strong position to repudiate any OAU efforts to bring about a united front to run the transitional government. Therefore, the consensus among African

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Cervenka, Zdenek, Op. Cit, pp. A85-90

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South Africa kept the size of its involvement in Angola secret. It only disclosed that it had despatched a limited number of troops to protect the Cuene River hydro-electric and irrigation projects under construction in Angola.

states was that MPLA should be recognised forthwith as the only legitimate government in Angola, while FNLA and UNITA should forfeit any right as genuine national movements. Consequently, the OAU member states recognised Angola as an independent state under the leadership of MPLA, and on February 11th, 1976 it was admitted as the 47th-member of the OAU<sup>(44)</sup>. Nonetheless, Zaire and Zambia delayed their recognition. Zambian recognition was issued on April 14th, 1976 while Zaire issued its declaration of recognition on January 10th, 1977<sup>(45)</sup>.

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Cervenka, Zdenek, The OAU in 1976,  
ACR, 1976-77, p.68

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Cervenka, Zdenek, Op. Cit, p.147

THE PROCESS OF DECOLONISATION IN ZIMBABWE:

The British colony called Southern Rhodesia had dominated African politics ever since the dissolution of the Central African Federation in 1962<sup>(1)</sup>. The Rhodesian government insisted on its right to independence which had been granted to the two other members, namely Zambia and Malawi, but the OAU requested the colonial power not to transfer the power to a minority government imposed on the majority by the use of force and under the cover of racial legislation<sup>(2)</sup>. In fact, the OAU feared the possibility of a unilateral declaration of independence by the minority government which became reality on November 11th, 1965<sup>(3)</sup>. Consequently, the OAU took the position that since Great Britain was still constitutionally answerable for Rhodesia, it was up to the colonial power to end the white rebellion and to restore legality in Southern Rhodesia. At the same time, the territory as a non-self-governing territory, came under the umbrella of the UN thereby the Rhodesian crisis was brought before it, within the meaning of Chapter XI of the Charter. As a matter of fact, the question of Southern Rhodesia had already been brought before the UN General Assembly since the breakdown of the Central African

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(1) The present boundaries of Zimbabwe were established by the Southern Rhodesian order in Council of October 20th, 1898. In 1923 the Charter of the British South Africa Company was abrogated and Southern Rhodesia was formally annexed as a Crown colony. (Brownlie, Ian, Op. Cit, p.1081)

(2) Cervenka, Zdenek, Op. Cit, pp.122-123

(3) Brownlie, Ian, Op. Cit, p.380

Federation in 1962 upon the insistence of African states. In this respect, the Decolonisation Committee determined that Southern Rhodesia was non-self-governing within the meaning of Article 73 and 74 of the UN Charter and General Assembly Resolution 1514 (XV)<sup>(4)</sup>. But, the UK rejected the aforesaid interpretation, arguing that Southern Rhodesia had attained in 1923 and further in 1961, constitutional rights and privileges which naturally curtailed the powers and functions of the British government. Therefore, the territory status remained outside the constitutional definition of the non-self-governing territory within the meaning of the provisions of the UN Charter<sup>(5)</sup>. Consequently, the 1963 founding Conference of the OAU adopted a regional strategy on Rhodesia which was designed to persuade the UK not to attribute sovereignty to a minority government<sup>(6)</sup>. To this end, the OAU sought, through the UN Security Council, to discourage the UK from transferring the military force of the defunct Central

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(4) Whiteman, Marjorie M., Digest of International Law, Volume 13, 1963, pp.733-734

(5) Ibid pp.735-739

(6) The OAU strategy on Southern Rhodesia consisted of two prolonged approaches, as follows:-

(i ) to hold the UK responsible for the situation in Southern Rhodesia and urge it not to transfer the power and attributes of sovereignty to a minority government imposed on African people by the use of force and under cover of racial legislation;

(ii) to declare solemnly that if power in Southern Rhodesia were to be usurped by a racial minority government, the African states would lend their effective moral and practical support to any legitimate measures which the African nationalist leaders may devise to transfer it to an African majority.

African Federation to Southern Rhodesia. Consequently, the Council convened at the request of African states which adopted its first Resolution on Southern Rhodesia, calling upon the UK to take all necessary action to prevent unilateral declaration of independence. It also requested the colonial power to grant independence only in conformity with the aspirations of the majority of the population. Moreover, it called upon all member states of the UN to deny recognition to any illegal entity that might be brought about through unilateral declaration of independence<sup>(7)</sup>. Despite the firm attitude of the UN enshrined in the Security Council Resolution, the possibility of a unilateral declaration of independence was revealed in early November 1965 which caused intensive diplomatic activity at both the OAU and the UN. In this respect, the OAU warned that if the UDI was not prevented, it would reconsider all diplomatic and economic relations of its member states with the UK. It also requested the UK to suspend the 1961 Constitution of Southern Rhodesia and to take all necessary measures, including the use of armed force in order to resume its administration to release all political prisoners and to convene a Constitutional Conference<sup>(8)</sup>. Moreover, it established a committee of

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<sup>(7)</sup> Brownlie, Ian, Op. Cit, p.403

<sup>(8)</sup> In its first year, the OAU concentrated on the first line of policy and sought in vain through the UN to discourage the UK from transferring the military of the defunct Central African Federation to Southern Rhodesia. It began seriously assisting the African liberation movements in Rhodesia only after the British government hinted that it intended to meet the unilateral declaration of independence solely by economic sanctions. Thus, ruling out the use of military force.

five, charged with the responsibility of co-ordinating African efforts to prevent the UDI by all possible means. Furthermore, it requested the UN General Assembly to incorporate all these recommendations in its own Resolution on Southern Rhodesia<sup>(9)</sup>. Accordingly, the UN General Assembly endorsed the OAU's request for the first time, thereby it called upon the UN member states to extend moral and material aid to the people of Zimbabwe in their struggle for freedom and independence<sup>(10)</sup>. Consequently, the UK stated its firm determination before the Assembly, to pursue a peaceful settlement through negotiations, but made it clear that it would not use force to suppress the UDI. As a result, the Rhodesian government unilaterally declared, on November 11th, 1965 the country independent, which induced the UN General Assembly to adopt a unanimous Resolution requesting the UK to end the rebellion and to

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( 9 ) Brownlie, Ian, Op. Cit, p.403

(10) The main OAU demands as reflected in the Resolution of the OAU Assembly can be summarised as follows:-

(1) to obtain from the UK effective measures including the use of force to end the UDI and to prevent any supplies including oil and petroleum products, from reaching Rhodesia;

(2) to obtain in the UN Security Council, the necessary enforcement sanctions under Chapter VII of the UN Charter;

(3) to condemn Portugal and South Africa for their support to the illegal regime;

(4) to condemn the activities of foreign financial and other interests which were supporting the illegal regime and to invite the states concerned to end such activities;

(5) to condemn any arrangement between the UK and the illegal regime resulting in a transfer of authority to the latter government contrary to the principles of universal suffrage;

(6) to secure moral and material support for the people of Southern Rhodesia in their struggle for independence.

restore its administration. It also asked the UN Security Council to consider the situation as a matter of urgency and to take the appropriate measures within the provisions of the UN Charter<sup>(11)</sup>. Consequently, the Council convened at the request of the UK, which adopted a Resolution that called upon all member states not to recognise the illegal regime and to refrain from extending any aid to it<sup>(12)</sup>. At the same time, the UK assumed a new approach towards the question of domestic jurisdiction concerning Southern Rhodesia. It determined that the only lawful authority in Southern Rhodesia was the British government and thereby it was clearly responsible for re-establishing the rule of law in the country concerned<sup>(13)</sup>. Thus, the UK constitutional position was brought close to the position long held by the UN General Assembly. However, the UN Security Council adopted, at different stages, four major Resolutions concerning the Rhodesian crisis but none of them fully met the OAU demands. The Council unanimously adopted on November 12th, 1965 Resolution 217 describing the situation resulting from UDI as extremely grave and that its continuation would constitute a threat to international peace and security. It also called upon the UK to quell the rebellion in Southern Rhodesia by taking all appropriate measures to eliminate the authority of the minority regime. Moreover, it called upon all member states to desist from providing

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(11) GR Res 2022(XX) November 5th, 1965

(12) SC Res 216 November 12th, 1965

(13) Whiteman, Marjorie M., Op. Cit, p.739



the regime with arms, equipment and material support. Furthermore, it requested all member states to break all economic relations with Southern Rhodesia including an embargo on oil and petroleum products<sup>(14)</sup>. Finally, the Resolution contained a paragraph most pertinent to the relationship between the UN and the OAU as a regional arrangement within the framework of Chapter VIII of the UN Charter. In this respect, paragraph 10 requested the OAU to take all appropriate measures at its disposal to assist in the implementation of Resolution 217<sup>(15)</sup>. It was the first time that the UN Security Council had asked the OAU to carry out diplomatic and economic sanctions against a political entity outside its membership. It would appear that this constituted both an indirect endorsement of the collective measures that the OAU had already taken against the minority regime in Southern Rhodesia and an authorization for the continuation of such collective action. However, the OAU economic boycott against Southern Rhodesia was ineffective, since most OAU member states had little or no trade with the country concerned. Instead, the economic measures taken by the OAU created hardship for Zambia whose economy was heavily dependent upon Southern Rhodesia. Consequently, the OAU set up a committee of Solidarity for Zambia to

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(14) Brownlie, Ian, Op. Cit, p.394

(15) Ibid p.395

co-ordinate aid from African and other states. But, in spite of the Committee's efforts and subsequent appeals by the UN to extend aid to the affected country, the Zambian government had to bear all the costs with only assistance from the British government<sup>(16)</sup>. As stated earlier, the OAU demands for mandatory sanctions did not at this stage receive sufficient support at the UN Security Council. Despite this fact, the OAU set out to assist the implementation of the UN Security Council non-mandatory sanctions but the measures adopted by the OAU Council of Ministers at its sixth emergency session went far beyond those contained in the UN Security Council's Resolution 217<sup>(17)</sup>. They included severance of diplomatic relations between OAU member states and the UK in the event of the latter having failed to repress the rebellion and to prepare the way for majority rule in Southern Rhodesia before the 5th of December, 1965. They also envisaged mobilization of military forces in OAU member states in order to plan a military action in the event of any attack by the minority regime in Southern Rhodesia on a neighbouring OAU member state<sup>(18)</sup>. At all events, the OAU member states discerned from the outset that they had over-committed themselves far beyond the measures maintained by the UN. This became obvious when only nine member states carried out the threat of breaking diplomatic relations with the UK. It would appear that the OAU approach was designed to obtain a change

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(16) Ibid p.404

(17) Tandon, Yashpal, Op. Cit, pp.1168-1199

(18) Krishnan, Maya, Op. Cit, pp.214-215

in the British position through the threat of breaking diplomatic relations, but it became obvious to several African states that it would be unwise to take such action. As far as direct military action was concerned, African states carefully examined the feasibility of mobilizing forces against Southern Rhodesia and again they became convinced that it would be unrealistic to take such action. The OAU realised how difficult it would be to prepare and organise an effective composite expeditionary force against the minority regime in Southern Rhodesia. The latter had a small army, but it was highly trained and equipped with modern military arms which might also be reinforced by Portuguese and South African troops. Under these circumstances, the OAU adopted an alternative strategy which was designed to increase funds, material and military training to the liberation movements<sup>(19)</sup>. Nonetheless, the military action and effectiveness of the liberation movements was undermined by rivalry between the principal movements and by their failure to comply with the recommendation of the OAU Liberation Committee for the formation of a common front<sup>(20)</sup>. Consequently, the OAU changed its strategy to induce the UN Security Council to take more effective measures within the framework of

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(19) Kapungu, Leonard, T., Op. Cit, p.144-145

(20) The OAU Liberation Committee succeeded in working out the Lusaka Agreement of December 10th, 1974 by virtue of which (ZANU) Zimbabwe African National Union and (ZAPU) Zimbabwe African People's Union agreed to merge into one movement accepting the name (ANC) African National Council.

Chapter VIII of the UN Charter. In this direction some progress was made when the UN Security Council convened in April 1966 at the request of the UK which authorized it to prevent by use of force if necessary, the arrival at Beira, Mozambique tankers reasonably believed to carry oil destined for Southern Rhodesia<sup>(21)</sup>. Nonetheless, the Council rejected the African suggestion to expand the scope of the measures against the illegal regime until the British government had exhausted prospects for a peaceful settlement through negotiation. Accordingly, the OAU appeal to the British government to consult only the African political parties about the possibility of a negotiated settlement. Nonetheless, the British government made a concrete proposal to the illegal regime in order to implement the majority rule already enshrined in the 1961 Constitution, but the proposals were rejected<sup>(22)</sup>. Under these circumstances, the British government decided to recommend further measures in the UN Security Council, thereby mandatory sanctions were imposed upon Southern Rhodesia with regard to certain key products under Chapter VII of the UN Charter<sup>(23)</sup>. The Council adopted, on December 8th 1966, Resolution 232 without opposition, but with the USSR, France, Bulgaria and Mali abstaining.

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(21) SC Res 221 April 9th, 1966

(22) Andemicael, Berhanykum, Op. Cit, p.120

(23) Ibid p.121

Acting in conformity with Articles 39 and 41 of the Charter, it was decided inter alia that all member states would prevent the importation into their territories of certain named products originating in Southern Rhodesia<sup>(24)</sup>.

Simultaneously, the Council reminded member states that failure by any of them to implement the Resolution would constitute a violation of Article 25 of the UN Charter<sup>(25)</sup>. However, some minor amendments proposed by certain African states were incorporated into the aforesaid Resolution, but the OAU demands for comprehensive sanctions failed to receive sufficient support in the Security Council. Subsequently, the Council convened on May 29th, 1968 at the request of African states to consider the OAU demands for military sanctions against Southern Rhodesia but these demands also failed to receive sufficient support in the Council. Instead, the Council adopted Resolution 253 in which it decided to apply mandatory sanctions with regard to all trade, investment and travel. At the same time, the Resolution requested the UN Secretary General to report to the Security Council on the progress of the implementation of the above-mentioned sanctions. It also established a committee entrusted to examine a report on the

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(24)

Brownlie, Ian, Op. Cit, p.298

(25) The Council decided that all member states should prevent the following: (1) importation into their territories of nine vital products of Southern Rhodesia - iron ore, chrome, pig, iron, tobacco, copper, meat and meat products as well as hide, skin and leather; (2) shipment in vessels or aircraft of their registration of any of those commodities; (3) any activities by their nationals or in their territories promoting the export of those commodities from Southern Rhodesia; (4) any activities by their nationals or in their territory promoting the sale or shipment to Southern Rhodesia of arms, ammunition, military and other aircraft, military or other motor vehicles and equipment and material for their manufacture and maintenance; (5) participation in any form in the supply of oil products to Southern Rhodesia. (Whiteman, Marjorie, M., DIL, Volume 13, pp.746-747)

implementation of the sanctions and to seek further information from any member states and the specialised agencies regarding the trade of that state, the commodities and products exempted from the prohibition, any activities by the nationals of that state or in its territories that may constitute an evasion of the measures decided upon in the sanctions. Moreover, the Council, for the first time recognised the legitimacy of the struggle of the people of Southern Rhodesia to achieve their rights to freedom and independence<sup>(26)</sup>. Accordingly, it urged all UN member states to extend moral and material aid to the national movements in their struggle to put an end to the illegal regime in their country. Thus, the OAU's long-standing plea to the UN Security Council for legitimization of the support being given to the African liberation movements was finally met. Despite the firm attitude of the UN towards Southern Rhodesia, the measures taken did not achieve the desired effect. This became quite clear in the reports of the committee set up to examine the implementation of the UN sanctions, which concluded that there were extensive violations and erosions of these sanctions<sup>(27)</sup>. Therefore, the OAU instructed the African group at the UN to intensify its efforts to attain through the Security Council, interruption of all existing means of transportation and communications to and from Southern Rhodesia. It also requested African states to make attempts at extending the mandatory sanction to Portugal and South Africa<sup>(28)</sup>. Accordingly, the UN

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(26) Brownlie, Ian, Op. Cit, p.298

(27) Ibid p.398

(28) Tandon, Yashpal, Op. Cit, pp.1169-1170

Security Council convened in June 1969 at the request of the African states which submitted a draft Resolution advocating the application of the aforesaid measures, but the demands failed to secure the required majority. Subsequently, the Council met in March 1970 in the wake of the illegal proclamation of Republican status for Southern Rhodesia by the minority government. The Council had to consider Resolution 2508(XXIV) of the UN General Assembly which drew its attention to the urgent necessity of applying the OAU demands, but the recommendation was rejected by the Council due to a veto by both the United States and the UK. At the same time, the Council rejected the UK draft Resolution which merely called for non-recognition of the Republican status proclaimed by the illegal regime in Southern Rhodesia<sup>(29)</sup>. However, the Council became so deadlocked that the UK and African states found it necessary to reach a compromise which was proposed in a draft Resolution submitted by Finland. The Finnish compromise was adopted as Resolution 277 passed by 14 votes to none with Spain abstaining. The Resolution made the withdrawal of consular and trade representatives in Southern Rhodesia mandatory. It also requested member states to interrupt any existing means of transportation to and from the country concerned<sup>(30)</sup>. But other means of communication were exempted and the Council refrained from extending these measures upon Portugal and South Africa.

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(29) Andemicael, Berhanykum, Op. Cit, p.122

(30) Ibid p.123

At all events, Resolution 277 marked the end of the consideration of the Rhodesian crisis by the UN Security Council. In fact, the British government had subsequently attempted to find a realistic basis for a peaceful settlement to the Rhodesian crisis<sup>(31)</sup>. At this stage, the OAU tried to discourage the conclusion of any agreement with the illegal regime and to prevent any erosion of the sanctions being taken. Despite the fact, a serious blow occurred in 1971 to the OAU attempts, when the American Congress enacted legislation which would allow the administration to import Rhodesian chrome<sup>(32)</sup>. Subsequently, the UK concluded an agreement with the illegal regime which provided for independence under a Constitution that would permit gradual progress towards majority rule in Southern Rhodesia. Nonetheless, the settlement was made with the proviso that the British government must be satisfied that the settlement was acceptable to the people of Rhodesia as a whole. To this end, the British government established a commission on Rhodesian opinion under the Chairmanship of Lord Pearce. It was entrusted with a

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(31) To this end the British government intensified its efforts in the second half of 1966 to conclude an agreement with the illegal regime in Southern Rhodesia, on the basis of the following six principles:- (1) "...unimpeded progress to majority rule already enshrined in the 1961 Constitution; (2) no... retrogressive amendment of the Constitution; (3) immediate improvement in the political status of the African population; (4) progress towards ending racial discrimination to the people of Rhodesia as a whole; (5) the British government would need to be satisfied that any basis proposed for independence was acceptable to the people of Rhodesia as a whole; (6) regardless of race, there was no oppression of majority by minority or of minority by majority.

(32) Andemicael, Berhanykum, Op. Cit, p.122



mandate to ascertain the response of all sections of the population of Rhodesia and to report its findings to the British government<sup>(33)</sup>. Under these circumstances, the OAU instructed the African group at the UN to intensify its efforts to reject, through the UN Security Council, the British proposals for a settlement. But the Council failed to adopt the African draft Resolution which would have rejected the proposals for a settlement in consequence of a veto by the UK<sup>(34)</sup>. Consequently, the African states went to the UN General Assembly which adopted a Resolution describing the British proposals for a settlement as a flagrant violation of the inalienable right of the African people of Zimbabwe to self-determination and independence<sup>(35)</sup>. Despite this fact, the Pearce Commission went on and carried out its mandate with competence and impartiality. Its conclusion was reported to the British government, the outcome of which was the rejection of the proposals for

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(33) ACR 1971-72 Op. Cit, pp. C144-145

(34) Andemicael, Berhanykum, Op. Cit, p.123

(35) The UN General Assembly simultaneously recommended member states to order the complete or partial interruption of postal, telegraphic and radio communications between Rhodesia and other states. It also requested the British government to take the following measures:- (1) to repeal all repressive discriminatory legislation measures, all restriction political activity and establish full democratic freedom and equality of political rights; (2) to convene a constitutional conference attended by legitimate political representatives of the people of Zimbabwe; (3) to work out a settlement the future of Rhodesia to be submitted for endorsement to the people of the country as a whole. However, the British delegation described these proposals as totally unrealistic and therefore unacceptable. (Andemicael, Berhanykum, Op. Cit, p.125)

a settlement of the African majority. However, the British government accepted the validity of this rejection and it became clear that no appropriate solution could be found unless the interests of the African majority were fully represented in any future efforts for a settlement<sup>(36)</sup>. Therefore, it decided that at the next stage it should conduct its efforts in the country concerned between the racial groups and any further arrangement must be within the agreed six principles. It also decided that the status quo, including sanctions, should be preserved. On the other hand, the OAU also endeavoured to maintain the status quo including the sanctions and felt that this was the only way to bring about the illegal regime to negotiate a new independence constitution. Accordingly, the Summit of the OAU Assembly which was held in 1974 at Mogadishu, Somalia, adopted a special Resolution which called upon member states to blacklist those persons, companies and institutions in their countries who continued to have dealings or do business with the illegal regime in Southern Rhodesia<sup>(37)</sup>.

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<sup>(36)</sup> ACR 1971-72 Op. Cit, pp. C151-153

<sup>(37)</sup> It should be mentioned that at the founding Conference of the OAU, African states agreed unanimously to co-ordinate concerted measures of sanctions against the regimes in Southern Africa. The first ordinary session of the OAU Assembly established in 1964 the Bureau of Sanctions to supervise the implementation of the OAU Resolutions calling on member states to apply economic sanctions against the regimes in Southern Africa. Subsequently, the OAU Council of Ministers informed the Bureau of Sanctions in February 1966 that after two years of supposed African sanctions against Rhodesia, South Africa and Portugal, there had been no marked progress in the implementation of the OAU sanctions. Many African states simply ignored the Resolutions and continued to engage in economic relations with these regimes in Southern Africa.

In any event, the UN sanctions failed in their primary objectives to topple the illegal regime but the OAU recognised the need to maintain them. Through them, Southern Rhodesia was denied access to any international conference, political or economic, and even more significant, to the world money market which was indispensable to its long-term survival. Sanctions and non-recognition also prevented the illegal regime from consolidating its position and maintained it both economically and militarily vulnerable. Moreover, sanctions were one of the three main elements, the other two being guerrilla warfare and lately the independence of Mozambique, which forced the illegal regime to commence negotiations with the OAU member states. In this respect, the government of Mozambique announced, on March 3rd, 1976, the implementation of UN sanctions on Rhodesia by closing its lifelines to Beira and Maputo. It also confiscated Rhodesian property and assets in Mozambique and put the latter country on a state of protective war footing against possible attack as a means of reprisal<sup>(38)</sup>. Consequently, Mozambique's decision threw the entire burden of Rhodesian international traffic onto South Africa. It also coincided with the failure of what was probably the last peaceful efforts at settling the crisis, which was known as the "Politics of Detente."

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Legum, Colin, Southern Africa, The Years of the Whirlwind, ACR 1976-77, pp. A33-39

The latter initiative was carried out by four OAU member states, Botswana, Mozambique, Tanzania and Zambia, which later joined Angola in 1976<sup>(39)</sup>. The heads of these states had attempted under the aegis of the OAU, to explore ways and means for the peaceful transfer of power to the African majority in Southern Rhodesia. The initiative evolved from the contacts between the heads of these frontline states on the one hand, and South Africa and the Rhodesian government on the other. In this respect, the government of South Africa pointed out its readiness to negotiate on how the majority rule would come in Rhodesia in conformity with the Lusaka Manifesto<sup>(40)</sup>. Therefore, the heads of the frontline states accepted the responsibility of acting as intermediaries with South Africa's government, accepting a similar role with the Rhodesian government. However, a constitutional solution in Southern Rhodesia would relieve South Africa from its costly role as UN sanctions breaker, and allow her to withdraw her military troops whose presence in Rhodesia was increasingly an international embarrassment. In exchange for the goodwill over Rhodesia, the government of South Africa might receive assurance from Mozambique that the rail links and

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(39) Since the Autumn of 1974, the initiative on the liberation of Southern Africa, namely Rhodesia and Namibia, has passed into the hands of the frontline Presidents Julius Nyerere of Tanzania, Kenneth Kaunda of Zambia, Secretse Khana of Botswana and Samora Machel of Mozambique. In 1976 they were joined by President Augustinho Neto of Angola. The OAU Liberation Committee and the staff of the Executive Secretariat at Dar-es-Salaam used its office at Lusaka and have effectively been integrated into the diplomatic teams of the five Presidents.

(40) Lusaka Manifesto, Op. Cit, pp.13-15

harbours of Nacala, Beira and Maputo would remain open for both South Africa and Southern Rhodesia. At all events, there were many in Africa who saw detente as a revival of the policy of dialogue. Most critical were the radical member states of the OAU and the liberation movements, particularly ZANU and ZAPU. Consequently, the OAU Council of Ministers convened, on April 7th 1975, in Dar-es-Salaam at an emergency session at the request of these radical member states<sup>(41)</sup>. The host delegation to the Conference stated that the OAU should endorse the use of peaceful means to achieve independence in Rhodesia, but if this was made impossible, the OAU would resume and intensify the armed struggle. Consequently, the host state succeeded in persuading the Council that the initiative was a change of tactics but not of strategy. Eventually, the Council adopted unanimously a declaration on Southern Africa which left the doors open for negotiations on Southern Africa. Therefore, the Dar-es-Salaam Declaration was endorsed by the Summit of the OAU Assembly held in July 1975 at Kampala, Uganda<sup>(42)</sup>. The Assembly endorsement marked the decline of the OAU role as collective policy-maker on Southern Africa, thereby the issues were

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(41) Guinea, Algeria and Libya led the critics against the OAU, and on Algeria's insistence, the extraordinary session of the Council of Ministers was convened at Dar-es-Salaam on April 7th, 1975. The Council eventually adopted unanimously a Declaration, in order to appease the critics of these states and clear distinctions were drawn between talks with South Africa on Rhodesia and Namibia, and the talks on apartheid. The talks on the latter were declared as unpermissible.

(42) Cervenka, Zdenek, Op. Cit, p.129

handed over to the heads of the frontline states to be handled solely by them through the assistance of its Liberation Committee. However, the Dar-es-Salaam Declaration paved the way to the Geneva Conference on Rhodesia which opened on October 26th, 1976. But, the proceedings of the Geneva Conference drifted into recess after seven weeks and it was never reconvened. In fact, the Conference was originally called to work out the mechanism for the transfer of power to the majority in Zimbabwe, but it failed in consequence of disagreement on the date for the independence and on the length of the transitional period. The delegations of the four Liberation Movements, ZANU, ANC, UANC and ZAPU were unanimous, though with varying emphasis that the interim phase should be no more than a year, while the British government suggested a period of 15 months. However, the central point of divergence between the liberation movements on the one hand, and the Rhodesian government on the other, was over who would control the instruments of the state and the army during the transitional phase<sup>(43)</sup>.

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ARB Volume 15, No.3, April 15th, 1978, p.4790

Under these circumstances, the British government embarked on another attempt to find a mutually acceptable solution to the Rhodesian crisis. This attempt culminated in joint Anglo-American proposals for a peaceful settlement<sup>(44)</sup>, but the Rhodesian government rejected them and put forward some proposals of its own for an internal settlement. In this respect, the Rhodesian government signed, on March 3rd, 1978, an agreement with three moderate black nationalist leaders of the ANC, UANC and ZAPU. The agreement contained a constitutional arrangement which gave the white minority guarantees and parliamentary representation for 10 years or the lives of two parliaments, whichever was the longer. It also stipulated a constitution which would provide for majority rule on the basis of one man, one vote. There would be a parliament of 100 seats, 72 of which were reserved for blacks and 28 for whites. Moreover, the

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(44) The Anglo-American proposals for a settlement in Rhodesia were based on seven points as follows:-

(1) "...the surrender of power by the illegal regime and a return to legality; (2) an orderly and peaceful transition to independence in the course of 1978; (3) free and impartial election on the basis of universal adult suffrage; (4) the establishment of the British government of a transitional administration with the task of conducting the election during the transition period; (5) a UN presence, including a UN force during the transition period; (6) an independent constitution providing for a democratically electoral government, the abolition of discrimination, the protection of individual human rights and the independence of judiciary; (7) a development fund to revive the economy of the country which the UK and the United States view as predicted upon the implementation of the settlement as a whole..."

(ARB, Volume 14 No.9, October 15th, 1977, pp. 4571-4572)

agreement provided for an interim government consisting of an Executive Council and a Lower Council of Ministers. The Executive Council's main task would be to draft the new majority rule constitution, while the Lower Council would be responsible for preparing legislation under the direction of the Executive Council<sup>(45)</sup>. Under these circumstances, a frontline Summit was held on March 26th, 1978 at Dar-es-Salaam which called for non-recognition of the internal settlement reached under the aegis of the illegal regime in Rhodesia. At the same time, the Conference instructed African groups at the UN to request a meeting of the UN Security Council to consider the matter urgently. Accordingly, the Council met on March 17th, 1978 and adopted a Resolution by 10 votes in favour to none against with abstention by the five Western members of the Council, the United States, the UK, France, West Germany and Canada<sup>(46)</sup>. The latter five states characterized the internal agreement as inadequate and expressed regret that it had not been

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The Security Council Resolution adopted on March 18th, 1978 condemned the Rhodesian election and urged member states to send observers to them. Neither the UN member states nor the British government sent official observers to the election. The OAU had declared on April 26th, two days after the publication of the Rhodesian election result, that they were null and void and again on April 30th, 1978 the Security Council adopted another Resolution which yet again condemned the election in Rhodesia and called on member states not to accord recognition to any government set up in consequence of it.

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ARB, Volume 15 No.3, April 15th, 1978, pp.4790-4791



possible to reach a mutually acceptable agreement. However, the Resolution described the internal settlement as an attempt aimed at the retention of power by a racist minority. It also declared that the speedy termination of the illegal regime and the replacement of its military and police forces was the initial prerequisite for the solution of legality in Southern Rhodesia. Moreover, it called upon the UK to take all necessary measures to bring about an end to the illegal regime in Rhodesia, to be followed by genuine decolonisation in the territory in line with the UN Resolutions<sup>(47)</sup>. Accordingly, the British government resumed its efforts at finding a mutually acceptable solution in conformity with the UN Resolutions in order to return Rhodesia to a state of legality. In this direction, it endeavoured to explore with the OAU frontline states, what form of settlement would carry international support. There was a general feeling that a settlement to the crisis must be seen to stem from the British government as the constitutionally responsible authority. There was also consensus between the UK and the OAU member states that further attempts must be made to involve all the parties to the dispute in the search for a peaceful settlement. To this end, the British government put forward firm proposals on the constitutional arrangement in order to achieve a proper basis for legal independence for Rhodesia. It transmitted invitations to Bishop Muzorewa and the

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(47) Ibid pp.47-90

leaders of the Patriotic Front Alliance to attend a Constitutional Conference which was to open on September 10th, 1979 at Lancaster House. At the same time, it published outline proposals for an independence constitution framed in general terms but largely compatible with the Constitution which had already been adopted in Rhodesia. But, the proposals took account of the criticism which had been made by the OAU member states whereby they maintained that the representation of the minority could not have a blocking power and senior appointments in public services etc. would be vested in the Premier<sup>(48)</sup>. It was against this background that the Lancaster House Conference proceeded. It should be noted that the Conference was marked by three major turning points. The first was in mid-October 1979 when Bishop Muzarewa's delegation had agreed to the British proposals for the independence Constitution. Subsequently, the Patriotic Front pointed out that it conditionally accepted the constitutional proposals and thereby the Conference was able to move on to discuss their implementation<sup>(49)</sup>. It was at this stage that the British government was ready to appoint a governor with executive legislative power in order to convey Rhodesia to independence. Consequently, the Conference entered its final and most difficult phase, at which Bishop Muzarewa's delegation again accepted, on

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(48) Lord Soames, From Rhodesia to Zimbabwe, JIA, Volume 56 1980, pp.407-410

(49) Ibid p.410

November 26th, 1979 the British proposal on the principles of the ceasefire and subsequently, the Patriotic Front also accepted, on December 5th 1979, the proposals thereby a formal ceasefire agreement was signed<sup>(50)</sup>. As a result, a Zimbabwe Bill was introduced in the British Parliament in order to enable Rhodesia to be brought to independence on a date to be declared. On December 7th, 1979, the British government appointed Lord Soames as Governor of Rhodesia, who resumed the local administration on the following day<sup>(51)</sup>. Consequently, legality was restored for the first time since November 11th 1965, thereby the UN sanctions were automatically lifted. An election campaign was conducted by all parties to the Lancaster House Agreement, as exiled leaders returned and others emerged from years of confinement or forced inactivity. Under these circumstances, the OAU Council of Ministers held, on March 10th 1980, a special session on Rhodesia at which the Council endorsed the outcome of the election as free and fair<sup>(52)</sup>. Finally, Britain's last African colony, the rebellious war-weary-beseiged and landlocked country of Rhodesia attained on April 17th, 1980, recognition and legal independence. Consequently, Lord Soames formally ceded his power as British Governor to Robert Mugabe, leader of the Zimbabwe African National Union (ZANU) and thereby, Zimbabwe became the 50th member of the OAU<sup>(53)</sup>.

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(50) Ibid p.411

(51) ARB, Volume 17, No.1, February 15th 1980, pp.5547-5548

(52) ARB, Volume 17, No.3, April 15th, 1980 p. 5602

(53) ARB, Volume 17, No.4, May 15th, 1980 pp.5639-5641

TOWARDS THE PROCESS OF DECOLONISATION IN NAMIBIA:

South West Africa (Namibia) came into being as such under treaties and boundary settlements between the colonial powers of the era, namely, Germany, Portugal and Great Britain<sup>(1)</sup>. After the defeat of Germany in the First World War, its overseas possessions were placed under the Mandates System of the League of Nations in conformity with the Peace Treaty of 1918. Therefore, Namibia ceased to be under the sovereignty of Germany, which had formerly governed it, and Great Britain assumed the mandate for the territory, to be exercised on its behalf by the government of the Union of South Africa<sup>(2)</sup>. In this respect, the mandate for Namibia was conferred on December 17th, 1920 upon South Africa by a Resolution of the Council of the League of Nations in accordance with Article 22 of the Covenant<sup>(3)</sup>. The mandate agreement authorized South Africa with full administrative and legislative power over the territory as an integral part of its territory, but with the proviso that would guarantee freedom of conscience and religion. It also provided for

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(1) "...the alignment with German South West Africa was established as a consequence of the delimitation of spheres of influence by the Anglo-German agreement of July 1st, 1920..."

(Brownlie, Ian, Op. Cit, p.1273)

(2) Dugard, John, The South West Africa/Namibia Dispute, University of California Press, Los Angeles, 1973, pp.75-77

(3) Cervenka, Zdenek, Op. Cit, p.149

the prohibition of abuses such as the slave trade, the traffic in arms and the prevention of the establishment of fortification or military and naval bases and of military training of the native for other than police purposes and defence of the territory<sup>(4)</sup>. Subsequently, the UN Charter came into force on October 24th, 1945 which introduced the Trusteeship System. According to Article 77 of the UN Charter, the Trusteeship System shall apply to any territories held under the Mandates System of the League of Nations which ceased to exist after the Second World War<sup>(5)</sup>. However, the representative of South Africa to the UN requested the General Assembly at its first session, that the territory of Namibia be incorporated into the Union of South Africa on the grounds that the territory was sparsely inhabited and could not exist independently. The General Assembly rejected the South African request and thereby called upon the latter power to place the territory under the Trusteeship System in conformity with the UN Charter<sup>(6)</sup>. Despite this fact, South Africa adopted an attitude of defiance towards the UN efforts to bring the territory of Namibia under the Trusteeship System. In this respect,

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(4) Kapleyn, P.J.G. et al., Op. Cit, p. 1.A.13.4.a

(5) Goodrich, Leland et al., Op. Cit, pp.478-487

(6) Andemicael, Berhanykum, Op. Cit, p.125

it refused to enter into a Trusteeship Agreement with the UN in conformity with Article 79 of the UN Charter, arguing that its responsibility for the Mandates had ceased to exist with the dissolution of the League of Nations<sup>(7)</sup>. It also sought to wash away the international criticism of its policies within the territory by arguing that Article 2(1) of the Mandates System empowered it with full administrative and legislative power over the territory concerned<sup>(8)</sup>. At all events, the UN General Assembly disagreed with South Africa's interpretation of the Mandates System. Therefore, the matter was submitted in 1950 to the ICJ for advisory opinion. The Court endorsed the General Assembly's position that the UN is the successor of the League of Nations in relation to the supervision of surviving mandate territories<sup>(9)</sup>. Therefore, the Mandates System persisted and continued to govern the right and duties of South Africa as the mandatory power. Nonetheless, South Africa maintained that the ICJ advisory opinions were political rather than legal in character<sup>(10)</sup>.

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( 7 ) Dugard, John, Op. Cit, pp.96-104

( 8 ) Cervenka, Zdenek, Op. Cit, p.149

( 9 ) International Status of South West Africa Opinion 1950, ICJ Report, pp.143-144

(10) Legal jurists are unanimous in their view that Advisory Opinions of the ICJ cannot be considered as legally binding. The Court itself declared with the utmost finality in its advisory opinions on Interpretation of Peace Treaties with Bulgaria, Hungary and Romania - "...it is only of an advisory character as such it has no binding force..." Consequently, it is generally recognised that an advisory opinion does not produce the effect of the *res judicata*. Nonetheless, it is not sufficient to deprive an advisory opinion of all the moral consequences which are inherent in the dignity of the organ delivering the opinion or even its legal consequences.

Consequently, two African states which were members of the League of Nations, namely Ethiopia and Liberia, in 1960 initiated a litigation against South Africa. The decision of Ethiopia and Liberia to take the matter up with the ICJ was in response to a Resolution of the 1960 Summit Conference of Independent African States and with their financial assistance. However, they contended that South Africa had consistently violated the provisions of the Mandates System in consequence of the application of the policy of apartheid in Namibia. It also failed to promote the moral and material well-being and social progress of the indigenous inhabitants of the territory concerned<sup>(11)</sup>. The judicial phase of the case came to an end on July 18th, 1966 when the Court dismissed the joint litigation by the narrowest majority of seven to seven, with the President casting a decisive vote. It ruled that the plaintiffs, Ethiopia and Liberia, could not be considered to have established any legal rights or interests appertaining to them in the subject-matter of their claims before it<sup>(12)</sup>. Otherwise, they were simply not considered competent to institute the proceedings against South Africa. Consequently, the Court frustrated the expectation of African states for a binding instruction to South Africa to cease forthwith the violation of the provisions of the Mandates, especially the introduction of

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<sup>(11)</sup> South West Africa Case (Second Phase), 1966, ICJ Report, pp.10-15

<sup>(12)</sup> Verzijl, J.H. W., The South West Africa (Second Phase), JIR, Volume 3, 1966, pp.87-97

apartheid into Namibia. The astonishing fact was that the Court did not even restate its earliest advisory opinion of 1950 which endorsed the position of the UN. Consequently, the OAU adopted its own course of action thereby instructing the African group at the UN to do its utmost to find a peaceful solution to the Namibian problem through the UN<sup>(13)</sup>. In this direction, the UN General Assembly convened on October 27th, 1966 and adopted Resolution 2145(XXI), terminating South Africa's mandate over Namibia<sup>(14)</sup>. The Resolution entrusted the UN with direct responsibility for the administration of Namibia in order to enable the people to achieve self-determination and independence. It also established an ad hoc committee of 14 members which was given the responsibility of recommending practical ways and means on how Namibia could be run under direct UN administration<sup>(15)</sup>. However, the committee examined various proposals which were submitted by the different groups and the deliberation revealed contrasting attitudes towards the respective roles of the UN and the OAU with

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(13) Concerning the imminence of a threat to international peace and security which the Namibian situation might cause, the level of agreement among the permanent members of the UN Security Council has been low until the beginning of 1972. Concerning the special responsibility of the UN for the future of the territory, the problem is one of discrepancy between the OAU demands and the moderate steps which have been taken by the UN Security Council, this having been the cause of the OAU's greatest dissatisfaction.

(14) The adoption of the Resolution by the UN General Assembly coincided with the 7th session of the OAU Council of Ministers held in October 1966 in Addis Ababa, which welcomed the action and endorsed the Resolution of the UN General Assembly.

(15) Brownlie, Ian, Op. Cit, pp.405-407



regard to Namibia. On one hand, the Soviet representative proposed that the UN should confer wide powers on the OAU in its capacity as a regional organisation. In this respect, the OAU was to inform the UN of steps being taken to promote the moral and material well-being and social progress of inhabitants towards achieving their right of self-determination and independence<sup>(16)</sup>. Accordingly, the Soviet suggestion recommended an unprecedented delegation of power to a regional arrangement and an indirect role for the UN to expel South African administration from Namibia. At the same time, the Soviet representative rejected the proposal of establishing a UN body to assume direct administrative responsibility in the territory. At all events, the Soviet proposal was rejected by the majority which maintained that it was the UN responsibility to carry out this difficult task which was beyond the limited capabilities of the OAU. Therefore, the African proposal requested the establishment of a UN Council for Namibia which would run the territory with the help of a commissioner to prepare the people for self-determination and eventual independence. The Council would have at its disposal a UN police force in order to maintain law and order in the territory concerned. At the same time, any action by South Africa to frustrate or obstruct the Council's task in any way,

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(16)

Andemicael, Berhanykum, Op. Cit, p.126

would be regarded as an act of aggression against the people and the territorial integrity of Namibia. Therefore, if such an action did occur, the UN Security Council could call for enforcement measures under Chapter VII of the UN Charter<sup>(17)</sup>. It would appear that African states preferred a peaceful settlement to the problem of Namibia which would be sought exclusively through the UN machinery. At all events, Western members in the committee, i.e. the United States, Italy and Canada, maintained through various emphasis on the UN direct responsibility, thereby they mentioned that they could not support the African suggestion. Instead of the establishment of a provisional UN administration in the territory, they proposed that the UN should designate a three-member Council and special representative for Namibia. The Council would be responsible for surveying the economic and political situation in the territory. It would also be responsible for establishing all contacts which the special representative might consider necessary in consulting the people of the territory concerned. Moreover, it would be authorized to determine the appropriate conditions that would enable the people concerned to achieve their right of self-determination and independence<sup>(18)</sup>. Accordingly, any form of alien administration of the territory concerned was unacceptable. In the last resort, a compromise was tabled by the Latin American members who proposed a plan resembling the above-mentioned three proposals, but ignored the establishment of an international police force and the enforcement measures by the UN Security Council. Nonetheless,

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(17) Ibid pp.126-127

(18) Ibid p. 127

the proposal mentioned consultation with South Africa which was unacceptable to the majority<sup>(19)</sup>. In consequence, no agreement could be reached, so the four proposals were referred to the fifth special session of the UN General Assembly. However, the African proposal which had already been endorsed by the OAU was acceptable to the UN General Assembly with minor modification. Accordingly, it was adopted as Resolution 2248(IV) by a vote of 85 to 2, Portugal and South Africa against it and 30 abstentions<sup>(20)</sup>. However, African, Asian and Latin American states voted in favour while most of the states that were capable of exerting influence on South Africa, were among those abstaining. Thus, the attitude of these states cast doubt upon the role of the established Council for Namibia. At all events, the Council created on May 19th, 1967, and empowered to administer the territory which in the following year renamed the territory as Namibia. Subsequently, in 1974 it established the office of the UN High Commissioner in order to strengthen its legal authority over the territory<sup>(21)</sup>. Despite this fact, a problem of immediate concern for the Council was the measures being taken by South Africa to implement the 1964 Odendaal Commission's recommendations<sup>(22)</sup>.

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(19) Ibid p.127

(20) Whiteman, Marjorie, Digest of International Law, Volume 13, pp.766-767

(21) Cervenka, Zdenek, Op. Cit, p.150

(22) The Commission recommended separate development of ethnic homelands. Accordingly, South African government accelerated the implementation of its separate development policy in Namibia by a number of acts designed to give effect to the Odendaal Commission's recommendation. Therefore, South African Parliament passed the acts for the development of self-government for native nations in Namibia. The acts restricted the different groups in Namibia to exist, each within its own area and its own political system.

It recommended the transfer of the legislative and administrative powers from the local government in Namibia to the government of South Africa. It also recommended the establishment of ethnic-based separate homelands with nominal self-government for the black population<sup>(23)</sup>. Thus, the measures involved forcible relocation of large numbers of the black population. This was also accompanied by the arrest and sentence of several Namibians alleged to have participated in guerrilla activities in Ovomboland, the region designated to become the ethnic homeland<sup>(24)</sup>. As a result, the OAU instructed the African group at the UN to intensify its efforts at inducing the UN to take appropriate measures to prevent South Africa from carrying out its insane action. Consequently, the UN General Assembly called upon South Africa to desist from applying its new policy and to release the prisoners immediately, but the latter state ignored such requests. At the same time, the UN Security Council warned South Africa that unless the prisoners were promptly released, it would urgently meet in order to determine appropriate measures in accordance with the relevant provisions of the UN Charter<sup>(25)</sup>. In spite of the firm attitude of the UN, South Africa sentenced to death in February 1968, 33 of the 37 prisoners on charges of terrorism. It also

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(23) Ymozurike, U.O., International Law and Self-Determination in Namibia, JMAS, Volume 8, 1970, pp.594-596

(24) Ibid p.595

(25) Whiteman, Marjorie, Op. Cit, p.768

frustrated and obstructed an attempt by the Council of Namibia to enter the territory concerned in order to investigate and report the events to the UN<sup>(26)</sup>. Therefore, the UN General Assembly convened on June 11th, 1968 at the request of the African group which adopted Resolution 2272(XXII) declaring the continued presence of South Africa in Namibia as an occupation which constituted a grave threat to international peace and security. It also called upon all member states to take effective economic and other related measures against South Africa in order to ensure the immediate removal of the latter state's measures from the territory concerned. Moreover, it asked the UN Security Council to consider the matter urgently in order to take appropriate measures in conformity with the provisions of the UN Charter<sup>(27)</sup>. Despite the urgent request, the Council did not respond fully to all aspects of the problem until March 1969 when the latter adopted Resolution 264 by a vote of 13 to none, with the UK and France abstaining. It has

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(26)

Andemicael, Berhanykum, Op. Cit, p.128

(27)

Whiteman, Marjorie, Op. Cit, p.767

recognised the fact that the UN General Assembly assumed direct responsibility thereby approaching the ICJ on July 29th, 1970 for an advisory opinion on the legal consequences of the continued presence of South Africa in Namibia<sup>(28)</sup>. It also called upon South Africa to withdraw its administration from Namibia in order to put an end to its occupation of the territory<sup>(29)</sup>. At the behest of the Security Council, the ICJ delivered, on June 21st 1971, the following opinion:-

(i ) "....the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the territory,

(ii ) that member states of the UN are under obligation to recognise the illegality of South Africa's presence in Namibia and to refrain from any acts and in particular any dealing with the government of South Africa implying recognition of the legality of or tending support or assistance to such presence and administration,

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(28) In this respect, South Africa contended that the Resolution of the Security Council which requested the advisory opinion was invalid. Therefore, the Court had no competence to deliver the opinion. The reason why the Resolution was invalid was because two permanent members of the Security Council abstained. Consequently, the Resolution was not adopted by an affirmative vote of nine members, including the concurring votes of the permanent members as required by Article 27(3) of the UN Charter. However, a customary rule in the voting of the Security Council has emerged which established that positions taken by members, in particular its permanent members, of voluntary abstention as not constituting a ban to the adoption of Resolutions. Therefore, abstention by a permanent member does not signify its objection to the approval of what is being proposed. Consequently, this does not prevent the Council from adopting a Resolution requiring the concurring vote of the permanent members.

(29) Brownlie, Ian, Op. Cit, pp.410-411

(iii) that it is incumbent upon states which are not members of the UN to give assistance within the scope of sub-paragraph (2) above in the action which has been taken by the UN with regard to Namibia....(30).

At all events, South Africa refused to implement the Court's ruling arguing that the new status of Namibia had no effect on its control over the territory concerned. As a result, the OAU instructed the African group at the UN to request an urgent meeting of the Security Council in order to consider ways and means of implementing the UN Resolutions in the light of the legal obligations enshrined in the ICJ's advisory opinion. However, South Africa has continued to defy the UN Resolutions and the ICJ advisory opinions in consequence of the lack of agreement in the Security Council for taking effective measures against South Africa. Under these circumstances, the OAU decided to despatch a mission under the Chairmanship of the Assembly of Heads of State in order to make a maximum impact on the proceedings at the Security Council regarding Namibia. The OAU's Mission demanded the application of the provisions of Chapter VII of the UN Charter but its request did not secure sufficient support in the Council. The Western permanent members, the United States, the UK and France, pointed out that they would not support any measures under Chapter VII against South Africa. They also maintained that they would support any measures which would take a realistic view of the situation, consistent with the UN's capabilities<sup>(31)</sup>. Therefore, the OAU should encourage

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(30) Legal Consequence for States of the Continued Presence of South Africa in Namibia (SWA) in 1971, ICJ Report, p.58

(31) Andemicael, Berhanykum, Op. Cit, p.120

a course of action based on the existing area of agreement and one that could be backed by the full weight of the Council's undivided authority. In this direction, the Council established an ad hoc sub-committee in January 1970, entrusted with recommending ways and means whereby the relevant Resolutions of the Council could be effectively implemented<sup>(32)</sup>. In conformity with the committee's recommendation, the UN Security Council decided to request the ICJ to give a further advisory opinion on the legal consequence for other states of the continued presence of South Africa in Namibia. Simultaneously, the Council called upon member states to end existing diplomatic, consular and other relations with South Africa so far as these apply to Namibia<sup>(33)</sup>. Despite the moderate language used in this Resolution, the UK and France continued to abstain, thereby the OAU felt that there was a slight retrogression in the position of the UN Security Council concerning Namibia<sup>(34)</sup>. Under these circumstances, the

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(32) Whiteman, Marjorie, Op. Cit, p.760

(33) Cervenka, Zdenek, Op. Cit, p.150

(34) When the OAU was established many member states did not understand how the UN worked. They believed that the OAU could pressure the UN into taking enforcement measures within Chapter VII of the UN Charter against South Africa, on behalf of the oppressed African people. It took almost two years for the OAU and its member states to understand that the UN Security Council as presently structured, is reluctant to take such action above-mentioned, against Southern African regimes. This fact became clear when the OAU endeavoured to pressure the UN Security Council to act on Rhodesia and Namibia, two of the clearest cases that came under the jurisdiction of the UN. But, the OAU found the Council unwilling to act, except to pass Resolution after Resolution supporting the African majority rule in those countries.



African group at the UN intensified its diplomatic efforts thereby the UN Security Council convened and adopted a resolution calling upon South Africa to withdraw its administration from Namibia. It also decided that in the event of South Africa's continued refusal to comply with the Resolution, the Council would immediately meet to consider the appropriate measures, in conformity with the relevant provisions of the UN Charter<sup>(35)</sup>. As expected, the UK and France abstained because they felt that it was unwise for the UN Security Council to pass Resolutions which were eventually bound to remain ineffective. They also questioned the legality and wisdom of the UN withdrawing unilaterally, the mandate from South Africa. Moreover, they maintained that even if the UN was the heir to the League of Nations, it could not in matters concerning the Mandates System, overstep the authority invested in the League of Nations<sup>(36)</sup>. Thus, the position of these states cast some doubt upon the effectiveness of the measures adopted by the UN Security Council. Consequently, South Africa continued its refusal to co-operate, thereby the Council convened again at the request of the African group and adopted, on August 12th 1969, Resolution 269 by a vote of eleven to none, with abstention by the United States, the UK, France and Finland. The Resolution described South Africa's presence in Namibia as an occupation which constituted an aggressive encroachment upon the authority of the UN and a violation of the territorial

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(35) Brownlie, Ian, Op. Cit, p.413

(36) Andemicael, Berhanykum, Op. Cit, p.128

integrity of Namibia. It also declared that if South Africa failed to withdraw its administration from Namibia before October 4th, 1969, the UN Security Council would meet immediately to determine the appropriate measures in conformity with the relevant provisions of the UN Charter. Moreover, the Council recognised the legitimacy of the struggle of the Namibian people against South Africa's occupation. Furthermore, it requested all member states to render moral and material aid to Namibian liberation movements in their struggle for freedom and independence<sup>(37)</sup>. Subsequently, the Council met and adopted an Afro-Asian draft Resolution, whereby it endorsed the ICJ advisory opinion. The Resolution also declared that any further refusal by South Africa to withdraw from Namibia could create conditions detrimental to the maintenance of regional peace and security. Moreover, the Council requested the ad hoc committee on Namibia to review and report on all treaties and agreements with South Africa concerning Namibia which were contrary to the provisions of the UN Resolutions. Furthermore, it called upon all member states to refrain from any relationships which might imply recognition of South Africa's authority over the territory concerned<sup>(38)</sup>. As indicated earlier, the UK and France abstained and once again argued that the UN General Assembly's Resolution had no validity to terminate the mandate of South Africa over Namibia. They also

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(37) SC Res 269 August 12th, 1969

(38) Panhuys, H.F. van et al., Op. Cit, p. 1.A.13.4.h.

maintained that the appropriate course of action would be to call upon South Africa to fulfill its obligations to negotiate in good faith with the UN in order to establish an international regime that would enable the Namibian people to exercise their right of self-determination. Moreover, they stressed that it was by dialogue rather than confrontation that progress could be made in promoting the Namibian interests and safeguarding the prestige of the UN<sup>(39)</sup>. In this direction, those states suggested that the UN Security Council should give careful consideration to the OAU's appeal for a UN initiative. Accordingly, the Council responded by asking South Africa to get in touch with the UN Secretary General in order to negotiate an agreement on the establishment of a provisional international regime that would enable the Namibian people to exercise their right of self-determination<sup>(40)</sup>. Despite this fact, South Africa remained unmoved by the diplomatic efforts of the UN Secretary General, thereby the OAU requested the UN Security Council to hold a special session on African questions in an African capital. Accordingly, the Council met, on January 28th, 1972 at Addis Ababa, which adopted an African draft Resolution by a vote of

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(39) Andemicael, Berhanykum, Op. Cit, p.131

(40) Voster in his 1971 talks with Waldheim and Escher, mentioned that no more than a ten-year plan for eventual independence without commitment by his government. Waldheim had also extensive discussions with representatives of ethnic and political groups in Namibia which had clearly confirmed that the overwhelming majority of the opinion consulted, was in favour of immediate independence.

fourteen to none with the People's Republic of China not participating in the voting. Resolution 309 called upon the parties concerned to initiate contacts with a view to creating the necessary conditions in order to enable the Namibian people to exercise their right of self-determination and independence. It also called upon South Africa to co-operate fully with the UN Secretary General in order to establish an international regime that would enable the people of Namibia to exercise their right to self-determination<sup>(41)</sup>. As mentioned earlier, China did not participate in the voting because it felt that the draft Resolution did not enshrine an immediate independence for Namibia, whilst the UK and France gave the draft Resolution strong support, since it conformed with the approach they had been advocating. On the other hand, the OAU member states decided to support the draft Resolution because they believed that unanimity in the Council would bring about diplomatic pressure that might persuade South Africa to negotiate in good faith<sup>(42)</sup>. Therefore, if the new approach failed to produce positive results, the consequences might clear the ground for an eventual intervention by the UN Security Council. The proceedings of the Addis Ababa session of the UN Security Council on Namibia marked a considerable progress in the sense that the OAU found common ground with the UK and

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(41) ACR 1972-73, p. C24

(42) Manning, C.A.W., The South West Africa Cases, Personal Analysis, JIR, Volume 3, 1966-71, pp.98-107

France in endeavouring to find a peaceful settlement. Thus, the new approach involved consultations with the Namibian people as well as negotiations with South Africa for the purpose of establishing the appropriate conditions for self-determination. In this direction, the UN Secretary General visited, on March 6th 1972, a number of African capitals as well as Namibia and had intensive discussions with the authority of the states concerned, as well as with representatives of ethnic and political groups in Namibia. The conclusion reached from the discussion with the Namibian people confirmed that the overwhelming majority were in favour of the immediate abolition of South Africa's homelands policy, withdrawal of its administration, the preservation of Namibia's territorial integrity and its accession to national independence. In contrast, the UN Secretary General's efforts did not produce complete and unequivocal clarification of South Africa's position towards self-determination and independence for Namibia. However, South Africa maintained that on the basis of the present development of the population as a whole, the territory might need ten years to be ready to exercise its right to self-determination<sup>(43)</sup>. In the course of the efforts of the UN Secretary General, the South African government had officially proclaimed two homelands, Ovomboland and

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Seiler, John, South Africa in Namibia, Persistent Misperception, Ultimate Failure, JMAS, Volume 20, 1982, p.693

Kavangaland as self-governing regions. It also established an Advisory Council for these areas, consisting of members of the homelands administration but excluding representatives of Namibian political parties<sup>(44)</sup>. Thus, this action convinced not only the OAU, but several other states, that further continuation of those contacts with South Africa might be detrimental to the interests of the Namibian people. The latest attitude had seriously questioned the good faith of South Africa in the contacts with the UN Secretary General<sup>(45)</sup>. In fact, it used the dialogue to neutralize the termination of the mandate, thereby consolidating its presence in the territory. As a result, the OAU as well as the UN Council for Namibia, urged the UN Security Council to put an end to those contacts and to adopt a firm attitude towards securing that the only acceptable contacts should be aimed at the transfer of power from South Africa to the UN Council for Namibia. However, the OAU request was met by the UN General Assembly Resolution which was adopted on November 28th, 1973, asking the UN Secretary General to end contacts with South Africa. At the same time, the Resolution

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(44) Ymozurike, U.O., Op. Cit, p.594

(45) A peaceful solution of the international conflict over Namibia had been a significant preoccupation of the Western contact group, but neither the efforts led by them, nor the efforts taken by the UN Secretary General had succeeded. Some responsibility must go to the UN, but a much larger share rests with the Western contact group.

reaffirmed the legitimacy of the struggle of the Namibian people for freedom and independence. It also recognised the South West African People's Organisation (SWAPO)<sup>(46)</sup> as the authentic representative of the Namibian people<sup>(47)</sup>. Subsequently, the OAU diplomatic offensive against South Africa over Namibia entered a new stage when its front-line member states took the initiative in 1974 to find a mutually acceptable solution to the Namibian problem. In this direction, they instructed the African group at the UN to intensify its efforts at the UN Security Council to secure South Africa's recognition of Namibian territorial integrity. Consequently, it had to take the necessary steps to transfer power in the territory to the people of Namibia with the UN assistance. Thus, the Council convened on December 13th, 1974 and adopted a Resolution giving South Africa six months to withdraw its administration and troops from Namibia<sup>(48)</sup>. Despite this fact, South Africa's response dashed all hopes for the early independence of the territory, by reaffirming its old position. In this direction, it proceeded with the implementation of its blueprint for Namibia's independence

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(46) In this respect, on January 17th 1975, SWAPO subsequently issued a statement in Lusaka declaring its conditions for negotiations with South Africa on the future of Namibia. Nonetheless, South Africa ignored the offer, thereby the OAU determined to increase its aid to the Namibian liberation movements in order to intensify the armed struggle for the liberation of their country.

(47) Cervenka, Zdenek, Op. Cit, p.151

(48) Ibid p.153

by convening, in September 1975, a Constitutional Conference at Windhoek. The Conference was attended by 156 delegates drawn from eleven ethnic groups which approved a Declaration of Intent. The latter provided for an all-white administration which committed itself to drawing up an independence Constitution within three years<sup>(49)</sup>.

However, the Declaration was drafted by the white-ruling National Party, while SWAPO and the Namibian National Convention (NNC) were excluded from the Conference. The Conference ended on August 18th, 1976 by reaching an agreement providing for a multinational government leading to independence for Namibia on December 31st, 1978<sup>(50)</sup>.

At all events, the Summit of the OAU Assembly held on July 3rd, 1976 at Port Louis, condemned the Constitutional Conference as a rubber-stamping of the policy of so-called Bantustans homelands<sup>(51)</sup>. In spite of the OAU's firm attitude, South Africa went ahead with its plans, which

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(49) Seiler, John, Op. Cit, pp.694-696

(50) The Constitution was approved on March 18th, 1977 by the plenary session of the Turnhalle Constitutional Conference. It described the territory not as Namibia, but as South West Africa and as a republican democratic state which recognised the principle of free enterprise. The Constitution provided for the protection of fundamental rights and gave an assurance on the equality of all people before the law. Nonetheless, the Constitution did not touch upon the discriminatory laws of South Africa which remained valid. The political parties or groups, with a Marxist-Leninist ideology were prohibited, as being enemies of the state. Finally, the structure of the government under the Turnhalle Constitution was based on the government of eleven ethnic groups.

(51) ACR 1976-77, Op. Cit, p. C20



enjoyed the support of the American Administration. Under these circumstances, the OAU went to the UN General Assembly which, on December 20th 1976, adopted a Resolution endorsing the OAU position. At the same time, it recognised the armed struggle as a legitimate means of attaining Namibian independence<sup>(52)</sup>. In consequence of the firm attitude adopted by the UN, the Namibian white population began to have their doubts about the viability of the Turnhalle Constitution on which they were requested to vote in a referendum on May 17th, 1977. This became obvious when the five Western Contact states namely, the United States, the UK, France, West Germany and Canada informed the South African government in April 1977 that the Turnhalle Constitutional arrangements were unacceptable<sup>(53)</sup>. Instead, they suggested that they would support a settlement in line with the UN Resolutions and demanded the withdrawal of South Africa's police and army from Namibia and the holding of free national elections under the UN supervision. They also requested South Africa to repeal its discriminatory laws, to release national political prisoners and to permit participation of SWAPO in the election for independence<sup>(54)</sup>. As a result, the OAU described the efforts of the Western Contact states on Namibia as a positive approach which

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<sup>(52)</sup> The five Western governments were upset by this initiative, therefore decided to despatch their Foreign Ministers, led by Secretary of State Cyrus Vance, to Pretoria in September 1978 in an attempt to persuade the newly-appointed Prime Minister Botha to think again, but their efforts failed.

<sup>(53)</sup> Young, Andrew, The United States and Africa, Victory for Diplomacy, JFA, Volume 59, 1980-81, p.660

<sup>(54)</sup> Ibid pp.660-662

would lead to the full implementation of the UN Resolutions on Namibia. Subsequently, the American Vice-President met, on May 20th 1977, with the South African Prime Minister in Vienna in order to find a mutually acceptable solution to the Namibian problem. These negotiations were deadlocked by South Africa's intransigent position by which it was determined to maintain its control over Walvis Bay, Namibia's only deep water port<sup>(55)</sup>. The OAU made it clear that Walvis Bay is an integral part of Namibia and as such, not negotiable. Thus, the OAU reached the conclusion that Namibia's independence would be achieved by the same means as that of Zimbabwe. Under the circumstances, the white-ruling National Party was split over the issue of Walvis Bay thereby the Republican Party emerged, pledged to co-operate with black Turnhalle participants in a federation arrangement. In this direction, a settlement was reached in mid-1978 when a transition plan was accepted initially by South Africa and subsequently by SWAPO. Consequently, the UN Security Council was called to ratify the agreement, but it revealed an ambiguity that was sufficient to upset the process of decolonisation. Therefore, the contact group and the OAU frontline states' draft Resolution was adopted which called upon South Africa and an independent Namibia to settle the status of Walvis Bay before commencing the process of decolonisation<sup>(56)</sup>.

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(55) ARB, Volume 14, No.5, June 15th, 1977, pp.4444-4446

(56) Cervenka, Zdenek, Op. Cit, p.155

Hence, South Africa conducted a series of bilateral administrative and political steps in Namibia which were in contravention with the latest UN Security Council Resolutions. In this direction, South Africa declared the establishment of a constituent assembly in December 1978, in order to carry on the work of the Turnhalle Conference. As a result, the five Western countries in the contact group were upset by South Africa's latest initiative. Thereupon they decided on September 19th, 1978, to despatch a mission of their Foreign Ministers led by the American Secretary of State in an attempt to persuade the South African government to abide by the latest Resolution of the UN Security Council<sup>(57)</sup>. Nonetheless, South Africa went ahead with its decision to hold the Assembly election, but simultaneously continued to negotiate with the contact group and the UN. However, the process of decolonisation was slackened during 1979 and 1980 in consequence of the breakdown in negotiations and South African suspicion of the proposal of the contact group transmitted to it<sup>(58)</sup>. The proposal introduced a plan for a demilitarized zone on South Africa's border with

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(57) ARB, Volume 16, No.7, August 15th, 1978, p.4935

(58) In August 1979, the contact group designated Sir James Murray, the UK Ambassador to South Africa as its spokesman, hoping that the symbolic relations of the United States Ambassador to the UN, Donald McHenry, who had become the focus of South African disgruntlement, might encourage the South African government to be more forthcoming. As it turned out, the South African government made some early gestures of interest but nothing came of them, leaving the UK government disillusioned about taking the lead again.

Namibia in order to break the negotiatory deadlock. The proposal was acceptable to the OAU frontline states and SWAPO, but the contact group discerned that South Africa should be given a brief period of time in order to study the plan<sup>(59)</sup>. Subsequently, South Africa proposed a pre-implementation meeting outside the UN framework to deal with substantive issues, notably the constitutional protection of minority rights. Accordingly, a multilateral Conference was set for January 7th, to 14th, 1981 in Geneva, but none of the black parties such as SWAPO, SWANU, the NNF or the newly-formed National Independent Party (NIP) took part in the Geneva Conference owing to their refusal to participate under the aegis of the South African government<sup>(60)</sup>. Despite this fact, the OAU frontline states offered, on January 10th 1981, conciliatory gestures to South Africa in order to secure its immediate acceptance of the ceasefire arrangement on March 31st, 1981 to be followed by transition to independence sometime in 1982. They also suggested that negotiations concerning constitutional protection for the minority would be completed before the election took place. At this stage, several participants endeavoured to elicit the support of the American Administration in order to prod South Africa into accepting the proposal, but these efforts failed<sup>(61)</sup>. Consequently, the Conference failed and South Africa felt sure that neither political nor

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(59) Seiler, John, Op. Cit, p.698

(60) ARB, Volume 18, No.1, February 15th, 1981, p.5940

(61) Ibid p.5942

economic pressure was imminent from the West. Subsequently, the United States put forward proposals for Namibian independence which gave central attention to the South African preoccupation with constitutional protection for the minority in an independent Namibia. It provided for a bill of rights, an independent judiciary and protection against expropriation of property. It also contained provisions which outlined the general format for the constituent assembly elections. Moreover, it provided for guiding principles in order to ensure fair representation in the legislative to different political groups representing the Namibian people<sup>(62)</sup>. It would appear that the American proposals for a settlement were designed to weaken SWAPO's chances of winning the two-thirds majority in the assembly, required to remove constitutional protection. Thus, SWAPO rejected the American proposals for a constitutional arrangement, arguing about its complexity while South Africa immediately accepted it. On the other hand, the OAU frontline states rejected the American proposals for a settlement on the grounds that it would enable a party with only 2% of the total vote to gain an assembly seat via the proportional representation envisaged in it. As a result, the American Administration decided to leave the settlement to the South African Administrator-General to find a mutually acceptable solution to the problem<sup>(63)</sup>. At the same time, it insisted on

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<sup>(62)</sup> ARB, Volume 18, No.6, June 15th, 1981, pp.6052-6053

<sup>(63)</sup> Ibid p.6053

the simultaneous withdrawal of South African troops from Namibia and the Cuban troops from Angola. Under these circumstances, the Namibian decolonisation process stayed on the same course, thereby the National Assembly made no progress in desegregation of facilities. But, the local administration continued in 1982, nationalizing the defence and police forces, but volunteer recruitment of blacks proved inadequate. Thereupon, compulsory registration for national service was declared, but the black reaction was negative since young blacks had no desire to fight against SWAPO and many of them fled the country to neighbouring OAU states<sup>(64)</sup>. This made South Africa intensify its standing commitment to periodic raids into OAU neighbouring states. At the same time, it made vigorous attempts to build a broader anti-SWAP0 political coalition in Namibia in order to keep it away from power<sup>(65)</sup>. Thus, South Africa believed that SWAPO had been definitely damaged as a military factor by repeated pre-emptive raids into neighbouring OAU member states. Moreover, its political strength was likewise reduced by South Africa's broader anti-SWAP0 political efforts in Namibia. It would appear that SWAPO is South Africa's PLO, so Israel's massive invasion of Lebanon in 1982 gave great encouragement to the South African government for its own similar approach to SWAPO.

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<sup>(64)</sup> At this stage the Namibian economy remained stagnant and investment by international corporations had ceased. The production of uranium, diamonds and copper had been badly hurt by deep cuts in international demands. Consequently, the economic down-turn in Namibia forced sharp stops in business and income. Moreover, the economic recession in South Africa has forced its government to look hard at its subsidization of the Namibian regime, including military and police costs. Therefore, the war against SWAPO remained at a low level, punctuated by periodic intensive raids into Southern Angola.

<sup>(65)</sup> ARB, Volume 18 No.7, August 15th, 1981, pp.6120-6122

THE OAU COLLECTIVE MEASURES AGAINST SOUTH AFRICAN  
APARTHEID POLICIES:

The South African government had by 1944 embarked on the policies of apartheid which were described by its architect, Prime Minister Melan, as the way to ensure the safety of the white role and of Christian civilization<sup>(1)</sup>. Since then it has pursued the implementation of such policies by forcing the removal of thousands of families, in the process of reversing the development of a multiracial society. However, the policies have been considered by the UN General Assembly in one form or another since 1946, when it requested the government of South Africa to abandon forthwith such policies<sup>(2)</sup>. But, it was only after the Sharpeville Incident of 1960, which resulted in a large-scale shooting of peaceful anti-apartheid demonstrators, that the policies became the centre of UN concern<sup>(3)</sup>. Consequently, the UN Security Council convened in April 1960 at the request of African and Asian groups at the UN, and adopted Resolution 134

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(1) Cervenka, Zdenek, Op. Cit, p.110

(2) In 1959 South Africa's government embarked on a policy of leading the country's homelands to independence. The homelands or the tribal areas which comprised about 13% of South African territory, began to be thought as the political homes for the country's entire African population. But, the UN condemned this form of decolonisation which constituted a flagrant violation of human rights and misinterpretation of the principle of self-determination. Despite opposition from the UN and the OAU, the South African government went ahead with its policy. Subsequently, the Yhosa homeland became independent in 1976 as the Republic of Transkei. A year later, Tswana homeland became the Republic of Bophuthatswana with even less enthusiasm.

(3) Brownlie, Ian, Op. Cit, pp.425-426

by a vote of nine to none with the UK and France abstaining. The Council declared that the South African policies of apartheid had led to international friction whereby their continuation might endanger international peace and security<sup>(4)</sup>. Thus, the Security Council Declaration overrode, for the first time, the South African argument that its apartheid policies were matters of domestic jurisdiction. Thereupon, African states have subsequently endeavoured to persuade the UN Security Council to define the apartheid policies as constituting a threat to international peace and security whereby the Council would have to apply enforcement measures under Chapter VII of the UN Charter. At the same time, the African group intensified its efforts at the UN General Assembly which adopted Resolution 1761(XVII) in November 1962, by a vote of 67 to 16 with 20 abstentions<sup>(5)</sup>. The Resolution largely resembled one that was adopted by the Conference of Independent African States held in June 1960<sup>(6)</sup>. In any event, the Resolution requested all member states of the UN, separately or collectively to apply diplomatic and economic sanctions as well as an arms embargo against South Africa. It also set up a Special Committee entrusted with the responsibility of keeping South African policies of apartheid under constant review<sup>(7)</sup>. Following the establishment of

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(4) Ibid p.426

(5) Ibid p.426

(6) Andemicael, Berhanykum, Op. Cit, p.134

(7) Brownlie, Ian, Op. Cit, pp.427-428



the OAU in May 1963, an early meeting of the UN Security Council was requested by the African group at the UN with the hope that the Council would apply the same measures as those recommended by the UN General Assembly<sup>(8)</sup>. At the same time, the OAU despatched a mission of four Foreign Ministers to the UN Security Council's meeting in order to explain to its members how the OAU saw the situation in South Africa. Thus, the mission conveyed to the Council that the OAU regarded apartheid as a threat to international peace and security. Nonetheless, the government of South Africa had no intention of abandoning its policies of apartheid. Consequently, the OAU would not sit passively when an African population was subjugated to sub-human level by the South African

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(8) The OAU founding Conference took place in Addis Ababa taking inspiration from the UN General Assembly Resolution 1761(XVII) adopted the previous year. The OAU Resolution requested the UN to take appropriate measures under Chapter VII of the UN Charter in order to force the South African government to abandon its racist policies. The OAU Resolution proposed the following measures:-

- (1) breaking off diplomatic relations with the government of South Africa or refraining from establishing such relations;
- (2) closing their ports to all vessels flying the South African flag;
- (3) enacting legislation prohibiting their ships from entering South African ports;
- (4) boycotting all South African goods and refraining from exporting goods, including all arms and ammunition to South Africa;
- (5) refusing landing and passage facilities to all aircraft belonging to the government and companies all under the law of the Republic of South Africa.

The OAU also made identical demands to its member states and requested them to apply these measures as soon as possible.

government. Therefore, the OAU mission requested the UN Security Council to follow its example by implementing the UN General Assembly Resolution 1761(XVII) of 1962<sup>(9)</sup>. Thus, the OAU initiative was the beginning of its sustained diplomatic offensive at the UN against South Africa with two objectives as follows:-

(i ) to persuade the UN member states that the situation in South Africa constituted a threat to international peace and security whereby the Security Council should resort to enforcement measures envisaged in Chapter VII of the UN Charter. Such measures might range from an economic blockade to military intervention by the UN force in order to put an end to South African policies of apartheid;

(ii) to put South Africa into an isolated position in the international community and endeavour to convince the UN member states of the validity for its expulsion from the UN and all other international organisations.

These objectives were only partially achieved in the UN Security Council meetings of 1963 and 1964 because the main OAU preoccupation was thereafter shifted to the situations in Southern Rhodesia (Zimbabwe) and South West Africa (Namibia). Nonetheless, the OAU has maintained its efforts at the UN and endeavoured to persuade the UN member states that the South African policies of apartheid

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(9) Krishnan, Maya, Op. Cit, pp.212-214

are a negation of the UN Charter thereby constituting a crime against humanity. Therefore, the explosive situation in South Africa resulted from the inhuman and aggressive policies of apartheid which disturbed international peace and security and was still the main concern of the UN. Thus, the OAU attempts at convincing the members of the UN Security Council, particularly those permanent members, to do their utmost to ensure that the Council would firmly call upon South Africa to abandon its policies of apartheid. In the event of South Africa failing to abandon such policies and releasing all political prisoners, the Security Council would request all states to take the following measures against the recalcitrant government:-

(i ) an arms embargo including a stop of all aid to South Africa's growing armaments industry;

(ii ) severance of diplomatic, consular and other official relations with South Africa;

(iii) comprehensive mandatory economic sanctions including the breaking off of all transport and communications<sup>(10)</sup>.

In this direction the African group at the UN was able to win support from the majority of the Security Council

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(10) African states feel that the practice of the policies of apartheid constitute a threat to international peace and security. They could no longer stand by in silence while their African brothers in the Republic of South Africa suffered tragic oppression. African states had never wished to meet violence and racism with violence, but it would be the last practical solution to the problem. The African states have not so far contemplated armed intervention in South Africa because it would not be successful without direct help from the major Western powers.

members except the UK and France who maintained that it would be unwise to adopt such unrealistic measures. Consequently, the UK and France abstained in the voting of a Resolution calling upon all states to halt the sale and shipment of arms, ammunition and military vehicles to South Africa<sup>(11)</sup>. However, this was a non-mandatory ban which was expanded in the Security Council meeting of December 1963 to include equipment and material for the manufacture and maintenance of armaments. These measures envisaged in Resolution 182, 1963 which was adopted unanimously reaffirming that the situation in South Africa was seriously disturbing international peace and security. It also established a group of experts entrusted with the responsibility of examining ways and means of solving the problem caused by the South African policies of apartheid<sup>(12)</sup>. When the UN Security Council convened in June 1964 at the request of the African group, the most it could do was to set up a committee of experts composed of its members. The committee was entrusted with the responsibility of undertaking a technical and practical study of the feasibility, effectiveness and implementations of such proposed measures which would appropriately be taken by the Security Council under the provisions of the UN Charter. However, the committee reported to the Council that it was unable to reach an agreement thereby its failure to recommend a common conclusion had undermined the chances of consensus at the level of the Council<sup>(13)</sup>. Under these circumstances, the

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(11) Brownlie, Ian, Op. Cit, p.429

(12) Ibid p.430

(13) Andemicael, Berhanykum, Op. Cit, p.135

OAU Assembly of Heads of State renewed its request to the OAU member states to apply economic sanctions against South Africa independently of the UN Security Council, but in line with the UN General Assembly Resolution 1761(XVII)<sup>(14)</sup>. Thus, the OAU proceeded through its Secretariat's Bureau of Economic Sanctions to co-ordinate the application and implementation of relevant OAU Resolutions<sup>(15)</sup>. At the same time the OAU requested its member states to campaign for similar efforts through the UN and friendly countries, to persuade the major trading partners of South Africa to sever their economic relations with the latter state. Thus, the African group at the UN sought without much success, to support the election to the membership of non-permanent members of the Security Council, those states which encouraged effective measures against South Africa, but the group carried out its mandate at the General Assembly level with considerable success<sup>(16)</sup>. Accordingly, the Assembly adopted, in December 1965, Resolution 2054(XX) which universally

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<sup>(14)</sup> ACR, 1969-70, Op. Cit, pp. C195-198

<sup>(15)</sup> The founding Summit of the OAU decided in May 1963 unanimously to co-ordinate concerted measures of sanctions against South Africa. Subsequently, the first ordinary session of the OAU Assembly established in 1964, the Bureau of Sanctions to supervise the implementation of the OAU Resolutions calling on member states to apply economic sanctions against South Africa. In February, 1966 the OAU Council of Ministers at its 6th ordinary session, was informed by the Bureau of Sanctions that after two years of supposed African sanctions against South Africa, there had been no marked progress in the implementation of the OAU Sanctions Resolutions. Many African states simply ignored the Resolution and continued to engage in economic relations with South Africa. Such disregard by the African states of the OAU Resolutions has led many people to the conclusion that the OAU could never mount a successful collective regional measures against South Africa.

<sup>(16)</sup> Andemicael, Berhanykum, Op. Cit, p.136

requested the application of economic sanctions within the framework of Chapter VII of the UN Charter. It declared that the economic sanctions were the only means to achieve a peaceful solution to the apartheid problem. It also appealed to the major trading partners of South Africa to put an end to their economic ties with the latter state. Moreover, it decided to enlarge the special Committee on Apartheid from eleven members to seventeen so as to include those states which were considered as the major trading partners of South Africa<sup>(17)</sup>. The primary purpose for the enlargement was designed to engage those states having a large share of world trade in constant discussion over the question of economic sanctions. Among those were the three Western permanent members of the UN Security Council, namely the United States, the UK and France, but none of them were willing to apply the recommended sanctions nor were they inclined to serve on the Committee<sup>(18)</sup>. Thus, the UN General Assembly became increasingly strong in its condemnation of South African policies of apartheid and in its criticism of its main trading partners whose co-operation with South Africa had an adverse effect on the UN measures. In this direction, the Assembly adopted Resolution 2396 (XXIII) in December 1968, by a vote of 82 to 2 with Portugal and South Africa against and with 14 abstentions. The Resolution described South African policies of

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(17) Brownlie, Ian, Op. Cit, p.431

(18) Kapungu, Leonard T., Op. Cit, pp.146-147

apartheid as a crime against humanity. It also called for the exercise by the people of South Africa of their right to self-determination in order to attain majority rule based on universal suffrage. Moreover, it drew the attention of the Security Council to the grave situation in South Africa thereby requesting the Council to urgently resume the consideration of apartheid policies, with a view to taking effective measures under Chapter VII of the UN Charter<sup>(19)</sup>. Among these measures, the Council should ensure the full implementation of comprehensive mandatory sanctions in order to induce a political change in South Africa. On the other hand, the Resolution called upon all states to extend moral, political and material assistance to South African liberation movements in their legitimate struggle for freedom and independence. It also declared that all freedom fighters who were taken prisoner by the South African authorities, should be treated as prisoners of war under international law and Geneva Conventions of 1948. Finally, it authorized the Special Committee on Apartheid to conduct an intensive campaign by holding international sessions away from the UN Headquarters or to despatch a sub-committee on a mission to consult the UN Specialised Agencies, regional organisations and non-governmental organisations in order to intensify dissemination of information on the evils of apartheid<sup>(20)</sup>. Thus, the position of the UN General

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(19) Andemicaël, Berhanykum, Op. Cit, p.136

(20) Ibid p.137

Assembly was far ahead of that of the UN Security Council which had been unable to reach an agreement on the measures which should be taken against South Africa<sup>(21)</sup>. It was hardly able to obtain support for the recommended measures from all the permanent members of the Security Council. Thus, when the question of apartheid was brought before the Council in 1970 it became very difficult even to maintain the level of agreement on measures imposed in 1963 upon South Africa. The Council convened at the request of the African group at the UN to consider the problem of violation of the arms embargo, in particular the violation of categories of arms for maritime defence. The acrimonious debate over alleged violations of the arms embargo, especially by those major trading partners of South Africa, revealed that the 1963 consensus on the arms issue had largely been eroded<sup>(22)</sup>. The major trading partners maintained that arms intended for the external defence of South Africa had actually been exempted, while the embargo applied only to arms which might be used for internal repression. When the Security Council sought, in 1970, to strengthen the embargo, the United States,

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(21) Thus, it must be considered that without all these diplomatic efforts of the OAU, Western support to South Africa would have been greater and the arrogance of the regime would have been beyond defiance. At the same time, these diplomatic efforts have advanced the moral justification for the guerrilla activities of the liberation movements in South Africa. This is not to say that the world community support these guerrilla activities, but at least most states have refrained from condemning them and have chosen to be ambivalent on the general issue of using force to effect changes in South Africa. If it were not for the OAU diplomatic efforts, most probably the states would be condemning the liberation movements in South Africa.

(22) Hughes, Anthony, Arms and South Africa, ACR, 1970-71, p. A4



the UK and France abstained in the voting for a Resolution along the lines advocated by the African states.

Resolution 282 strongly condemned all violations of the arms embargo thereby calling upon all states to implement the ban unconditionally and without any reservation whatsoever. It also urged all states to strengthen the arms ban by withholding the supply of all vehicles, equipment and spare parts for the use of the armed forces and para-military organisations of South Africa. Moreover, it requested all states to revoke all licences and military patents granted to South Africa for the manufacture of arms, ammunition and military vehicles. Furthermore, it called upon states to ban economic investment, technical aid and training for military purposes and to cease all other forms of military co-operation with South Africa<sup>(23)</sup>. As indicated earlier, the United States, the UK and France abstained on the voting thus casting doubt upon the effectiveness of the arms embargo. Consequently, the OAU considered that the lack of active support from these states was a major setback at a time when there was an urgent need, not only for an arms ban, but also for economic sanctions. Despite this fact, the setback was alleviated during the UN Security Council session held in January 1972 at Addis Ababa, when an African draft Resolution relating to apartheid was adopted. Resolution 311 was passed, with active support from the UK but not France, which expressed the grave concern of the Security

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(23) Brownlie, Ian, Op. Cit, pp.435-436

Council that the situation in South Africa was seriously disturbing international peace and security. It also recognised the legitimacy of the struggle of the oppressed people of South Africa in the pursuance of their human and political rights as set forth in the UN Charter and the Universal Declaration of Human Rights. Moreover, it requested all states and international organisations to contribute generously to the UN fund used for humanitarian and training purposes to assist the victims of apartheid. Furthermore, it called upon states to observe strictly the arms ban but the Resolution refrained from reiterating the Council request of 1970 that they should cease all forms of military co-operation with South Africa<sup>(24)</sup>. Subsequently, the OAU was, in 1974, close to achieving its second objective, but South African membership in the UN was saved by the veto cast by the United States, the UK and France. When these states repeated their veto in June 1975, the African group attempted instead to secure a mandatory arms embargo against South Africa, an action under Chapter VII of the UN Charter, but its request did not find sufficient support in the Council<sup>(25)</sup>. As a result, the OAU realised that the UN Security Council, as presently structured, is reluctant to take such measures against South Africa. This fact became clear when the OAU found the UN Security Council unwilling to act, except to pass Resolutions

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(24) ACR, 1972-73, Op. Cit, pp. C25-26

(25) Hughes, Anthony, Op. Cit, p. A4

expressing great concern that the situation in South Africa was disturbing international peace and security. Therefore, the OAU began to shift its tactics in consequence of the report of its Secretary General, which revealed that the OAU anti-apartheid offensive measures were powerless and had no significant effect on South Africa. This conclusion became obvious when the findings of the International Conference on economic sanctions against South Africa, held in 1974 in London, revealed that the UN sanctions would have small and marginal effects on the state concerned<sup>(26)</sup>. Despite this fact, the OAU perceived that the UN is the only excellent platform to appeal to international conscience about the atrocities that the South African government were perpetrating against the African population. At the same time the OAU also perceived that it had a duty to marshal world support for sanctions by seeing how best its own efforts in Africa could be made effective. Therefore, it could not expect the UN to take the OAU request seriously for mandatory sanctions if its member states made no great sacrifice in these matters. Unfortunately, many of the OAU member states were still trading with South Africa and its vessels enjoyed the facilities of African ports. As a result, the OAU found it necessary in 1976 to urge those of its member states which had not yet done so, to refrain forthwith from all relations with South Africa<sup>(27)</sup>. In this

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<sup>(26)</sup> Weiss, Ruth, South Africa: The Grand African Economic Design, ACR, 1970-71, pp. A11-17

<sup>(27)</sup> Kapungu, Leonard T., Op. Cit., pp.144-145

direction, the OAU majority member states had gradually complied with the OAU collective measures against South Africa, but certain members continued to sabotage the OAU sanctions<sup>(28)</sup>. Despite this fact, the OAU put much of the blame on the Western powers whose economic ties with South Africa were responsible for the survival of that country and its apartheid policies. The OAU is fully aware of the fact that the success of its collective measures against South Africa is ultimately dependent upon the persuasion of Western powers to halt their co-operation and whose economic and military strength has a decisive say on the issue. Consequently, the OAU appealed to the Western powers to discontinue the encouragement they had given to the maintenance of apartheid by halting their investments and trade relations with South Africa. It also urged these states to maintain a strict embargo on the supply of arms and military equipment and to cease their military collaboration with South Africa<sup>(29)</sup>. However, the OAU fully realised the

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(28) Some OAU members which acted contrary to the OAU collective measures, like Malawi, who declared on September 10th 1976, the establishment of formal diplomatic relations with South Africa. In defiance of the OAU collective measures, Malawi ignored the appeals of the OAU Assembly of Heads of State which were envisaged in the Resolution of the OAU Summit which took place in Kinshasa. The Resolution also condemned the political, economic and military collaboration of the Western powers with South Africa. Moreover, the Resolution requested all OAU member states to be vigilant in boycotting South African products. The attitude of Malawi was also condemned, with Zambia taking the lead in proposing its expulsion from the OAU, but the OAU members were fairly restrained and there was even some sympathy for the attitude of Malawi from a number of OAU member states.

(29) ACR, 1970-1971, p. C4

difficulties and the magnitude of convincing these states, who are responsible for the survival of that country and its apartheid policies, to halt their economic and military ties with South Africa. Therefore, the OAU attempted to explore other possibilities based on a dual strategy on South Africa to try a peaceful approach and if that failed, then it would resume and intensify the armed struggle. In this direction, an important OAU initiative on decolonisation and apartheid in Southern Africa was formulated in the Lusaka Manifesto in April 1969 which was adopted by the Conference of East and Central African States<sup>(30)</sup>. The Manifesto was endorsed in 1969 by the Summit of the OAU Assembly of Heads of State and Government which took place in Addis Ababa. Thereafter, the Assembly entrusted its Chairman with the responsibility of presenting the Manifesto to the 24th session of the UN General Assembly. The latter adopted the Manifesto on November 20th 1969, as Resolution 2505(XXIV) which passed by a roll-call vote with 113 states in favour, 2 states against (South Africa and Portugal) and 2 abstentions (Malawi and Cuba). The

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The Lusaka Manifesto on Southern Africa was a joint Declaration proclaimed in April 1969 by the Conference of East and Central African States. The initial signatories to this Declaration were Burundi, Central African Republic, Chad, Congo, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Tanzania, Uganda, Zaire and Zambia. The Manifesto was subsequently approved by the OAU Assembly of Heads of State and Government.

Resolution described the Manifesto as an important step in the direction of the peaceful settlement to the problem of Southern Africa and recommended it to the attention of all states and peoples<sup>(31)</sup>. The Manifesto outlined the OAU objectives in Southern Africa, decolonisation and the elimination of apartheid and refuted South Africa's claims that its apartheid policies constituted an internal matter within its domestic jurisdiction. The signatories to the Manifesto elucidated their common concern with the questions of decolonisation and apartheid in Southern Africa as follows:-

"....our objectives in Southern Africa stem from our commitment to this principle of human equality. We are not hostile to the administrations of these states because they are manned and controlled by white people. We are hostile to them because they are systems of minority control which exist as a result of and in pursuance of doctrines of human inequality. What we are working for is the right of self-determination for the people of those territories. We are working for a rule in those countries which is based on the will of all the people and an acceptance of the equality of every citizen....<sup>(32)</sup>" The Manifesto further elaborated by asserting that "....the Republic of South Africa is an independent sovereign state and member of the UN...." but, while recognising that "....on every legal basis its internal affairs are a matter exclusively for the people of South Africa....<sup>(33)</sup>" It is obvious

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<sup>(31)</sup> Manifesto on Southern Africa, Lusaka Manifesto, Op. Cit, p. Introductory Note AHG/44

<sup>(32)</sup> Ibid p.6

<sup>(33)</sup> Ibid p.8

that the policies of apartheid exceed the limit of internal affairs and are of rightful concern to the international community. Under these circumstances, African aims are summed up as follows:-

(i) "....that the peoples in the territories still under colonial rule shall be free to determine for themselves their own institutions of self-government;

(ii) that the individual in Southern Africa shall be freed from an environment poised by the propaganda of racialism and given an opportunity to be men not white men, brown men, yellow men or black men.... (34)"

The Manifesto further pointed out that "....we would prefer to negotiate rather than destroy, to talk rather than kill. We do not advocate violence, we advocate an end to the violence against human dignity which is now being perpetrated by the oppressors of Africa. If peaceful progress to emancipation were possible, or if changed circumstances were to make it possible in the future, we would urge our brother in the resistance movements to use peaceful methods of struggle even at the cost of compromise on the timing of change.... (35)" It should be noted that the Manifesto constituted a departure from the OAU strategy adopted in May 1963 at the founding Summit of the OAU which banned any direct contacts with the South African government. Notably, neither the OAU Resolutions on apartheid were ever addressed nor were appeals ever made to the government of South Africa. Despite this fact,

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(34) Ibid p.8

(35) Ibid pp. 9-10

the existence of South Africa as an independent sovereign state and member of the international community was recognised by all OAU member states. In fact, the OAU collective pressures for a change in South Africa had always been advocated through the UN and those Western powers that maintained close relations with the state concerned<sup>(36)</sup>. In 1970, the member states of the Organisation Commune Africaine et Malagasse (OCAM), proposed the establishment of diplomatic relations, trade missions and an exchange of delegations with South Africa. They believed that mutual contacts between the OAU member states and South Africa would eventually cause a change of heart on the part of the South African white population, thus the contacts would bring about the end of apartheid policies<sup>(37)</sup>. The initiative was subsequently supported by the member states of the Entente Council but they maintained that they would not take an independent initiative towards South Africa without OAU approval<sup>(38)</sup>. Therefore, the challenge of the dialogue

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<sup>(36)</sup> As a matter of fact, the OAU does not possess military and economic resources to challenge South Africa decisively. Therefore, the OAU had no choice other than the UN and Western powers to advocate its collective will to bring about an end to the apartheid policies in South Africa.

<sup>(37)</sup> The proposal for a dialogue with South Africa was put forward by President Houphouët-Boigny of the Ivory Coast on November 6th, 1970. He invited African leaders to join him in launching a peace mission to assist the South African whites to enter into dialogue with their own black population. Thus, the dialogue with the South African government would encourage moderate white opinion and influential business pressure groups within South Africa to make peace with the blacks and put an end to apartheid. Nonetheless, he was cautious enough to take an independent initiative towards South Africa, therefore he maintained that he would act only in co-operation with the other OAU leaders. His initiative was designed to encounter the danger to the peace and security of the continent which he perceived to be threatened by Communism.

<sup>(38)</sup> Cervenka, Zdenek, Op. Cit, p.120



policy forced the OAU to define its attitude towards South Africa as a matter of urgency<sup>(39)</sup>. In this respect, a show-down between the supporters and opponents of dialogue occurred at the Summit of the OAU Assembly of Heads of State held on June 21st, 1971 at Addis Ababa. The Summit was preceded by the usual meeting of the OAU Council of Ministers which rejected the dialogue with South Africa, describing it as a manoeuvre by the latter state in order to divide the OAU member states. The Council eventually adopted a Declaration reiterating the commitment to the principles envisaged in the OAU Charter and pointed out that the Lusaka Manifesto was the only basis for a peaceful settlement to the problems of apartheid and decolonisation in Southern Africa. It also indicated that no member states of the OAU should initiate or engage in any type of activity that would undermine or abrogate the solemn undertakings of the OAU Charter. Moreover, it requested all OAU member states to only undertake activity that was consistent with the guidance, consent and approval of the OAU<sup>(40)</sup>. It would appear that the right of each member state to an independent opinion and independent foreign policy did not apply in the case of dialogue with South Africa<sup>(41)</sup>.

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(39) Under these circumstances, the Emperor Haile Selassie of Ethiopia and General Gowon of Nigeria met in May 1971 and made consultation about the OAU rules for dealing with the dialogue policy with South Africa. In their joint statement of May 6th, 1971 they reiterated the OAU strategy that there would be no meaningful dialogue which was not based on the respect for human equality and dignity envisaged in the Lusaka Manifesto.

(40) ACR, 1971-72, pp. C3-4

(41) The Declaration was adopted by 28 votes to 5 against, Ivory Coast, Gabon, Lesotho, Malagacsy, Malawi and Mauritius, while 4 abstained, Benin, Niger, Togo and Upper Volta. However, Malawi also defied the Declaration and in August 1971 its President Banda paid an official visit to South Africa.

Subsequently, the signatories to the Lusaka Manifesto met in October 1971 at Mogadishu in order to review the development that had taken place since the adoption of the Manifesto in April 1969. At the end of the Summit, the East and Central African States adopted a Declaration which reaffirmed the OAU's objection of dialogue with South Africa and concluded that there was no way left for the liberation of Southern Africa except armed struggle<sup>(42)</sup>. However, the effect of the Declaration was felt in the intensification of armed struggle on all fronts in Southern Africa, thereby sealing the fate of dialogue and making it a dead issue. Under these circumstances, the Summit of the OAU Assembly which was held in June 1972 at Rabat, Morocco shifted the OAU stand to the previous strategy on Southern Africa adopted at the founding Summit of the OAU in May 1963. Thus, the OAU called for world-wide measures against South Africa with the following objectives:-

(1) the discontinuation of all military aid and co-operation with South Africa;

(2) the boycott of South Africa in economic, cultural and other related fields;

(3) the termination of torture in South African prisons and the release of all political prisoners;

(4) the application to freedom fighters of the relevant provisions of the Geneva Conventions of 1949

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(42)

ACR, 1971-72, Op. Cit, p. C16

on prisoners of war and the participation of liberation movements in the drafting and application of international humanitarian laws applicable to internal conflicts;

(5) the imposition of mandatory economic sanctions and the prohibition of forced emigration, especially of skilled workers to South Africa<sup>(43)</sup>.

Thus, the Rabat Summit of the OAU Assembly was the finest example of African unity and it was entirely dominated by the issues of total decolonisation of African territories. Despite this fact, the OAU was concerned over the repressive measures and the military build-up in South Africa which constituted a threat to international peace and security. Under these circumstances, the OAU decided to go back to the UN in order to co-ordinate concerted international measures of sanctions against South Africa. It perceived that it could only be done through the UN. However, the UN and the OAU are in full agreement over the objectives to be attained in South Africa but there is a great difference over the measures that should be taken to meet these objectives. This was partly due to differences over the assessment of the extent of threat posed by the apartheid policies to international peace and security and the measures needed to solve the problems. As indicated earlier, it was agreed among all members of the UN Security Council, and especially those of the permanent members,

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(43) ACR, 1970-71, Op. Cit, p. C4

that the situation in South Africa was seriously disturbing international peace and security. But, nothing more than a partial arms embargo banning arms for internal use could command their unanimous support. Consequently, it had become obvious to the OAU that the UN would not be the machinery for the liberation of the African population in South Africa. Nonetheless, the OAU realised that the UN would be an excellent platform from which to appeal to international conscience about the atrocities the South African government were perpetrating<sup>(44)</sup>.

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At the time of writing, a new Constitutional development has taken place in South Africa. The all-white Parliament was replaced by three Chambers, one each for whites, Indians and coloured (people of mixed race). But, blacks who make up more than 70% of the population would still be excluded. White voters decided the fate of the proposal in a referendum held on November 2nd, 1983 which resulted in an overwhelming majority in favour of the Constitutional reform.

THE OAU ATTITUDE TOWARDS ISRAELI OCCUPATION  
OF EGYPT'S SINAI PENINSULA:

The Israeli occupation of Egypt's Sinai Peninsula, the decolonisation and apartheid problems in Southern Africa presented the OAU with three cases of extra-regional aggression committed by a third state against its member states. On these occasions the OAU reaction was limited and indecisive because the Organisation was not better prepared to assist its member states against external aggression committed by a third state. As a result of the Six Day War of 1967, Israeli troops occupied substantial territory belonging to Egypt<sup>(1)</sup>. Despite this fact, Article II(c) of the OAU Charter provides that one of the purposes of the Organisation is the defence of sovereignty and territorial integrity of its member states<sup>(2)</sup>. Nonetheless, it proved extremely difficult to obtain agreement for the OAU action on behalf of Egypt against an external aggression committed by a third state. The OAU member states were split in their feelings about the war and its results.

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(1)

Cattan, Henry, Palestine and International Law, Longman, London, 1973, pp.126-135

(2)

Brownlie, Ian, Op. Cit, p.3

At the emergency session of the UN General Assembly, the OAU member states were divided sharply on most of the major roll-call votes<sup>(3)</sup>. In this respect, only twenty percent of the Sub-Saharan African votes were pro-Arab, while over forty percent were pro-Israel. As a matter of fact, those African states who voted pro-Israel at the UN General Assembly made it clear that they did not consider Israeli occupation of Egypt's Sinai Peninsula as an African dispute<sup>(4)</sup>. Despite this fact, Egypt is an original member of the OAU and its territorial integrity had been violated by an external aggression committed by a third state. However, when Somalia requested, on June 19th 1967, an emergency session of the OAU Council of Ministers to be convened to consider the Israeli occupation of Sinai, few Sub-Saharan states supported the request<sup>(5)</sup>. In fact, it proved impossible

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(3) During the deliberations, while all the African representatives stressed the importance of the reactivation of the Jarring Mission as well as the principle of the non-acquisition of territory by war, their approach varied as to the means of accomplishing these ends. As a result, African votes on UN General Assembly Resolution 2977(XXVII) were divided between yes and abstention. Despite this fact, the African group at the UN united on the need for withdrawal from occupied territories, a principle envisaged in the OAU Charter relating to territorial integrity and political independence. With regard to the right of self-determination enshrined in the Resolution, they confirmed the legality of the peoples' struggle for self-determination. This represented the link between African liberation movements in Southern Africa and the Palestinian National Movements within the same UN concern with liberation.

(4) El-Ayouty, Yassin, The OAU and Arab-Israel Conflict, A Case of Mediation that Failed, The OAU After Ten Years, Comparative Perspective, Edited by El-Ayouty, Yassin, Praeger Publications, New York, 1975, p.193

(5) Only a few African states took individual action in response to the 1967 Six Day War. Among the non-Arab states only Guinea offered material assistance to Egypt. Only Guinea of the twenty-nine African states broke off diplomatic relations with Israel but, with the rest, Israel continued to trade with most Sub-Saharan African states and maintained its military collaboration.

to obtain a quorum, therefore the occupation of Sinai was only considered subsequently by the regularly scheduled 1967 Summit of the OAU Assembly of Heads of State which took place in Kinshasa, Zaire. Although, a concerted effort of the OAU Arab states to obtain a strong Resolution of support for Egypt failed to find sufficient support in the OAU Assembly of Heads of State. Instead, the Assembly agreed on a Declaration rather than a Resolution which expressed a sense of solidarity with Egypt, but contained no operative paragraphs. It reaffirmed the OAU stand for respect of territorial integrity and articulated sympathy for Egypt. It also mentioned that the OAU member states would continue to work through the UN to secure the withdrawal of foreign military forces from Egyptian soil<sup>(6)</sup>. Despite this, the OAU Arab states subsequently attained substantial support at the meeting of the OAU Council of Ministers held in February 1968 which adopted a Resolution condemning the Israeli occupation of Egypt's Sinai Peninsula, which constitutes an integral part of the African continent. The Resolution also called upon all OAU member states to render moral and material support to the countries that were victims of aggression<sup>(7)</sup>. Notwithstanding, the OAU Assembly of Heads of State was unable to adopt a Resolution of this type at its 1969 Summit because it proved impossible to get the OAU member states to approve such a Resolution asking for

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(6) ARB, Volume 4 No.9, October 23rd, 1967, p.856

(7) ACR, 1968-69, Op. Cit, pp.620-621

direct action by the OAU. This was in consequence of a few member states who were explicitly pro-Israel, in addition to a number of others who continued to claim that the occupation of Egypt's Sinai Peninsula was not an OAU concern. Only a few Sub-Saharan states took individual action in response to the 1967 Six Day War, while the others were unwilling to support the OAU Collective Security response against an external aggression committed by a third state. In any event, the OAU Arab states attained a victory at the 1971 Summit of the OAU Assembly which took place at Addis Ababa, Ethiopia<sup>(8)</sup>. The Assembly adopted a Resolution on the Arab-Israeli conflict which resulted in an unprecedented involvement by the OAU in the Middle East crisis. The Resolution condemned Israeli occupation of part of the territory of a member state which constituted an integral part of

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As of that Summit, the OAU went beyond the realm of adopting Resolutions condemning Israel's occupation of part of the territory of a member state. Since then, the OAU sought to exert direct pressure aimed at the achievement of a durable and just peace in the Middle East. The transformation of the OAU role in that regional conflict from one of pure exhortatory to action-oriented led especially after the war of October 1973. This led to a dramatic alteration in African-Israeli interaction, when all the African states belonging to the OAU, with the exception of Malawi, Lesotho, Botswana and Swaziland, severed diplomatic relations with Israel. As part of these trends on the OAU which began as early as 1971, the intertwining of co-operation between the Arab League and the OAU commenced with regard to both the Middle East and Southern African conflicts. In this regard, the PLO received the full support of the OAU as the only legitimate representative of the Palestinian people in their struggle against Zionism and racialism.



the African continent since the result of the Six Days War on June 5th, 1967. It called for the immediate withdrawal of Israeli armed forces from all occupied Arab territories. Moreover, it blamed Israel for the impasse of the Jarring Mission<sup>(9)</sup> in consequence of its refusal to withdraw back to Egypt's international frontier. Furthermore, it established a Special Middle East Peace Committee which would act as a neutral third party in order to seek the resumption of the Jarring Mission and the implementation of the UN Security Council Resolution 242<sup>(10)</sup>. It should be noted that the OAU Resolution was a clear diplomatic victory for Egypt and was the most forceful action taken by the OAU on the Middle East crisis since the 1967 War. As stated earlier, the OAU initiative was directed towards the implementation of the UN Security Council Resolution 242 and the resumption of Egyptian-Israeli indirect negotiations under the Jarring auspices. It was not surprising that priority was given in the OAU Resolution to the principle of withdrawal from all Egyptian and

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( 9 ) In conformity with Paragraph (3) of Resolution 242, the UN Security Council requested "...Secretary General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the states concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this Resolution..." Thus, Secretary General Waldheim designated the Swedish representative to the UN, Dr. Jarring with the mandate set forth in Paragraph (3) to advocate the resumption of indirect negotiations in order to implement the Security Council Resolution 242.

(10) ACR, 1971-72, Op. Cit, pp. C5-6

other territories occupied since June 5th, 1967 because the OAU Charter envisaged the principle of territorial integrity of states whereby the provisions are primarily aimed at opposing fragmentation through either secession or acquisition of territory by war<sup>(11)</sup>. Thus, the only unifying principle for the OAU membership as far as the Arab-Israeli conflict was concerned, was the withdrawal of Israeli forces from the occupied Arab territories. Despite this, the OAU's firm attitude revealed at the 1971 Addis Ababa Summit transformed the conflict from an issue of sympathy to an issue of action. In this direction, the OAU initiative could be understood in terms of an African effort to facilitate the resumption of the Jarring Mission and to assist in the implementation of the UN Security Council Resolution 242<sup>(12)</sup>. Consequently, the OAU initiative was based on Security Council Resolution 242<sup>(13)</sup>, upon which

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

(12) The OAU initiative was based on Security Council Resolution 242 of November 22nd, 1967. Therefore, it was not considered as supplanting that Resolution or replacing Ambassador Jarring. In this respect, Senegal's Foreign Minister, whose head of state led the OAU Mission, informed the UN General Assembly in December 1971, that the OAU initiative was not to supplant the principles enshrined in Resolution 242 or to replace Dr. Jarring's Mission.

(13) Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles: (1) withdrawal of Israeli armed forces from territories occupied in the recent conflict; (2) termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognised boundaries free from threats or acts of force. Affirms further the necessity (1) for guaranteeing freedom of navigation through international waterways in the areas; (2) for achieving a just settlement of the refugee problems (3) for guaranteeing the territorial inviolability and political independence of every state in the area through measures including the establishment of demilitarized zones. ■

the OAU Assembly of Heads of State and Government requested its Chairman to advise African leaders to use their influence to ensure the full implementation of this Resolution<sup>(14)</sup>. However, the legal intent and orientation of Resolution 242 were not sufficiently clear and offered no clues as to the method of implementation. Therefore, the decision on the nature of implementation was apparently left for later consultations between the Chairman of the OAU Assembly of Heads of State and Government and African leaders. In any event, following the African approach which had been developed under the OAU umbrella for peaceful settlement of African regional disputes, a group of heads of states, numbering ten were designated by the OAU committee of implementation. It consisted of Cameroon, Ethiopia, Ivory Coast, Kenya, Liberia, Mauritania, Nigeria, Senegal, Tanzania and Zaire<sup>(15)</sup>. With the exception of Mauritania, all these OAU member states maintained diplomatic relations with Israel. It would appear from the composition that the OAU deliberately attempted to include a variety of political views between those holding pro and anti-Israeli positions, in order to avert the OAU involvement in what was regarded as primarily a non-African problem. In this respect, Mauritania and Liberia for instance, could be taken as representing the two extreme shades of the spectrum of opinion on the OAU Committee of Ten. In fact, the OAU unanimity on the need for Israeli withdrawal from occupied Egyptian territory did not imply unanimity among its members on

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(14) ACR, 1971-71, Op. Cit, p. C6

(15) ARB, Volume 8, No.11, December 15th, 1971, p.2275

the commitments regarding the problem as an African concern. For this reason, Israel apparently did not object to the OAU initiative and at the same time, did not wish to endanger its good bilateral relations with many Sub-Saharan states. Nonetheless, the OAU Committee of Ten represented states known to have good relations with either side of the conflict or considered as a non-aligned party wishing to assist the conflicting parties to initiate a dialogue in order to reach a mutually acceptable solution to the conflict. Thus, following the creation of the Committee of Ten, four members were chosen to represent a fact-finding mission entrusted with the responsibility of clarifying the Egyptian and Israeli views<sup>(16)</sup>. The Mission consisted of the following heads of state: Ahidjo of Cameroon, Mobutu of Zaire, Gowon of Nigeria and Senghor of Senegal as Chairman. The Mission was also entrusted with the responsibility of establishing better grounds for understanding between the parties to the conflict in order to make it possible to reactivate the indirect dialogue under Jarring's auspices<sup>(17)</sup>. It would appear that the range of African views, from support for the Egyptian position on Resolution 242 to neutrality could also be found in the composition of the Mission of four. If Cameroon and Nigeria could be regarded as representing the former point of view, both Senegal and Zaire might be considered as representing the

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(16) The Mission visited Egypt during November 1971, and Israel twice where it prepared its report based upon their conclusions and recommendations. Subsequently, the Mission visited the UN in December 1971 during the debate on the Middle Eastern Issues. At this stage, the views of the four Presidents were revised in the light of political consideration at the UN.

(17) Gitelson, Susan Aurelia, The OAU Mission and the Middle East Conflict, JIO, Volume 27, 1973, p.414

latter position. Despite this, neither Egypt nor Israel expected the efforts of the OAU Mission of the Four Wise Men to accomplish much in initiating dialogue between them in order to reach a mutually acceptable solution to the conflict. Because the Egyptians needed to obtain from the OAU peace-making efforts on the Israeli positive response to the Jarring memorandum regarding prior Israeli commitments on withdrawal. At the same time they did not wish the OAU efforts to be considered as a mediation mission, but rather as an initiative seeking the implementation of the UN Security Council Resolution 242. Therefore, the OAU mission could only seek to reactivate the Jarring indirect negotiations and clarify the position of the conflicting parties. They were also seeking to use the Israeli negative position in the event of the OAU efforts being unsuccessful as a means of furthering the isolation of Israel in the international community. Simultaneously, Israel's economic and political interests in Africa might be adversely affected in consequence of its non-compliance to the principle of non-acquisition of territory by war<sup>(18)</sup>. On the other hand, the Israelis expected the OAU initiative would result in modifying pro-Egypt position in Africa which prevailed at the 1971 Summit of the OAU Assembly of Heads of State at Addis Ababa. It was also regarded as potentially significant in the Israeli efforts at improving its relations with the third world countries.

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ARB, Volume 8, No.11, December 15th, 1971, pp.2275-2276

Moreover, they hoped that the OAU initiative would be used as a new turning point for free negotiations in which no pre-conditions or pre-commitments be requested as was being done by the Jarring Peace Initiative of November, 1967 and February 1971<sup>(19)</sup>. Against this background, the OAU Mission began by visiting the two conflicting countries during November 1971 in order to complete the preparation of a report based upon the conclusions and recommendations of its members<sup>(20)</sup>. The Mission followed the usual precedent for individual third party efforts in African inter-state conflicts<sup>(21)</sup>. It should be noted that African leaders saw the present OAU efforts as an opportunity to increase African contribution to the international legal system. At the same time, they shared an awareness of the effect that an important international role might also enhance their domestic political positions. However, the Mission accomplished its discussion through two visits to each country and eventually turned to the UN and Dakar, Senegal in order

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(19) El-Ayouty, Yassin, Op. Cit, p.193

(20) Gitelson, Susan Aurelia, Op. Cit, p.415

(21)

The OAU Mission began fairly well and set about its fact-finding tasks in the hope of initiating positions and persuading the two conflicting parties to reach a mutually acceptable solution to the conflict. The African leaders indicated a desire to be impartial and independent to examine the situation on its own merits and to make suggestions that might alleviate mistrust between the two sides. Eventually, the Mission reached a stage which became overwhelmingly beset by outside forces and by the irreconcilable positions of the two parties to the conflict.

to consider the report with the members of the OAU Middle East Peace Committee of Ten. The Committee considered the Mission's report which contained suggestions and assessments which might help to reconcile the sharp differences between the positions of the conflicting parties. The report advocated the resumption of indirect negotiations under the aegis of Dr. Jarring, an interim agreement for re-opening the Suez Canal and free navigation in the Straits of Tiran. It also mentioned that secured and recognised boundaries be determined in the peace agreement and security could be achieved through UN guarantees. Moreover, it proposed demilitarized zones, and that international forces be stationed at some strategic points. Furthermore, withdrawal of Israeli armed forces from Egyptian soil would be envisaged in the peace treaty<sup>(22)</sup>. At all events, a study of the report and the responses of the parties to the conflict revealed sharp differences between the Egyptian and Israeli positions. The two parties agreed to see the Jarring Mission resumed although with a different order of negotiations. The Egyptians clung to the reaffirmation of the UN Security Council Resolution 242 and the 1971 Resolution of the OAU Assembly of Heads of State and Government, while the Israelis saw in the report of the OAU Mission, the promise of a new start to free negotiations<sup>(23)</sup>. Accordingly, they agreed to

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(22) Gitelson, Susan Aurelia, Op. Cit, p.416

(23) El-Ayouty, Yassin, Op. Cit, p.196

resume indirect negotiations without prior conditions under the Jarring aegis with the terms of Resolution 242 in order to reach a mutually acceptable solution to the conflict<sup>(24)</sup>. Thus, it would appear that the sharp differences between the positions of the two conflicting parties on the issue of no prior conditions, versus the issue of prior commitment on withdrawal, could not be reconciled. As far as the proposal for re-opening the Suez Canal was concerned, the Egyptians were ready to undertake arrangements for re-opening the Canal in return for a first stage of Israeli withdrawal and on condition that Israel responded positively to Jarring's memorandum of February 8th, 1971. On the other hand, Israel proposed a Suez Canal agreement be negotiated which would cover measures to ensure supervision and observance of the treaty<sup>(25)</sup>. It would appear that the Israeli position on the conclusion of an independent agreement on the re-opening of the Canal would apparently treat the issue as subsidiary. Thus, it was in contrast with the Egyptian position which stressed the comprehensiveness of Resolution 242 as covering all aspects relating to the peaceful

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(24) The OAU Mission could claim partial success since the Jarring Mission was officially resumed in August, 1972. Thus, little credit was given to the OAU for this. Nonetheless, the resumption of Dr. Jarring's Mission appeared to have been more directly related to the desire of the UN Secretary General to reactivate the UN role. However, this depended upon the suggestion of the OAU Mission and the changed circumstances within the ME regional system. In this respect, Egypt endeavoured to reduce Soviet influence and followed a more non-aligned policy.

(25) Cervenka, Zdenek, Op. Cit., pp.159-161



settlement of the entire conflict. As far as the issue of secured and recognised boundaries was concerned, the OAU Mission's report mentioned the idea that such boundaries be determined in the peace treaty. Israel agreed to this proposal that boundaries would be determined by negotiations between the parties concerned and envisaged in the peace treaty. Whilst the Egyptians agreed to the OAU formula, they stipulated that any agreement would have to conform to the OAU Resolution that withdrawal from all Egyptian territory occupied since June 5th 1967 was necessary<sup>(26)</sup>. It should be noted that it was on a very difficult task upon which the OAU initiative failed to bridge the gulf that separated the conflicting parties on the issues of withdrawal and boundaries. Thus, the Egyptian demand was rejected by Israel, but the latter's refusal was countered by insistence on the principle of non-acquisition of territory by war, envisaged in the UN and the OAU Charters. As far as the security guarantee was concerned, the African report mentioned that the solution to such a problem could be found within the establishment of international forces at some strategic points and the creation of demilitarized zones. In this respect, Egypt accepted the entire African formula, except where it referred to demilitarized zones outside the borders, while Israel raised the need for reciprocity of territorial demilitarization<sup>(27)</sup>. The final point was the proposal for the stationing of international forces at Sharam-el-Sheikh in order to guarantee freedom of navigation to

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<sup>(26)</sup> El-Ayouty, Yassin, Op. Cit, p.197

<sup>(27)</sup> Gitelson, Susan Aurelia, Op. Cit, p.415

all ships through the Straits of Tiran. In this respect, Egypt accepted the African formula in its entirety while Israel preferred it to be included as a separate agreement in order to provide for free navigation in all international waterways for all ships and cargoes<sup>(28)</sup>. It should be noted that there were sharp differences between the positions of the conflicting parties, therefore the OAU initiative did not succeed in eliciting the reconciliation of essential elements in the above-mentioned positions. Thus, the OAU initiative was unable to find a compromise between the Egyptian demand for an immediate withdrawal, and Israeli insistence upon negotiating first<sup>(29)</sup>. This could be judged by the past OAU position regarding the occupation of Sinai as non-involvement beyond the adoption of Resolutions supporting the UN calls and Egyptian stands. As a result, the Mission's report found no sufficient support among the Committee of Ten. Thus, the lack of agreement about the report of the Four Wise Men made some OAU member states reluctant to support the OAU initiative at the UN in the December 1971 debate on the Middle East conflicts. Three members of the four, Cameroon, Nigeria and Senegal, joined with Ethiopia, Mauritania and Tanzania in the participation of the sponsoring 21 powers Arab-Asian Resolution which called for the withdrawal of Israeli armed forces from the territories occupied in the 1967 War<sup>(30)</sup>. The Resolution

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<sup>(28)</sup> El-Ayouty, Yassin, Op. Cit, p.197

<sup>(29)</sup> It would appear that Egypt gained in the short term at least because it got the resumption of the Jarring Mission tied to the February 8th memorandum which held the majority support in both the UN and the OAU. Israel, on the other hand, gained when the OAU Mission came to view the Middle East situation on its own merits with them. It had also got the sympathy of a few African states which continued to maintain their friendly relations with it, even after the October war of 1973.

<sup>(30)</sup> Gitelson, Susan Aurelia, Op. Cit, p.416

also called for an end of all claims or states of war and respect for the sovereignty, territorial integrity of every state in the region and its right to live in peace with secured and recognised boundaries free from threats or acts of war. Moreover, it expressed full support for all the efforts of the Special Representative (Jarring Mission) in order to implement Security Council Resolution 242 of 1967<sup>(31)</sup>. It should be noted that Senegal proposed an amendment indicating that the UN General Assembly noted with satisfaction, the responses given by Egypt and Israel to the African memorandum of the OAU Mission and considered the replies sufficiently positive. However, the amendment failed to pass, partly because it was submitted too late in the deliberation of the General Assembly session<sup>(32)</sup>. It would appear that the reason for the shift of view among the majority of the OAU member states from the report of the OAU Mission, lay with the change in the political environment within the African regional system. Egypt called upon African solidarity with a fellow member of the OAU, which could also be important in return on votes of particular concern for Africans, such as the liberation of Southern Africa. Consequently, the OAU was unsuited for a neutral role concerning one of the major conflicts resulting from the war of 1967 which led to the occupation of Egyptian Sinai which constitutes an integral part of the African continent.

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(31) GA Res 2799(XXVI) December 13th, 1971

(32) Gitelson, Susan Aurelia, Op. Cit, p.416

In addition, Israel refused to give the OAU Mission any promise that it would not permanently annexe any of the territory that it held as a result of the war of 1967<sup>(33)</sup>. Thus, notice of the Israeli refusal occasioned the OAU's strong anti-Israeli Resolution adopted in June 1971 at the Summit of the OAU Assembly which took place in Rabat, Morocco. This was also facilitated by the site of the gathering, in an OAU Arab member state, Morocco, and by an Arab Chairman of the OAU Assembly of Heads of State and Government<sup>(34)</sup>. Despite this, the Resolution did not have the support of all the delegates present. It was only passed by consensus, but once again, certain Sub-Saharan states were reluctant to count votes because this would have emphasised the lack of enthusiasm for involvement in the Middle East conflicts<sup>(35)</sup>. At all events, the Resolution explicitly denounced Israel and called upon her to withdraw from Egyptian territory which constitutes an integral part of the African continent. It was also, for the first time, that the OAU Assembly made explicit reference in its Resolution to Article II(c) of the OAU Charter which lists defence of territorial integrity among the main purposes of the OAU.

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(33) Mayers, David B., Op. Cit., p.210

(34) ARB, Volume 9, No.6, July 15th, 1972, p.2495

(35) Israel has maintained good relations with most Sub-Saharan states like Ghana, Ivory Coast, Ethiopia and Kenya but, after the October War of 1973, 21 Sub-Saharan states broke off diplomatic relations with Israel, except Malawi, Lesotho, Botswana and Swaziland. Nonetheless, the Sub-Saharan states regarded their action simply as a gesture of support for Egypt's stand.

Moreover, it requested all the OAU member states to extend to Egypt every aid possible at their disposal to assist their fellow member state to regain its occupied territory<sup>(36)</sup>. Thus, the Resolution made a significant change in African attitudes towards Israel and the Middle East conflicts. During the year since the Resolution was passed, a few Sub-Saharan states have broken off their diplomatic relations with Israel, but the vast majority of Sub-Saharan states continued their normal diplomatic and trade relations. Consequently, the OAU failed to make a symbolic response to the occupation of part of a member's territory by an extra-regional third state. It would appear that there was no feeling of regional community and so, support for Egypt has been limited, and that that member's conflict with Israel was not regarded as being an African concern. This was in consequence of the belief of many OAU member states that Israel is not a potential threat to African security, whereby they neither wish to extend collective security assistance to Egypt nor for the OAU to be involved in what was seen as a Middle East conflict. Despite this fact, the OAU attempts at mediation of the Egyptian-Israeli sector of the Middle East conflict precipitated a series of gradual transformations in the international relationships between Sub-Saharan states and Israel. These transformations isolated Israel in Africa and brought

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ACR, 1972-73, pp. C23-24

the League of Arab States and the OAU together in the process of harmonization of policies regarding both the Middle East conflict and the problems in Southern Africa<sup>(37)</sup>. This has also established ideological interaction between the Palestine Liberation Organisation and the African liberation movements in Southern Africa. Since the October 1973 War, these processes have accelerated, particularly in terms of Afro-Arab co-operation in the aftermath of the rise in oil prices. Thus, these trends have been reflected in subsequent Resolutions adopted by the OAU with regard to the Middle East conflict<sup>(38)</sup>. In this direction, the OAU Council of Ministers adopted a Resolution in 1973 at its meeting which took place in Addis Ababa, condemning Israel for its refusal to withdraw from all occupied Arab territory. It also denounced Israel's expansionist policy which led to the uprooting of the Palestinian people from their rightful homes. Following the October War of 1973 in which Egypt recaptured by force of arms, part of its occupied territory, this was noted with African satisfaction. At this occasion, the OAU Council of Ministers met

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(37) Arab Review, General Union of Arab Students in the UK and Ireland, Volume 4, No.3, December 1982, pp. 15-17

(38) In reality, the change was neither sudden nor unexpected, the Arab States of the OAU having been pressing the Sub-Saharan states for some time to take their side against Israel. Nonetheless, the campaign for an Afro-Arab alliance had begun long before the OAU was even established in May 1963. When the Casablanca group was created in 1961, President Nasser of Egypt saw in it the first chance of some kind of alliance to halt the Israeli advance into Black Africa. Nasser linked the problem of Palestine with the general theme of defence of independence and security in Africa to which Israel constituted a threat, not only to the Arab states in Africa, but to the whole continent.

at its eighth extraordinary session which took place in Addis Ababa and the Council adopted a Resolution which recalled the one adopted in May 1973 by the Summit of the OAU Assembly of Heads of State and Government. It also noted the OAU satisfaction with the gain achieved by Egypt during the war. Moreover, it requested all the OAU member states to sever diplomatic relations with Israel until the latter withdrew from all the occupied Arab territories and until the recovery by the Palestinian people of their legitimate national rights<sup>(39)</sup>.

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ARB, Volume 10, No.11, December 15th, 1973, p.3039

## CONCLUSION

### EVALUATION OF THE OAU SYSTEM FOR REGIONAL DISPUTES:

A surge of nationalism swept across the African continent after the Second World War. African politicians who had a prominent part in a series of Pan-African Congresses abroad, returned home to lead movements for independence and the right to self-determination. Meanwhile, between 1958 and 1962 there was a rapid emergence and disappearance of regional groupings among the independent African states. And, on May 25th, 1963 the Third Summit Conference of Independent African states took place in Addis Ababa where the outcome was the adoption of a Charter of African Unity. The OAU Charter envisaged 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 which would be based on mutual understanding and would transcend ethnic and national differences. It also mentioned the responsibility of member states to maintain a solid foundation for peace and security among them in order to safeguard their political independence and territorial integrity. Nonetheless, the OAU system designated no institution with particular powers in the matter of peace and security, equivalent to the UN Security Council. Consequently, no privileged position has been given to the great powers of Africa. The African states deliberately determined to avert the formation of any kind of hegemony de facto or de jure on the model of the Organisation of American



States where the United States plays a dominant role. The OAU structure also avoided the weight voting formula at present in effect in the European Economic Community and in a number of UN Specialised Agencies. The OAU system adopted the formula of one vote for one state. However, African states discerned that peace and security which they so badly needed, was in constant danger. Therefore, the initial undertaking of all member states was to observe the principle of peaceful settlement by negotiation, conciliation and arbitration. Nonetheless, the OAU Charter has also enshrined a principle of a somewhat different character, the principle of absolute dedication to the total emancipation of the African territories which are still dependent. In pursuance of this principle, African states are endeavouring to secure the legitimacy of the armed struggle against the colonial powers in order to attain the legal recognition of liberation movements. In this direction, African states expressed a deep desire to see Africa rid itself of all foreign military bases and to stand aloof from any military alliances and from the armaments race. African states have sufficient points of common interest on a number of crucial questions which constitute a continental approach to international affairs. However, any independent sovereign African state shall be entitled to become a member of the OAU, except South Africa, which was excluded because of its apartheid policies which are in absolute conflict with the aims and purposes of the OAU Charter.

At the same time, the procedures for termination of membership in the OAU are very easy. Any state which desires to withdraw its membership shall forward a written notification to the Secretary General. At the end of one year from the notification, the Charter shall cease to apply with respect to the renouncing state. However, the Charter contains no provisions for collective security and defence in case of an external aggression against any member state or when a member state has resorted to war in an effort to solve a dispute with another member state, or to subvert the political independence of its neighbouring member states. Even so, there is no provision for partial or comprehensive sanctions or equivalent to Article 6 of the UN Charter. As stated earlier, the OAU Charter is based upon the principle of sovereign equality of all member states, but the budget is contributed in accordance with the scale of assessment used by the UN, provided that no member state is assessed an amount exceeding 20% of the yearly regular budget of the Organisation. However, the OAU Charter maintains no provisions equivalent to Article 19 of the UN Charter which allows the suspension of the voting rights in the UN organs of those states who are in arrears with their financial contributions to the OAU. In fact, there are a number of members who are in arrears of payments. As a result, the entire Organisation is caught in financial problems. As far as the internal structure of the OAU is concerned, the principal institutions are clearly distinct from the specialised commissions of the OAU which are provided for in Article 20 of the

Charter. The Assembly of Heads of State and Government is the supreme organ of the OAU. It consists of the heads of state or government or their duly accredited representatives. The Assembly meets at least once a year in ordinary session but it may meet in emergency session at the request of any member states upon approval by a two-thirds majority of the membership. Each member has one vote in the Assembly where all Resolutions and decisions are determined by a two-thirds majority of the member states. Questions of procedures require a simple majority only. It should be noted that all decisions require a simple majority except the ones that are concerned with amendments to the Charter and the appointment of the Secretary General and his assistants, as well as budgetary matters. Resolutions are recommended to the member states. This conforms to the principles of non-interference and sovereign equality which the Charter stresses heavily. Thus, the Charter neither established an organ with disciplinary powers in order to enforce compliance with OAU Resolutions nor allows the expulsion of a member which had persistently violated the OAU Resolutions. It has become customary that the head of the host government is elected the Assembly's Chairman along with eight Vice-Chairmen. The Assembly has the power to debate, deliberate and adopt Resolutions on any matters of common concern to Africa. The Assembly is not specifically charged with the settlement of regional disputes but as the supreme organ, it has inevitably become involved in settling regional disputes through a variety of procedures

and techniques. In such cases, the Assembly has made use of the techniques of conciliation, mediation and good office in dealing with regional disputes. The Assembly has also provided a forum for negotiations between the member states in disputes and is usually relied upon by the Council of Ministers to implement these procedures. The Council consists of Foreign Ministers or such other ministers as are designated by the government of member states. The composition of this organ is clearly flexible in order to allow member states to designate any minister to represent them as circumstances require. The Council meets at least twice a year or when requested by any member state and approved by two-thirds of all member states in emergency session. One of the ordinary annual sessions which are held in February each year, is devoted to considering and approving the programmes and budget of the OAU for the next fiscal year. The other one held in August, is devoted to the preparation of the Assembly's annual Summit Conference and is usually held at the same place where the Summit is taking place. All Resolutions of the Council are determined by a simple majority which makes no distinction between substantive and procedural questions. The Council is responsible to the Assembly of Heads of State and Government which is entrusted with the implementation of its decisions. Notably, the Assembly is the decision-making organ but in practice, the Council does make decisions on a wide variety of matters, some of great importance. Nonetheless, the Council's Resolutions are not binding upon member states unless they are approved by the Assembly. As indicated earlier,

neither the Assembly nor the Council are specifically charged with the settlement of regional disputes, but the Council has assumed this competence under the provisions of Article II of the Charter. The Council has always used the technique of setting up an ad hoc committee entrusted with the dual function of fact-finding and conciliation. Such functions involve the investigation of the issue in dispute between the parties and simultaneously attempt to bring about a mutually acceptable solution to the problem. As far as the Secretary General is concerned, he is appointed by the Assembly of Heads of State and Government. He is assisted by one or more Assistant Secretary Generals who are also appointed by the Assembly. The Council of Ministers is not competent to consider nomination for the Secretary General and his Assistants or even to make recommendation to the Assembly in this matter. The OAU Charter only refers to the administrative and budgetary functions of the Secretary General. The other aspects of its functions are defined in the internal regulations of the General Secretariat which were drawn up by the Council of Ministers. The Secretary General is also responsible generally, for supervising the implementation of decisions of the Council of Ministers. It should be noted that it clearly appears that the Secretary General's contribution to the settlement of African regional disputes has been severely limited. This could be attributed to the deep cleavage among African states which has affected the influence of the post of the OAU Secretary Generalship. The cleavage

reflects such basic factors as British or French background and the difference between Arab and non-Arab cultures. The other divisions stem from differing foreign trans-regional organisations such as the Arab League and the Commonwealth of Nations. Therefore, 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. In the years preceding the establishment of the OAU, the major difference between African states involved their attitude towards the Algerian War of Independence and their support of the different factions in the first Congolese War. These divisions were institutionalized in the rival sub-regional grouping established at Casablanca, Brazzaville and Monrovia. Ethiopia was a non-member of any of the sub-regional groups which successfully initiated efforts to end these splits on the African continent. Consequently, it succeeded in bringing the Brazzaville group, with a number of African moderate states, to the Monrovia Conference. Subsequently, Guinea succeeded in convincing the Casablanca group to participate at the founding Summit of the OAU at Addis Ababa. Therefore, the circumstances at the time, determined the nationality of the Secretary General and still continue to limit the number of states that can furnish candidates for the post of the OAU Secretary General, whose application must secure the required two-thirds of the Assembly. The Secretary General regularly participates in the deliberation of all organs of the OAU through which he initiates debates on controversial problems. As the head of the

OAU, he has become spokesman for the Organisation and has often been entrusted by the Assembly or the Council with powers which have the nature of executive functions. Nonetheless, his influence has been limited by his inability to recruit the personnel serving in the General Secretariat and the continued reluctance of African states to provide the General Secretariat with sufficient material resources, which limit the potential influence of his role in regional disputes. Thus, the role entrusted to the OAU Secretary General 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 is the Chairman of the Assembly of Heads of State and Government who issues statements on behalf of the OAU. Other rivals are the Secretary of the Commonwealth and the Secretary General of the Arab League, whose prestige has been increased by their successes in the settlement of regional disputes. This is in contrast with the OAU practice through which the Assembly appoints one or more of the African Heads of State to lead efforts to initiate the peaceful settlement of African regional disputes. Thus, the OAU Secretary General has never been the mediator in any of the major African regional disputes and is unlikely to be so in the future. The Assembly has often referred such disputes to an ad hoc committee representing the diversity of views within the OAU. Consequently, the office of the OAU General Secretary has been viewed 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. As far as African regional disputes are concerned, the OAU Charter envisaged provisions in which member states pledge to settle all disputes among themselves by peaceful means and to this end decided to establish a Commission of Mediation, Conciliation and Arbitration. The composition and conditions of service which have been defined by a separate protocol approved in July 1964 by the Council of Ministers and endorsed by the Assembly at its second regular session. 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. The functions of the Commission on enquiry, fact-finding and investigation in regional disputes appeared to have been largely vitiated. The member states have the right to recourse to any one of three modes of peaceful settlement, mediation or arbitration and all dependent on the consent of the parties to the particular dispute. In the absence of such consent, the Commission is only competent to refer the matter to the Council of Ministers for consideration. In such circumstances, the Council will endeavour to find a mutually acceptable solution but in case of disagreement, the matter is referred to the Assembly of Heads of State. However, the three methods of peaceful settlement are alternative and not necessarily successive procedures by which parties in a certain dispute are free to make a choice of any one of the three methods in respect of a dispute. It is obvious that the Commission has no compulsory jurisdiction over



member states but rather is optional like other international tribunals. As a matter of fact, African states would not accept the principle of compulsory jurisdiction at such an early phase of their development. Despite this fact, African states have shown some interest in the development of the Commission, but in practice they have continued to express a preference for mediation and conciliation under the aegis of African heads of state. The OAU Charter provides that one of the purposes of the Organisation is to promote international co-operation having due regard to the Charter of the UN and the Universal Declaration of Human Rights. It is obvious from these provisions that the OAU was intended to be a regional arrangement within the framework of Chapter VIII of the UN Charter. It is understood that Chapter VIII 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 UN Security Council. As far as the settlement of African regional disputes is concerned, the OAU performs 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. 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 UN Security Council authorization. Similarly, diplomatic and economic measures recommended by the OAU against the colonial and

minority regimes in South Africa cannot be considered as enforcement actions requiring authorization. These types of measures have been approved by the UN General Assembly and endorsed by the Security Council which can be regarded as constituting legitimization of these activities. However, 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. According to Article 54 of the UN Charter, regional arrangements are obliged at all times to report to the Security Council, activities conducted under their auspices concerning the maintenance of international peace and security. 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 the issues of apartheid and colonialism. African states had no influence on the establishment of the UN, therefore they have joined the Asian states which have interests in economic development, human rights and the struggle against colonialism in order to form a pressure group in the UN General Assembly. This period did not last long because of the rapid increase of African membership in the UN which has allowed them to express themselves as a separate caucus. After the rapid increase in their membership, they also laid claim to more equitable representation in the UN organs and its Specialised Agencies. Accordingly, amendments to Articles 23 and 61 of the UN Charter were made and endorsed by the UN General

Assembly in its Resolution of December 17th, 1963. But, this is not 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 of representation on the principal organs of the UN. They argue that the UN Charter was written and adopted while most of the African states were still colonial territories. Nonetheless, they hold the Charter in the highest esteem because it embodies their hopes for a world in which all nations work together in peace and security. But, 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. As a result, African states followed the lead taken by India to a position of non-alignment with respect to the two rival blocs. Nonetheless, non-alignment as used by African states only means a refusal to be committed in advance to giving support to one bloc or other in the deliberation of international processes, thereby this is not intended to mean neutrality. The African delegations always decide in each individual case which side to cast their votes or to whom to promise support in return for reciprocity. Such support is ad hoc and is intended to be limited only to the subject matter in hand. As stated earlier, the existing African states did not play an active role in the development of international law during the creative period of its history in the nineteenth and beginning of the present century. African states believe that international law is created by and for a few prosperous industrial nations with a common cultural background and strong liberal individualistic

features and is hardly suitable for African states in 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, they want the protection of a system of international law which would attempt to mould conditions in accordance with their interests. They based their argument on the grounds that alterations to the sociological structure of the international community must be accompanied by alterations in international law. Consequently, African states have sought to reshape and renovate some of the old principles of international law according to changed circumstances. Having been, in their eyes, victims of an unequal position and a 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. 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. 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. Consequently, they argue that it is not prohibited to use violence in the struggle for liberation under Article 51 of the UN Charter in which self-defence is an admitted exception to the general prohibition against the use of force. Nonetheless, African states are increasingly following national interests in

their conduct in international affairs. Therefore, 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. As stated earlier, 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 regional disputes. They regard the intractable boundary and border disputes among themselves and other forms of regional disputes as threatening their political independence and regarding their objectives for social and economic development. Therefore, for all of them, security, stability and settlement of regional disputes by peaceful means are inseparably linked to the process of social and political development. In recognition of this fundamental principle, African states have provided in Article 3(4) of the OAU Charter for the peaceful settlement of regional disputes by negotiation, mediation, conciliation or arbitration. African states are also interested in the establishment of an African Court of Justice, although the African attitude towards judicial settlement is less certain. They have shown a marked preference for 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 have undertaken to bring about the peaceful settlement of international disputes in conformity with Article 33(1) of the UN Charter. According to Article 93(1) of the UN Charter, all of the UN member states are ipso facto parties to the statute of the ICJ. African attitude towards the ICJ as a means for the judicial settlement of international disputes is apparently sceptical. This seems to be an indirect manifestation of the rebellion of African states against the present system of international law. As far as acceptance of compulsory jurisdiction under Article 36(2) of the statute on optional reservation clause is concerned, African states have in general, followed the pattern of other states, particularly the UK and France. Despite this, African states shy away from 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. In consequence, African states have not yet developed a regional judicial institution which is capable of settling their regional disputes. Under these circumstances, African states have endeavoured to settle their regional disputes at the level of diplomatic negotiation in close line with their tastes and traditions. Accordingly, the OAU has departed from the nature of procedures envisaged in the framework of the original Charter and the Protocol of Mediation, Conciliation and Arbitration. The 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. The Commission, as a forum for the peaceful settlement of regional disputes, was abandoned upon its establishment. African states have avoided the more formal institutionalized mode of peaceful settlement including the procedure enshrined in the OAU Protocol of Mediation, Conciliation and Arbitration. They favour ad hoc informal responses to individual conflicts by the OAU Assembly of Heads of State and the Council of Ministers. The Assembly usually recommends recourse to mediation by an individual or group of heads of state or to an ad hoc body established by it or the Council of Ministers, rather than have recourse to the Commission of Mediation, Conciliation and Arbitration. At the Addis Ababa Conference of 1963, African leaders reached a consensus regarding their 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 and boundary disputes and allegations of subversive activities by neighbouring states. 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. Despite this, the provisions concerning collective defence which are found within the framework of the OAU Charter, are weak and ambiguous when compared with other regional security arrangements. The African states were not able to agree on strong regional

security arrangements 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 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 masters. The Anglophones were mostly also 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, while being themselves divided by the different defence and security policies pursued by Morocco, Algeria, Tunisia and Libya. Secondly, the collective security system by the Arab League had tended to impose different priorities from those of most of the rest of Africa. Thirdly, the colonial experience in Africa had created a dividing line between the Arab states of North Africa and the Sub-Saharan states which produced and maintained a psychological barrier. As a result, although the Sub-Saharan states have refused to accept the Sahara as a political barrier, they are, nevertheless, anxious not to become too closely involved in the Arab-Israeli conflict. Nonetheless, this tension



with the OAU was partly resolved after the 1973 War when the Sub-Saharan states moved slightly closer to the Egyptian position over the demand for the restoration of the occupied Arab territories. Despite this fact, the OAU did not prove to have effective machinery for collective defence against extra-regional acts or threats of aggression against its member states. For this reason, the OAU member states have become increasingly dependent upon the super powers for their defence and security. Therefore, it seems that the OAU will not be able to defend the security of its member states in case of any future aggression or even in case of internal disruption.

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. The Universal Declaration of Human Rights also enshrined self-determination in paragraphs (1) and (2) which provide 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. Despite this, the UN has stood firm against secessionist self-determination which reads as follows:-

"....nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign independent state...."

However, the principle of self-determination still lacks general acceptance and agreement on the nature and content of the concept which constitute a part of customary international law. Due to these circumstances, self-determination has been considered a concept of political rather than legal character. Nonetheless, the UN has never endorsed the right to secede, and took the position 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. African states declare their adherence to Article III of the OAU Charter to the principle of respect for the sovereignty and territorial integrity of each state. 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. Simultaneously, they asserted that self-determination is the right of the majority within an accepted political unity, therefore there can be no such thing as self-determination for the indigenous minorities living within a unit of an OAU member state. Despite this firm attitude towards secessionist self-determination, it simultaneously declared that such matters are within the domestic jurisdiction of member states and thus, interference from the OAU is precluded. Thus, the OAU is severely handicapped in its mediative role by interpreting the non-interference provisions of its Charter in absolute terms which prevent it from dealing with threats to peace and security arising from secessionist

movements in the African continent. Consequently, the role assumed by the OAU in such issues has produced only verbal condemnation of secessionist self-determination and the despatching of a consultative mission of heads of state 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. The OAU commitment to the absolute preservation of the principle of territorial status quo would make sense if it were combined with serious endeavours to prevent the conflict from threatening the peace and security of the continent. However, the problem of secessionist self-determination could be substantially solved by adequate safeguards providing for human rights and security of minorities in African states. 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 publicize 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 these critical situations in which minority groups face severe denial of human rights. The OAU should also

establish an African Court of Justice along the lines of the European Court of Justice.

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. Therefore, the description of African borders as artificial in the sense that they were drawn with total disregard for local conditions is not accurate. In fact, a considerable number of African colonial borders were shaped gradually and by stages, and endeavours were made by colonial demarcation commissions to take certain local features into account and to introduce changes and amendments over the years. Therefore, a high proportion of African independence movements accepted political divisions made by the colonial administration. Thus, the principle of continuity has been regarded as one of the principles of a state's succession in the processes of decolonisation in Africa. Despite this, the problem of borders received no explicit reference in the OAU Charter, but the key development was the 1964 Resolution adopted at the first Summit of the OAU Assembly of Heads of State, which took place at Cairo. The Resolution maintained that the borders of African states on the day of their independence constituted a tangible reality. But, the Resolution has suffered from several weaknesses. One was that Somalia, the state most directly concerned, declared that it did not feel bound by the Resolution because of her non-participation in the Summit. Other

weaknesses were inherent in the text of the pledge 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. There was also no provision in the Resolution that might assist in settling border conflicts arising from different interpretations of treaties defining borders. Finally, one of the main weaknesses was the absence of any provisions in the Resolution concerning the question of secession and self-determination. However, when issues concerning borders have arisen in the debates of the OAU organs, the OAU adhered rigidly to the principle of status quo and inapplicability of secessionist self-determination in these cases. The attitude behind this firm stand is clear enough, for if the principle on revision was to be agreed upon, there would be considerable difficulties in applying the principle to the ethnic and tribal complexities of African societies. The Resolutions as such probably have no binding effect as far as international law is concerned, nonetheless, the principle may coincide with the hitherto generally acceptable argument that frontiers do not lapse when decolonisation takes place. However, the Resolution based upon a rule of regional customary international law is binding on those African states who have unilaterally declared their acceptance of the principle of the status quo as at the

time of independence. 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. These two states have an ethnic or irredentist claim which is based on the sense of ethnic nationalism. Both Morocco and Somalia have remained committed to their objectives and have pursued the military option rather than turning to the means of peaceful settlement. The role of mediation or conciliation may be carried out by the OAU Assembly in finding a mutually acceptable solution to these conflicts. Disputes which have a technical and legal character may be submitted by the parties to the 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 special agreement for the particular purpose of settling the issues in disputes in conformity with the principles of international law. But, claims based on historical factors or ethnic affinities are not susceptible to settlement according to recognised principles in international law. 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. As far as Moroccan claims are concerned, they are based on the Muslim boundary concept in North Africa by which the Umma or community of believers determine the geographic scope of the state and not the territorial limit of the state. This is similar to the pre-colonial boundary

concept in Africa which was based on one of frontier marches and not determined by border lines. Accordingly, the classical African entities were composed of one or more centres of power with central allegiance conceived in terms of people rather than land. However, the Moroccan-Algerian border dispute presented the OAU with the first issue of an African regional dispute 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 conflict. 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. Nonetheless, the OAU should be given credit for contributing to the achievement of an agreement between the states in dispute and the settling of their differences within its framework. By declaring its support for the Bamako agreement, the OAU conferred its authority or the observance of the terms of such an agreement. Accordingly, the OAU brought the Bamako ceasefire commission under its aegis which eventually succeeded in bringing about a ceasefire as well as defining a demilitarized zone. Nonetheless, the Algerian-Moroccan border dispute was eventually settled by the process of direct negotiation between the states concerned as well as by assistance and encouragement from the OAU. In the cases of the Somali-Kenyan border dispute, as well as the Somali-Ethiopian border conflict over the Ogaden, since its establishment these types of conflict have always been thrust upon the stage of the OAU forum.

But, these conflicts have revealed the limitation of the OAU and its restricted scope of action and therefore, these border disputes have continued to exist as a consequence of the OAU's limited capability to handle them. This fact in itself has added to the determination of African states to pursue their objectives and claims by non-peaceful means. At the same time, OAU involvement in African regional disputes has remained basically deliberative rather than one of direct mediation, conciliation and arbitration. The OAU has also avoided the allocation of responsibility to any side in African regional disputes even when it was invited to do so by the parties to a dispute. This has developed from a belief that African solidarity may be threatened by an active involvement of the OAU in regional disputes. The OAU has tended, after its experience in the Algerian-Moroccan border dispute, to encourage bilateral negotiations of substantive issues and to rely more heavily upon the role of selected African statesmen in emergency situations. Thus, the personal initiative of individual African leaders has appeared to compensate for the limitation of the OAU role attributable to the OAU Commission of Mediation, Conciliation and Arbitration, as well as the OAU Secretary General, who has no role entrusted to him to play in this respect by the OAU Charter. As far as Ghana's border conflict with Togo, Upper Volta and Ivory Coast were concerned, the conflicts were the consequence of Nkrumah's concept of Pan-Africanism through which he had intended to establish a state of Greater Ghana. But, this doctrine did not find favourable grounds with the majority of African states



who came out strongly in favour of the principle of sovereignty and territorial integrity. As stated earlier, the Cairo Summit of 1964 of the OAU Assembly was mainly concerned in general with African territorial disputes but these conflicts aroused little discussion or interest and most of the delegations felt that OAU action would be premature as bilateral settlement still seemed possible. However, the border conflicts between Ghana and its three neighbouring states remained unresolved until after the overthrow of Nkrumah. Thus, after the Ghanaian coup of 1966, the new military regime sought to improve Ghana's relations with its neighbours and to resolve outstanding border disputes. As far as the conflict over the Western Sahara is concerned, 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. But, 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. Thus, it must be the free choice of the majority in that particular colony to be absorbed or dismembered. Despite this firm position, the OAU has so far had little success in implementing its principles in this vital area. There is also not much reason for supposing that the OAU will be able to act any more efficiently in implementing its principles in the Western Sahara conflict. The result has been a bitter desert war and a debilitating crisis within the OAU itself over this question.

As far as the implication of African refugees on regional disputes is concerned, the situation has caused a large series of regional conflicts that have erupted in several African states. The problem is that some African governments offer asylum for essentially political reasons by encouraging and supporting the political opponents in their subversive activities against their home governments. Many also encourage passive refugees to do so in order to bring about internal changes in their country of origin. This has given rise to tensions which have served to exacerbate relations between OAU member states and has also led to conflict situations and the continued increase in the number of African refugees, which poses a series of social, economic and political problems for the OAU. Consequently, receiving refugees from one state to another has precipitated hostilities between two or more countries. As a result, the OAU set up a special commission to deal with the refugee problem and also charged it with responsibility for drawing up certain principles and rules for governing the treatment of refugees. These aims were largely met by the Addis Ababa Convention of 1969, which regulated the specific aspect of the refugee problem in Africa. Unfortunately, the Convention is not always observed by OAU member states and therefore, border tensions have recurred along the frontiers, such as that between Ghana and its neighbouring countries and between Burundi and Rwanda and that between Guinea, Ghana and Ivory Coast. The OAU has endeavoured to prevent such regional tensions and potential African refugee problems,

but it lacks the resources necessary to solve the refugee situation in Africa. As far as the effectiveness of its machinery in solving regional tensions is concerned, it is necessary to distinguish between normalization of relations between member states and final settlement of regional disputes. In respect to the former matter, the OAU was able to act as an effective instrument for resolving inter-state tensions without solving the main causes of the disputes. The OAU's principle of non-interference in the internal affairs of member states does not say that member states should refrain from taking sides in civil war situations, but that their support should automatically go to the member governments. Notably, the obligation of non-interference in domestic jurisdiction is only imposed upon member states and not upon the OAU itself. Nonetheless, the OAU has chosen to interpret the provisions of its Charter in absolute terms to exclude any active role of mediation or conciliation in civil war and internal conflict resulting from a power struggle to control the machinery of government. This in fact is a classic form of civil war and undoubtedly in an internal matter, although such situations have been raised in the OAU forum. But, the legality of governments who come to power by a coup d'etat has never been questioned, except after the overthrow of Ben Bella of Algeria in 1965, Nkrumah of Ghana in 1966 and Obotu of Uganda in 1971 and even in these three cases, legality gave way to reality. As far as issues of civil war are concerned, the OAU has taken the line of establishing ad hoc commissions in order to bring about national reconciliation. The initial example of OAU involvement

in the internal conflicts of a member state was the East African Military Mutinies of 1964 in which the initiative for an OAU role came not from other member states, but rather from the government of the afflicted country itself. The involvement of the OAU in this situation could be seen as a success for the OAU which served as a Pan-African vehicle for arranging military assistance to help solve a serious internal problem of a member state. The main reason which compelled the OAU to consider the internal matter in one of its member states, was the realization that most of its member states achieved independence with a remarkably low level of defence capability which had direct implications on African regional disputes. Despite this fact, the OAU is still no better prepared to assist its member states in defence, in the event of internal disruption. The reason for this is the lack of trust in military co-operation among OAU member states and the general shortage of resources available to most African states. In addition, there is a lack of shared interest in a real sense of continental community. Moreover, most African armies are small and are particularly deficient in logistic capabilities, especially air transport. Consequently, the OAU was unable to bring peace to the Congo and could not resolve its civil war. This was due to the above-mentioned circumstances in addition to foreign intervention, exemplified in the East-West rivalry. The OAU was unfortunate enough to be hit with problems of such a kind that would have shaken an even older and more solidly

established regional organisation. The Congo crisis represented an internal conflict of a nation torn by civil war at the very centre of the continent, headed by a leader who was considered as controversial by the majority of the OAU member states and an army led by white mercenaries. These combined factors created an extremely explosive situation which was a difficult test for the OAU and which proved powerless to bring about national reconciliation. Thus, in the civil war in Nigeria, the OAU member states were expected to give their full backing to the federal cause, but half-a-dozen member states did in fact support the Biafrans. The OAU's active role was only to rally support for the federal Military Government and as a consequence, robbed the OAU of any effective role as mediator. The OAU treated the conflict as one of purely internal origin and therefore, allowed external intervention to such an extent as to upset the equilibrium between the protagonists and to determine the outcome of the conflict. By following such an approach, the OAU was in effect allowing the outcome of African regional disputes to be determined by external actions. In fact, the supply of arms to the antagonists in the conflict clearly affected the conduct of the war. However, the OAU commitment to the absolute preservation of the territorial status quo in Africa would make sense only if it were supplemented by a serious effort to resolve the problems that underlie and breed secession. In this respect, secessionist efforts could be substantially reduced if adequate safeguards were provided for the security of minorities in African states

As far as the OAU involvement in Chad's civil war is concerned, the OAU accepted a role in Chad that the Organisation's founders had designed for it at their first Summit in May 1963. Despite this, the OAU efforts at national reconciliation in Chad were unsuccessful. The OAU peace-keeping forces had in fact been amply highlighted, both by an extremely explosive situation and by the enormous financial difficulties with which it was faced. Consequently, the OAU made an unprecedented request for funding by the UN but the latter had never financed a force which was not under its aegis.

At the birth of the OAU, a pledge was made to complete the liberation of those parts of the continent where colonial rule still prevailed. To this end, the OAU established an instrument for this purpose, the Liberation Committee with its headquarters in Dar-es-Salaam. Its objective was, inter alia, to give effective support and financial aid to African liberation movements. The OAU also set up a special fund to be raised by voluntary contributions but the first ordinary session of the OAU Assembly of 1964 which took place in Cairo, decided to levy a fixed contribution based on UN membership contribution. However, the Committee's role has been controversial and has led to conflicting views between states advocating armed struggle and those supporting a peaceful approach to the problem of decolonisation. However, most damaging by far to the functioning of the OAU Committee of Liberation, has been the disagreement between the rival liberation movements who suffered from internal strains brought about by personality clashes, ambitions and differences in strategy.

These strains have led on the whole, to polarization of the movements and each territory began to have more than one movement claiming the legitimacy and supremacy in the struggle for that territory's liberation. Nonetheless, there is no doubt that the OAU has endeavoured to make the African people in dependent territories feel that they are not alone in the struggle against colonial rule. The moral and material support the OAU has given is unlimited and decolonisation of African dependent territories has become the rallying issue of the OAU. The justification which is put forward by the OAU for its moral and material aid is placed upon the doctrine of humanitarian intervention which was known, as early as the seventeenth century, to form part of customary international law. Accordingly, the OAU acts in conformity with this belief which requires no authorization of the UN Security Council. However, it has been widely recognised as legitimate by the UN General Assembly and in certain situations, by the UN Security Council. At the same time, as well as pursuing this approach of supporting armed struggle as a means of completing the liberation of African dependent territories and the elimination of apartheid in Southern Africa, the OAU was also engaged in pursuing an alternative option. It offered to achieve a non-violent negotiated settlement with the regimes of Portugal, Rhodesia and South West Africa. These principles were formulated in the Lusaka Manifesto of 1969. This peaceful approach led the major Western powers to change their attitudes which had already begun to orientate their policies away from

the white communities in Southern Africa towards support for black majority rule. Thus, the OAU strategy has succeeded in Portugal's African territories and Rhodesia, and in Namibia its efforts are close to achieving its objectives, but in South Africa there is a long way to go to achieve a peaceful emancipation of the African populations. However, a recent constitutional development has taken place in South Africa but the African population is still excluded from the new Parliamentary reform. Thus, these peaceful efforts have advanced the moral justification for the guerrilla activities of the liberation movements in Southern Africa. This is not to say that the world community support these guerrilla activities, but at least most states have refrained from condemning them and have chosen to be ambivalent on the general issue of using force to effect changes in Southern Africa. If it were not for the OAU diplomatic efforts, most states would probably be condemning the liberation movements in Southern Africa. Thus, the decolonisation, apartheid problems and the Israeli occupation of Egypt's Sinai Peninsula presented the OAU with three cases of extra-regional aggression committed by a third state against its member states. The OAU reaction was limited and indecisive because the Organisation was not better prepared to assist its member states against external aggression committed by a third state. As far as the occupation of Egypt's Sinai Peninsula is concerned, the OAU failed to make a symbolic response to the occupation of a member's territory by a third state. It would appear that there was no feeling of regional community and so, support for Egypt was limited and that



member's conflict with Israel was not regarded as being an African concern. This was a consequence of the belief of many OAU member states that Israel is not a potential threat to African security whereby they neither wished to extend collective security assistance to Egypt nor for the OAU to be involved in what was seen as a Middle East conflict. The Arab states of the OAU were upset by the indifferent attitude towards Zionist colonisation in North Africa and the completely different one in Southern Africa. Despite this fact, the OAU attempted in 1971 to mediate the Egyptian-Israeli sector of the ME conflict, which has led to a series of gradual transformations in the international relationship between African Sub-Saharan states and Israel. These transformations have isolated Israel in Africa and brought the Arab League and the OAU together in the process of harmonization of policies regarding the ME conflicts and the problems in Southern Africa. This has also established ideological interaction between the Palestine Liberation Organisation and the African liberation movements in Southern Africa. As has been seen, the OAU has been beset by an endless series of regional disputes upon which it would seem that there was no prospect of any compromise and the break-up of the OAU over these issues would leave wounds that could not be quickly healed. The survival of the OAU itself should surely be the overriding aim

of its member states. Despite its failure to move towards a Pan-African approach, the OAU has nonetheless, 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 peaceful settlement. Despite widely varying regimes and ideologies, African states through the OAU continue to speak to each other. However, the OAU is concentrating on an international political role and the settlement of regional disputes has clearly neglected other areas of policy, such as health, transport, defence and 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 could lose its last hope of resisting extra-regional interference by outside powers.

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