

"A SURVEY OF CERTAIN LEGAL

AND

POLITICAL ASPECTS OF THE O.A.U."

I N T E R N A T I O N A L L A W

"A SURVEY OF CERTAIN LEGAL

AND

POLITICAL ASPECTS OF THE O.A.U."

BY

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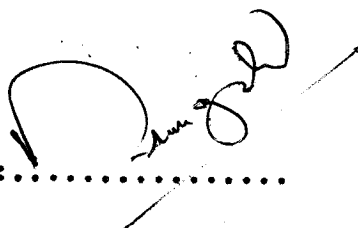
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DECLARATION

I..... MUNGOLE RAPHAEL SIMONO.....

declare that this dissertation represents my own work. It has not previously been submitted for a degree at this or any other University.

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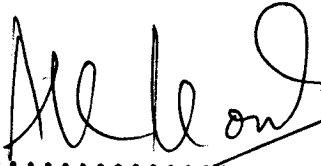

UNIVERSITY OF ZAMBIA
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SEPTEMBER, 1983

This dissertation of

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- (i) Books
- (ii) Magazines and newspapers
- (iii) Lecture Notes

3. FORMA T

Due to lack of original sources which could not be obtained from the Ministries of Legal and Foreign Affairs, the paper has heavily relied on Secondary sources and this has dictated the descriptive and analytical form taken by the paper.

A B S T R A C T

This work is devoted to a general survey of the legal and political aspects of the organisation of African Unity as it operates today. An attempt has been made to briefly trace the history of the O.A.U. and how it has attempted to solve disputes among its member states.

The work has however, suffered from lack of a sufficient number of original sources. The Zambian Ministries of Legal and Foreign Affairs from where it was originally planned to obtain original documents, refused to give any information. The African desk stated that as a matter of policy, they are not allowed to disclose any information to researchers because these materials were State secrets. The little original materials were only obtained from the United Nations Information Centre. In the alternative, secondary sources have been largely relied upon, and this dictated both the descriptive and analytical form taken by the paper.

It has been the author's intention to combine the legal and political aspects of the O.A.U. in order to make general conclusions about certain aspects of the O.A.U. today. Chapter I of the paper deals with the historical background to the founding of the O.A.U. Chapter II examines the organs and principles of the O.A.U. and their implications.

Chapter III examines a selected number of disputes which have confronted the O.A.U. and the attempts the organisation has made to resolve them. The relationship between the O.A.U. and the International Court of Justice is discussed in Chapter IV. The factors that undermine the Unity of African states are further examined in Chapter V. A review of the Charter of the O.A.U. has been suggested in Chapter VI, followed by a summary of the discussion in Chapter VII.

It is hoped that students of both law and political science will find this study useful in understanding the politics of the O.A.U. as a regional organisation.

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INTRODUCTION

The Organisation of African Unity essentially means the unification of the disparate African interests into one homogenous and straight forward instrument to achieve internal prosperity and external defence.

To-day's Africa comprising of 51 states, more than 41 of which are members of the Organisation of African Unity, has had a very uneasy evolution from the start. In the historical past, Africa was broken into various Savannah Kingdoms which were ridden with various feudal politics. These Kingdoms were often unstable and nomadic but they were important Arab targets in terms of Trade.

Africa was influenced by great many external cultures common of these were the earlier Arab culture which established the slave trade in the Somalia, Kenya and Mozambique regions. Portuguese influences were also found in the areas of East Coastline of Africa, up to the present day Mozambique. British Culture equally had its influences in the Tanzanian main land and West Coast of Africa. By the middle of the 19th century, Africa was colonized by European nations whose interests finally resulted in the Berlin Conference where Africa was officially partitioned as booty among the European powers.

Colonialism in Africa was soon challenged because of the desire by Africans to free themselves from white rule that had dominated the African continent. The idea of liberation, political independence and African Unity among independent African

States were among the major factors that led to the formulation of the organisation of African Unity. There were a number of attempts made earlier to establish an inter-African Organisation before the O.A.U. Charter was drawn. In April 1958, a Conference of independent African States was held in Accra attended by eight states to discuss the formation of an African Organisation that could free Africa from Colonial rule. This Conference was followed in December 1958 by a Conference of All African Peoples Conference at Accra. Ghana and Guinea drafted a charter for the Union of African States. Subsequent Conferences were held in 1960 at Addis Ababa from 13th June to 24th attended by Heads of States. In January, 1961 a Conference was held in Casablanca attended by Morocco, Mali, Ghana, Guinea and drew another charter. In March, 1961 three Conferences were held in Abidjan, Brazzaville and Yaounde where at each of these, draft Charters were produced, including one for the Union of Malagasy. The 1962 Lagos Conference brought *tangible* results in that a permanent Secretariat and a Committee on funds was formed.

It was the Conference at Addis Ababa in 1963 that saw the Charter of the Organisation of African Unity agreed upon and signed by thirty-two Heads of African States which ushered the formation of the Organisation of African Unity. Despite political, regional and linguistic differences among African states, the charter was purely functional ~~and~~ was itself a compromise between the loose association of states favoured by the

Monrovia group of states and a federal idea supported by Casablanca group of states and in particular, Ghana.

In order to understand and appreciate the need for the organisation and its role in the settlement of disputes among African states, I have attempted to present a brief historical account of African reaction to colonial rule in Chapter I, followed by a discussion on the aims, purposes and principles of the Organisation in Chapter II. Since its inception in 1963 the O.A.U. has never stayed without disputes among its member states and its attempts to solve these disputes are discussed in Chapter III. The relationship between the Organisation of African Unity and the International Court of Justice is discussed under Chapter IV, followed by an examination of the factors that undermine African Unity in Chapter V. Suggestions as to how the O.A.U. could improve its performance and a summary of the entire discussion is presented in Chapters VI and VII respectively.

It is hoped that students who desire to study the Legal and Political aspects of the O.A.U. in more detail, would find this thesis a useful introductory reading on the subject.

CHAPTER I

HISTORICAL BACKGROUND TO THE FORMATION OF THE ORGANISATION OF AFRICAN UNITY

It ought to be stated from the outset that African contacts with European powers began well before the Berlin Conference of 1884.¹ There were early contacts between Arabs of the North of Africa and the Kings of the African Savannahs, which in the main were characterized by unstable nomadic movements.² These soon developed into large scale historic encounters to an extent that the Arabs had occasionally to intervene in the politics of the African Savannah Kingdoms.³ In East Africa, Arab influence penetrated from the Red Sea to the regions of the Somalia, Kenya, Tanzania and Mozambique,⁴ and small Arab settlements which were subsequently established became major collecting points for slaves.⁵ The Arab presence in Africa resulted in the initial establishment of the slave trade on the East Coast-line, where in the case of Mozambique, Portuguese powers had already settled. In Central Africa, small gold and copper production centres had been established and the Arabs sought to take advantage to exploit this trade.⁶ The Swahili language presently spoken in the majority of the East African States, is perhaps one of the major noticeable consequence of the early Afro-Arab Contacts.⁷

The early Arab Contacts with Africa, coupled with the slave trade, attracted European powers who, from the outset sought to take over the slave trade and gain access to the riches of Africa. The Portuguese were among the first to settle along

the East Coast of Africa, particularly in the area of present day, Mozambique. These Contacts were initially on the basis of diplomatic exchanges between the King of Portugal and Chiefs in the affected areas but trade and economic interests soon became a major pre-occupation. Every effort was made to break into the profitable Arab-Controlled Indian Ocean and eventually joined in the slave trade.

In the Northern part of Mozambique, British influence had begun to penetrate in the Tanzanian mainland.⁸ They had also greatly penetrated the West Coast of Africa, which became known as the "Gold-Coast."⁹ French interests were minor and were confined to the most interior parts of the continent, especially in the Congo region.¹⁰ These French interests had often met strong resistance from the British, true of the Congo region because of copper and other mineral resources.¹¹ While these events were taking place in the Northern, Western and Eastern parts of Africa, Dutch influence had also begun to take hold at the Cape of Good Hope in 1652. The hostilities between the Dutch administration and the indigenous African Communities, greatly influenced the GREAT TREK into the further interior of the Southern region from the Cape.¹²

The picture that emerges here firstly shows that Arab and particularly European interests in Africa were economically motivated and the slave trade was at that time considered

more profitable. In exchange for slaves, African Chiefs received clothes, jewellery, tobacco, guns and gunpowder.¹³ As Sanders has pointed out, the worst part of these trade exchanges, was the introduction of alcohol,¹⁴ although he does not state or elaborate in what way alcohol was considered an evil. His argument could as well be supported for the present, but at the time of early contacts with European powers, alcohol was a prestigious commodity. What Sanders ought to have considered serious an evil, was the loss to Africa, of the more than fifteen million people to American sugar plantations and Europe in general.¹⁵ This figure greatly de-populated the continent.

In order to legalize spheres of influence, these European powers adopted a method of signing treaties with local chiefs to give them full access to resources. For example, British treaties in the Niger Oil River Districts gave the British access to the oil reserves in the Niger River Basin.¹⁶ British trade in the Congo delta was the result of treaties signed by Lieutenant Cameron in the 1800,¹⁷ which gave Britain greater access to the Congo. The Suez Canal was administered under the Treaty of Constantinople,¹⁸ and a good number of treaties were equally signed in other parts of Africa by various European powers.

European interests in Africa culminated in the 1884-1885 Scramble for Africa at the Berlin Conference, where

Africa was officially partitioned among the European powers.¹⁹ For those European nations who had early contacts in Africa, the partition idea only came when Germany and Belgium began to take keen interest in certain areas of Africa. It took the form of boundary agreements and treaties. By the Anglo-Congolese Treaty of 1894, King Leopold gave recognition to British influence in the Upper Nile while Anglo-French agreements in the lower Nile respected spheres of both Anglo and French authorities. Anglo-Italian Agreements in East Africa delimited British and Italian claims in the Somalia region.²⁰ The "1888 RUDD CONCESSION"²¹ signed by King Lobengula and the British South Africa Company, paved the way for British rule in Zimbabwe. By 1902 the whole process of colonization had been completed and directly or indirectly European powers began ruling Africa.

It must be pointed out that effective control of any portion of Africa by a European power was a major goal, but no account of African interests were considered. This position had been summarized by Sir ALAN BURNS, the then Governor of Nigeria when he stated:

"No European Nation had the right to assume sovereignty over the inhabitants of any part of Africa, and the claims put forward by the various governments at the Berlin Conference in 1885 took little account of the rights of the people who lived in the territories claimed."²²

Colonial rule, as we have come to understand it today, had bad effects, not only because Europeans took little account of African interests, but deliberate efforts were made to

destroy the social, economic and cultural developments in the respective spheres of influence and more so of African political thought. As LESLIE RUBIN has pointed out:

"The arrival of Europeans and their efforts to establish a colonial system radically affected African politics and is a continuing influence today."²³

Europeans, in most parts of Africa, were considered racially, culturally and economically superior to Africans and the African majority had for a long period, been ruled by European minorities. It seems to me that what Rubin refers to as a continuing influence today, in relation to the establishment of colonial rule in Africa, is in fact Neo-colonialism embodied in economic dependence, of the many African States.

It is also a fact that the legal sovereignties of the majority of the African Kingdoms were completely submerged under the sovereignties of the metropolitan powers.²⁴ Artificial boundaries were created so as to fully consolidate resource manipulation but Africans soon reacted to colonial rule. The colonial period varied from country to country but in the majority of African States, it was relatively brief because Africans opposed colonial rule. Further more, colonial powers themselves began to change their minds about the empires.²⁵ It is not denied that in some cases some people or groups of people accepted European rule and benefitted from it,²⁶ but the greater opposition to colonial rule brought to the fore African demands for self-determination and freedom. The immediate demand for the

right of the African people to pursue their own political, economic and social development patterns oriented to their needs became of paramount importance. This gave rise to African Nationalism and the need for African Unity for its achievement, particularly after the second world war.

AFRICAN NATIONALISM AND AFRICAN UNITY

The Berlin Conference which was convened by fourteen Western Nations, Save for Switzerland and America, was firstly;²⁷

- (a) intended to clarify the status of the international trade on the Congo and the navigational aspects on the Niger.
- (b) Secondly, the Conference sought to define conditions under which future territorial annexation in Africa could be made.

But no African Nation was represented. It was a Conference concerned with Africa, held in Europe by Europeans and exclusively on behalf of European interests.²⁸ The Conference therefore punctuated the fact of the Scramble for Africa.²⁹

Initially, the African people were little able to check the tidal wave of foreign control that swept over them. However, by 1920, Pan-Africanism had begun to be felt by Africans which stimulated the already growing African Nationalism against Colonial rule.³⁰ Pan-Africanism arose as a protest movement of American and West Indian Negroes

who sought to assert their civil and political rights. They sought further to endorse their links and achievements with African civilization.³¹ The men who led the movement, ~~Henry~~ Du-Bois, Garvey and George Padmore, were highly critical of the slave trade and colonial rule itself and put greater demands for civil liberties in both America and Africa. By 1919 Du-Bois, had been confirmed as the father of Pan-Africanism with George Padmore as Secretary. George Padmore himself was regarded as a serious Pan-African theoretician.³² Jomo Kenyatta and Kwame Nkrumah played the role of Assistant Secretaries of the movement but they conspicuously represented African opinion.³³ Garvey was considered the more radical in his approach to Pan-African issues than Du-Bois. Garvey's significant contribution in the whole movement was to make the American negro conscious of his African origin and created for the first time, a feeling of international solidarity among American negroes and people of Africa.³⁴ As this international solidarity was directed against oppression, it was considered a progressive step, a step which gave blacks a sense of political power to fight colonialism and oppression.³⁵

The first Pan-African Conference was held in London in 1900 by Henry Williams, a West Indian Lawyer. That Conference was mainly called to protest against colonial rule in Africa but was largely attended by blacks of the West Indies. It was at this Conference that concrete ideas about black unity

were formulated and largely called for social progress.³⁶ Henry William's Conference was followed by one organised in Paris by Du-Bois in 1919, coinciding with the Versailles Peace Conference. By organising the Conference, Du-Bois's objective was simply to seize an opportunity to demonstrate to the Assembled powers, the importance of Africa in the post-war era and further demonstrate black solidarity.³⁷ In fact, by 1921, Du-Bois had organised yet another Congress in London where he stressed the importance attached to civil liberties and African independence.³⁸ The year 1945 saw a dramatic change in the ideas of Pan-Africanism. It shifted emphasis from merely being a protest movement of Western Hemisphere negroes seeking racial equality to a tool for African nationalist movement fighting colonial rule.³⁹ It gave birth to the West African National Secretariat of which Kwame Nkrumah was secretary in London.⁴⁰

Pan-Africanism by then, had three objectives;

- (a) that it was a protest movement against racial discrimination, oppression and denial of civil liberties, largely by American and West Indian negroes.
- (b) that it was a tool in the hands of African nationalists struggling for independence and
- (c) that it was a movement to establish a Supra-national entity for African independent States, - hopefully the creation of the United States of Africa.⁴¹

It should be pointed out that although Pan-Africanism originated outside Africa in the Caribbean, it caught the attention of Kwame Nkrumah of Ghana and Senghor of Senegal. These two, articulated themselves and spoke of Pan-Continentalism embodied in the political unification of Africa.⁴² In their drive for the Unity of African States, Nkrumah and Padmore shared similar views, thus;

"In our struggle for national freedom, human dignity and social redemption Pan-Africanism offers an ideological alternative to Communism on the one side and tribalism on the other. It rejects both white racialism and black chauvinism. It stands for racial Co-existence on the basis of absolute equality and respect for human personality."⁴³

Thoroughly schooled in Pan-Africanism, and having closely followed both Duboissian and Garveyite School of thought, Kwame Nkrumah became the driving force behind the concept of African Unity. His concept of Pan-Africanism looked beyond the confines of class, race and tribe. It embraced regional self-governing States and their ultimate amalgamation into a United States of Africa.⁴⁴

In seeking the Unity of African States, Nkrumah articulated himself, thus;

"In their individual fruitfulness, the new States of Africa could do little to influence the greater powers; neither to dissuade them from a senseless and dangerous arms race, nor to cause them to divert defence expenditure towards solutions of the economic problems of developing countries. In Unity, however, Africa could accomplish much. It could be a powerful force in the United Nations, a third force to balance the giants of West and East and an economic community that would raise Africa from a

depressed supplier of raw materials to an industrialized, modernized region, healthy and prosperous in its own rights."⁴⁵

By this articulation, Nkrumah was hoping to achieve a politically Unified African Super-State but such a concept proved utopian. As Robert July has argued, political unification of African States proved utopian and unacceptable to States whose independence and sovereignty had just been won.⁴⁶

In 1958, Nkrumah organised the first Conference of independent African States to pressurize for the Union of African States.⁴⁷ The ideological differences that emerged at this Conference prevented a consensus on the major issue of the Union of African States. An explanation for this rift in ideological terms could perhaps be found in the fact that during this period a number of African States were receiving independence from colonial powers and priorities were being given to local State problems. The 1960 Congo Crisis drove the first ideological wedge into African Unity, by dividing the support of African States between Patrice Lumumba and Kasavubu. It is submitted that it was these ideological differences which lessened the impact of Pan-Africanism.⁴⁸ The Brazzaville group of states supported Kasavubu but adopted a more restrained position on the Algerian war.⁴⁹ The Monrovia group emphasized non-interference in internal affairs of states and called for renewed approach to continental unity.⁵⁰

What further emerged at the 1958 Conference were initial differences as to what African Unity was all about.

- (a) Firstly, the Casablanca group, advocated among other things, political unity, economic and social co-operation, African High Command for self-defence and getting rid of colonialism on the continent. The argument was that political union of African States preceded economic co-operation. It was further argued that only through a well modulated political union of African States could colonialism be eradicated, including apartheid.⁵¹ Of course, Nkrumah, who had by then exerted tremendous amount of influence, stood to spearhead African revolt against colonialism and apartheid.
- (b) Secondly, the Monrovia group of states suggested only a loose form of association among states based on economic, social and cultural co-operation. It rejected political union as a base for African Unity. The idea of the High Command was equally rejected.
- (c) Thirdly, the Brazzaville group shared views with the Monrovia group but emphasized respect for territorial integrity and independence of States and non-interference in domestic affairs of individual States. It argued in the main, that what was really needed at that point in time was economic co-operation so that real African Unity could be "achieved step by step."⁵²

Although one would quickly conclude that the 1958 Conference was a failure, it did however, achieve some measure of success. The achievement was measured in the integrating Arab support for the decolonization process and bringing both Ethiopia and Liberia out of isolation.⁵³ Further Conferences were held in 1962 in Lagos where an O.A.U. Inter-African Draft Charter was drawn but further action was suspended until the views of the Casablanca group were reconciled.⁵⁴

However, international events in the continent eased the way towards Casablanca and Monrovia reconciliation. The end of the Congo crisis, the eased tension in the Algerian war and the collapse of the federation of Rhodesia and Nyasaland, brought to the fore the reality that independence for the white dominated South was Africa's priority, which required absolute unity.⁵⁵ Even then, there was still a political rift between Ghana and Togo. When Togolese President SYLAVAMUS OLYMPIO was killed in a military coup of the 13th January 1963, Ghana was highly suspected. This incident was a blessing in disguise for it was followed by the May 22, 1963 Addis Ababa Conference of African Heads of State and Governments. By and large it was at this Conference that a Draft Charter of the Organisation of African Unity was agreed upon and it did not materially differ from the Lagos draft,⁵⁶ except for one provision of referring disputes to the I.C.J. which was removed. As it were thirty-two African Heads of State who attended the 1963 Conference at

Addis Ababa signed their signatures to the Charter which copies were deposited with the Government of Ethiopia whose capital was Addis Ababa chosen as the headquarters of the Organisation of African Unity. The Charter was subsequently ratified by constitutional processes of signatory states before the Heads of State Conference held in Cairo in 1964, by endorsing signatures to the Charter. Since then, there has been no amendments to the Charter although the TURKSON REPORT recommended structural changes to the Charter, including the establishment of an Assembly for Development Co-operation. These recommendations have never been implemented and they still remain shelved.

That the Charter had finally been agreed upon, was largely attributed to the diplomatic approach to the conflicting views by Emperor Haile Selassie who played a fatherly role as Conference Chairman.⁵⁷ The Emperor had been quoted by Dr. Zdenek Cervenka as having told Conference participants;

"What we still lack, despite the efforts of the past years is the mechanism which will enable us to speak with one voice when we wish to do so and to take important decisions on African problems when we are so minded.... What we require is a single African Organisation through which Africa's single voice may be heard, within which Africa's problems may be studied and resolved.... Let us at this Conference create a single institution to which we will all belong, based on principles to which we all subscribe."⁵⁸

But for Nkrumah the Addis Ababa Conference gave a death blow to his political dreams of ever achieving a union of African States which envisaged a military High Command.⁵⁹

leaders spoke of ideas of self-determination, freedom, rapid economic development, co-operation among States and neutrality in world ideologies. These in fact became fundamental postulates of the O.A.U. Charter, whose aims, purposes, principles and functions of its major organs are briefly examined in Chapter II.

CHAPTER II

AIMS AND PURPOSES OF THE O.A.U

The fundamental purposes of the O.A.U. are stipulated in Art 2(1) of the O.A.U. Charter itself, thus,

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

In order that these purposes be fully realized, the founding fathers pledged to co-ordinate and harmonize their general policies, especially in the fields of,⁶⁴

- (a) political and diplomatic co-operation.
- (b) economic co-operation, including transport and communication.
- (c) education and cultural co-operation.
- (d) health, sanitation and nutritional co-operation.
- (e) scientific and technical co-operation.
- (f) co-operation for defence and security.

The kind of co-operation which was envisaged at that time, was a loose form of co-operation in defence, scientific, technical, education and economic fields. States were only required to generally harmonize their policies in those fields and set up diplomatic relations with each member State of the O.A.U. to secure political co-operation. But it was never intended that such co-operation in these fields should be strong, that is why Nkrumah's High Command in areas of Defence for the continent was rejected because States feared the risk of surrendering troops to an All Africa High Command. However, there has been some realization by O.A.U. member States that there was need to put these aims and purposes into more concrete shape. At the 14th Summit of the Heads of State and Government held in Libreville in 1977, the Secretary-General tabled a proposal for the creation of an O.A.U. Combined Defence Force to replace the ineffective Defence Commission, but the proposal was shelved. A ten-man Ad-hoc Committee comprising of Togo, Algeria, Guinea-Bissau, Chad, Cameroon, Uganda, Lesotho, Liberia, Tanzania and Egypt was formed to replace the Defence Commission and work out measures aimed at aiding Zambia and Botswana against military raids perpetrated by South Africa and Rhodesian forces during the Zimbabwe liberation war. The Tanzania and Zambia Railways Line which link the two countries is a true reflection of the O.A.U. policy of economic co-operation particularly with regard to transport and communication

among O.A.U. member States. On the whole, a lot more need to be done in order to bring these purposes to reality.

It may be pointed out that the above provisions, particularly with regard to the eradication of all forms of colonialism on the continent of Africa, form the real corner-stone of the O.A.U. Liberating Africa from colonial rule was a major goal at Addis Ababa in May, 1963. By this time, the majority of the Portuguese colonies South of the Sahara had not been liberated. Rhodesia was entering into U.D.I. and the apartheid policies of South Africa were gaining strong ground. These caused great concern to the unity of Africa.

The task of preparing ground for the liberation of colonized States was left to the O.A.U. LIBERATION COMMITTEE whose Head office is in Tanzania.⁶⁵ Much of the O.A.U. efforts in the field of liberation has been to give moral, material and military assistance to freedom fighters through the Committee. That the Committee's administration^{be} based in Tanzania, headed by Tanzania's Colonel Mbita, points in the direction with which Mwalimu Nyerere concerns himself with the freedom of Africa. Under the auspices of the O.A.U., Colonel Mbita has undertaken duties in training and co-ordinating the activities of freedom fighters of Swapo and others.⁶⁶ The speed with which Mozambique, Angola and Zimbabwe received their independence has been remarkable.

The independence of the Canary Islands and the Seychelles in 1976, bring to the fore, the great desire among O.A.U. member States to free all states from colonial rule.

Namibian independence still ranks among the thorny issues the O.A.U. faces today. Although the front line States are still pressurizing for that country's freedom, it is argued that the O.A.U. ought to take the blame for leaving the issue to the United Nations. This of course, opens the Namibian question to the West-East conflicts of the Cold war politics. While the General Assembly had discussed the policy of apartheid as early as 1946, it was only during the "Sharpeville Massacre" on 21st March, 1960 that the Security Council became concerned. Even then, the Security Council refrained from endorsing demands by African States that the policy of apartheid threatened the maintenance of international peace and security.⁶⁷ If the Security Council had made a determination under Art 39 of the U.N. Charter, this would have led to mandatory action under Chapter seven of the U.N. Charter which would have involved the use of force against South Africa.

The Namibian question is compounded by the serious denial of human rights, and the apartheid policy has been classified as a crime against humanity. It disturbs world peace.⁶⁸ The Soweto Massacre is a further testimony of the atrocities South African government were committing against the people of South Africa. The Security Council does no more than draft repetitive,

un-enforced resolutions, evading legal action to dislodge South Africa from Namibia.⁶⁹ The Western Contact group seek opinions from Frontline States and yet the same contact group have invested heavily in South Africa, support and cherish the apartheid regime.⁷⁰ But as it has been argued elsewhere in this paper, the consequence of the abortive 1966 International Court of Justice decision which ran against African interests were severe. This decision strengthened South African position and claims over Namibia. It is submitted therefore that Africa must depend on its own efforts if Namibia is to be freed and this implies strengthening the O.A.U. Undoubtedly, the Namibian question still remains a uniting factor both among Frontline States and the O.A.U. generally.

The founding fathers of the O.A.U. agreed in 1963 at Addis Ababa to harmonize and co-ordinate policies in defence and security. It seems to me that this provision was included merely as a compromise to take account of Nkrumah's demands for a Military High Command for the defence of Africa. A Defence Commission to co-ordinate defence policies among O.A.U. member states had been set up. One reason for rejecting Nkrumah's Military High Command was that African States were undisputably reluctant to surrender part of their sovereignty for an African Cause.⁷¹ But as we will be arguing later in this paper, there is a growing awareness among leaders of African States of the need to establish an O.A.U. defence mechanism.

It must be pointed out that the threat to the independence and sovereignty of each State in Africa was no longer the concern of a single State. Every O.A.U. member State becomes increasingly vulnerable to external aggression. It is only through a defence system that require the pooling of Africa's defence resources would meaningful security for Africa be co-ordinated and harmonized. This is needed in the face of a Defence Commission that has been rendered ineffective.⁷²

The mention of the United Nations Charter and the Universal Declaration on Human Rights only indicates Africa's awareness of the principles of the U.N. Charter. These principles, it has been argued, formed a firm foundation for world peace and co-operation among States. It is in fact evident that the majority of the provisions of the O.A.U. Charter are couched in a language that reflects complete adherence to the principles of the United Nations. It is from this premise that it is submitted that the O.A.U. was and is a regional organisation within the meaning of Art 52(1) of the U.N. Charter. The only problem is that the policies of the O.A.U. do not make specific references to political Unity of African States.⁷³

PRINCIPLES OF THE O.A.U. CHARTER

Art 3 of the O.A.U. Charter enumerates seven principles to be observed by member States of the O.A.U. in pursuit of

the aims and purposes outlined in Art. 2 of the Charter. It states that member States solemnly affirm and declare their adherence to;

- (i) the sovereign equality of all member States.
- (ii) non-interference in the internal affairs of States.
- (iii) respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.
- (iv) peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.
- (v) unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other.
- (vi) absolute dedication to the total emancipation of the African territories which are still dependent.
- (vii) affirmation of a policy of non-alignment with regard to all blocs.

The principle of sovereign equality of States appears also in Art 2(1) of the United Nations Charter. For the Organisation of African Unity, this provision was included to remove fears among small States such as Togo that they would be absorbed by larger States by adjusting boundaries. It was important that the provision for the sovereign equality of States be supported by the principle of non-interference in the domestic affairs of States. Art 2(7) of the United Nations Charter emphasizes

that member States of the United Nations should not interfere in the domestic affairs of each other. Both the United Nations and indeed the Organisation of African Unity, recognise the fact that the ability for a State to pursue economic, social and political policies that are relevant to its course of development patterns without disturbance, is an attribute of a sovereign State. The principle of respect for the sovereignty and territorial integrity of each State merely forbids a State from carrying out acts that deprive the other State of peaceful existence as a political entity either inside the territory or at a common border like the Zambia-Zaire border.

The Organisation of African Unity also emphasizes the principle of peaceful settlement of disputes among member States. Art 33(1) of the United Nations Charter also lays emphasis on member States of the U.N. to settle disputes among themselves peacefully. For the Organisation of African Unity, there was a compelling and perhaps an inescapable desire by African States to maintain peace among themselves if they were to enjoy and consolidate their won independence. They needed peace for political and economic development. It would appear that there was some awareness on the part of African States that peace on the continent of Africa would be threatened by territorial disputes and it is for this reason that a Commission for the settlement of such disputes was established under Art 19 of the O.A.U. Charter. The principle under clause (5) Art 3 of the O.A.U. Charter was included as a result of a military coup in Togo before the

Charter was finally drawn at Addis Ababa and Ghana was accused of having instigated the coup in Togo.⁷⁴ Total emancipation of colonial territories is a fundamental postulate of the O.A.U. Charter as evidenced from the preamble which dedicates the Organisation to the fight against neo-colonialism in all its forms. But with economic difficulties Africa was experiencing, fighting against neo-colonialism is a dream because the West are colonizing Africa through cheque books.

The principles of non-interference in internal affairs of member States, respect for the sovereignty and territorial integrity of each State and non-alignment are widely spoken by African leaders. They appear to be the most controversial principles, as they are easily contravened and have been the source of squab^bles in the O.A.U. When Nyerere recognised Biafra as an independent State in 1968, it was generally interpreted to mean that by that recognition, Nyerere was interfering in an internal problem affecting the Nigerians. Federal Nigeria announced that their crisis was an internal affair and no State should intervene as this would amount to interference.⁷⁵ The official O.A.U. stand was to support a United Nigeria and set up a Conciliation Committee under President Kenyatta to resolve the problem. The solution however, came by the surrender of the Biafrans.⁷⁶ Biafran leaders had visited many countries among which was Zambia⁷⁷ and Nyerere had travelled to France to discuss the Biafran

question with President Charles de-Gaulle. He visited Ivory Coast where Nyerere stressed;

"Unity is not an easy thing to achieve, nor will it come over night. Over-riding all our differences of economic and language and philosophy is the fact that we are all Africans."⁷⁸

On return home, Nyerere announced that,

"Tanzania had decided to recognise Biafra as an independent sovereign entity and a member of the community of Nations."⁷⁹

He argued that his recognition of Biafra was because there was a break-down of constitutional authority in Nigeria and that Easterners were subjected to political victimization. Of course Nyerere was supported by Ivory Coast's Felix Houphouet Boigny but he was criticized by Malagasy President who condemned him; thus;

"it was not an honest act vis-a-vis a brother State in the O.A.U."⁸⁰

The Government of Federal Nigeria recalled its High Commissioner to Tanzania and closed its Embassy.⁸¹ Scholars and young intellectuals who looked to Nyerere for a model of African leadership which required clear observance with the principles of the Charter were equally disillusioned. Nigerian University students demonstrated at Lagos and Ibadan Universities with placards that directly insulted Nyerere⁸² and called for his expulsion from the OAU for contravening Art 3(2) of the O.A.U. Charter.

Whatever the arguments, Nyerere's action of recognition only encourages the balkanization of Africa as against the

spirit of the Charter under Art 3(2) of the O.A.U. Charter. Many African politicians received Tanzanian recognition of Biafra with dismay and disbelief. Taking into account Nyerere's earlier support and commitment to the O.A.U. and the Unity of Africa generally, that recognition could not be said to be within the spirit of Art 3(2) of the O.A.U. Charter. As evident reprisal against Tanzania, Federal Nigeria withdrew her financial contributions to the Liberation Committee of which Nyerere was Chairman.⁸³ Nyerere should have waited before announcing his recognition of Biafra because the two parties were capable of solving their internal problem as they finally did.

As if the Nigerian situation was not enough, when Tanzanian troops toppled Amin's government in 1978-79, in preference for Obote, Tanzania was again considered to have interfered in Uganda's internal affairs against Art 3(2) of the O.A.U. Charter. Characteristic of his politics, Nyerere stated that Tanzanian troops had acted in defence against Ugandan aggression. The O.A.U. was indecisive and impotent on Tanzanian violation of the principles of the Charter.⁸⁴ What seems to be the problem in judging whether a state has interfered in the affairs of another contrary to Art 3(2) of the O.A.U. Charter is the lack of criteria for such determination in the O.A.U. Charter. The principle of non-alignment which implies neutrality of African States in their relations with super-powers, is attributed to Nehru of India. It is a principle primarily to avoid involvement in

in the Cold war politics of the West-East conflict. It is a principle followed by poor nations to enable these States^{to} receive aid from any developed country. But with the race for economic and military superiority in Africa, the concept of non-alignment is greatly under-mined. The majority of African States are still tied-up to those developed nations which supply economic and military aid. For example, Zaire has been for long known to be the best American friend in terms of aid.⁸⁵ Ethiopia has been tied-up to^{the} Soviet Union, while Kenya and Somalia are tied-up to America. Malawi, Lesotho and Swaziland are tied-up to apartheid South Africa for economic aid. This makes it even more difficulty for States to abide by the principles of the Charter.⁸⁶

What is clear however, is that great care was devoted to the drafting of the Charter but in practice, O.A.U. members apply double standards.

When Amin toppled Obote in 1971 Amin's delegation was refused to attend a budget session.⁸⁷ And yet international law recognises a coup, whether internally or externally motivated, as a legal means of changing a government.⁸⁸

These inconsistencies, coupled with lack of commitment to the principles of the O.A.U. on the part of some member States, have made the machinery of the O.A.U. a very loose form of organisation. What could be considered as an interference in a State's affairs today, would not be considered

so tomorrow. That Nyerere should support a tribal argument advanced by Biafra was itself a political absurdity that tore the roots of the emerging ties between Tanzania and Nigeria.

MAJOR ORGANS OF THE O.A.U.

Article 7 of the O.A.U. Charter enumerates four major organs of the O.A.U. as being;

- (a) The Assembly of Heads of State and Government,
- (b) The Council of Ministers,
- (c) The General Secretariat and
- (d) Commission of Mediation, Conciliation and Arbitration.

(1) THE ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

The Assembly of Heads of State and Government is the Supreme Organ of the O.A.U. It provides a forum for discussion by Heads of State and Government on any matter of common concern to Africa. The Assembly further co-ordinates and harmonizes general policies of the O.A.U.⁸⁹ The power to review the structure, functions and general performance of any other organ of the O.A.U. is vested in the Assembly.⁹⁰ The composition of the Assembly is primarily confined to Heads of Government of independent African States. However the current practice has shown that leaders of liberation movements have occasionally been admitted to the Conferences of Heads of State and Government without voting.⁹¹ The Assembly meets once in a year and occasionally, at the

request of a member State, it would meet in extraordinary session at the approval of the majority of member States.⁹²

It has power to determine its rules of procedure in conducting its deliberation and questions of procedure only require a simple majority.⁹³

Each member State has one vote and all resolutions and/or decisions of the Assembly are taken by two thirds majority of the member States which, two thirds form a quorum.⁹⁴

African leaders of independent States have since the inception of the O.A.U., held a number of summits; whose venues have been rotating although ETHIOPIA still remains the Head quarters of the Organisation. Thus, from 1963, the summits of the Assembly have been held as follows:

<u>YEAR</u>	<u>VENUE</u>
1963	Addis Ababa
1964	Cairo
1965	Acra
1966	Addis Ababa
1967	Kinshasa
1968	Algiers
1969	Addis Ababa
1970	Addis Ababa
1971	Addis Ababa
1972	Rabat
1973	Addis Ababa
1974	Mogadishu

<u>YEAR</u>	<u>VENUE</u>
1975	Kampala
1976	Mauritius
1977	Libreville
1978	Khartoum
1979	Monrovia
1980	Freetown
1981	Nairobi

In all these summits, the host President automatically assumes the Chairmanship of the meeting. However, these meetings, have never been without problems. During the 17th summit in Freetown in 1980, the question of the Western Sahara was heavily debated and there were sharp divisions among African leaders in supporting the admission of Western Sahara to the full membership of the O.A.U. President Machel led the attack on Morocco, accusing her of expansionism over the Western Sahara. In 1975, there were sharp differences among African leaders over Idi Amin's Chairmanship of the summit in Kampala. Although Amin's Chairmanship was supported by Afro-Arab States, notably, Libya, the majority of the Eastern and Southern member States of the O.A.U. objected to Kampala hosting the summit because of Amin's retrogressive policies and for his lack of respect for human rights.

It must, however, be pointed out that the O.A.U. 19th summit of Heads of State and Government held in Libya in August 1982, in which Colonel Muammar Gadaffi was to take

Chairmanship of the O.A.U., did not materialize because of lack of a quorum. It was clear that this lack of a quorum was because some States boycotted the meeting over the admission of the Democratic Republic of the Sahara to the O.A.U.⁹⁵ A number of African States refused to recognise the Western Sahara as an independent State and therefore they could not see any provisions in the Charter to support a decision to admit Western Sahara as a member of the O.A.U.

The argument in Tripoli was basically one of lack of legal provisions in the Charter which could have helped the Assembly to take a decision in a situation of a deadlock. One ought to appreciate the fact that there was still a struggle between Morocco and the Polisario Front over the independence of the Sahara. It could not have been legal by any chance to admit a liberation movement to the full membership of the O.A.U. Such a decision would have been devoid of legality. On the other hand, the Charter was silent on what the Assembly could do to enforce its decisions, even those taken by other organs.

One of the Assembly's weaknesses is the fact that whatever the nature of its decision or resolutions, such/are not legally enforceable on member States. The decisions could in a way be politically persuasive but not legally enforced. There have been many occasions when States have flouted the decisions of the Assembly and of the O.A.U. generally. The 1982 crisis in Chad provide evidence of how States refuse to accept decisions of the Assembly.⁹⁶ The problem is lack of provisions in the O.A.U.

Charter which could give the Assembly enforcement machinery for its decisions. That this provision should be lacking in the Charter is perhaps not strange because from the outset, African States desired only to have the O.A.U. a loose form of organisation. They did not want to be heavily committed to the cause of the O.A.U. at the expense of their domestic policies and programmes.

In a way, a member State of the O.A.U. abides by the decisions of the O.A.U. by its own will. What is not really disputed is the fact that both decisions or resolutions of the Assembly of Heads of State and Government of the O.A.U. and the United Nations General Assembly are politically persuasive. The only departure is that the O.A.U. has no body such as the Security Council which could take binding decisions in marked situations.

The other function of the Assembly is to consider proposed resolutions prepared by the Council of Ministers, reports from the Secretariat and other organs of the O.A.U. It would appear therefore that the role assigned to the Assembly is merely deliberative, and cannot enforce its decisions. This was perhaps in line with the idea that decisions of the Assembly be based on consensus, an element which was common in traditional African Society.⁹⁷ It is therefore clear that compliance with the Assembly's decisions depends largely on the good-will of States based on political considerations.⁹⁸

(ii) THE COUNCIL OF MINISTERS

The Council of Ministers is composed of foreign Ministers of member States of the O.A.U. or any Minister as a member State may designate.⁹⁹ The primary functions of the Council are stipulated in Art. 13 of the O.A.U. Charter, thus;

- (a) to prepare the Conferences of the Assembly of Heads of State and Government and to take cognizance and implement any matter or decision referred to it by the Assembly,
- (b) to co-ordinate and harmonize inter-African co-operation and general policies among member States in accordance with Art 2(2) of the O.A.U. Charter. Generally, the Council is answerable to the Assembly in the conduct of its affairs¹⁰⁰ and as Cerenka and Sanders have argued, this puts the Council in a more subordinate position. Thus;

"The Council of Ministers is answerable to the Assembly of Heads of State and Government."¹⁰¹

The Council approves the O.A.U. budget and takes its decisions by simple majority vote. Two thirds of the total membership of the Council form a quorum and each member has one vote.¹⁰²

Although the Council implements decisions of the Assembly, it has no enforcement machinery. It does not take binding decisions ^{except} for those decisions related to its internal administration.¹⁰³ In a number of cases, it has to refer its decisions to the Assembly for approval, particularly in matters pertaining to the O.A.U. budget prepared by the Secretary-General of the O.A.U.

(iii) THE GENERAL SECRETARIAT

By virtue of Art 16 of the Charter, the General Secretariat is headed by a secretary-General appointed by the Assembly of Heads of State and Government. There are one or two Assistants who help in the daily running of the Secretariat. He is the principal administrator of O.A.U. affairs, and a greater portion of his work is devoted to preparing the budget of the O.A.U.¹⁰⁴ The Secretary-General and his staff are required to remain neutral on political and diplomatic matters. They shall not seek or receive any instructions from any government or authority external to the O.A.U. For instance, Secretary-General Edem Kodjo of Togo has been blamed for being instrumental in the admission of the Democratic Republic of the Sahara to the O.A.U. He is also answerable to the Council of Ministers and supervises the implementation of their decisions in areas of economic, social, cultural and legal exchanges among member states. He reports progress to the Council.¹⁰⁵

The Secretary-General holds office for a term of four years but can be removed from office by the Assembly on two

thirds majority vote on the grounds of inability to perform his duties. And characteristic of the O.A.U. Charter, it is silent and does not specify grounds which may necessitate such removal.¹⁰⁶ Notwithstanding this omission member States undertake to respect the exclusive character of the responsibilities of the secretariat. Members are required not to influence the secretariat in their duties.¹⁰⁷

The staff of the Secretariat are accorded and enjoy diplomatic privileges and immunities in the discharge of their duties.¹⁰⁸ The Protocol text on their privileges and immunities adopted in 1964 in Cairo, follows closely the text of the United Nations Convention on Privileges and Immunities of its staff adopted in 1946.¹⁰⁹

It is apparent that the O.A.U. has borrowed heavily from Art. 100 of the United Nations Charter. By and large this borrowing indicates the desire on the part of the founding fathers not to depart seriously from the style of the United Nations,¹¹⁰ as a regional organisation.

(iv) COMMISSION OF MEDIATION, CONCILIATION AND ARBITRATION

This is one of the major organs of the O.A.U. Charter. It is established under Art 19 in which member states pledge to settle their disputes by peaceful means. It was intended that the Commission should help solve the numerous problems facing emergent African States in areas of boundary and internal disputes. But the Commission's usefulness hangs

in the balance as the majority of African States do not submit disputes to it. One explanation can be found in the lack of Charter provisions to make recourse to the Commission compulsory. However, this reluctance is of a general nature on the part of States because it involves the question of sovereignty and freedom of action.

The Commission consist of twenty-one elected members by the Assembly of Heads of State and Government from nominations prepared by the Secretary-General. These nominations are of people with professional qualifications, although the charter is silent as to what these qualifications are.¹¹¹ It can only be speculated that they are mainly in the legal field. No two members shall come from one state and once elected they serve in their personal capacity for a period of five years. They may be re-elected. Like the staff of the Secretariat, members of the Commission receive a salary and include general expenses borne by the O.A.U.¹¹²

The jurisdiction of the Commission is confined to disputes between O.A.U. member states only and a state has to submit in writing that it will have recourse to the Commission on its free will. However, the Assembly and the Council are free to refer any dispute involving member states to the Commission. The parties are free to resort to any one method,¹¹³ either mediation, conciliation, or arbitration. The Commission is empowered to adopt its own rules of procedure¹¹⁴ and members enjoy diplomatic immunities and privileges.¹¹⁵ But whether or not the Commission has been able

to deal with disputes successfully as an organ of the O.A.U., can be best answered when we specifically look at the settlement of disputes within the frame-work of the O.A.U. Charter in Chapter III of the thesis. On record the Commission only tried to resolve unsuccessfully the Somalia-Ethiopia disputes in 1977-78. This prompted African leaders to call for changes in the working system of the Commission at its 14th summit in Libreville where a standing Committee comprising of Gabon, Togo, Tunisia, Madagascar, Zaire, Nigeria and Zambia was formed to stand in for the Commission.

CHAPTER III

THE SETTLEMENT OF DISPUTES UNDER O.A.U. MACHINERY

INTRODUCTION

Art 19 of the Charter of the Organisation of African Unity refers to the settlement of disputes within the African continent, inter-alia;

"Member States pledge to settle all disputes among themselves by peaceful means and, to this end, decide to establish a Commission of Mediation, Conciliation and Arbitration; the composition of which and conditions of service, shall be defined by a separate protocol to be approved by the Assembly of Heads of State and Government. The said protocol shall be regarded as forming an integral part of the present Charter."¹¹⁶

- (a) Firstly, it would appear that the Commission was itself established by Art 19 of the O.A.U. Charter when the entire organisation was established. The protocol only dealt with matters of internal administration of the Commission in areas of composition, qualification of its members, procedures and conditions of service.
- (b) Secondly, the protocol only required the approval of the Heads of State and Government to be effective. In fact sixteen governments had already signed it by the 21st July, 1964.

- (c) Thirdly, it was considered as an integral part of the Charter and did not require a separate ratification by member states.
- (d) Fourthly, it was generally argued that the importance of the Commission was reflected by its being considered as being on equal par with the Council of Ministers, the Secretariat and the Assembly of Heads of State and Governments.¹¹⁷

The argument was basically advanced by Professor Elias, then Attorney-General of Federal Nigeria who was heavily involved in the drafting of the charter and the protocol. But for practical purposes, Professor Elias's conclusion seems to be wrong. Firstly, members of the Commission are elected by the Assembly of Heads of State by virtue of Art 2(1) of the Protocol from nominations made by member states. Secondly, the Assembly of Heads of State and Government can remove a member of the Commission from his post on two-thirds majority vote of the total membership of the Assembly if found unable to perform duties or misconduct has been levelled against such a member.¹¹⁸

The point that ought to be appreciated is that upon these provisions, the Assembly of Heads of State and Government remain the supreme body in the entire fabric of the O.A.U. It could never be put on par with the Commission. It was never the intention of the founding fathers of the O.A.U. that the Commission be put on par with the Assembly.

Undoubtedly, the Commission enjoy diplomatic privileges and immunities. What was not doubted was the important role the Commission was intended to play in the peaceful settlement of disputes in Africa. But since its establishment, very few disputes have been referred to the Commission and its work, if any, is least publicised. One understands equating the Commission with the Secretariat and the Council of Ministers because all these are subordinated to the Assembly.

Associated with Article 19 of the O.A.U. charter is Art 3 (3) which calls for the respect of the sovereignty and territorial integrity of each state, and for its inalienable right to independent existence. This article attempts to confirm the pledge made by states that they would respect existing boundaries to avoid conflicts. The unanimous views of the Heads of State assembled at Addis Ababa in 1963 were summed-up by President TSIRANANA OF MALAGASY when he declared;

" . . . It is no longer possible, nor desirable to modify the boundaries of Nations on the pretext of racial, religious or linguistic criteria....., should we take these criteria for settling our boundaries, a few states in Africa would be blotted from the map."119

Nkrumah and others had regarded African boundaries as obsolete, artificial in nature and that they were an obstacle in achieving the real unity and development for Africa. Hence, in their opinion, these boundaries needed to be removed at the earliest opportunity. However, at the Conference, African leaders opted to retain these boundaries against earlier criticisms. One explanation was the fear among small states that they would

be absorbed by neighbouring bigger states. It was further explained that individual state interests would be best served by maintaining the status quo.¹²⁰ In fact the concept of status quo as applied to African states implied the notion that state sovereignty could be lost if boundaries were modified.

This being the position, we ought to place on record the contention that from the time the O.A.U. was born, much of its efforts have been directed towards settling disputes among its members particularly boundary disputes. It has also attempted to settle intra-state problems of its members. Let us re-count selected boundary and intra-state problems of a few states in order to see what O.A.U. efforts have been in finding solutions.

PART I

INTER-STATE DISPUTES

1. THE SOMALI-ETHIOPIA BOUNDARY DISPUTE

The essence of the Somali-Ethiopia dispute has been Somalia's expansionist policy in which the Somali government had made demands as part of its territory, certain Ethiopian areas inhabited by Somali people. The territorial area affected by the Somali demands includes the Ogaden area, and Northern part of Kenya. The basic argument by Somali was that the Somali nation was homogeneous until divided by colonial powers. (History has shown that Somaliland became a British protectorate under treaties of 1886 concluded between various tribes). In 1887 Britain signed a treaty with Ethiopia which fixed the boundary of Ethiopia and Somalia in the North. But vast areas of land which fell under British authority on the Ethiopian side were traditional Somali grazing areas. Letters of grazing rights were issued to both sides and attached to the treaty. To the South, the Kenyan boundary was fixed by an Italo-Ethiopian Treaty of 1908 but this treaty did not fix precisely the boundary line. The original map was lost. By this treaty, large tracts of the Ogaden area fell under Ethiopia. The Wal-Wal incidents of 1930 - 34 were a consequence of an unclear, undemarcated boundary. By 1950, a dispute between Ethiopia and Somalia had been fomented.

The Somali government made it clear that it would not abide by the obligations of treaties signed by its parent government. Somali then denounced the 1899 Anglo-Ethiopian and the 1908 Italo-Ethiopian treaties. The Ethiopian reaction was to request the Somali government to respect treaties signed by its parent state. It too disregarded Somali grazing rights.

It ought to be observed ^{at} this point, that both the boundary delimitation and grazing rights concern land and Somali refused to be bound by those treaties concluded by its parent state.¹²¹ Somali argued that;

- (a) as protecting states, Great Britain and Italy, lacked the capacity to conclude these agreements to cede the disputed territories.
- (b) and that there had been some duress in signing these treaties and therefore void.

It argued further that the unity of Somali peoples would make ethnic, religious, cultural, economic and political good sense in creating peace and unity. The Ethiopian argument maintained that such claims were merely reflective of Somali's expansionist ideal of "Great Somali." These claims, however, raise issues of both international law and politics and bring to the fore the conflict between traditional and contemporary views in international law in areas of state succession. The "Nyerere doctrine" on state

succession points to the contention that a new state should receive its government power on clean slate and that it was not bound by treaties signed by its parent state. The only exception is where the new state has declared that it would be so bound. Whether to abide or not to abide, a new state has an option. The Somali-Ethiopian dispute is basically centred on state succession and the validity in law of those agreements and treaties signed by colonial powers. It is a legal problem.

It is important to mention that Somali irredentism strained the relationship with Ethiopia and the dispute was among the first to be dealt with by the O.A.U. in 1963. Then Somali President Aden Abdullah Osman demanded the adjustment of the boundary and accused Ethiopia of taking large portions of her land. Somali had in fact presented the dispute on the basis of the United Nations principle of self-determination under Art 1(2) of the U.N. Charter.¹²² By 1964, hostilities between the two states, had began and the Council of Ministers Conference in Tanzania placed the dispute on its Agenda. Even then, the matter was put on Agenda with difficulties because Somali wanted the dispute to be presented and handled by the Security Council. She viewed that the Security Council would decide in her favour as African members of the O.A.U. were apparently hostile to her case.

Ethiopia and Kenya argued on their part that the dispute could not be referred to the Security Council, as doing so, would be against the spirit of the O.A.U. charter. It was stated that the principle of self-determination applied to territories not yet independent. They further argued that Somali should respect existing boundaries in compliance with Art 3(3) of the O.A.U. charter.¹²³ The O.A.U. firmly maintained that the unity of Africa required that solutions to all disputes between member states be sought first within the O.A.U.¹²⁴ This stand was taken because of Somali's insistence that the dispute be presented to the Security Council. The O.A.U. then called on the parties to observe a ceasefire, stop hostilities and propaganda against each other and find a negotiated settlement. With continued fighting, Sudanese President General Ibrahim Abdound intervened and relations between the two countries slightly improved. Under the authority of the O.A.U. in 1967 President Kaunda of Zambia who attended the Kinshasa Summit, mediated resulting in a MEMORANDUM OF UNDERSTANDING between Ethiopia and Somalia. They further re-established Diplomatic relations.¹²⁵

The initial peace between the two states would have marked the first step towards a final settlement but it was short-lived. Fighting broke out in 1978. The O.A.U. Commission which was formed to resolve the dispute ended in a stalemate when Somali and Ethiopia both refused to

abide by the Commission's recommendations. The Compromise was rejected by both states. A further attempt by the Assembly of Heads of State Summit in 1978 called for;

- (a) Cessation of all hostilities and any war-like acts by Ethiopia and Somalia and withdrawal of all troops of each of the parties.
- (b) requested the chairman of the mediation Committee to enforce measures and endorse, the Good Offices Commission proposals of July 1978.
- (c) the Commission had stressed that an indispensable condition for the settlement of disputes between African states could best be met by the re-affirmation of the principles of respect for sovereignty and territorial integrity of states. The inviolability of existing frontiers, non-interference in internal affairs of member states and peaceful settlement of disputes.

The Ethiopia-Somali dispute is further compounded by Big-power intervention, especially with regard to the Ogaden area. Africa Research Bulletin has indicated that both Somali, Ethiopia and Kenya were receiving military equipment from Western countries.¹²⁶ Ethiopia has received "\$2 Billion" worth of military equipment from the Soviet Union since 1977 to meet the cost of the war.¹²⁷ To a large extent, the Soviet Union has financed Ethiopia's military operations in her fight

2. MOROCCAN - ALGERIAN BORDER DISPUTE

The French authorities had concluded a number of boundary agreements with the Moroccan government in 1830 and 1912 which attempted to define the border with Algeria. In particular, the treaty of LALLA - MARNIA of 1845 gave details of the border up to the TENIEL - EL - SASSI but did not clarify the boundary situation. When Morocco became independent in 1956, it refrained^{from} raising any issues concerning the border until 1961 when Algeria became independent. The immediate cause of the problem was a clash of interests between the two countries, Moroccan irredentism and expansionist policy on one hand, and mineral resources and oil discoveries in areas occupied by Algeria on the other. Ideological differences compounded the problem. Under Ben-Bella, Algeria was a revolutionary regime in which land and foreign businesses had been nationalized. In Morocco, land was heavily invested in the hands of foreigners. It was obvious that many Moroccans admired the policies in Algeria. But a further complication was that French maps never clearly showed where oil and other mineral resources discovered in the Sahara desert were situated. However, indications were that they were situated in land occupied by Algeria, much to her advantage. Morocco then claimed that the mineral-rich desert occupied by Algeria was her land. Troops then clashed. Morocco attempted to justify its claims by drawing the attention of the Security Council but no initial response had been received. Attempts

by the two countries to negotiate a peaceful settlement failed to produce the intended results. An O.A.U. Conference in 1963 at Addis Ababa placed the Moroccan-Algeria dispute on its agenda but Morocco refused to attend on the grounds that Mauritania had been invited to the Conference.¹³⁰

Emperor Haile Sellasie and the Mali President then chose to mediate. The result of this effort was the convening of the BAMAKO Conference in which Morocco and Algeria attended. The Bamako Conference called for a ceasefire, proposed a demilitarized zone and military neutrality. A Council of Ministers's Ad-hoc Committee set up to examine the problem referred the parties to Article 3 of the charter emphasizing on the need to settle the dispute peacefully under the auspices of the O.A.U. truce was reached and the two countries exchanged Ambassadors under an Ambassodorial Committee which saw the restoration of normal diplomatic relations.¹³¹ The mediatory efforts of Emperor Haile Sellasie deserve praise although the present position militates this praise. The early O.A.U. success deserve comment;

- (a) Firstly, it must be appreciated that by getting the parties to the Bamako Conference and getting them to exchange ambassadors, the O.A.U. had obtained the confidence of the disputing parties.
- (b) that the O.A.U. had been able to effect a ceasefire in the midst of hostilities was no small matter.

- (c) more important was the fact that the O.A.U. took the opportunity to consolidate its authority and assert the importance of solving African problems within an African framework.

However, when further hostilities broke-out in 1966, the 9th session of the O.A.U. Ministers set up an Ad-hoc Commission chaired by Mali to resolve the dispute but no specific solution was found, although the parties expressed confidence in the O.A.U. That a final solution has not been found^{can} only be explained;

- (i) partly by the attitude of states,
- (ii) partly by Moroccan expansionist policy of attempting to create a "Greater Morocco."
- (iii) and partly to the weaknesses in the charter itself, particularly with regard to enforcement and settlement machinery. America's influence on Morocco's relations with neighbouring states play a significant role.

3. ZAMBIA-ZAIRE BORDER DISPUTE

One particular dispute which has not yet received O.A.U. attention but which has been of security concern to Africa has been the Zaire-Zambia border dispute over Kaputa in Zambia's Northern province. It dates back to the 1894 British - Belgian Treaty whose Article 1(6) reads

"The frontier between the independent Congo state and the British sphere to the North of the Zambezi shall follow a line running direct from the extremity of Cape Akalunga on lake Tanganyika, situated at the Northern most point of Cameroun Bay at about 8° 15' South latitude to the right bank of the river Luapula where this river issues from lake Mweru."¹³²

The cause of the problem has been the fact that maps which were drawn, gave confused if not conflicting information as to where Kaputa fell. The indications were that the maps were drawn in favour of Zambia.

It is true that in 1960, after the attainment of independence, Zaire did not raise the question of the border but with the 1960 Congo revolt having ended, and the discovery of mineral rocks in Kaputa, Zaire then claimed that the area fell under her jurisdiction. A flag was hosted. In 1973, two British geologists prospecting for minerals on behalf of Zambia were detained by Zairean authorities for straying into alleged Zairean territory at Kaputa.¹³³ Reacting to these detentions, Kaunda's policy indicated a desire to solve the dispute peacefully and to this effort a joint Permanent Commission has been established to review border issues. In 1981, Kaunda and Mobutu met in Lusaka over the problems of Kaputa, but closely guarded information indicated that nothing tangible came out of this meeting. The matter has still not been resolved.¹³⁴

This instance explains Kaunda's recent policy statements that Zambia intended to lodge the dispute with the O.A.U. Liberation Committee for a solution.¹³⁵ There has however

been unofficial reports that the Zairean flag at Kaputa has been withdrawn although Zairean soldiers are still being seen at Kaputa.¹³⁶ The point ought to be made here that, although there has not been any major military hostilities arising from Zairean arrogance and adamant stand over Kaputa, this has been due to a well reasoned policy stand by the Zambian government. It would appear that Kaunda's patience is running out and the road to the O.A.U. has become more than certain.

4. MALAWI-ZAMBIA BORDER DISPUTE

The dispute between Malawi and Zambia in the Eastern Province at Mwami, gives further testimony as to how O.A.U member states ignore principles elaborated in Art III of the O.A.U. charter. Since her attaining independence, Malawi never made any territorial claims to any part of Zambia but in 1981, Malawi claimed that the area around Mwami immigration post belong to her. This claim by Malawi has obviously been made in total disregard for the provisions of Art III(3) of the O.A.U. charter as supported by Art (6) of the O.A.U. charter. The central theme in these provisions is a pledge by O.A.U. member states to respect colonial boundaries and the respect for the sovereignty and territorial integrity of each state.

Zambia through its Minister for Decentralization appealed to Malawi to respect colonial boundaries to enhance the spirit of the charter. There are no indications that Zambia would

refer the matter to the O.A.U. for settlement.¹³⁷ The only step Zambia has taken has been to employ a team of legal experts and surveyors who have since submitted a report to the government. There is however evidence which suggests that the Malawian government, through its surveyor-general, have rejected the Zambian report of the team of experts. There are indications that fresh negotiations are under-way.¹³⁸

We must point out that relations between Malawi and Zambia have long been strained. During a cabinet revolt in Malawi in 1964, Malawi accused Zambia of harbouring Malawian political dissidents. It was emphasized that certain Ministers in the Kaunda government were siding with Malawian political dissidents. This led to then Vice-President Simon Kapwepwe of Zambia to issue a policy statement that it was Zambia's foreign policy to give political asylum to people who were unsafe in their own countries. However, relations have been normalized.

5. MALAWI AND TANZANIA

Malawi further claimed a portion of land between Kasumulu and Kalongelela in Tanzania but the boundary line has since been re-drawn by experts.¹³⁹ What emerges from the Zaire-Zambia, Malawi-Zambia and Malawi-Tanzania border disputes is the fact that;

- (a) there has been an attitude to obtain a peaceful settlement by negotiations outside the Umbrella of the O.A.U. There has been no explanation for this attitude. One cannot rule out the possibility of leaders of the affected areas realizing the inability of the O.A.U. in finding a final solution to the problems.
- (b) but more significantly, Malawi's claims could only be understood in the wider context of South Africa's strategy to antagonise Front-line states by using Malawi, her long time economic ally.

6. TANZANIA AND UGANDA

The 1978 Tanzanian-Ugandan crisis over their common border, gives further proof of how ideological problems compound boundary disputes in Africa. On 31st October 1978, Uganda, under the leadership of trynical Amin, announced that Ugandan armed forces had fought a 25 - minute battle to drive ^{out} Tanzanian troops allegedly occupying 400 square miles of Ugandan territory.¹⁴⁰ This was followed by another Ugandan statement on November 1, 1978 that Uganda had pushed its border with Tanzania to the Kagera river, annexing about 710 square miles of Tanzanian territory. This, according to Ugandan sources, was in retaliation to Tanzanian invasion of Ugandan territory.¹⁴¹

Four months of continuous fighting, culminated in the 32nd session of the O.A.U. Council of Ministers which met in Nairobi. It set up a mediation Committee of nine states to find a solution but no practical proposals were formulated. Neither was there compensation paid to Tanzania for damages done to the territory. Kenya and Libya offered to mediate but Mwalimu Nyerere refused. He argued that the O.A.U. had let his country down by failing even to condemn Uganda. Nyerere's confidence in the O.A.U. was obviously shattered and he preferred to fight Uganda to the bitter end, thus;

"All those who offered to mediate should understand the Tanzanian position and stop their efforts. We do not want to fight him but now we are going to fight until this snake is out of our house."¹⁴²

Nyerere took the occasion to express the feeling to Africa that it was a question of dislodging Amin from power. Libya sided with Uganda but Front-line states supported Nyerere. The British opinion on the dispute was well summarized by the Guardian paper when it commented;

"Uganda has had seven years of Amin's tyrannous rule. If East Africa thinks the time has come to end it that is possible now that he has crossed the narrow legalistic line."¹⁴³

It can be observed in the final analysis that the O.A.U. failed to find a solution to the dispute, neither did the O.A.U. restrain Colonel Gaddafi who had sent troops to help Amin fight Nyerere. By the turn of events, the dispute was resolved in favour of Tanzania when Ugandan forces were over-run. It was clear that

the O.A.U. lacked the legal provisions to condemn the Ugandan situation.¹⁴⁴

Taking into account the weak settlement machinery found in the charter, the role of the O.A.U. in the disputes cited was only to pacify these disputes and to try and avoid Big-power involvement in the actual confrontation between two African states, with difficulties. Behind scenes, super-powers have been supplying military equipment to the disputants especially in case of Somali and Ethiopia. It can further be said that the role of the O.A.U. still hangs in the balance. Many leaders are still disillusioned, bitter and even angered at the impotence of the O.A.U. for not fulfilling any of the high expectations it originally raised.

PART II

INTERA-AFRICAN STATES DISPUTES

Another set of problems that ever confront the O.A.U. are the intra-state disputes in the form of secessionist situations. The notable ones being the Congo, the Nigerian-Biafran crisis and the Chad crisis.

(i) CONGO CRISIS

When the Congo crisis broke-out, the initial O.A.U. reaction was to set up a peace-keeping force and a Conciliation Commission to settle the dispute.¹⁴⁵ Many African states refused to give Congo all the necessary military assistance and the O.A.U. did not ease the situation. The Security Council ended a debate on the 10th December, 1965 on the Congo in which it requested all states to refrain or desist from intervention in the domestic affairs of the Congo. It re-affirmed Congo's sovereignty and territorial integrity and gave the impression that the solution to the problem depended on national reconciliation and the restoration of Law and order.¹⁴⁶ The Security Council further appealed for a ceasefire, withdrawal of mercenaries and declared that the O.A.U. should be encouraged to pursue its efforts to help the Congo government achieve national reconciliation. The Security Council further stated that the O.A.U. should only keep the Security Council fully informed of any action

it might take to settle the situation. Niger was among the African states that refused to participate in the Security Council resolution on the grounds of the principle of non-interference in domestic affairs of member states.¹⁴⁷

As the Congo crisis worsened, the General Assembly, on the basis of the uniting for peace resolution of 1950, constituted a U.N. Peace-keeping force for the Congo which halted the situation.¹⁴⁸ Deducing from the Expenses Case, the United Nations met the cost of the Force's operations in the Congo. The World Court's opinion rightly confirmed that such expenses were for the United Nations.¹⁴⁹

But it has been pointed out else-where that the United States had intervened in the Congo and gave General Mobutu financial assistance to pay his soldiers and mercenaries.¹⁵⁰ As AJALA has argued, in his Pan-Africanism, the American Johnson administration met substantial costs of the war and recruited Anti-Castro Cuban mercenaries who worked with the Congo government against the rebels. Although there was no specific proof America believed that rebels in Congo had received arms from Cuba and Communist China. General Mobutu became un-cooperative to the O.A.U. Conciliation Committee chaired by Kenyatta to try and reach a settlement.¹⁵¹ Receiving funds and military aid from America, Mobutu was merely carrying out a C.I.A. plan to get rid of Patrice Lumumba. It is true as for the present, that Mobutu

continues to remain an American best friend in a strategically located country.¹⁵² O.A.U. efforts in the Congo failed to produce the results.

(ii) NIGERIAN-BIAFRA CRISIS

The Nigerian situation makes a great departure from the other cases already cited in that when civil war broke out, Federal Nigerian government made it clear that theirs was a domestic matter. It did not require any intervention by the O.A.U., as doing so would be against the spirit of the charter and Art 3(2) in particular.¹⁵³ But concerned with the plight of the Biafrans, the O.A.U. forced itself into the matter and set-up a Consultative Committee for a peaceful settlement. The two sides agreed to negotiate in Niamey on 15th July, 1968. However, the attitude of some African states, particularly Tanzania, which announced early de-jure recognition of Biafra as an independent state, brought O.A.U. efforts to naught.¹⁵⁴ The Anglo-Russian support for Federal Nigeria and the France-Biafran alliance escalated the war resulting into great loss of life and property. Biafra then had to surrender. It is submitted that although the O.A.U. had failed to find a negotiated solution to the problem, credit was given to the organisation for minimizing Big-power involvement.

(iii) PROBLEM IN CHAD

The Crisis in Chad had occupied the minds of O.A.U. African Heads of State and governments on the many summits it held to resolve the situation. As fighting continued between govern-

ment troops and Habre's guerrillas, in the Eastern region, there was danger of guerrillas taking over power. Libyan forces were called in to fight side by side with Government troops against Habre's forces. But Libya was heavily criticised by the O.A.U. for sending its troops into Chad. These troops were then withdrawn. Immediately after this withdrawal, President Mitterrand of France got Nigeria, Senegal, Ivory Coast to agree to provide a joint army force under O.A.U. sponsorship to replace Libyan troops. Nigeria initially agreed to this plan but feared expenses. France promised to meet the costs of the operations and to send arms, ammunitions and officers to supervise transport and communications. These proposals had the blessing of the O.A.U.

By the 9th December 1981, a Nigerian commander of the O.A.U. peace-keeping force Major General Geoffrey Ejiga had arrived in Chad with an advance contingent of 400 Nigerian troops.¹⁵⁵ Zaire provided a force of about 500 paratroopers,¹⁵⁶ Senegal supplied 650 men. By January, 1982, an African peace-keeping force under O.A.U. auspices had started operational tasks in Chad.

Togo was among the states to provide forces for the Chad operations but Chadian President refused to accept Togolese forces. He alleged that Togolese President Gnassingbe Eyadema had earlier suggested the holding of talks between Chadian government and guerrillas.¹⁵⁷ The O.A.U. plan suggested a cease-fire to be effected by February 28, 1982 followed by

a constitution, leading to Presidential elections by June 1982.¹⁵⁸ The O.A.U. plan envisaged an amount of negotiation but President Weddeye refused to accept this plan. He referred to it as an insult, thus;

"We shall wipe out this O.A.U. insult, we shall find a solution to the Chad problem here among us and with the help of really true friendly countries and brothers, we are not a protectorate of the O.A.U."¹⁵⁹

No reasons were given for this attitude and it was not clear whether Chad had turned to Libya or France for further assistance. Indications were that Chad would turn to Egypt for assistance.

Whatever the case, a sufficient insult had already been meted to the O.A.U. The refusal to accept the plan, the continued fighting with rebels, culminated in June, 1982 in the over-throw of the Weddeye government when N'djamema was captured by FAN armed forces. By Saturday 12th June 1982, Arap Moi ordered the peace-keeping force to vacate. One reason for this decision had been that the O.A.U. forces mandate were to expire by June 30, 1982 and subsequent lack of funds with which to continue to maintain the troops.

But the decision to vacate only indicated O.A.U. support for Habre's cause and not in favour of the Weddeye government. The Kenyan radio quoted Arap Moi as having said;

"O.A.U. Chairman Daniel Arap Moi ordered the O.A.U. peace-keeping force commander in Chad to start immediate preparations for withdrawing troops. The President took the decision in view of the latest developments in Chad where the rebels armed Forces of the North (FAN) took

The capital of N'djamena, ousting President Weddeye."160

What emerges from our discussion of the selected problems in that;

- (a) firstly, the O.A.U. has attempted to confine itself to the pledge that African problems had to be resolved within the O.A.U. framework by peaceful means. In fact, in the many disputes it has tried to solve, the organisation has insisted on "AN O.A.U first doctrine."¹⁶¹ It has discouraged its members from sending disputes to the Security Council or General Assembly, only keeping them informed of measures taken.
- (b) secondly, the O.A.U. has further attempted to convince its disputant member states that existing colonial boundaries had to be respected, particularly when it declared the Ogaden region as part of Ethiopia.
- (c) thirdly, in the cases briefly highlighted above, the causes of boundary disputes in International relations become clear. Wrongly drawn maps which was one of the causes of boundary dispute between India and China has also been reflected in the Morocco-Algerian case, and also in the Zaire-Zambian dispute over Kaputa. Expansionist tendencies shown by China towards her relations with India over Tibet and the Northern part of India are reflected in the Somali claims over Ethiopian territory and Morocco over

Algeria and the Sahara. Malawi claims in 1969 over certain parts of Zambia at Mwami in the Eastern region are a further reflection of an expansionist concept/ⁱⁿboundary disputes. Ethnic and linguistic ties have played a major role in causing boundary disputes in Africa and the Somalia-Ethiopian dispute, Togo and Ghana provide excellent examples of how ethnic and linguistic differences compound these problems. A further cause of boundary disputes in International Law is the economic or resource factor, particularly as had been indicated by the Temple of Preah Vihear case.¹⁶² By claiming Algerian land and part of the Sahara, Morocco was clearly interested in the minerals of the Sahara desert. Somali was also interested in retaining her traditional grazing rights over lands occupied by Ethiopia and Zaire's claims over Kaputa was specifically to retain a rock of minerals (diamonds) that is found in Kaputa area.

It is submitted that in the cases we have highlighted and those not specifically mentioned, O.A.U. efforts to find solutions to these problems have been frustrated by individual member states refusing to accept O.A.U. plans for a negotiated peaceful settlement. It has also appeared that the O.A.U. has preferred to deal with these problems through Committees of the Assembly of Heads of State and Government without referring these problems to the Commission for settlement. The explanation for this attitude seems to be that O.A.U. member states are aware of the weak points in the settlement

machinery under the O.A.U. charter framework which does not provide for recourse to judicial settlement of disputes by the International Court of Justice. The work of the Commission has not received adequate publicity and has not produced the desired goals. At the 14th Libreville Summit of Heads of States and Government, in 1971 delegates criticized the work of the Commission and a standing committee comprising of Gabon, Togo, Guinea, Madagascar, Tunisia, Zaire, Nigeria and Zambia was appointed to examine and make proposals as to how the work of the Commission could be improved. However, like the TURKSON Report, the Standing Committees recommendations have still been shelved.

The reluctance on the part of O.A.U. member states to submit disputes to the Commission or the International Court of Justice for judicial settlement, coupled with lack of charter provisions to compel states to judicial settlement, has resulted in failures by the O.A.U. to finding lasting solutions to disputes between its member states. And consequently, making a false start to the concept of African Unity. Why O.A.U. member states are reluctant to submit their disputes to the International Court of Justice, has been dealt with in Chapter IV of this thesis.

CHAPTER IV

THE ORGANISATION OF AFRICAN UNITY AND THE INTERNATIONAL COURT OF JUSTICE

We have argued in the preceding Chapter that in spite of the prevalent violence, African states prefer to settle disputes peacefully by way of negotiation and mediation. These methods merely emphasize the political aspects of these disputes but do not bring legally accepted solutions to these disputes.

The basic argument, which many authors have advanced, is that African states are reluctant to refer disputes either to its commission for mediation, conciliation and arbitration or the International Court of Justice for their decisions. Although this reluctance is not peculiar to African states in international relations, this reluctance on the part of African states is in fact reflected in Art 27 of the O.A.U. charter. This provision states that any questions which may arise concerning the interpretation of the charter, shall be decided by a vote of two-thirds of the Assembly of Heads of State and Government of the Organisation. The original draft charter had indicated that the International Court of Justice should interpret any provisions of the charter in the event of a dispute between member states.

But this draft provisions was rejected at Addis Ababa when member states agreed that;

"Disputes as to the interpretation of any of the provisions of the charter would be best disposed of within the framework of the O.A.U. itself rather than by an authority external to it."¹⁶³

This emphasizes the point we have made earlier that it was the wish of African leaders that problems of member states firstly be settled within the framework of the O.A.U. The immediate concern by states was African unity. The majority of the emergent African states are members of the United Nations and as such, they are encouraged to settle disputes peacefully in accordance with Art 33 of the United Nations charter. Some of these disputes reach such dimensions as to disturb international peace and security that the United Nations ought to be concerned.

If, however, the O.A.U. is a partner of the United Nations in the search for international peace and security on the continent of Africa, the rejection of the draft charter at Addis Ababa seem justified. It strengthens the organisation.

Of course, by virtue of Art 35 of the U.N. charter, African states, members of the U.N., can refer disputes to the attention of the security council or the General Assembly. Such proceedings may or could be subjected to the limitations of Art 11 and 12 of the U.N. charter. In fact, although the initial U.N. response to the Morocco, Somali and Congo disputes, were to refer these disputes to the O.A.U., the the United Nations later became involved, particularly in the Congo situation.

Under Art 92 of the United Nations charter, the International Court of Justice is the world's only judicial organ. All member states of the United Nations are ipso facto parties to the statute of the court. However, states are required to make a declaration that they accept the compulsory jurisdiction of the court. Unfortunately, the majority of African states have not made such declarations.¹⁶⁴ The consequences are that states which have not made a declaration could not present their disputes to the court for judicial decision. In a way, this is further proof of the reluctance of African states to submit to judicial settlement of the U.N.

However, it is pointed out that the relationship between African states as members of both the Organisation of African Unity and the United Nations and the International Court of Justice, would have been non-existent had it not been for the South West Africa case (herein after referred as the Namibian case). In this case, Liberia and Ethiopia presented a dispute to the world court over allegations of serious violations of the mandate by South Africa.¹⁶⁵

The Namibian case ranks among the first African problems the court had dealt with in its thirty-seven years of existence in which the O.A.U. was granted permission to appear before the Court to give oral evidence. In fact, the O.A.U. was represented by Professor Elias. Let us now examine how the court handled the Namibian case in order to appreciate Africa's reluctance to present disputes to the world court.

2. THE COVENANT OF THE LEAGUE OF NATIONS AND SOUTH AFRICA AS A MANDATORY POWER

Art 22 of the League Covenant created an international regime called a mandate. Under this system, territories which were inhabited by peoples not yet ready for independence and were not able to stand by themselves under conditions of the modern world, were given to advanced nations to govern and administer the territories as mandatory powers on behalf of the League of Nations. A number of principles operated in these mandated territories, thus;

- (a) that the well-being and development of the people in these territories formed a sacred trust of civilization and that the mandatory powers were to guarantee basic fundamental rights. This was subject to the maintainance of Law and order in those territories.
- (b) The mandatory powers were specifically prohibited from recruiting the inhabitants for the armed forces.
- (c) the mandatory power could not alter or annexe the territory without the consent of the League.¹⁶⁶
- (d) Each and every mandatory power had to submit an annual report to the Council of the League.

A Permanent Mandates Commission was established to receive and examine annual reports from the mandatory powers on matters pertaining to the observance of the mandates. South West Africa which was a Germany colony was conquered by South African troops. Later, when Germany surrendered her overseas possessions South West Africa (Namibia) was *entrusted* to South Africa as a mandatory power. The concept of unanimity in decision-making, coupled with the absence of the U.S.A. and the rise of totalitarian regimes, the League of Nations became a weak body for the purposes of effectively preserving international peace and security. The weaknesses of the League as a system of collective security led to the founding of the United Nations which came into existence on the 24th October 1945. Under the resolution of the League dated the 18th April 1946, the League of Nations was dissolved and replaced by the United Nations. The operative part of this resolution read;

"This League Resolution, recognises that League functions with respect to the mandates will come to an end and notes that provisions of Chapter XI, XII, and XIII of the United Nations charter embodied principles corresponding to Art 22 of the League. And further noted that members of the League administering mandates to continue to administer for the well-being of the inhabitants until other arrangements have been agreed between the United Nations and the mandatory."167

No provision was specifically made for the continuation or dissolution of the mandate system when the League was dissolved. However, the United Nations charter made provision for an International Trusteeship system for the supervision and

administration of such mandated territories as might be placed under it by agreement on a voluntary basis.¹⁶⁸

The South African government made it clear from the beginning that it had no intention of placing Namibia under the United Nations Trusteeship system. At San Francisco Conference, a South African delegate made a claim that the mandate over Namibia be terminated and that Namibia be incorporated as part of the Union of South Africa. In giving reasons for this claim, he stated that the claim was being made;

"so that South Africa may not afterwards be held to have acquiesced in the continuation of the mandate or the inclusion of the territory in any form of trusteeship under the United Nations."¹⁶⁹

General Smuts view was that South Africa could not have been compelled to conclude a trusteeship agreement in respect of Namibia and that if South Africa's proposals for incorporation were rejected, South Africa would continue to administer the territory of Namibia as a mandatory power. By the end of 1945, Namibia was being administered as an integral part of South Africa.

As it were, not only did South Africa refuse to place Namibia under trusteeship system, but that South Africa even refused to further submit reports to the General Assembly. In 1947, the Union Government submitted a report to the General Assembly which in turn authorised the Fourth Committee of the Trusteeship Council to examine and comment upon it.

The Committee discovered evidence of violations of the mandate and adversely criticized the report. The South African government objected to this procedure and arrogantly informed the United Nations that it would no longer submit any reports. In the words of the South African government, it stated that;

"The Union government can no longer see that any real benefit is to be derived from the submission of special reports on South West Africa to the United Nations, and have regretfully come to the conclusion that in the interests of efficient administration, no further reports should be forwarded."170

This stand marked the beginning of the long struggle between the General Assembly and the South African government. The latter then sought advisory opinions from the world court on the view that the mandate was in force and whether the South African government was obliged to conclude a trusteeship agreement for Namibia.

3. THE 1950 WORLD COURT ADVISORY OPINION

The difficulties faced by the United Nations in persuading South Africa to place Namibia under the trusteeship system culminated in the General Assembly requesting the court to advise on whether the mandate of South Africa over Namibia was still in force. The court was also requested to consider whether South Africa had an obligation to place the territory under the trusteeship system or submit the territory for supervision of the General Assembly. In an opinion delivered on the

11th of July 1950, the fourteen judges who sat in court were unanimous in holding that; 171

- (a) the mandate for Namibia was still in force and that Art 6 of the mandate for Namibia had survived the dissolution of the League. And further that the supervisory functions of the League passed over to the United Nations and South Africa ought to submit annual reports. The supervisory functions passed over to the United Nations by virtue of Art 80(1) of the United Nations charter to safeguard the interests of the inhabitants. The compromissory clause in Art 7(2) of the mandate for Namibia was also still in force and passed over to the world court under Art 37 of its statute. That South Africa was under obligation to accept the jurisdiction of the court.
- (b) On the view that South Africa was under an obligation to place the territory under trusteeship system by virtue of Article 80(2) and 77 of the United Nations charter, the court viewed that South Africa was not under any legal obligation to sign a trusteeship agreement as the matter was entirely voluntary.

- (c) that the competence to determine and modify the international status of the territory rested with South Africa acting with the consent of the United Nations.

In a dissenting judgment Judge ALVAREZ took the view that Articles 75 - 80(2) of the U.N. charter and especially with the spirit of the charter, the South African government was under a legal duty to negotiate and conclude a trusteeship agreement and that if this was not possible, the case must be referred to arbitration.¹⁷²

It is difficult to appreciate the court's opinion in view of the obvious contradictions. Firstly the court said the Union government ought to submit annual reports to the United Nations. But how was this going to be done effectively when the union government was not under an obligation to place the territory under the international trusteeship system? If the United Nations had been refused the right of supervision over the territory by virtue of the opinion, on what ground would the union government render such reports?

We may further ask how the principles of non-annexation of the territory and the well-being of the inhabitants be safeguarded if supervision by the United Nations had been refused? The court's view that South Africa ought to submit annual reports but had no obligation to sign a trusteeship agreement was certainly an irreconcilable absurdity. It

must be submitted further that the intention of the framers of the United Nations charter in respect of Chapter XII was to make the trusteeship system automatically applicable to all former mandated territories not yet independent. As Obozuwa has observed, a court, it be at municipal or international level must not give a judgment that leads to absurdity. It must not even be seen to frustrate the intentions of the parties.¹⁷³ It seems clear that the court's opinion frustrated the trusteeship system in respect to Namibia, causing in the main legal chaos. What was even more significant as a direct consequence from the opinion, was that armed with the judgment of the court, South Africa challenged all efforts by the General Assembly to control and place the territory under the trusteeship system.

It was obvious therefore that the General Assembly, although accepting the court's opinion, had difficulties in the practical application of the opinion. In 1955, it sought yet another opinion as to the degree of General Assembly supervision over Namibia and the competences of the Committee on Namibia. The court returned a verdict that the General Assembly supervision should conform as far as possible with the procedure of the League and adopted rule F for a two-thirds () majority voting on matters pertaining to Namibia as important matters.¹⁷⁴ South Africa objected to this majority voting arguing that this contradicted the courts procedure of unanimity adopted in 1950.

In 1956 the court returned a further opinion that the General Assembly has the competence to authorize the Committee on Namibia to grant oral hearing to petitioners from the territory in the absence of any co-operation from South Africa. As advisory opinions of the court are not binding, South Africa rejected all these opinions and this caused the General Assembly to request the Committee on Namibia to study the situation as to what legal action could be taken against South Africa. The legal action referred to above was to ensure that the South African government fulfilled its obligations. Among the items the Committee reported, was that contentious proceedings could be instituted by individual members of the United Nations.

Indian Nationalism of the 1950's and the wind of change that swept across the continent of Africa, placed and influenced greater demands for decolonization. Influenced particularly by the independence of Ghana in 1957, and the growing political awareness of the people of Namibia, Afro-Asian radicalism became a force in the corridors of the United Nations. The Afro-Asian states seemed to regard the court's opinion as totally a perpetuation of colonialism and a disregard for an African political thought. As Professor Singh has pointed out, the powerful countries of the West, particularly the United States were obliged to make policy adjustments to suit new conditions and demands for decolonization.¹⁷⁵ American judges who sat to deliver

these opinions, seemed to support Namibia's cause.

The year 1960 has gone into history as "Africa year"¹⁷⁶ as the United Nations made decolonization its upper-most concern. This concern culminated in a General Assembly resolution on the granting of independence to colonial countries and peoples. While addressing the United Nations in 1960, President Nkrumah of Ghana, summarized the political mood of African States, thus;

".....Our voice booms across the oceans and mountains over the hills and valleys, in the desert places and through the vast expanse of mankind's habitation, and it calls out for the freedom of Africa, Africa wants her freedom, Africa must be free. It is a simple call, but it is also a signal a red-light of warning to those who tend to ignore it." 177

This was not all. At the 1960 Conference of African Heads of State, leaders decided that the matter of South Africa's violation of the mandate over Namibia be put to the world court. Upon this decision, Ethiopia and Liberia, being former members of the League of Nations signalled their intention to institute proceedings against the union government. From ERNEST CROSS's accounts, the decision to petition was a painful one for emergent Afro-Asian states. But the decision arose out of the frustrations in the manner the union government was ill-treating Africans and Indians under the policy of apartheid and the denial of basic human rights.¹⁷⁸

Secondly, Afro-Asian states were genuinely gripped by a sense of responsibility for the fate of fellow blacks in Namibia and South Africa. This sense of responsibility brought to the fore the solidarity of Afro-Asian states emerging from colonial rule.

4. ETHIOPIA AND LIBERIA - 1960-62 PROCEEDINGS

On November 4, 1960, Ethiopia and Liberia filed petitions to the world court against South Africa's violations of the mandate. Each state filed separate petitions but they were identical in wording and were joined in proceedings. Ethiopia and Liberia asked the court to adjudicate on five major points;

- (i) to declare that Namibia was a territory under mandate and that such a mandate was still a treaty in force within the meaning of Art 37 of the statute of the Court.
- (ii) that South Africa has failed to promote to the utmost the material and moral well-being and social progress of the inhabitants and this failure was in violation of Art. 2 of the Mandate and Art 22 of the League Covenant.

- (iii) that during the course of its administration, the union government has practiced apartheid in violation of the mandate and has established three) military bases in the territory in addition to substantially altering the territory.
- (iv) that the union government has failed to render annual reports to the United Nations to indicate the direction it was taking in its administration of the territory and such a failure violated Art 6 of the mandate.
- (v) that the union government has introduced a legislation which suppress the rights and liberties of the inhabitants as against Art 2 of the mandate, Art 22 of the League covenant and United Nations Declaration on Human Rights and general international standards as embodied in the U.N. Charter.

The South African government raised preliminary objections that Ethiopia and Liberia had no locus standi in the proceedings and that the court itself had no jurisdiction to hear the case upon question of law and fact raised in the applications and Memorials. It then argued that:

- (a) by dissolution of the League of Nations, the mandate of Namibia was no longer a treaty in force within the meaning of Art 37 of the statute of the court.

- (b) that the two governments of Ethiopia and Liberia were no longer members of the League.
- (c) and that in fact there was no dispute under the provisions of Art 7 of the mandate as it did not involve material interests of the applicants.

The court found that the applicants, Ethiopia and Liberia had locus standi in the matter and that the court itself had jurisdiction to hear and adjudicate upon the questions of law and fact raised by the applicants.¹⁷⁹ It further found that;

- (i) the mandate was a treaty within the meaning of Art 37 of the statute because it has an international character.
- (ii) that a dispute therefore existed between the two countries and the union government as regards the performance of the obligations of the mandate and that South Africa cannot retain rights and deny obligations.
- (iii) that the union government was obliged to submit their territory to international supervision.
- (iv) that South Africa was obliged to accept compulsory jurisdiction of the court under Art 37 of the statute and Art 80 of the charter.

(v) that Art 7 of the mandate was still in force.

The court emphasized that judicial protection of the sacred trust was an essential feature of the mandates system. The duty to ensure the performance of the trust was given to the League and in the event of a veto by the mandatory, the court was the only course left to defend the interests of the inhabitants. In the words of the court, it said that;

"The only effective recourse for protection of the sacred trust would be for a member or members of the League to bring the dispute to the court for adjudication."¹⁸⁰

The court proceeded to hear the case on its merits and its President had this to say in addressing the court;

"The court is assembled to-day to deal with the merits of the South West Africa cases between Ethiopia and Liberia on one hand and South Africa on the other." 181

The court had ninety-nine () days of public sitting. That this judgment should be in favour of Ethiopia and Liberia and Africa was owed to the composition of the judges during preliminary objections and hearings. However, Judge Cordova of Mexico did not sit because he was ill and judge TANAKA could not participate in the judgment. With phase of the judgment in favour of the plaintiffs, their joy and restored respect for the court was short-lived when,

on the 18th July 1966, the court threw out the Ethiopian-Liberian case. The court argued that the two states had no legal right or interest in the matter and therefore it would not proceed to hear the case.

At the time of this verdict, there had been some change in the composition of the court. Among those who sat to hear the preliminary objections in 1962, judge ALFARO of Panama had his term of office expired. Rivero of Peru did not sit because of illness and judge Badawi of Egypt had died in 1965. Judge KHAN of Pakistan was disqualified by virtue of Art 24 of the statute under which he was accused of having participated as a judge ad-hoc for Ethiopia and Liberia at the United Nations. This is not the first occasion that a judge of the court had been disqualified. In the ANGLO-IRANIAN OIL CO. CASE. Sir Benegal Rau did not sit because he had represented India in the Security Council. ¹⁸² Judge Jessup did not sit in the Temple of Preah Vihear case because he had acted as consul of one of the parties. ¹⁸³ But for judge Khan's disqualification, no specific reasons were given, and Art 17 or 24 of the statute could not have justified this action. The matter ought to have been properly decided under Art 17(3) or 24(3) of the statute, which procedure was wholly ignored. It does not appear that this controversy has been resolved.

It appeared that by some circumstances beyond the control of Afro-Asian states judges of the third world who could have supported the African cause, did not participate. Although the judge from Poland and Greek voted against the plaintiffs, some marginal difference in favour of the plaintiffs would have been scored. The argument that Africa's cause was a victim of Western imperialism could not be challenged.

5. AFRICA'S REACTION TO THE 1966 JUDGMENT

The African reaction to the judgment was indeed swift, bitter and unequivocal, condemning the court in the manner it applied legal technicalities to reach a judgment. In a letter of protest to the United Nations, Nigeria stated that;

"It was incredible that it should take a court of such distinguished jurists almost six years to determine what is in essence a procedural question. By the deliberate evasion of its responsibility, the court has done serious damage to its image." 184

Poland too denounced the judgment.¹⁸⁵ COL. IN LEGUM, writing in the observer of the 24th July 1966, condemned the judgment, thus;

"The real tragedy of the astonishing ruling at the Hague was that it damages the chances of creating a legal institution capable of contributing towards the resolution of conflicts between nations by means other than violence." 186

Not only was Africa expecting a favourable judgment from the court, but even some of the European countries. The legal machinery have therefore not worked.

IMPACT OF THE JUDGMENT ON AFRICAN STATES

It ought to be submitted that African states had hoped for a judicial role in the supervision of the mandate. Much of the criticism came from the opponents of the ~~act~~ apartheid policy. The argument was not to say that the court should have given consideration as to whether its judgment would be well received or not. Neither was it lack of appreciation of the legal issues involved. The court was not under any compulsion to find for the plaintiffs. But what ever the considerations, the nature of apartheid could not even have influenced a fellowship of international lawyers to defend the judgment from attacks by laymen. The court was perhaps unclear of the issues. It was difficult to understand how it could hold in 1962 that Ethiopia and Liberia had an interest in the matter and proceed to hear the case on its merits. Then turn round and hold that the plaintiffs had no locus standi in the matter. It was wholly contradictory. Even the distinguished judge Jessup could not hold voicing out that the judgment;

"was completely unfounded in law." 187

The above discussion leads ~~one~~ to conclude that the impact has been a complete reluctance by African states to use the

the World Court to settle disputes even when there was a marked change in the composition of the court. Firstly, there was the feeling that the Bench at the Hague was basically of a pro-Western disposition. Coupled with the notion that international law arose out of Western Customs formulated without the participation of African states, and which customs runs against their interests, makes any reference to the court of academic interest. It must also be pointed out that it is not that African states are not aware of the universality of international law. There are obvious advantages to be accrued from the decisions of the court, but admittedly, a decision of the court in favour of apartheid only breeds Afro-Asian hostility to the court. The fear among African states to lose a case in a manner that might involve encroachment on its sovereignty runs through many African leaders.

Even in the charter of the O.A.U. itself, there are no provisions which indicate what the Assembly of Heads of State and Government could do in the event of a member refusing to abide by its decision. The 1981 draft African charter on Human and Peoples Rights is equally silent and omits the establishment of a court for the settlement of disputes concerning violations of Human Rights.¹⁸⁸ It is therefore submitted that by and large the present independence problems for Namibia are largely a result of the 1966 judgment which denied the people of Namibia to be brought specifically under United Nations

supervision. If that supervision had been granted, this would have given an initial step to the death of apartheid. That South Africa should maintain a hardened stand over Namibia does not only show the irrelevance of international law to contemporary issues but also the contradictions that exist between West and East ideologies under the cold war, which has taken a firm ground in Africa.

It is submitted further, that Namibia still remains the uniting factor among member states of the O.A.U. When Ethiopia and Liberia petitioned the world court, the role played by the O.A.U. had been one of giving moral and financial support for the petitioners. This role continues to be played by giving material, financial and military assistance to SWAPO through the O.A.U. Liberation Committee headquartered in Tanzania.¹⁸⁹

Reports of serious violations of Human rights in Namibia by the Pretoria regime continue to reach the Security Council. Even by its Resolution No. 435 of 29th September, 1978 which was a follow-up to earlier Resolution No. 385 of 1976, the Security Council could not move the South African government for an early independence for Namibia and the Western Contact Group's efforts continue without any prospect of early success.¹⁹⁰

One serious omission the Security Council has done, in addition to the absurdity caused by the world court's judgment, was to refuse to make a determination under Art 39 of

U.N. Charter. The determination was to find that the Conduct of South Africa over Namibian people was a threat and a breach of international peace and security. Such a determination would have entitled the Security Council to apply enforcement action to dislodge South Africa from Namibia. But instead, France, Britain and America continue to supply arms to South Africa for use against the people of Namibia. This in effect suppresses them in their revolt against apartheid.

As many writers have said economic factors determine the political relationships among states. The world powers mentioned above have heavily invested in South Africa and Namibia that it was illogical for them to support any adverse but revolutionary measures that attempt to remove their ally from control over Namibia.¹⁹¹ The present proposals that Namibia could only be independent when Cuban troops have vacated Angola is further proof of adverse Western strategy over Namibia. It is again the cold war at play. The onus is on the O.A.U. and indeed on Africa, to take full responsibility over the independence of Namibia.

C H A P T E R V

FACTORS UNDERMINING AFRICAN UNITY

The factors that undermine African Unity are numerous, but for the purpose of this thesis, only the following factors have been identified and studied. These are Economic Dependence and Foreign Aid, Apathy or hostile attitudes towards the O.A.U., lack of an African ideology and indeed lack of enforcement machinery in the O.A.U. charter itself. Let us examine these factors in order to appreciate difficulties the O.A.U. faces to-day.

1. ECONOMIC DEPENDENCE AND FOREIGN AID

One of the major factors undermining African Unity is the economic dependence of African states on foreign aid from the metropolises or the West. This has been attributed to the weak economies found in the majority of the emergent African states, hence, their failure even to contribute to the budget of the O.A.U.

At the 1963 Addis Ababa Conference the founding fathers of the O.A.U. made a pledge that member states would finance the activities of the organisation through annual contributions. Article 23 of the O.A.U. charter was devoted to this pledge, thus;

"The budget of the organisation prepared by the administrative Secretary-General shall be approved by the Council of Ministers. The budget shall be provided by contributions from member states in accordance with the scale of assessment of the United Nations; provided, however, that no member

state shall be assessed an amount exceeding twenty percent of the yearly regular budget of the organisation. The member states agree to pay their respective contributions regularly." 192

However, there are obvious weaknesses in this provisions;¹⁹³

- (a) Firstly, there is no further provision in the charter for an assessment Committee which could have devised a criteria for such assessment, taking into account the ability of a state to secure foreign exchange to meet its contributions on the basis of comparative incomes per head per available population.
- (b) Secondly, and perhaps more serious, is that the provision does not stipulate any enforcement machinery in the form of a penalty for failure by a member to contribute to the budget. It would appear that payment to the budget was merely based on political and moral obligations and the wish of a state to pay its dues. There is no corresponding legal provision as that of Art 19 of the United Nations charter where a member can be deprived of a right to vote for failing to pay contributions or even deprived of membership to the organisation. There is in a way, no legal duty to pay contributions to the organisation.

The nature of Africa's weak-economies, coupled with reluctance on the part of some member states to pay for their dues to the organisation, has left the O.A.U. with little funds with which to manage its affairs. It appears that this position is historical, for as early as 1964-65, twelve (12) African states did not pay their contributions to the O.A.U. liberation Committee. And yet these funds were required for decolonization purposes. Among such states were Central African Republic, Chad, Congo Brazzaville, Congo Kinshasa, Dahomey, Gambia, Malawi, Mauritania, Morocco, Somalia, Sudan and Upper-Volta. The 1965-66 budget further disclosed that twenty-(20) states did not pay up their dues towards the budget. This figure increased to twenty-four (24) in the 1967-68 budget, and twenty-three (23) in the 1968-69 budget.

It would appear that African states are simply indifferent to the budget. The record of the 23rd May 1975 budget session disclosed that about ten (10) states were in arrears in their payments. Among those listed were again the Central African Republic, Chad, Malawi, Mauritania, Senegal, Morocco, Sudan, Zaïre and Zambia. By 1975, the pattern of support for, and the gap between the O.A.U. intentions and performance was not encouraging. It became worrisome. The insufficient funds at the disposal of the O.A.U. since its inception has logged the organisation from funding projects

that reflect the true spirit of African Unity. The financial difficulties the O.A.U. peace-keeping force faced while in Chad is a case in point. By the 10th of February 1982 ¹⁹⁴ the O.A.U. chairman Daniel Arap Moi told the world that the O.A.U. had run out of funds to finance further operations in Chad. He then made an appeal for financial assistance from Western countries and the United Nations. By the 22nd February 1982, it was further confirmed that the O.A.U. budget had fallen by K17 million because twenty-seven (27) member states had not paid their contributions to the O.A.U. for two (2) years. And yet the O.A.U. peace-keeping force in Chad needed about K160 million for its maintenance. ¹⁹⁵ However, Western countries indicated that K500 million aid would be provided to the organisation but that some of this amount would come from the European Economic Community.

The present insolvency of the O.A.U. has also been reflected in the various speeches of the Secretary-General in many of the O.A.U. Conferences. Presenting his report to the 34th session of the O.A.U. in 1980, Secretary-General Kodjo observed;

"that the O.A.U. would face insolvency if member states continue to fall behind in their contributions to the budget and that the enemies of the O.A.U. were waiting for its insolvency to liquidate it." 196

He made these remarks after an Equatorial-Guinea delegate had complained that the deposed President Macias Nguema had squandered the country's resources and requested for the suspension of Equatorial Guinea's contributions for two years.

The budget presented at this session stood at \$170m in 1980 and showed a 21.7% higher than for the 1979.

But this was not sufficient because a great deal of this money went to pay for staff salaries and rentals. In the same report, Secretary-General Kodjo further observed that;

"budget arrears for the year 1979-80 had accumulated by 25.5%, showing a downfall of 60% in payments in the budget." 197

The situation did not improve even when the 1981-82 budget was presented at the 36th session of the O.A.U. in which \$19,515,000 was presented and indicated a drop by 10% in the estimated amount when all monies have been paid in full. The crisis of the Tripoli 19th Summit of the Heads of State and Government which revealed that the O.A.U. was owed more than K25 million in unpaid member's subscriptions deepens the financial crisis of the organisation. The picture that emerges from the figures presented above is that African states merely pay lip-service to the cause of the O.A.U. and clearly indicates lack of commitment to the O.A.U. aspirations.

The financial position in the O.A.U. can partly be explained by lack of commitment by states to pay dues as they fall due. Partly also that the economies of many member states are so weak that they heavily depend on foreign aid and loans to sustain their national budgets. The consequence of aid received from donor countries have resulted in African

states abandoning the cause of the O.A.U. in preference for the donor. As Akintoye has argued, increasing dependence on foreign aid particularly in areas of food supply and military hardwares, has made Africa today "A continent of competing beggar-nations."¹⁹⁸

Under Haile Sellasie Ethiopia was the most recipient of U.S.A. military aid during 1960's. America had built a major communication base at Kagnev near Asmara but this was phased out in 1974. In 1978, Ethiopia received \$2,000m U.S. dollars worth of military aid to sustain the war with nearby Somalia. Malawi received from Britain, financial aid totalling £149 million since independence with additions. About 450 experts from Britain had worked in Malawi. By 1978, Malawi received £28 million loan from the European Economic Community and South Africa gave her K9.7m in 1980 General Economic Aid.

This clearly indicates that the race for loans from Western countries has been a characteristic phenomenon for all emergent African states and this trend still continues. (Zimbabwe has already joined). In this race the cause for the O.A.U. and for Africa in general is put aside, and individual state economic needs take priority over the aspirations of the O.A.U. This is understandable when considering economic realities. But the question still remains, "why is it not possible for states to apportion a little of the loans received to pay for the contributions to the budget"⁹ Lack of commitment perhaps but answers are varied.

2. APATHY OR HOSTILE ATTITUDES TOWARDS O.A.U.

Closely associated with the financial problems of African states, is the hostile and un-cooperative attitudes of some African Heads of State develop towards the O.A.U. These attitudes are influenced by the aid states receive from donor countries. One underlying factor is the desire by each African state to give priority to the solving of economic and social problems in individual states. The desire to pursue development projects that reflect the interests and welfare of the people in each state is of great importance for each leader in order to maintain and retain his position.

John Arthur has argued that for African states, they desire freedom to develop without outside interference, an African version of the hands-off policy.¹⁹⁹ Although African nations consider as paramount their own affairs, lack of development capital has opened them to big-power intervention in their domestic and foreign policies. In the main, they develop attitudes that disregard O.A.U. aspirations. Malawi ranks first among African states that frustrate O.A.U. efforts which reflect the aspirations of the continent. Why single out Malawi?

- (a) Firstly, it is well-known that the majority of the O.A.U. member states have been unanimous in condemning the apartheid policies in South Africa and Namibia.

They have generally agreed on the application of sanctions against the Pretoria regime. But by the end of 1965, Malawi began secret contacts with South Africa to secure a loan with which Malawi built the capital of Lilongwe. She obtained a further amount with which she built a powerful radio communication station as a gift.²⁰⁰ On the 10th of September 1967, Malawi formally announced that she would continue with her diplomatic relations with South Africa. The significant part of this statement, was that the formal announcement was made a day before the 1967 Kinshasa O.A.U. Summit of Heads of State and Government.

It was clear that her attack of the O.A.U. was to please South Africa. Malawi further received aid from South Africa to finance the railway line from Northern Mozambique to Malawi to the tune of £6,400,000.²⁰¹ Since then, Malawi has shown apathy and has been hostile to O.A.U. activities on the continent. Addressing the Malawian Parliament in July 1970, President Kamuzu Banda further defended his contacts with apartheid South Africa, but condemned fellow African leaders, thus;

"African leaders condemned sale of arms to South Africa by Britain. As I understand it, my fellow African leaders are saying this, Britain must not sell arms to South Africa because if she does, then she is helping to prolong to continue with apartheid. In my view, in my honest belief, honest opinion, Mr. Speaker, it is absolutely of no use we the African leaders north of the Zambezi or farther elsewhere on our continent the African continent, denouncing the white people of South Africa, white people of Rhodesia, of Mozambique and Angola from a distance thousands of miles away in Addis Ababa, New York, London, Lagos, Singapore, it is no use we African leaders shrieking our heads-off, calling for boycott and isolation of the whites in South Africa. It is of no use us uttering empty, idle and childish threats at the whites of these countries, which threats everybody, everyone including ourselves knows we are not capable of implementing, no use at all." 262

This statement by President Kamuzu Banda, only implies the support he has for South Africa. President Banda was against the stand African people took to refuse any dialogue with the racist regime. It is in total contradiction with the Lusaka Manifesto on Southern Africa signed on 16th April, 1969. The manifesto was later approved by the General Assembly of the United Nations.²⁰³ The proper course of action would have been to immediately expel Malawi from the organisation but there was no machinery for that purpose in the O.A.U. charter. It is incredible that a member of the O.A.U. should make a statement that supports the suffering of Africans under apartheid South Africa.

An Amnesty International Report for March 1979,²⁰⁴ listed South Africa as among the world's worst countries for torture and described such torture as standard practice.

Many people under the age of 18 years were detained under TERRORISM and Internal Security Acts without trial. But it must be pointed out further that by receiving South African aid, Kamuzu Banda was perhaps complying with;

*South African policy which believed that economic realities will force Africa to change its attitudes towards her."
Trade figures with African states were put at R300 m with BOTSWANA and Swaziland topping the list. 205

In 1976, South Africa overtook Britain as a major trading partner, accounting for 37% of Malawi's total imports and R 83.2 m South African exports to Malawi.²⁰⁶

- (b) Malawi is not the only country with trade links with South Africa. On her part, Gabon had been sending private delegations to South Africa and shown willingness to co-operate in economic and medical fields. As a result of these contacts, a South African millionaire Louis Luyt had taken out a share with a French oil company to build a hotel in Libreville costing \$7,000,000.²⁰⁷ In 1971, the O.A.U. appealed to France and Britain not to sell arms to South Africa, a deal which caused students riots and demonstrations at the University of Zambia and French and British embassies in Zambia, Lusaka. Malagasy and Gabon supported South Africa, suggesting a dialogue with the regime as against the O.A.U. declaration. When France carried out atom-bomb tests in the Sahara, the O.A.U. attempted to dissuade France from

carrying out the tests. But O.A.U. Francophonic states signalled happiness and viewed the tests as part of their achievement. President Boigny stated then that the tests were in their interest.

- (c) Zambia also bought 177,578.84 tonnes of maize from South Africa at a cost of K33m.²⁰⁸ This was at the height of the liberation war in Zimbabwe. Ghana has received \$21.25m from Britain for development projects, Nigeria Dm 350m and \$37.5m Swiss loan for the state of Anambra, the biggest loan to any African country.²⁰⁹ From Britain, Malawi received \$20m for agriculture and this was part of a \$120m package deal over three years to buy vehicles and equipment. Malawi received a further \$700,000 in 1980 from America for Rural water supply projects.²¹⁰
- (d) In 1979, America rushed to Sudan, defence equipment for Sudanese army to counter-Libyan air raids. These included;
- 20 x M 60 tanks
 - 12 x 155 mm howitzers
 - 2 x F-5 fighters
- All these were part of \$100 m defence loan.²¹¹
- (e) Chad received 5,000 tons of food from France and repaired communications in 1979-80. She received 50m Marks for her reconstruction from West-Germany when Chad budget had a deficit of \$6ln. In 1981, Libya paid salaries for civil servants in Chad in August for six (6) months in addition

to military aid.

It is submitted that while African states condemn the apartheid policies of South Africa, they are directly or indirectly trading with her. In some cases, O.A.U. member states have received aid directly from South African allies such as France, America and Britain, and confirms South African policy in relation to Africa. The point to be stressed is that with the race for economic aid from imperialist states of the West, which aid reflect the weaknesses of Africa's economies, the aid itself has influenced hostile attitudes towards the cause of African unity. The Chadian utterances at the O.A.U. already referred to, reflect the fact that she was being backed elsewhere, although of course it should also be appreciated that the O.A.U. in the main supported the Habre faction group, a factor which influenced the Weddeye government to reject O.A.U. negotiations. What is also clear is that the aid received reflect the desire among African states to pursue individual state interests than African Cause at large and not to abandon state sovereignty. In fact some African states (Tanzania in case of Biafra) have the tendency to fly to the metropolises to explain their stand and receive further assurance as to the stand to be taken at major O.A.U. issues. It is argued that the neo-dependence of African states on Western aid influence attitudes in the O.A.U. that make African unity difficult to achieve.

5. LACK OF AFRICAN IDEOLOGY

Africa has no single ideology, that is a system of political thought that can guide the practical activities and policies of states and the entire fabric of the O.A.U. Many African boundary disputes are compounded by differences in state ideologies. ^{in 1974} Ethiopia announced that she would adopt a socialist ideology and this was an attempt to get the country away from Emperor Haille Sellasie's capitalist model of ideological thinking. But the war with Socialist Somali had reached crucial stages of big power intervention and it has been shown that Russia influenced the Ethiopian government to change from Capitalist to Marxist or Socialist ideology when Col. Mengistu signed a twenty (20) year Treaty of Friendship with Russia. Kenya and Somalia differ ideologically because Kenya is more capitalistic. The Kenyan policies reflect American interests. However, there has been some evidence of attempts to change to a socialist ideology. Tanzania has openly chosen a socialist ideology while Zambia has been persuing Humanism. The point ought to be made therefore that by the very nature of differing ideologies African leaders could not be expected to form one particular line of political thought on any major issue concerning Africa. The 1978 Tanzania-Uganda war was itself a culmination of ideological differences between Nyerere and Idi Amin.

Verbal squables caused by state nationalism could not be avoided among leaders, but these undermine the O.A.U.'s strength at resolving major issues.

Although language barriers contribute to difficulties in communications, this has been eased by the fact that English and French are commonly spoken as official languages in many African states.

4. LACK OF ENFORCEMENT MACHINERY IN THE CHARTER

Although the O.A.U. has established the Commission for Mediation, there is no provision in the charter which could assist the O.A.U. enforce its decisions and make its decisions binding on member states. The machinery evolved at Addis Ababa were not enough to bring to an end the hostilities in Africa both from past and present experience. Individual interests of states continue to receive priority over organised authority of the O.A.U. The vital link of making recourse to the O.A.U. compulsory or to judicial settlement of disputes was deliberately left out. The O.A.U. is normally seized if a state refuses to comply with its decision, and the O.A.U. (stalemate) when Chad refused to comply with its peace plan, provides further evidence of a weakened machinery. All that is left in the O.A.U. is political talk and slogans.

Addressing the 22nd Session of the O.A.U. Council of Ministers in Kampala, in 1974, Idi Amin stated;

"Main weaknesses of the O.A.U. was lack of determination and there is too much talking in the O.A.U. and I am fed-up." 212

Amin's statement was followed four years later in Mogadish on 6th April 1978 when O.A.U. foreign Ministers pointed out that the machinery of dispute settlement in the O.A.U. was weak and left the organisation with no alternatives when negotiations and mediation have failed. It is argued that African leaders refuse to abide by the decisions of the O.A.U. because they do not want to give away state sovereignty. But as has already been stated, leaders only pay lip-service to the cause of African unity to an extent of even blaming super-powers for internal squabbles and mis-understandings between and among African states. 213

It ought to be submitted therefore that for the entire nineteen years of the birth of the O.A.U. the organisation has failed to find solutions to crucial and chronic African problems. Those of the Somali-Ethiopia, Morocco-Algeria rank among the early ones. True African unity, has still not been reached, and the aspirations of the African people, hopes for political and economic development and above all the security of Africa has still not been fulfilled.

What seem to have been achieved in the O.A.U. are irrational divisions over non-politico-legal issues such as the admission of a guerilla movement to the Assembly of legally

free independent states. However, the development pattern in the majority of these emergent African States continue to be influenced by Western policies of the metropolises. Exploitation of resources continue unabated, under-development continue to plague the majority of the African people. The apparent lack of commitment on the part of these African leaders, coupled with the desire to enrich themselves while in office has become a standard pattern of leadership in Africa.

The incidence of military intervention in African politics has become a common phenomenon. The most common ground for these military interventions, are allegations that the civilian government was corrupt and squandered the country's resources. When Nkrumah was toppled, the soldiers accused him of corruption and heavy personal expenditures from the national budget. A similar criticism was advanced against Obote's civilian government in Uganda by Amin's Military Council. The appearance of the military in politics not only shows desire on the part of the military officers to gain a share of the national cake but for Africa, it signals a leadership crisis. Where there is leadership crisis, it is difficult for these leaders to push with vigour, the cause of African unity. A false start to African unity had been made, and a reborn Africa of the eighties must start afresh. Let us examine therefore, areas that require improvements to ensure the unity of Africa.

C H A P T E R VI

PROSPECTS FOR THE FUTURE - SUGGESTIONS

As already outlined, one of the major weaknesses of the O.A.U., is the fact that it lacks enforcement machinery for its decisions. It lacks even such provisions which could enable it condemn retrogressive actions of its member states. This is amply proved when Nyerere demanded in 1978 that he would only accept a negotiated settlement over the border dispute with Uganda if the O.A.U. CONDEMNED Uganda, the O.A.U. had no provision in the charter to back its condemnation of Ugandan invasion of Tanzanian territory. And of course, Nyerere's confidence in the O.A.U. withered as a result of this failure.

When in January 1982, the Weddaye government in Chad refused to accept the peace plan stipulated by the O.A.U., the African organisation was seized. No action was taken against Chad for not only refusing to accept the O.A.U. plan, but also for using insulting and disparaging language against the O.A.U. itself.

It ought to be stated that in relation to the United Nations, the O.A.U. is considered to be a regional organisation within the proper interpretation of Art 52 of the United Nations charter. In accordance with Art. 102 of the United Nations charter and Art 25 of the O.A.U. charter, it is registered with the secretariat of the United Nations. 214

The effect of this registration, is for the United Nations to regard the O.A.U. as a partner in the search for international peace and security in the continent of Africa.

In order to strengthen the O.A.U. enforcement machinery to enable it handle the ever-increasing disputes among its members, it is necessary to modify the provisions of the charter in the following ways;

(i) COMMISSION:

As the Commission is already established, it is only necessary to suggest that the task of the Commission and its staff should be confined to investigating the causes of particular disputes among or between member states. Upon the facts, the Commission draws up a report to the Council of Ministers and supplying a copy to the disputing states. The parties would not be allowed to comment upon the report or publish it until the Council of Ministers has made its findings. The Commission should not mediate or negotiate a settlement but merely to report to the Council, indicating in the main, its opinion as to the manner of settlement of the particular dispute. Its jurisdiction would be based on any disputing state making a formal written submission, requesting for such indulgence by the Commission.

The Council of Ministers could give directives for the Commission to carry out such investigations and to report its findings to the Council. In its investigations, the Commission should avail itself of all data and if possible to visit disputed areas and examine documentary evidence pertaining to any claim. In drawing up the report the Commissioners ought to take account of both political and legal aspects of the case.

As for the rest of the provisions pertaining to the administrative aspects of the Commission as at present, it is further suggested that these should remain un-altered, unless it can be shown that any further alterations would contradict the new functions and operational procedures of the Commission. The major portion of its functions would be to investigate boundary disputes as opposed to dealing with internal domestic strifes of member states. It would take its decisions or opinions by a majority vote. Putting the matter this way, only reduces the role of the Commission to investigations and reporting to the Council of Ministers.

(ii) COUNCIL OF MINISTERS:

A further provision ought to be made in the O.A.U. charter to allow the Council to receive and study the reports from the Commission. It will then call upon the parties to agree or disagree with the Commission's findings

By a two-thirds majority vote of the members present and voting, it would prescribe a settlement. Where the parties have agreed the decision of the Council be final and parties to undertake to regard as binding on them such final decision. The Council would then publish a report, indicating the manner in which a settlement has been reached. However, where disagreement has been registered, the course of action for the Council would be to compile a report upon the facts, together with its own prescribed measures for the settlement of the dispute and submit a report to the Assembly of Heads of State and Governments for consideration. The other type of dispute which is suggested exclusively to be dealt with by the Council, should be intra-state disputes, where upon the facts, the Council should encourage settlement by negotiation or mediation. If it failed, the course of action open would be to send a report to the Assembly of Heads of States and Government with comments as to the manner of settlement.

(iii) ASSEMBLY OF HEADS OF STATE AND GOVERNMENT

When a dispute has been referred to the Assembly, it would call upon the parties to restate their case and where a settlement has been reached, it will prescribe measures and a period within which the parties are to comply with the measures.

The Assembly would then publish a report and to legally bind the parties. It will then entrust special powers to the Commission to observe on the compliance of its decision or measures as agreed upon by the parties, and to report on any violations by any of the parties.

(iv) AFRICAN COURT

It is important to insert some provision in the O.A.U. charter to provide for an African Court to hear boundary disputes among member states and to advise on intra-state disputes. It would be interesting for the court also to hear petitions alleging violations of Human rights by O.A.U. member states. It is in fact noted that even the present draft of the O.A.U. charter on Human Rights 1981 omits a vital organ of the African Human Rights Court. In the area of boundary and other intra-state disputes, a state would appeal to the African Court against the decision of the Assembly. In the alternative, where the Assembly is itself unable to find a solution, it ought to submit the dispute to the African Court and allow the parties to plead their positions. Indeed, where the Assembly has to submit the dispute to the African Court, it need not publish a report.

Where a state has alleged violations of Human rights by another state, states should be free to

petition the Court. The decision of the African Court should be final and binding on the parties. However, a provision ought to be included that where a party has disputed the judgment of the African court, the Court be authorized to put its judgment to the International Court of Justice for review and finality. The point here is that the African Court should be able to put the dispute to a finality unless it is shown that one of the parties was dissatisfied. In that case, the African Court would be obliged to send the record to the International Court of Justice. On the other hand, states can apply to the Court for review of the judgment.

But it must be emphasized also that provision ought to be inserted in the charter that both the African court, the Assembly and the Council would not entertain disputes submitted to them which disputes have not been investigated by the Commission. Secondly, a further provision to be inserted in the charter to prohibit any reference of a dispute to the Security Council, General Assembly or the world court unless approval by the African Court has been obtained. It is hoped that this procedure would not only curtail on African disputes receiving international dimensions of the cold-war, but also to ensure that the concept of solving African disputes within the framework of the O.A.U. becomes a reality. This would help give authority and power to the organs of the O.A.U. in relation to the African Court.

The African procedure would require to be exhausted before the world court is called upon to review the decision of the African Court. The normal international law concepts would apply to give legality to the provision.

Let us also argue here that given these amendments to the charter, they may not in themselves absolutely strengthen the unity of African states. But at least they would point to some direction to gain compliance of O.A.U. decisions and in the main, to obtain the co-operation of states. The provision for a regional court already exists in the European convention on Human Rights and the Organisation of American States. These have, by and large, settled disputes among its member states successfully to a finality. In the European convention, THE LAWLESS CASE²¹⁵ is a better example. The facts were briefly that the applicant, a national of Ireland, was arrested and detained without trial for five (5) months in 1957 when the Irish Republican Army was causing much violence. The European Court held that LAWLESS was wrongfully detained and entitled to be released. The case mainly centred on violation of Human rights by England. The IRELAND v. UNITED KINGDOM CASE²¹⁶ is a further example. In 1971 Ireland petitioned the European Court, pleading that the United Kingdom had violate

an undertaking for detaining Irish national accused of terrorist activities without trial. Among the many findings the Court made was that United Kingdom was guilty of inhuman treatment of the prisoners. The point is therefore that an African Court could equally handle cases of violation of human rights, given the necessary provisions in the charter. This would be in addition to handling cases involving border disputes.

The Organisation of American States which date back to 1889 when the United States convened a conference of American States, which culminated in the Bogota Pact of 1948,²¹⁷ give clear examples of how a regional organisation of the O.A.U. type could solve disputes between its member states. It sought to find inter-American peace and security in the American Sub-continent and to settle territorial disputes among its members. We can only say that its record has so far been remarkable. As early as 1937 an Inter-American Commission mediated successfully in the dispute between Haiti and the Dominican Republic. The dispute itself arose out of an incident at their common borders in which Haitian labourers were killed by Dominican soldiers.²¹⁸ In 1948, the O.A.S. mediated in the dispute between Costa Rica and Nicaragua and a peaceful settlement was reached.²¹⁹

The HONDURAS v. NICARAGUA CASE ²²⁰ is also important here. On the 7th October 1894, Honduras and Nicaragua signed a convention which demarcated the limits of the two countries. In 1904, a dispute arose in which the Boundary Commission was asked to resolve the matter but could not. The King of Spain gave the award to Honduras which Nicaragua contested at the Hague. The International Court of Justice upheld the Honduras award and directed that Nicaragua was under an obligation to give effect to the award. It be pointed out here that the O.A.S. has tended to draw on regional legal and diplomatic traditions embodied in the charter. What has even been of more remarkable, has been the fact that the O.A.S. had created a legal machinery which has, to a large extent, been able to stop these disputes from developing into full scale wars. It may be observed that recourse to the International Court of Justice or judicial settlement by a member of the O.A.S. is done as a last resort. A Court within an African frame- work would save a sufficient purpose in Africa.

Secondly, from its inception, the organisation of African Unity has suffered from a chronic lack of funds with which to meet projects that reflect the African aspirations within the spirit of the charter. The majority of its members are unwilling and are seemingly reluctant to pay their annually subscriptions to the budget.

The O.A.U. peace-keeping force in Chad which completed its operations in June 1982 suffered from lack of funds to maintain itself up to as long as sufficient peace had returned to Chad. In fact the whole idea of sending an O.A.U. peace-keeping force to Chad would have not initially been implemented had it not being for France financing the force, with Nigeria and Saire contributing towards its maintenance. It also became evident that not only did the Eastern and Front-line states contribute no forces and refuse to assist in the expenses of the force, but that the whole idea was entirely left to France and her francophonic allies except for ex-British Nigeria who largely contributed both a Commander, troops and financial resources. The cost of maintaining the troops was estimated up to \$150m and this would have costed about \$300m for a full year. One wonders why African states refuse to contribute towards the O.A.U. budget considering that the race for foreign aid from developed countries is much higher than before. By 1981, the total amount of aid to African states from World Bank had reached US \$849m, ²²¹ the largest of which was US \$247m ²²² which went to Nigeria and US \$100m ²²³ to Ivory Coast.

African states ought to use part of this aid to pay for their subscriptions because no state would pay for them. Neither is it fair to derive benefits from the O.A.U. and yet fail to meet budgetary obligations. It may not only be the

question of weak economic position of the majority of African states. It goes a little beyond this. It is a question of lack of commitment on the part of those states and lack of O.A.U. charter provisions to compel member states to meet their budgetary obligations. Two suggestions therefore require special consideration;

(a) BUDGETARY ASSESSMENT COMMITTEE

Provision ought to be made in the O.A.U. charter to provide for the establishment of an O.A.U. budgetary Assessment Committee to consider the amount each state would contribute on the basis of a state's economic position taking into account its economic and development projects for the running year and its external borrowing capacity.

(b) A further provision ought to be included in the charter to stipulate what would befall a state for failure to pay its dues, and such consequences could range from denying a member state to vote, suspension from sessions to complete expulsion from membership of the organisation. In this regard, further provision be made for re-admission on conditions to be met particularly that a member has paid arrears and a fee for default.

(c) A further provision be made to give authority to the O.A.U. to bring the African Development Bank under its specific control and to insist that a member should not

be allowed to constantly receive aid from developed countries if such a member constantly fails to meet its obligations. In the alternative, a member which has met its obligations should have full O.A.U. authority to receive aid from any developed nation. It is saddening to note that many leaders have borrowed very heavily from the West but the money is not been used to develop fully, the welfare of the African people. Instead, leaders are using this money to enrich themselves while in office. Zambia's Kanyama-gate brings the point home.²²⁴ In the 1977-78 rainy season, heavy rains caused floods to the Makeni, Misisi and Kanyama shanty township and a number of squatter houses collapsed, leaving a number of squatters homeless. The government of Zambia then requested for donations from business houses and agencies to help finance drainage projects in the affected areas. A number of International agencies including Switzerland and Russia donated. The then Cabinet Minister for Lusaka Province Hon. Rajah Kunda, misappropriated for personal use blankets and other materials intended for use by flood victims. He further misappropriated for his personal use, bricks with which he built a personal house. A Commission was appointed to investigate the matter but the government intended to harsh-up the findings, had it not been for political pressure. Kunda has since been arrested for abuse of office.

The military coups in Africa, allege, among the many reasons, that the civilian government have squandered public funds and enriched themselves. They have corrupted the civil service. At least, this type of allegations featured prominently when Idi Amin overthrew the civilian government of Milton Obote in Uganda.²²⁵ The point we are making is therefore that from the aid received, African states ought to pay for their subscriptions to the O.A.U. budget. Those who do not pay towards the budget must be prepared to face the consequences as prescribed in the charter. There cannot be benefits from the O.A.U. without obligations, and realities ought now to be faced.

ECONOMIC UNITY

1. In the economic field, it is important to emphasize that regional grouping would be a better alternative among the O.A.U. members. However, it is gratifying to note that already, this is being done. With the help of the United Nations Economic Commission for Africa and the O.A.U., an African Regional Technological Centre has been established in Addis Ababa.²²⁶

It has the following objectives;

- (a) to assist member states in the establishment of national institutions for the development, transfer and adaption of technology.
- (b) to identify and supply consultants to member states to advise on technology.

- (c) Promote effective links between producers and users of technology at national level.
- (d) Organise training, seminars and workshops on various aspects and problems in the field of technology.
- (e) Promote exchange of technical, managerial and research staff at various levels.
- (f) Promote orientation of education towards technology.
- (g) and assist states in identifying alternative sources of technology in various fields.

The United Nations Development Programme contributed \$1.0m towards the 1978-79 budget ²²⁷ and the rest of the money would come from sub-subscriptions of the (25-26) member states. The centre's first session took place on the 11th May, 1978 in Arusha, Tanzania.

(ii) EAST AFRICAN MINERAL RESOURCES DEVELOPMENT CENTRE

has already been established at Dodoma in Tanzania in June 1978. It had a budget of \$100,000. ²²⁸ It has an initial membership of four (4) states, Ethiopia, Mozambique, Comoros and Tanzania. Its objectives are mainly, to provide; ²²⁹

- (a) Advisory services in the fields of planning, implementation and evaluation of geological, geo-chemical, geo-physics and hydro-geological prospecting and exploration projects.

(b) To carry out technical and economic pre-feasibility studies in the development of minerals.

(c) To collect and disseminate data.

(iii) IN WEST AFRICA, THE MULTI-NATIONAL PROGRAMMING OPERATIONAL CENTRE ²⁵⁰ was established in Niamey, Niger in 1978, with sixteen (16) countries as members that form the ECOSWAS in West Africa. Its major objective was to mobilize resources coming from outside West Africa. In particular, it aims at putting into full use, resources that come from United Nations. Dr. Adebayo Adedeji became its first Executive Secretary. Its services have already been extended to East and Southern regions with Lusaka as the headquarters.

(iv) SOUTHERN REGION

The idea of a Southern African Development Co-ordination Conference (SADCC) dates back to 1974 when it was realised that Mozambique would be independent. President Kaunda of Zambia spoke of a day when Southern African states could speak of economic liberation.²⁵¹ It was followed by The Lusaka Declaration on Southern Africa towards Economic Liberation. This declaration reflected a commitment of nine (9) Southern African states to pursue policies that aim at economic liberation and integrated economic development of national economies. In a wider context, however, it was equally aimed at not only at isolating South Africa and reduce its dominating role economically., but also that its establishment was to enhance

the political unity among the FRONT-LINE states. It gave transport and Communications as major priorities. And recently, the Preferential Trade Area ended its meeting in Lusaka with a pledge for further economic co-operation. It ought to be observed at this stage that;

- (a) firstly, these regional groupings are being done under the authority of the O.A.U.
- (b) secondly, there exist therefore, sufficient regional economic groupings that aim not only at economic development of their regions but also make genuine attempts at the unity of African states at sub-regional level. What remains is to put these groupings to full use.

Although Amon Nsekela refers to these groupings as TRADE UNIONS OF THE POOR,²⁵² the case for economic co-operation and integration is obviously compelling. It is a first step towards Africa's economic self-reliance and cut-down on the race for foreign aid, in which new comers, Zimbabwe, have already obtained a \$46,600 dollars loan from America to finance legal training.²⁵³ Economic self-reliance for Africa would be long and cumbersome. It would involve a great deal of sacrifices on the part of states, but as a Chinese proverb has shown;

"Even the longest journey begins with the first step." 234

The only problems that would mitigate the effectiveness of these groupings would be un-equal gains, inter-state ideological differences and external political influences. In fact, it is these factors which characterized the fall of the East African Community. But African states must understand that the policy of creating several unstable and weak though independent states of Africa still remains a major goal in the West. It is important therefore that states co-operate and pool their resources together, if neo-colonialism has to be checked. Regional economic grouping is a vital initial step to symbolize African unity.

4. A SOCIALIST IDEOLOGY FOR AFRICA

It has been argued in the course of this paper, that Africa lacks a single ideology and that differences in ideologies among states have compounded many of the disputes. It is argued here that in order to back up the economic regional grouping that have been discussed, Africa needs an African Socialist ideology. It needs Socialism to meet her needs. As Okoye has pointed out in his writings, old capitalism was dying because it was unsuited to new technical conditions of production. Nobody really believes in it and as a result it survives in the form of financial aid and technical assistance.²³⁵

Under the theory of "survival of the fittest," the road is presently wide open for capitalism to decay and to leave only socialism as a promising survival path. Tanzania has so far taken the lead in her adoption of a socialist ideology. Ethiopia and Somalia have begun to formulate socialist policies. President Kaunda's humanism in Zambia borrows a great deal of socialist ideals.

Socialism is more than a necessity in the political life of African states. The MONROVIA Unity Summit ²³⁶ between Houphouët-Boigny of Ivory Coast, Sekou Toure of Guinea and Senghor of Senegal held on the 18-19th March 1978 to reconcile their political differences, called for the establishment of African socialism to meet the political needs of Africa. In the words of President Senghor, he stated;

"Africa was increasingly becoming the scene of a triple economic, military and cultural conflict between East and West and Africa's salvation was neither in capitalism nor in communism but in a socialist and democratic path adapted to the African context. 237

President Senghor had addressed these remarks to representatives of socialist parties assembled on 31st September 1978 in his capital to lay ground-work for the creation of a PAN-AFRICAN SOCIALIST UNION. He urged the Conference and indeed the entire African leadership to re-read Marx and Engels writings in order to lay further ground for African political parties to join the socialist international order.

What emerges from Senghor's statement is the fact that socialism has become and is still becoming widely spoken by African leaders. However, not all these leaders engage in real socialist programmes which promote economic and social development. The political thinking embodied in socialism only imply three fundamental conceptions;

- (a) that common ownership of the means of production, distribution of goods and exchange of production, services, are for use by the people and not necessarily for profit.
- (b) it conceptualizes planned methods of production by the state based on modern industry and management services.
- (c) but more important, political power is placed in the hands of the people. This is in keeping with the long accepted egalitarian spirit which featured in traditional African society where all are workers and no one exploits the other.

African society was essentially communalistic in nature. Forests, streams, grazing land were owned in common by the community. It seems to me therefore that given this traditional African society, what Africa would require would be a rational and planned extension of that pattern to encompass larger areas of the community than is for the family. States and Africa as a whole needs to democratically ascertain the needs of society as a whole.

As it were, the immediate task for African leadership would be to evolve, in the practical work of national reconstruction a new synthesis of socialism by drawing from the rich African Communal traditions and borrow from revolutionary experiences of Islamic and Western-democratic christian tutelage as well as the successful experiments of any socialist lands. It must be pointed out that a great deal of debate is going on among scholars and intellectual revolutionaries centred on the notion that African unity, at its very core lies socialism, and its definition in emergent African states is widely linked to African traditions. What has then emerged from this debate is the understanding that "Socialism and African Unity are originally complementary."

Undoubtedly, the path to full achievement of a socialist ideology in Africa would not be easy because in the first place not many of the leaders and the masses understand it and in this path there will be both feudalists, capitalists, and neo-colonialists who would mercilessly strive to maintain the status quo. There will be problems of the ways and means, organisational and purely technical problems, the problem of reconciling order with progress and inheritance privileges. But it must also be realized that for African states only under socialism could the continent reliably accumulate the necessary capital needed for the development of Africa, ensure that gains derived from industrial investment are applied for the welfare of the people. And only then could African unity be realized and a United Africa born.

The socialist states of Africa would obviously differ in details of policy which ought not to be arbitrarily decided but scientifically explained, taking account of specific and special circumstances of each state.

A major objective in socialist reconstruction for Africa would be to ensure not only the eradication of imperialism, foreign oppression and neo-colonialism but that African states would be able to develop within an African continental frame-work, a framework which Africa has been unable to achieve since the inception of the O.A.U. A provision ought to be provided in the O.A.U. charter which would encourage the practice of socialism within the boundaries of African states, a step which appear to have already been taken by the African draft charter of the Human and People's rights, when it recognises the rights to the family.

5. O.A.U. HIGH MILITARY COMMAND

We must re-state what Kwame Nkrumah had already said that the unity of African states implied a unified military defence system. It is argued here that time has come, for Africa to put her military resources together for the defence of the continent. The O.A.U. ought to provide the machinery in the charter in which states could set aside army units ready to be rushed to troubled spots and attempt to prevent foreign intervention mainly by super-powers who internationalize the situation.

The Charter of the O.A.U., in its preamble, refers to the need to establish conditions of peace and security on the continent but instead states resolved to create a Defence Commission to co-ordinate policies in defence and this defence commission is ineffective because it has neither the power nor the equipment with which to start work. One reason was the undisputably reluctance of most of African states to give part of a state mechanism which reflect its real sovereignty for a continental cause. But there are now reasons which necessitate the setting up of an effective defence system on the basis of the Warsaw or Nato systems under O.A.U. Command.

- (i) Firstly, South African troops continue to cause havoc in Angola, and the other Frontline states without any resistance.
- (ii) And secondly, foreign troops are defending and giving security protection to a number of African states. The point is that foreign troops are stationed in places where African troops were supposed to be stationed.
- (iii) And Africa has become not only an ideological battlefield for the super-powers but also a testing and display field for military hardware and the training of their military personnel. A close examination of this situation is important here.

The Ethiopian-Somali war over the Ogaden area in the Horn of Africa is largely a war between Russia and America behind scenes. Under Emperor Haile-Sellasie, Ethiopia was a major recipient of American military aid but began to receive Soviet military aid when Lt. Col Mengistu was advised by Russia to lead the country towards a socialist state under a twenty year Treaty of Friendship between Ethiopia and Russia. By 1978, Ethiopia turned to Cuba for further military aid and was offered 16,000 Cuban troops and pilots to fight war with Somalia, and two full Cuban brigades were stationed in the Ogaden area to maintain peace. Equipping Ethiopia for the war with Somalia, Russia provided tanks and Mig-fighters and by the end of 1978 she had received a total of \$2 billion U.S. dollars worth of military aid from Soviet Russia. These were socialist states but they are not Africans. America reacted by financing military operations for Somalia against Ethiopia and Kenya and although no figure could be quoted, this aid ranged in billions. In the Horn of Africa, the Carter administration built-up a 100,000 men as Rapid Deployment Force, built a military base in Diego Garcia and a naval and airforce base at Masirah island and has further plans for a fifth fleet in the Indian Ocean. Russia had a huge army base in Berbera in Mogadishu sufficiently equipped to monitor American Military built-up in the Horn of Africa. The military balance of the super-powers in the Horn stood as follows; ²³⁸

MILITARY BALANCE IN THE HORN OF AFRICA

TYPE OF EQUIPMENT	AMERICA	RUSSIA	FRANCE
COMBATANTS	18	13	10
SUB-MARINES AND CARRIERS	2	-	-
SUPPORT SHIPS	8	15	-
MARINES	1800	400	-

The O.A.U. merely condemned super-power military built-up in the Horn but did not point out any particular power specifically, only Col. Muamar Gaddafi criticized the American idea of a Rapid Deployment Force but how genuine this was, could only be explained in the events that led to the strained relations between Libya and Washington. The presence of 20,000 Cuban troops in Angola on which negotiations for the Namibian independence now remain stalled, is further proof of foreign troops on African soil. Even Libya which has been rated as one of the largest armies in Africa has about 1,750 Soviet armed personnel and another 1,600 German Democratic Republic forces helping with Libyan expansionist tendencies into Chad. The African soil therefore is covered by foreign troops and the consequences are that the unity of Africa is being manipulated to the advantage of the military powers.

This only reflects a lack of a defence mechanism under the O.A.U. charter. In the very obvious case, the military equipment acquired from the military powers are used by Africans to fight among themselves. Of course, small armies such as that of Chad are open to foreign manipulation compared to that of Libya and Nigeira but through a well organised African Defence Force under the O.A.U. High Command, countries like Chad would benefit when an **aggression** has occurred because O.A.U. units would quickly be rushed to the trouble spots. The only problem is that Africans are fighting Africans in the many of the disputes.

TABLE 1. CHAD ARMED FORCES

ARMY	5,000
AIRFORCE	200
PARA-MILITARY	6,000

TOTAL: 11,200 MEN²³⁹

TABLE 2. LIBYA ARMED FORCES 240

ARMY	35,000
NAVY	3,000
AIRFORCE	4,000
COMBAT AIRLIGHT	201
ARMED HELICOPTERS	24

The argument therefore is that if the military resources of African states are pooled together, Africa should be able to defend herself from any outside aggression. It could in fact deal with an internal situation that threaten the peace of Africa which could hinder any meaningful economic development. Not only are African armies expanding steadily like Libya, but countries like Morocco are spending heavily on military hardware to fight among Africans and yet they fail to contribute to an African peace force in Chad. These expenditures should now be directed towards building a Permanent African Defence Force for the service of Africa.

TABLE 5: LIBYAN DEFENCE AND SECURITY EXPANSION ²⁴¹

TYPE OF EQUIPMENT	1973	1978
ARMoured BRIGADE	1	2
Mechanized BRIGADE	2	3
SPECIAL FORCES	1 regiment	1 Brigade
TANKS	250	1,900
ARMoured PERSONNEL CARRIERS	450	1,000
ARMYMEN	150	600
GROUND TO GROUND MISSILES	-	27
COMBAT AIRCRAFT	72	150
HELICOPTERS	25	50
GROUND TO AIR MISSILES	3	40
COMBAT NAVAL VESSELS	1	10

This perhaps reflected Libya's wish to become a powerful force in the Mediterranean and by then his navy had only 2,700 men with two Russian built Submarines.

TABLE 4: MOROCCAN MILITARY EXPENDITURE IN MILLION DIRHAMS

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	1976	1977	1978
TOTAL BUDGET	18,945	21,680	17,597
(i) DEFENCE	2,339	3,510	3,438
(ii) INTERIOR	1,126	1,018	1,267
TOTAL (i) & (ii)%	18	21	27

Foreign military intervention in African disputes are often at the call of African states themselves because of the desire to protect their sovereignty in the face of a weak army. Although Morocco had a budget deficit of Dh 2.5bn in 1978, ²⁴³ she enjoys military support from America who supplies her with defence equipment. On March 2, 1982, America announced that she would supply 108M-60 tanks valued at \$182m to Morocco and deliver six (6) OV-10 BRONCO COUNTER-INSURGENCY planes and twenty (20) NORTHROP F-5 jets, ²⁴⁴ to fight her war with the Polisario guerillas.

It was the wish of America to arm Morocco in order to counter Libyan activities since relations between Libya and America strained because of America's accusation that Libya was engaged in international terrorism against America. America was hoping to benefit by making Morocco serve as a transit point for America's Rapid Deployment Force. With a further Saudi Arabian yearly budget of \$400 for military expenses, Moroccan armed forces have expanded enormously to 180,000 in the eighties compared to only 61,000 in 1975.²⁴⁵

It is opportune therefore that with these military expenses and bigger establishments of military forces in Africa, the O.A.U. charter ought to provide the necessary machinery for member states to contribute forces and equipment to an African Defence Force under O.A.U. High Command for the defence of Africa and for the O.A.U. to utilize in internal strifes as that of the Chad situation. The call for an African Defence Force is increasingly becoming common, for as early as 1974, General Idi Amin of Uganda spoke of weaknesses in the O.A.U. defence machinery and called for the creation of an O.A.U. Military High Command. A similar call was repeated in 1981 by many leaders. Of course the idea reflects Nkrumah's thoughts in 1960's and was rejected because of small armies of African states, but now the idea has become more of a song and the O.A.U. ought to provide the provisions in the charter if we really have to remove foreign soldiers on the African continent and to engage in defence

mechanisms that have African orientation and originality. It is of no use clinging to sovereignty and abandoning the African cause, because the majority of African states are vulnerable to attack and Africa must have a means of protecting and defending herself. What ought to be realized is that the threat to the independence and sovereignty of a single state is the concern for Africa as a whole.

6. AN AFRICAN LANGUAGE - SWAHILI

While the English and French language were serving admirably in the many of the Francophonic and Commonwealth countries of Africa, the charter of the O.A.U. is silent as to what could have been the official language uniform in the member states. Art 24(2) of the charter does not refer to any specific African language and each member states is free to endorse O.A.U. documents in its own language. It ought to be stated that the English and French languages still remain a symbol of the colonial masters and it is necessary to attempt to break away as much as possible from colonial ties. The argument is that by virtue of differences in language, minor areas of misunderstanding are created, particularly the North-South split over major issues that concern Africa. French speaking countries prefer to tie among themselves. A provision ought to be inserted in the

O.A.U. charter to provide and encourage the creation of sub-regional languages. In East Africa, the idea was already being implemented, to make Kiswahili as an official language in the Eastern sub-region of Africa.

In 1972, UNESCO suggested Kiswahili to be developed as a sub-regional language in East and part of Southern region of Africa. ²⁴⁶ The O.A.U. had agreed at its Mauritius Summit to implement this suggestion. A Centre for Research on Oral TRADITIONS AND LANGUAGES has been established in East Africa with an initial budget of \$400,000. with Sudan, Ethiopia, Malagasy and Tanzania as original members. ²⁴⁷

Swahili is spoken in East Africa, Zaire, Mozambique, Malawi, partly in Zambia, Burundi and Comoro Islands. It can easily be learnt from Cape-Town to Cairo because of its historical links with Arabic and other Bantu languages. If Swahili could be developed as a continental language, many Africans would like to see the organisation of African Unity which normally debates in Arabic, French and English use its autothorny language.

It must be submitted here that culturally and racially, Africa counts for black and Arab inhabitants of the North, it accounts for many languages and tribes.

The religion and ethnic groups are multiple and diverse. Detractors of African Unity have argued that the diversity of the tribes and ethnic groups hinder the unity of Africa in mainly slowing the pace to unity. This problem has in the main been recognised but one is tempted to believe that these are artificial barriers that discourage enthusiastic effort on the road to achieve African unity. Africa can therefore benefit from these diverse and differences in language and culture by encouraging sub-regional languages. These differences should be considered not as serious obstacles but as complementary factors, not as sources of antagonism but as instruments to be used to contribute to a United Africa. If these differences are really strong as it has been argued elsewhere, it is perhaps the more reason that sub-regional language grouping should serve as a compromise.

C H A P T E R VII

CONCLUSION

The Organisation of African Unity as out-lined earlier was essentially conceived to bring about unity among the diverse political, economic and social entities of the African continent. It was believed that the organisation will be a source of political, economic and social polarisation of forces so that the countries of Africa could jointly and severally contribute to the well-being of the African people.

However, as discussed in Chapter II and III of this thesis, the performance and effectiveness of the Organisation of African Unity, has often been judged by the record of its annual summits of its supreme-body - The Assembly of Heads of State and Government, whose resolutions provide guidelines for foreign policies in member states of the O.A.U. These resolutions have not resulted in a material way to any change in the member states thinking for the simple fact that these resolutions have no bindingness. The lack of legally binding force in the decision making process has led to the settlement of disputes in the O.A.U. equally ineffective.

It has also been pointed out how countries like Tanzania have flouted the O.A.U. prescriptions. Nyerere's behaviour in the Biafran war reflected the inability of member states to obey or abide by the O.A.U. decisions and principles. African unity as conceived by the O.A.U. was flouted by Nyerere in the Biafran war.

The second major weakness in not making the O.A.U. effective has been the repeated O.A.U. splits on major issues. The 19th Tripoli Summit of the Heads of State and Government convened twice in the Libyan capital witnessed a major split in the O.A.U. on the question of the admission of Western Sahara as a full member of the O.A.U. However, it is submitted that it would not have been legal for the O.A.U. to admit Western Sahara to the full membership of the African organisation as there is no provision in the charter for admitting a liberation movement.

The O.A.U. lacks support from its African leaders as demonstrated in Chapter V who sometimes developed anti O.A.U. attitudes as was the case in Chad. African leaders fail to support O.A.U. decisions, when such support was needed most to enhance the concept of African unity. In the main, the African leaders have often blamed the super-powers for making attempts to weaken the O.A.U. But they do not blame themselves for refusing to abide and support decisions of the O.A.U.

The settlement of disputes provision of the O.A.U. as a major thrust for achieving desired goals of the O.A.U. have, by and large, been of no consequences. The extent to which these provisions have been effective, has been discussed in Chapter III and on balance, it has been shown that these provisions have not proved effective in halting hostilities among member states of the O.A.U. By and large, the vital link of making recourse to the O.A.U. Commission for Mediation, Conciliation and Arbitration compulsory, is visibly missing. Yet mediation, negotiations, Good Offices and Conciliation are methods that emphasize the political and diplomatic approaches in the settlement of disputes. In a way, these methods pacify disputes but do not finally solve them. It is because of these weaknesses in the charter, that we have suggested a simplified machinery for settling boundary and intra-state disputes. This new machinery includes an African court and a further appeal to the International Court of Justice as a means to effect full compliance with O.A.U. decisions. The benefit of this new procedure would be to move away from emphasis on political settlement of disputes to invoke legal machinery and give these decisions a legal force behind them. The role of the International Court of Justice in the new procedure, would be to review decisions of the African Court, particularly in areas where the African Court has made an error in international law or has misjudged

factual situations.

As discussed in Chapter V, the inability of the O.A.U. to finance projects that reflect Africa's aspirations, cut across its effectiveness. The major problem in this area, has been the lack of funds with which to carry out these projects. The 1982 O.A.U. Peace-Keeping Force in Chad almost failed to complete its term of operation had it not been for France and America who provided funds. The O.A.U. could not raise sufficient funds from its own account. These financial difficulties are compounded not only by the weak-economies of member states, but also some member states' unwillingness to contribute to the budget of the organisation. Although the adverse effects of foreign aid cannot be over-emphasized, unwillingness to contribute to the budget of the O.A.U., cannot be condoned. In order that the economies of the African member states of the O.A.U. be improved, we have suggested in Chapter VI that Africa's future should start with the introduction of sub-regional economic groupings which reflect regional economic cooperation. The setting up of the African Regional Technological Centre in East Africa, the East African Mineral Resources Development Centre in Tanzania, the MULTI-NATIONAL PROGRAMMING OPERATIONAL CENTRE in West Africa, MULPOC, and its Lusaka based offices, the Southern African Development Co-ordination Conference (SADCC) and the Preferential Trade Area (PTA) whose Inaugural

Meeting of the Authority of the (P.T.A.) ended in Lusaka on December 17, 1982, are all welcome developments in sub-regional economic self-reliance and sustainancy. These programmes also envisage the establishment of regional common markets, common currency and the removal of customs barriers. The end product is the pooling of regional economic resources for the benefit of the sub-region. By and large these initiatives are being undertaken and will continue to be undertaken under the umbrella of the Organisation of African Unity. It is hoped that these programmes would help remove the effects of colonially balkanized Africa.

But we have equally pointed out in Chapter VI that one problem inherent in regional groupings, has been the unequal gain in resources, and this factor characterized the fall of the East African common market. It featured also in the Federation of Rhodesia and Nyasaland. The difficulty in making industrial investment decisions in most African states lay in the size of the markets. One way of over-coming this, is for grouped states to form common markets for industrial products which permit the growing of crops and the establishment of industries that are reasonably economic in size. A regional approach to the economic development of African states has therefore become a "worthy-trying" alternative.

Since the formation of the Organisation of African Unity, and the option of the African states between capitalism and socialism, the majority of the African states still remained

poor. However, some of them opted for a capitalist mode of production while others opted for a socialist society. But on balance, the African societies continued to remain awkwardly poor.

The glaring inequality in the majority of the O.A.U. member states, is manifested on the one hand by the mercedesbenz, luxury hotels, sky-scrapers etc., and on the other hand, the majority of the people living in shanty townships. Those living in shanty townships see little change in terms of the standards of living, except of course, they are no longer subjected to the obvious humiliations of colonial rule. The O.A.U. therefore should make provisions in its charter to enable member states to formulate, promote and enforce socialist principles within their boundaries. This is important because only a genuine socialist option in the majority of member states of the O.A.U. could deliver the continent of Africa from the crushing burden of under-development and economic dependence. In fact, the people of Africa are demanding a new path to Africa's development and this can only be a socialist path to establish a new socialist order in Africa.

Essentially, African unity is the basic objective of the Organisation of African Unity, as discussed in Chapter V of this thesis. However, there has been difficulties in achieving African unity because some of the newly independent states are unwilling to surrender a part of their sovereignty for the

sake of African unity.

We must also state here that while suggesting a new approach to African unity, account should be taken of the fact that as a member of the family of international organisations, the O.A.U. has won international recognition in its search for peace and security on the continent of Africa. Dedicated to the total liberation of Africa, and to the economic and social development of the inhabitants the O.A.U. has at times scored successes judging from the O.A.U. efforts that led to the Bamako Conference. The Pan-African drive characteristic of some of its members found in President Kaunda of Zambia and that of Nyerere of Tanzania, have greatly helped the O.A.U. to assert an African personality at international level. This African personality must now be modulated to help achieve unity among member states of the O.A.U.

Admittedly, there are a number of factors which undermine the unity of African states as shown in Chapter V, but the O.A.U. and Africa as a whole, can no longer remain a helpless spectator in her own problems of unity. There will be no experts to bring about political and economic unity to Africa, neither could these experts eradicate under-development in O.A.U. member states.

The O.A.U. therefore must search for alternatives to solve problems of unity among its members, alternatives that reflect African aspirations and thoughts. It is in the light of this that our suggestions in Chapter VI of this paper become relevant.

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Sir Gerald Fitzmaurice of U.K. had to criticize the
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LIST OF STATES THAT HAVE LODGED DECLARATIONS
UNDER ARTICLE 36 OF THE STATUTE

Australia
Belgium
Botswana
Cambodia
Canada
China
Colombia
Denmark
Dominican Republic
El Salvador
Finland
France
Gambia
Haiti
Honduras
India
Israel
Japan
Kenya
Liberia
Liechtenstein
Luxembourg
Malawi
Malta
Mauritius
Mexico
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
Panama
Philippines
Portugal
Somalia
Sudan
Swaziland
Sweden
Switzerland
Turkey
Uganda
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay

and Nigeria,⁵⁹ to extend an invitation to Mr. Sam Nujoma under rule 39 of the provisional rules of procedure.

At the same meeting, the Council further decided, at the request of the representatives of Gabon, Mauritania and Nigeria,⁶⁰ to extend an invitation to Mr. Edem Kodjo under rule 39 of the provisional rules of procedure.

Resolution 435 (1978)

of 29 September 1978

of the Security Council,

Recalling its resolutions 385 (1976) of 30 January 1976 and 431 (1978) and 432 (1978) of 27 July 1978,

Having considered the report of the Secretary-General submitted pursuant to paragraph 2 of resolution 431 (1978)⁶¹ and his explanatory statement made to the Security Council on 29 September 1978 (S/1978/9),⁶²

Taking note of the relevant communications from the Government of South Africa to the Secretary-General,

Taking note also of the letter dated 8 September 1978 from the President of the South West Africa People's Organization to the Secretary-General,⁶³

Confirming the legal responsibility of the United States over Namibia,

Approves the report of the Secretary-General on the implementation of the proposal for a settlement of the Namibian situation⁶⁴ and his explanatory statement,

Reiterates that its objective is the withdrawal of South Africa's illegal administration from Namibia and the transfer of power to the people of Namibia with the assistance of the United Nations in accordance with Security Council resolution 385 (1976);

Decides to establish under its authority a United Nations Transition Assistance Group in accordance with the above-mentioned report of the Secretary-General for a period of up to 12 months in order to assist his Special Representative to carry out the mandate conferred upon him by the Security Council in paragraph 1 of its resolution 431 (1978), namely, to ensure the early independence of Namibia through free elections under the supervision and control of the United Nations;

⁵⁹ *Id.*, document S/12860.

⁶⁰ *Id.*, document S/12870.

⁶¹ *Id.*, document S/12820.

⁶² *Id.*, Thirty-third Year, 2087th meeting, paras. 11-22, and *Id.*, Supplement for July, August and September 1978, document S/12841.

⁶³ *Id.*, Supplement for April, May and June 1978, document S/12636.

4. Welcomes the preparedness of the South West Africa People's Organization to co-operate in the implementation of the Secretary-General's report, including its expressed readiness to sign and observe the cease-fire provisions as manifested in the letter from its President of 8 September 1978;

5. Calls upon South Africa forthwith to co-operate with the Secretary-General in the implementation of the present resolution;

6. Declares that all unilateral measures taken by the illegal administration in Namibia in relation to the electoral process, including the unilateral registration of voters and the alteration of the electoral roll, in violation of Security Council resolution 385 (1976) and the present resolution, are null and void;

7. Requests the Secretary-General to report to the Security Council not later than 23 October 1978 on the implementation of the present resolution.

Adopted at the 2087th meeting by 12 votes to none, with 2 abstentions (Cuba and the United States of America).

At its 2088th meeting on 30 September 1978, the Council decided to invite the representative of Guinea to participate without vote in the discussion of the question.

At its 2089th meeting on 1 October 1978, the Council decided to invite the representatives of Burundi, Egypt and Ghana to participate, without vote, in the discussion of the question.

The situation in Kenya

4. Requests the Secretary-General to report pursuant to paragraph 7 of Security Council resolution 427 (1978) concerning the situation in Kenya.

5. Requests the Secretary-General to invite the Permanent Representative of Tanzania to the United Nations, addressed by the President of the Security Council (S/12906),⁶⁵

At the same meeting, the Council also decided to extend an invitation, under rule 39 of the provisional rules of procedure, to the representative of the United Nations Council for Namibia, consisting of its President and Vice-President, to that meeting.

⁶⁵ *Id.*, Thirty-third Year, 2087th meeting, paras. 11-22, and *Id.*, Supplement for July, August and September 1978, document S/12841.

COUNTRIES OF THE PREFERENTIAL TRADE AREA

