

THE ORGANIZATION OF AFRICAN UNITY AND ITS ROLE IN REGIONAL CONFLICT RESOLUTION AND DISPUTE SETTLEMENT: A CRITICAL EVALUATION

P. MWETI MUNYA*

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

INTRODUCTION

Africa has never experienced a lasting peace. Peace and stability proved elusive in pre-colonial and colonial Africa. The scourges of the slave trade, inter-tribal warfare and the imposition of colonialism did not allow it. One would expect emancipation and independence to have created an era of stability and relative peace. Instead, post-colonial Africa has experienced conflicts of a scale and magnitude heretofore unwitnessed. Pre-colonial Africa may have been volatile, but the rudimentary nature of the weapons and the unsophisticated organizational structure of the societies made conflicts disruptive and adventurous rather than catastrophic. The emergence of an artificially constructed modern state with internal contradictions and a sophisticated state apparatus and weaponry, coupled with the presence of external forces, has made Africa one of the most unstable regions in the world, and has made creation of peace prospects a daunting task.

Of course, conflict and civil wars have not been exclusive to the African continent. Two world wars marked a dark period in the world. With the end of the Cold War and the collapse of Communist hegemony

* Research Associate, International and Graduate Legal Studies Program, University of Georgia School of Law. University of Nairobi, LL.B. 1994; Free University of Brussels (VUB), LL.M. 1996; University of Georgia, LL.M. 1997. The author owes a debt of gratitude to Professor Gabriel Wilner of the University of Georgia School of Law for his insightful comments on an earlier draft of this paper and his immeasurable support in numerous other ways.

¹ Celestine O. Bassey, *Retrospects and Prospects of Political Stability in Nigeria*, 32 AFR. STUD. REV. 97, 97 (1989) (citing S. PHILLIPSON & S. ADEBO, *THE NIGERIANIZATION OF THE CIVIL SERVICE* (1954)).

only in Eastern and Central Europe, states were plunged into tribal and ethnic conflagrations hitherto prevented by Communist socio-political order. This indicates that ethno-nationalism has re-emerged in the Western Hemisphere as well.

Africa was not spared the adverse repercussions of the end of the Cold War either. While superpower-sponsored conflicts during the Cold War were low-key, albeit protracted, due to the balance of power in the region, post-Cold War conflicts have been marked by unparalleled rapidity and devastating consequences. The situation has been worsened by the dwindling of Africa's geopolitical importance in the post-Cold War era. Africa's traditional allies in the non-aligned movement and former Communist bloc have recapitulated due to post-Cold War economic hardships. The result has been a general lack of concern with what happens in Africa. While the United States and the North Atlantic Treaty Organization (NATO) were prepared to intervene in Haiti to restore a democratic regime and in the former Yugoslavia to end "ethnic cleansing," no one is willing to intervene to avert a bloodbath in Rwanda or Sierra Leone. No strategic Western interests are harmed there, and the United Nations Charter traditionally prohibits intervention in the internal affairs of other states. Thus, the post-Cold War era, punctuated by forces of economic liberalization and dominance of the Bretton Woods institutions in the economic management of the developing countries, has not only accelerated the economic marginalization of Africa—placing her at the fringes of the global economy—but has also wrought insecurity in its wake.

This post-Cold War "new order" only serves to emphasize the need for the Organization of African Unity (OAU) to re-invent itself to cope with these new challenges. This article attempts to unmask these and other challenges facing the OAU, to critically examine the performance of the OAU in conflict resolution, and to offer suggestions on how the OAU can re-evaluate and reform itself to meet the old and new challenges that threaten the efforts to create lasting peace in Africa.

There is no question that the OAU's historical record of success in conflict resolution is lacking. Perhaps this has to do with its history and constitution. The signing of the OAU Charter at Addis Ababa, Ethiopia in May, 1963 was greeted with optimism and high expectations. Aspirations of unity in a continent hitherto divided by colonialism had reached fruition. The polarizing differences experienced in the preceding preparatory conferences had been bridged, and the largest regional organization in the world at the time was born. How-

ever, the OAU was not just an expression of continental efforts to achieve unity; it was a culmination and a concrete expression of the aspirations of the Pan-African movement, which dates back to the beginning of the twentieth century.

Unfortunately, dismay and disillusionment replaced this early optimism. The ink had not even dried on the Charter before the continent was plagued by conflicts, civil wars and a myriad of other problems. The celebrated organization that many had hoped would consolidate continental security and nurture peace and stability had failed to do so. Instead, civil wars and inter-state conflicts, with their concomitant humanitarian crises, have bedeviled the African continent since independence, threatening to tear it apart. What went wrong?

Many writers have attributed the problems of inter-state and intra-state conflicts to the colonial legacy of artificial borders and the nature of the colonial state that was inherited after independence. Others have blamed the OAU Charter for the dismal performance of the OAU and its inability to resolve conflicts. The normative structure of the Charter, they argue, has an inherent tendency to encourage ineffectiveness and ineptitude. The conservative application of the concepts of 1) non-interference with internal affairs of states and 2) respect for the sanctity of borders has rendered the OAU completely ineffective.

Any objective view of the role the OAU has played in resolving regional conflicts must use the aforementioned historical and ideological context, and internal as well as external forces, as the point of departure. This enables one to discern and appreciate the role of the OAU within the context of the complexities and intricacies of conflict situations in Africa.

By examining the role played by the OAU in regional conflict resolution and dispute settlement, I hope to contribute to this debate. Part I of this paper examines the Pan-African roots of the OAU. Part II describes its purposes and principles. Part III examines its institutional structure. The OAU's mechanisms of dispute resolution and case studies of its conflict resolution activities are discussed in Parts IV and V, respectively. Part VI assesses the role that the OAU has played in the arena of conflict resolution over the years. Finally, Part VII is a discussion of the legal and other impediments to effective conflict resolution in Africa.

I. THE PAN-AFRICAN ORIGINS OF THE OAU

Cultural and spiritual affinity among Africans is an age-old phenomenon that is exhibited worldwide in their poetry and music.² In the nineteenth century, this affinity evolved into fraternal solidarity and eventually a formidable movement in the common struggle against racial discrimination.³ The OAU is the present-day symbol and embodiment of the ideals of this early Pan-African movement.⁴

In its formative stages, the Pan-African movement was led by black North American intellectuals.⁵ Among the most notable ones were W.E.B. Du Bois⁶ and Marcus Garvey,⁷ although their approaches and philosophies differed. Beginning with the 1900 Westminster Conference, a series of Pan-African conferences were organized to formulate goals for the advancement of black people and the protection of native Africans from white settlers.⁸

After World War II, Pan-Africanism became a potent force in the struggle for independence from colonialism in Africa.⁹ Commencing with the 1945 Manchester Congress, African intellectuals like Kwame Nkrumah, Léopold Senghor, Jomo Kenyatta and Sékou Touré took a center-stage in the movement.¹⁰ Several conferences were organized in Africa at the the beginning of the twentieth century which re-articulated the vision and goals of the Pan-African movement.¹¹ Thus, the cause was transformed from a sentimentalized forum for racial solidar-

² See Lawrence W. Levine, *African Culture and Slavery in the United States*, in GLOBAL DIMENSIONS OF THE AFRICAN DIASPORA 99, 103 (Joseph E. Harris ed., 2d ed. 1993). John Wideman writes that "rhythm and blues and rock 'n' roll are rooted in traditional African music . . ." JOHN EDGAR WIDEMAN, BROTHERS AND KEEPERS 197 (1984).

³ See ELENGA M'BUYINGA, PAN AFRICANISM OR NEO-COLONIALISM?: THE BANKRUPTCY OF THE O.A.U. 34-42 (Michael Pallis trans., 2d ed. 1982) (1979).

⁴ See P. OLISANWUCHE ESEDEBE, PAN-AFRICANISM: THE IDEA AND MOVEMENT, 1776-1991, at 192-225 (2d ed. 1994).

⁵ The man credited with coining the term "Pan-African Movement," Henry Sylvester Williams, was a West Indian lawyer who was then practicing law in London. See OWEN CHARLES MATHURIN, HENRY SYLVESTER WILLIAMS AND THE ORIGINS OF THE PAN-AFRICAN MOVEMENT, 1869-1911, at 52, 55 (1976).

⁶ See generally W.E.B. DU BOIS: A READER 637-92 (David Levering Lewis ed., 1995) (a compilation of his essays and articles on Pan-Africanism).

⁷ See generally MARCUS GARVEY AND THE VISION OF AFRICA (Jon Henrik Clark ed., 1974) (general summary of Garvey's work and philosophy).

⁸ See RONALD W. WALTERS, PAN AFRICANISM IN THE AFRICAN DIASPORA: AN ANALYSIS OF MODERN AFROCENTRIC POLITICAL MOVEMENTS 205 (1993).

⁹ See *id.* at 139-45.

¹⁰ JON WORONOFF, ORGANIZING AFRICAN UNITY 22-23 (1970).

¹¹ See Gordon Harris, *Introduction* to 7 ORGANIZATION OF AFRICAN UNITY ix (1994).

ity to a movement for self-determination of the African people focused on the eradication of colonialism and the promotion of African nationalism.¹² In this continental phase, the movement's goals included: complete political independence for the entire continent; fraternal cooperation between African states; creation of a united Africa based on a federation of sub-regional groups, within which there would be a limitation of national sovereignty; and non-interference by Africans in the internal affairs of other states.¹³ The following conferences that occurred in Africa echoed these goals.¹⁴ There was a consensus that regional cooperation and unity were crucial if the vast resources of Africa were to be utilized for the prosperity of the continent and its people.¹⁵

However, the road to continental unity was full of obstacles. Independent African states emerged from colonialism to find themselves balkanized into regional and ideological groups that were, ironically, the fruits of the Pan-African conferences.¹⁶ The main post-independence groups to precede the OAU included: the Brazzaville Group (composed of Cameroon, the Central African Republic, Madagascar, the Peoples' Republic of the Congo, Ivory Coast, Dahomey, Gabon, Mauritania, Upper Volta, Niger, Senegal, and Chad), formed in December, 1960;¹⁷ the Casablanca Group (composed of Ghana, Guinea, Libya, Mali, Morocco, the United Arab Republic and the Algerian Provisional Government), formed in January, 1961;¹⁸ the Monrovia Group (composed of Liberia, Somalia, Togo, Nigeria, Ethiopia, Sierra Leone, Libya, and Tunisia), formed in May, 1961;¹⁹ and the Pan-African Freedom Movement of Eastern, Central and Southern Africa (PAF-MECSA).²⁰

¹² See WORONOFF, *supra* note 10, at 28-57.

¹³ See ESEDEBE, *supra* note 4, at 158-59, 167-71.

¹⁴ See generally ESEDEBE, *supra* note 4, at 165-91 (describing conferences occurring between 1958 and the OAU's formation in 1963).

¹⁵ See *id.* at 176.

¹⁶ See Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113, 1114 (1995); cf. WORONOFF, *supra* note 10, at 40 (discussing need for new states to resist attempts at balkanization by colonial powers' exertion of further economic control).

¹⁷ See WORONOFF, *supra* note 10, at 96.

¹⁸ See The African Charter of Casablanca, in BASIC DOCUMENTS OF AFRICAN REGIONAL ORGANIZATIONS 42-43 (Louis B. Sohn ed., 1971) [hereinafter BASIC DOCUMENTS]; WORONOFF, *supra* note 10, at 49-50.

¹⁹ See Decisions of the Monrovia and Lagos Conferences, in BASIC DOCUMENTS, *supra* note 18, at 53-54; WORONOFF, *supra* note 10, 71-73.

²⁰ See RICHARD COX, PAN-AFRICANISM IN PRACTICE: AN EAST AFRICAN STUDY, 1958-1964, at 1-4 (1964); WORONOFF, *supra* note 10, at 43-45.

The preparatory meetings for the May, 1963 Addis Ababa summit of African leaders, which was to adopt a charter for continental unity, saw the African states divided into two main ideological camps. The radical Casablanca group of states favored a continental union government, while the more conservative Monrovia group desired a loose continental body of independent states.²¹ The Addis Ababa conference had to find a middle ground to appease these opposing groups. Therefore, the OAU Charter emerged as a compromise document that has since lost its cutting edge.²² Instead of serving as a blueprint for continental political unification, as intended by the "progressive" forces, the Charter ultimately supported the status quo. This compromise is at the heart of the OAU conflict resolution and management crisis.²³ It is argued that the Charter's norm of non-intervention in internal affairs of member states insulates internal conflicts from scrutiny and resolution by the OAU, and that the sanctification of national borders prevents the OAU from addressing the problem of border conflicts.²⁴

The OAU cannot be divorced from the historical setting within which it was created. The OAU was formed at an epoch-making period when the African states were emerging from colonial rule.²⁵ It was natural that these newly independent states sought to safeguard their sovereignty from any future subjugation, while at the same time they adopted a common approach in the struggle against the remaining vestiges of colonialism.²⁶ The aims and objectives of the OAU embody these African concerns of the time and are not radically different from those of its predecessor, the Pan-African movement.

It is also important to recognize that the continental phase of the Pan-African movement and the struggle against colonialism was dominated by leaders of the pro-independence nationalist movements.²⁷ It was these leaders, propelled into the leadership of their respective states by the granting of independence, who converged at Addis Ababa

²¹ See WORONOFF, *supra* note 10, at 97-99 (discussing Casablanca Group), 99-101 (discussing Monrovia Group).

²² See *infra* Part VII.A. and accompanying notes.

²³ See *id.*

²⁴ See *infra* notes 310-14 and accompanying text.

²⁵ See James O.C. Jonah, *The OAU: Peace Keeping and Conflict Resolution*, in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS 3-13 (Yassin El-Ayouty ed., 1994) [hereinafter THE OAU AFTER THIRTY YEARS].

²⁶ See *id.*

²⁷ See generally HANS KOHN & WALLACE SOKOLSKY, AFRICAN NATIONALISM IN THE TWENTIETH CENTURY (1965) (tracing nationalist movements in different African countries).

to form the OAU. Therefore, the domination of the institutional structure of the OAU by these leaders is not accidental.²⁸

The preamble of the OAU Charter opens with the following words: "We, the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia, . . . have agreed to the present Charter."²⁹ This language underscores the predominant and exclusionist role that the African heads of state have played in the formation of the OAU.³⁰ Contrast this preamble with that of the United Nations Charter, which starts with these words: "We the peoples of the United Nations"³¹ The prefatory language to the United Nations Charter emphasizes the centrality of the people in the aims and objectives of the United Nations. The success or failure of the OAU is, therefore, consequently intertwined with the weaknesses or strengths of the African heads of state: an indictment on the OAU is an indictment on the African states' leadership. Indeed, the African leaders constitute the supreme organ of the OAU—the "Assembly of Heads of State And Government."³²

The efficiency and effectiveness of an organization is, to a large extent, determined by the nature of its Charter—its architectural foundation. It is, therefore, important to examine the basic tenets of the OAU Charter in order to appreciate how its provisions and structure impact on the capacity of the OAU to resolve conflicts and settle disputes.

II. PURPOSES AND PRINCIPLES OF THE OAU

Article I of the OAU Charter specifies the geographical frontiers of the membership of the OAU, which includes the continental African states, Madagascar and other islands surrounding Africa.³³ It was important to clarify the geographical limits of the OAU in order to distinguish it from the mainstream Pan-African movement which was diasporic in scope. From the formation of the OAU, one can discern

²⁸ See BOUTROS BOUTROS-GHALI, *THE ADDIS ABABA CHARTER—A COMMENTARY* 13–25 (Anne Winslow ed., 1964).

²⁹ Charter of the Organization of African Unity, *reprinted in* BASIC DOCUMENTS, *supra* note 18, at 62 [hereinafter OAU CHARTER].

³⁰ See BOUTROS-GHALI, *supra* note 28, at 13–25.

³¹ U.N. CHARTER preamble, *in* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY xix (Bruno Simma ed., 1994) [hereinafter U.N. CHARTER].

³² See OAU CHARTER, *supra* note 29, at art. VIII.

³³ See *id.* at art. I, § 2.

a shift in the Pan-African movement from having a universal outlook to a regional worldview.

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

- a. to promote the unity and solidarity of the African States;
- b. to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa;
- c. to defend their sovereignty, their territorial integrity and independence;
- d. to eradicate all forms of colonialism from Africa; and
- e. to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.³⁴

To these ends, Article II calls upon the member states to coordinate and harmonize their general policies. Priority areas identified for harmonization and coordination include: political and diplomatic co-operation; economic cooperation, including transport and communication; educational and cultural cooperation; health, sanitation and nutritional cooperation; scientific and technical cooperation; and co-operation for defense and security.³⁵ Clearly, the areas requiring harmonization through common efforts are diverse and encompass all facets of socio-economic and political life of the member states. The purposes of the OAU echo those of its progenitor, the Pan-African movement.

The principles and norms that the OAU member states have pledged to observe scrupulously are enumerated in Article III and may be classified into three categories based on their teleological and philosophical underpinnings.³⁶ Category One includes those principles aimed at safeguarding the sovereignty and territorial integrity of member states: Principle one, which recognizes the sovereign equality of all the member states; Principle two, which prohibits interference in the internal affairs of states; and Principle three, which reaffirms the member states' pledge to pay respect to the sovereignty and territorial integrity of each state and its inalienable right to independent existence.³⁷ Principle four, which immortalizes the principle of peace-

³⁴ *Id.* at art. II, § 1.

³⁵ *See id.* at art. II, § 2.

³⁶ *See id.* at art. III.

³⁷ *See* OAU CHARTER, *supra* note 29, at art. III, §§ 1-3.

ful settlement of disputes by negotiation, mediation, conciliation or arbitration, may also fall into this category, since it is a principle aimed at settling disputes peacefully before they escalate into conflicts that may threaten the sovereignty and territorial integrity of member states.³⁸

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

Principle seven stands in a category of its own. It represents an attempt by the member states to create ideological uniformity in their foreign policy relations with non-member states. The stated policy of non-alignment provides a basis to govern the relations between the member states and the superpower blocs. This principle is understandable when analyzed in the context of the Cold War. Despite the member states' strongly professed adherence to non-alignment in theory, it is still an open question as to whether they follow it in practice.

Principle five may fit into Category One or in a category of its own, depending on how one interprets it.⁴⁰ Condemnation of political assassination and subversive activities on the part of neighboring states,⁴¹ seen as a measure to protect the national political institutions from being undermined by extraterritorial forces, falls into Category One. However, the provision on assassination is a curious one. It may be viewed as a measure to protect and perpetuate the personalities occupying the highest offices in the land in addition to being a safeguard to the political institutions in the member states.

This article focuses on dispute resolution. Therefore, these principles will be examined in more detail later insofar as they affect the capacity of the OAU to resolve conflicts and settle disputes. In particular, the principles in Category One dealing with the protection of territorial integrity, sovereignty of member states, and non-interference in the internal affairs of member states will be discussed. There is an inherent tension between the need to create a strong and effective organization and the desire to jealously guard the sovereignty of the member states. It is this tension that is at the heart of the ineffectiveness of the OAU as a regional arbiter and stabilizer.

³⁸ See *id.* at art. III, § 4.

³⁹ *Id.* at art. III, § 6.

⁴⁰ See *id.* at art. III, § 5.

⁴¹ See *id.*

III. A GLIMPSE INTO THE INSTITUTIONAL STRUCTURE OF THE OAU

In order to fully understand the role of the OAU in conflict resolution, one must examine the internal structure of the organization.⁴² The OAU Charter creates four principal institutions to carry out its mandate: the Assembly of Heads of State and Governments; the Council of Ministers; the General Secretariat; and the Commission of Mediation, Conciliation, and Arbitration.⁴³

The Assembly of Heads of State and Governments is the OAU's "supreme organ," which has a general supervisory role over the other three components.⁴⁴ It has the power to discuss matters of concern to Africa with a view toward coordinating and harmonizing the general policy of the OAU. Additionally, it may review the structure, functions and acts of all the other organs and specialized agencies.⁴⁵ The Assembly is also entrusted with the judicial function of interpreting the Charter.⁴⁶

The Assembly is composed of heads of state or their accredited representatives. The Charter requires an annual general meeting for the Assembly and allows for an extraordinary session at the request of any member state with the approval of a two-thirds majority.⁴⁷

According to the OAU Charter, the Council of Ministers consists of foreign or other ministers as designated by the governments of member states.⁴⁸ The role of the Council is to prepare conferences of the Assembly, implement the decisions of the Assembly, and coordinate inter-African cooperation in accordance with the instructions of the Assembly.⁴⁹

An administrative Secretary-General, appointed by the Assembly, directs the affairs of the Secretariat.⁵⁰ Assistant Secretaries-General may

⁴² For a detailed analysis of the OAU Institutions, see James S. Bowen, *Power and Authority in the African Context: Why Somalia Did Not Have to Starve—The Organization of African Unity (OAU) As an Example of the Constitutive Process*, 14 NAT'L BLACK L.J. 92, 101-08 (1995).

⁴³ OAU CHARTER, *supra* note 29, at art. VII.

⁴⁴ *Id.* at art. VIII.

⁴⁵ *Id.*

⁴⁶ *See id.* at art. XXVII (posits that questions of interpretation of the Charter shall be determined by a vote of two-thirds of the Assembly of Heads of State and Government).

⁴⁷ *Id.* at art. IX.

⁴⁸ OAU CHARTER, *supra* note 29, at art. XII, § 1.

⁴⁹ Evidently, the role of the Council of Ministers is adjunct to that of the Assembly of Heads of State and Government. Indeed, Article XIII states that "The Council of Ministers shall be responsible to the Assembly of Heads of State and Government." OAU CHARTER, *supra* note 29, at art. XIII, § 1.

⁵⁰ *Id.* at art. XVI.

also be appointed by the Assembly.⁵¹ The independence of the Secretary-General and his or her staff is entrenched in the Charter. To avoid a conflict of interest, the Charter states that the Secretary-General and his or her staff are prohibited from receiving instructions from any external authority and are to refrain from actions which might interfere with their positions as international officials responsible only to the organization.⁵² Likewise, the Charter provides that the member states undertake to respect the exclusive character of the Secretary-General and his or her staff and do not to attempt to influence them in the discharge of their responsibilities.⁵³

The Commission of Mediation, Arbitration and Conciliation will be discussed in further detail in the next section. At this point it is important to mention the OAU's voting process. Two-thirds of the total membership form the quorum of both the Assembly and the Council.⁵⁴ Procedural and substantive matters in both the Assembly of Heads of State and Government and the Council of Ministers are determined by a simple and a two-thirds majority of the total membership of the organization, respectively. These majority requirements are significant in that one can easily envision the OAU being paralyzed by lack of a quorum.⁵⁵

IV. REGIONAL CONFLICT RESOLUTION AND DISPUTE SETTLEMENT WITHIN THE OAU CONTEXT

A. *Mechanisms for Peaceful Settlement of Disputes in the OAU Charter: The Commission of Mediation, Conciliation and Arbitration*

The OAU Charter established the Commission of Mediation, Conciliation and Arbitration as one of the principal institutions of the organization. Carefully detailed steps were outlined to elaborate on its composition, procedures and functions. The complexity of this Commission emphasizes the seriousness with which the founders of the OAU valued dispute resolution by peaceful means.⁵⁶ Indeed, Article

⁵¹ *Id.* at art. XVII.

⁵² *Id.* at art. XVIII, § 1.

⁵³ *Id.* at art. XVIII, § 2.

⁵⁴ See OAU CHARTER, *supra* note 29, at art. X, § 4, art. XIV, § 3.

⁵⁵ Such paralysis of the Assembly took place when Morocco and its sympathizers boycotted an OAU summit meeting prompted by the official recognition of the Sahara Arab Democratic Republic (SADR) by the OAU. See J. Naldi, *The Organization of African Unity and the Saharan Arab Democratic Republic*, 26 J. AFR. L. 152, 152 (1982).

⁵⁶ See OAU CHARTER, *supra* note 29, at art. XIX.

XIX, which establishes the Commission, echoes the prohibition of the threat or use of force found in the United Nations Charter.

The protocol for the Commission forms an integral part of the OAU Charter.⁵⁷ The protocol consists of six parts and provides in elaborate detail the modes, procedures and types of disputes to be submitted for settlement.⁵⁸ Part One of the protocol deals with the establishment and organization of the Commission. The Commission consists of twenty-one members elected by the Assembly from a list, prepared by the Secretary-General, of names of persons of recognized professional qualifications who have been nominated by the member states.⁵⁹ Each member state is entitled to nominate two candidates, but no two members of the Commission may hail from the same state.⁶⁰

Members of the Commission hold office for a term of five years and are eligible for re-election. Upon the expiration of their terms, members of the Commission remain in office until the election of a new Commission. The members of the Commission also shall complete any proceedings in which they are already engaged, even if their term of office has expired.⁶¹

Article IV secures the tenure of office of the members of the Commission. They shall not be removed from office except by decision of the Assembly of Heads of State. A decision to remove must be made by a two-thirds majority of the Assembly on the grounds of inability to perform the functions of the office or proven misconduct.⁶²

The Commission is headed by a president and two vice presidents who are elected by the Assembly from among the members of the Commission to serve for a period of five years without being eligible for re-election. These three officers constitute the Bureau of the Commission and are designated as full-time members of the Commission, while the rest of the Commissioners are part-time members.⁶³

Part Two of the protocol, entitled "General Provisions," sets out the procedure for dealing with disputes. The jurisdiction of the Commission is restricted to disputes between member states. However, even

⁵⁷ *Id.*

⁵⁸ See Protocol of the Commission of Mediation, Conciliation and Arbitration, *reprinted in* BASIC DOCUMENTS, *supra* note 18, at 69-76 [hereinafter Protocol].

⁵⁹ Protocol, *supra* note 58, at art. II.

⁶⁰ *Id.*

⁶¹ *Id.* at art. III, § 3.

⁶² *Id.* at art. IV.

⁶³ *Id.* at art. VI.

non-member states may submit disputes between themselves and member states to the Commission for adjudication.⁶⁴

A dispute may be jointly referred to the Commission by the parties concerned, by a single party to the dispute, by the Council of Ministers, or by the Assembly.⁶⁵ When a dispute has been referred to the Commission, and one or more parties have refused to submit to the jurisdiction of the Commission, the Bureau refers the matter to the Council of Ministers for consideration.⁶⁶ It is not clear what happens after referral to the Council, but the Charter seems to indicate that the Council of Ministers can make a recommendation which may be submitted to the Assembly for further approval.⁶⁷ However, it is doubtful whether the resolution, if passed by the Assembly, is legally enforceable.⁶⁸

Article XIX establishes three alternative means of dispute settlement: mediation, conciliation and arbitration. These methods do not differ in any significant manner from their application in international law.⁶⁹ Among the three methods, the simplest and least formal is mediation. Once the parties agree to mediation, the president of the Commission appoints one or more members of the Commission, with the consent of the parties, to mediate the dispute.⁷⁰ Once appointed, the mediator endeavors to reconcile the views of the parties and makes written proposals to the parties as expeditiously as possible. The solution that the mediator proposes, if accepted by the parties, forms the basis of an arrangement between the parties.⁷¹

Part Four of the protocol elaborates on the procedure of conciliation. One or more of the parties to a dispute formally submits a request for conciliation to the Commission by means of a petition addressed to the president. If only one party petitions, the petitioner must show that prior written notice has been transmitted to the other

⁶⁴ See Protocol, *supra* note 58, at art. XI; T. O. ELIAS, AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW 170-71 (Richard Akinjide ed., rev. 1988) (1972).

⁶⁵ Protocol, *supra* note 58, at art. XIII, § 1.

⁶⁶ *Id.* at art. XIII, § 2.

⁶⁷ See OAU CHARTER, *supra* note 29, at art. XIII.

⁶⁸ The Charter does not create any mechanism for enforcement of the decisions of the institutions of the OAU. See generally OAU CHARTER, *supra* note 29.

⁶⁹ See generally OAU CHARTER, *supra* note 29. For a general background on international dispute resolution, see Christine Chinkin & Romana Sadurska, *The Anatomy of International Dispute Resolution*, 7 OHIO ST. J. ON DISP. RESOL. 39 (1991); Dayle E. Spencer & Honggang Yang, *Lessons from the Field of Intra-national Conflict Resolution*, 67 NOTRE DAME L. REV. 1495 (1992).

⁷⁰ Protocol, *supra* note 58, at art. XX.

⁷¹ *Id.* at art. XXI.

party. The petition shall include a summary explanation of the grounds of the dispute.⁷² Next, the president of the Commission forms a board of conciliators, consisting of three persons appointed by the president from among the Commission and one appointee of each party. The president designates one of the members of the Commission as chairman of the board. During the nominations, all parties attempt to ensure that none of the members of the board are nationals of the same state.⁷³

The duties of the board are to clarify the issues in contention and to broker an agreement between the parties upon mutually acceptable terms. The board has jurisdiction to consider all questions submitted to it and may undertake any inquiry or hear any person capable of giving any relevant information concerning the dispute. Each board determines its own procedures with the consent of the parties.⁷⁴

The parties have a right to be represented before the board by agents who also act as intermediaries between the board and the parties. If the parties wish, these agents may be assisted by counsel and other experts. The parties may request that all persons with relevant evidence appear before the board.⁷⁵ Finally, at the close of the proceedings, the board drafts a report stating either the terms of the agreement between the parties, if there is one, or that it has been impossible to come to a settlement.⁷⁶ The report shall be submitted to the president of the Commission as soon as possible and shall be published only with consent of the parties.⁷⁷

The procedure for establishing an arbitral tribunal is spelled out in Part Five of the Commission protocol. Each party to the dispute designates an arbitrator from among the members of the Commission. The parties may only select persons who are legally qualified. The chairman of the tribunal is designated from among the members of the tribunal by the two arbitrators appointed by the parties. If the two arbitrators fail to agree on the choice of a chairman within one month, the Bureau itself shall designate one.⁷⁸

The president may, with the consent of the parties, appoint two additional members, who need not be members of the Commission,

⁷² *Id.* at art. XXII.

⁷³ *Id.* at art. XXIII, § 3.

⁷⁴ *Id.* at art. XXIV, § 3.

⁷⁵ Protocol, *supra* note 58, at art. XXV.

⁷⁶ *Id.* at art. XXVI, § 1.

⁷⁷ *Id.* at art. XXVI, § 2.

⁷⁸ *Id.* at art. XXVII, § 1.

but who will have powers equal to the other members of the tribunal.⁷⁹ To ensure objectivity and impartiality within the tribunal, the arbitrators cannot share nationality with the parties, have the same territorial domicile as the parties, or have served previously as mediators or conciliators in the same dispute.⁸⁰

Once parties to a dispute agree to go to arbitration, the resulting agreement shall be presumed to be a submission in good faith to the arbitral award. This provision strikingly echoes the international law principle of *pacta sunt servanda*.⁸¹ As evidence of such agreement, the parties shall create a *compromis* confirming the desire of the parties to seek arbitration and to accept the decision of the tribunal as legally binding. The *compromis* shall further specify the subject matter of the dispute and the seat of the tribunal.⁸² The *compromis* may also specify the law to be applied and whether or not the parties agree to adjudicate *ex aequo et bono*. Additionally, the *compromis* may indicate the appointment of counsel to take part in the proceedings and the time limit within which the arbitrators shall give an award.⁸³

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

Such elaborate machinery clearly demonstrates the desire of the OAU founders to settle conflicts and disputes by peaceful means through certain and formal procedure. Ironically, no member state has ever submitted a dispute for adjudication by the Commission. Therefore, this machinery has never been tested. Indeed, the Commission is of phantom existence. Instead, the OAU and its member states have

⁷⁹ *Id.* at art. XXVII, § 2.

⁸⁰ Protocol, *supra* note 58, at art. XXVII, § 3.

⁸¹ *Id.* at art. XXVIII; WERNER LEVI, CONTEMPORARY INTERNATIONAL LAW: A CONCISE INTRODUCTION 1 (2d ed. 1991) (defining *pacta sunt servanda* to mean "agreements must be kept").

⁸² Protocol, *supra* note 58, at art. XXIX, § 1.

⁸³ *Id.* at art. XXIX, § 2.

⁸⁴ *Id.* at art. XXX.

⁸⁵ *Id.* at art. XXXI.

resorted to ad hoc committees and "good offices" to resolve their conflicts, and thereby have ignored the existence of the Commission.

At least one observer in the early years of the OAU attributed this anomaly to the infancy of the Commission, arguing that the Commission was of recent creation and needed time to evolve guidelines.⁸⁶ Others attributed the redundancy of the Commission to the susceptibility of African disputes to "friendly solutions."⁸⁷ However, time has proven otherwise. Thirty-six years after its creation, the Commission has yet to come out of its infancy. More often than not, African disputes have been settled on the battlefield instead of at a round-table conference. Perhaps the greatest weakness that has prevented the emergence of the Commission as a viable vehicle for peaceful settlement of disputes is its very nature—it can only be moved to action through the consent of the disputants. There is no machinery in place for the enforcement of its decisions; hence, disputants have hardly any incentive to submit to the Commission's jurisdiction.⁸⁸

B. *Other Conflict Resolution Mechanisms*

As previously mentioned, the OAU has preferred to use "good offices" and ad hoc committees to deal with conflicts rather than the formal machinery provided by the Commission of Mediation, Conciliation and Arbitration. Perhaps less formal procedures are more attuned to the fluidity and rapidity of African conflicts, which tend to defy overly legalistic and time-consuming formal solutions.⁸⁹ It is no coincidence that several conflicts and disputes in Africa have been addressed through ad hoc arrangements.⁹⁰

Under the OAU's incumbent Secretary-General, Dr. Salim Ahmed Salim, a new mechanism, perhaps intended to replace the obsolete Commission of Mediation, Conciliation and Arbitration, has been created. This mechanism, dubbed the "Organization of African Unity's Central Organ for the prevention, management and resolution of conflicts," initially registered some success in dealing with the recent

⁸⁶ See BOUTROS-GHALI, *supra* note 28, at 45.

⁸⁷ See FELIX CHUKS OKOYE, *INTERNATIONAL LAW AND THE NEW AFRICAN STATES* 147 (1972).

⁸⁸ See OAU CHARTER, *supra* note 29, at art. XIX, XXII, XXVII, XXXI; Protocol, *supra* note 58, at art. XIII.

⁸⁹ See Ibrahim J. Gassama, *World Order in the Post-Cold War Era: the Relevance and the Role of the United Nations After Fifty Years*, 20 BROOK. INT'L L. 255, 285 (1994).

⁹⁰ See Jane A. Meyer, Note, *Collective Self-Defense and Regional Security: Necessary Exceptions to a Globalist Doctrine*, 11 B.U. INT'L L.J. 391, 419 (1993).

Zairean crisis.⁹¹ Under the auspices of this new group, Togo hosted a summit in March, 1997 which brought the rebel forces of Laurent Kabila and the government of the dictator President Mobutu Sese Seko to the negotiating table.⁹² Plans also are underway to establish an early warning system to facilitate the investigation of potential conflict areas and allow for timely intervention.⁹³ This new mechanism could be just another ad hoc arrangement, a specialized Commission envisioned under Article XXII (the most probable option), or an institution of the OAU established through an amendment to the OAU Charter (the most improbable option).

V. THE PERFORMANCE OF THE OAU IN CONFLICT RESOLUTION AND DISPUTE SETTLEMENT: CASE STUDIES

This section sets forth case studies of conflicts in Africa in order to demonstrate the challenges that faced the OAU in each conflict and the OAU's response to those challenges. A thematic as well as a sub-regional approach is adopted. In the Maghreb region, the Moroccan-Algerian border conflict and the Western Sahara conflict are discussed. The Ethiopia-Somalia-Kenya border conflict is the focus in the Horn of Africa. In West Africa, the Nigerian civil war is examined; in Central Africa the Congo crisis is discussed; and in Southern Africa, the Southern Rhodesian crisis is described. It is worthwhile, however, to attempt a characterization of these conflicts before embarking on case studies.

A. Characterization of Conflicts and Case Studies

Scholars have developed different ways of classifying conflicts.⁹⁴ T.O. Elias places post-colonial African conflicts into two categories:

- (a) those that may be regarded as inherited, in the sense that they emanate from the rights and obligations that devolved

⁹¹ See Paul Ejime, *Salim Says Zaire Needs Negotiated Transition*, PANAFRICAN NEWS AGENCY, May 3, 1997 (visited Mar. 12, 1999) <<http://search.nando.net/plweb-cgi/...0Central%20Organ%20peace%29%3ATEXT>>; Rigobert Munkeni-Lapess, *Security Concerns Dog Proposed Mobutu-Kabila Meeting*, PANAFRICAN NEWS AGENCY, Apr. 24, 1997 (visited Mar. 12, 1999) <<http://search.nando.net/plweb-cgi/...0Central%20Organ%20peace%29%3ATEXT>>.

⁹² See Munkeni-Lapess, *supra* note 91.

⁹³ See *OAU to Set up Conflict Early Warning System*, PANAFRICAN NEWS AGENCY, May 11, 1997 (visited Mar. 12, 1999) <<http://search.nando.net/plweb-cgi/...C%3DDate%3C%3D19970511%20%20%20%20>>.

⁹⁴ See Ted Robert Gurr, *Theories of Political Violence and Revolution in the Third World*, in CONFLICT RESOLUTION IN AFRICA 153, 167-71 (Francis M. Deng & I. William Zartman eds., 1991).

in the new States in the consequence of the application of state succession; and (b) those that are the results of post-independence alignments mainly in economic and technical spheres.⁹⁵

Oliver Furley categorizes post-colonial conflicts into internal or inter-state conflicts.⁹⁶

Inter-state conflicts are caused mainly by border disputes emanating from the legacy of colonialism.⁹⁷ African state boundaries can be traced to the Berlin Conference of 1885, at which the European imperial powers, oblivious to the natural boundaries between the different nationalities, partitioned Africa into spheres of influence.⁹⁸ For example, the Somali people were divided among Kenya, Somalia, and Ethiopia, while the Ewe were divided among Dahomey (now Benin), Togo, and Ghana.⁹⁹

Intra-state conflicts have a myriad of causes, ranging from ethnic animosity caused by the divide-and-rule tactics of the colonial regimes in Africa (such as the Hutu-Tutsi conflict in Rwanda and Burundi) to historical differences between groups.¹⁰⁰ Other conflicts are caused by disparities in the distribution of wealth within states.¹⁰¹ Governance problems and human rights violations are other principal sources of conflicts in Africa.¹⁰²

⁹⁵ ELIAS, *supra* note 64, at 162.

⁹⁶ Oliver Furley, *Introduction: Africa: The Habit of Conflict*, in *CONFLICT IN AFRICA* 1, 9 (Oliver Furley ed., 1995).

⁹⁷ For a thorough discussion of the phenomenon of African colonial boundaries, see IAN BROWNLIE, *AFRICAN BOUNDARIES: A LEGAL AND DIPLOMATIC ENCYCLOPAEDIA* 3-12 (1979).

⁹⁸ See Mutua, *supra* note 16, at 1127 n.42.

⁹⁹ See ZDENEK CERVENKA, *THE ORGANISATION OF AFRICAN UNITY AND ITS CHARTER* 92 (1969); WORONOFF, *supra* note 10, at 346-47.

¹⁰⁰ See Neil Weiner, *Hutu and Tutsi of Rwanda and Burundi*, May 1, 1994 (visited on Mar. 12, 1999) <<http://www.backgroundbriefing.com>>. For instance, the simmering internal conflict in Chad is basically an ethnic conflict between the Muslim Arabs in the North and Black Africans in the South who are either Christians or profess African traditional religions. For a detailed discussion of this North-South divide, see René Lemarchand, *Chad: The Misadventures of the North-South Dialectic*, 29 AFR. STUD. REV. 27, 28-31 (1986).

¹⁰¹ See M. Louise Pirouet, *The Effects of Conflict, I: Human Rights and Refugees*, in *CONFLICT IN AFRICA*, *supra* note 96, at 275, 281-82.

¹⁰² For a discussion of the process of class formation and ensuing governance conflict in one African nation, see Emmitt B. Evans Jr., *Sources of Socio-Political Instability in an African State: The Case of Kenya's Educated Unemployed*, 20 AFR. STUD. REV. 52 (1977). Regarding recent human rights crises, see Edward Barnes, *Into the Heart of Darkness*, TIME, Jan. 25, 1999, at 46-47 (describing Sierra Leone rebel offensive and resulting human rights violations).

Other intra-state conflicts are closely linked with the nature of the nation-state in Africa—the so-called crisis of the nation-state. The African nation-state is characterized by a monopolization of state power and wealth by one elite faction. This engenders conflict because, when excluded elite groups attempt to wrestle power from the group controlling the state apparatus and national wealth, the ruling elite defends the status quo at all costs.¹⁰³ For example, the Ethiopian civil war has been viewed as a series of reactions by other elite groups (mainly the Tigre and the Oromo) who were excluded from the spoils of state power by the Amahara ruling class.¹⁰⁴ Other conflicts are caused by special problems, such as the destabilization policies of the former apartheid regime in South Africa.¹⁰⁵

The characterization of conflicts as intra-state or inter-state is arbitrary because of the complexity and interconnectedness of causes and consequences. More often than not, intra-state conflicts have extra-territorial effects, and inter-state conflicts certainly have intra-state repercussions. Furthermore, although Furley's above categorization is useful as an aid to analysis, it is too broad. I would argue that it is possible to subdivide African conflicts into seven narrower categories: 1) inter-state conflicts arising from the colonial legacy of artificial borders; 2) conflicts emanating from colonial state succession; 3) conflicts involving illegitimate and racist regimes resulting from delayed decolonization; 4) internal conflicts resulting from secessionist movements; 5) internal conflicts resulting from challenges to the legitimacy of the authority in power; 6) conflicts involving external intervention; and 7) conflicts with strong religious or ethnic underpinnings.¹⁰⁶

¹⁰³ See generally David Throup, *The Colonial Legacy*, in *CONFLICT IN AFRICA*, *supra* note 96, at 237, 237–74.

¹⁰⁴ See generally PATRICK GILKES, *THE DYING LION: FEUDALISM AND MODERNIZATION IN ETHIOPIA* 175–227 (1975).

¹⁰⁵ See generally Tom Lodge, *Perspectives on Conflict Resolution in South Africa*, in *CONFLICT RESOLUTION IN AFRICA*, *supra* note 94, at 115, 115–49 (discussing South Africa's political culture and potential transfer of power).

¹⁰⁶ Ellen Frey-Wouters identifies five categories. See Ellen Frey-Wouters, *The Relevance of Regional Arrangements to Internal Conflicts in the Developing World*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 458, 466–73 (John Norton Moore ed., 1974). The present writer deviates from this classification by discerning seven categories, borrowing from Frey-Wouters' two categories on conflicts involving external intervention and one involving illegitimate and racist regimes. See *id.*

1. Inter-State Conflicts Arising from the Colonial Legacy of Artificial Borders

a. *The Algerian-Moroccan Border Conflict*

The Algerian-Moroccan border conflict was the first test case on the capacity of the infant OAU to resolve conflicts. It is also a microcosm of other border conflicts bedeviling the continent in that it illustrates the legacy of colonialism.¹⁰⁷ The actual conflict erupted in July, 1962, when Moroccan troops tried to occupy various areas in the disputed frontier zone after the referendum that ushered in Algeria's independence. Morocco claimed that this area formed an integral part of its kingdom.¹⁰⁸ The Algerian government responded through military force.¹⁰⁹

The genesis of the problem can be traced back much earlier, to the beginning of French colonial rule in the Maghreb region. Morocco had existed as a distinct entity for more than a thousand years when the French conquered and occupied Algeria in 1930.¹¹⁰ To serve their own interests, the French avoided demarcating the boundary between Morocco and Algeria; indeed, France signed several treaties with Morocco without attempting to fix a boundary between Morocco and Algeria.¹¹¹ This boundary issue and the Islamic concept of *umma*, denoting a nation as a community of believers, as distinguished from the Western concept of a nation with an ascertainable territorial entity, encouraged Morocco to harbor irredentist ambitions.¹¹² Thus, when the French were forced by the Algerian war of liberation to withdraw from Algeria in 1962, the seeds of conflict had been germinating for a long time.¹¹³

During that war of liberation, Morocco decided to submit the border dispute to the United Nations Security Council, while Algeria, favoring an African solution, took the dispute to the OAU. Morocco's

¹⁰⁷ For a more detailed history of French colonial involvement, see Alf Andrew Heggoy, *Colonial Origins of the Algerian-Moroccan Border Conflict of October 1963*, 13 AFR. STUD. REV. 17, 17-22 (1970).

¹⁰⁸ See FRANK E. TROUT, MOROCCO'S SAHARAN FRONTIERS 426 (1969).

¹⁰⁹ See *id.*

¹¹⁰ See I. WILLIAM ZARTMAN, GOVERNMENT AND POLITICS IN NORTHERN AFRICA 19 (1963).

¹¹¹ See WORONOFF, *supra* note 10, at 336.

¹¹² See H.A. Amankwah, *International Law, Dispute Settlement, and Regional Organizations in the African Setting*, in THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION 197, 202 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987).

¹¹³ See *id.* at 202.

allies within the Security Council similarly persuaded it to seek an African solution first.¹¹⁴ Hence, Emperor Haile Selassie of Ethiopia and President Modibo Keita of Mali organized a meeting in Bamako to negotiate a cease-fire.¹¹⁵ Although the negotiated armistice was short-lived, the meeting produced the famous Bamako Communiqué which consisted of a five-point plan with the following goals:

1. the immediate end of hostilities . . . ;
2. the creation of a committee composed of Algerian, Moroccan, Ethiopian and Malian military officers which would define a demilitarized zone;
3. the supervision of security and military neutrality in the demilitarized zone by Ethiopian and Malian observers;
4. the request for an extraordinary meeting of the OAU Council of Ministers, for the purpose of creating a committee of arbitration to effect a definitive solution of the Algerian-Moroccan dispute and
5. the cessation of hostile propaganda attacks¹¹⁶

The requested extraordinary meeting of the OAU Council of Ministers was convened in Addis Ababa in November, 1963 to discuss the conflict.¹¹⁷ A summary of the arguments that delegates of both parties submitted to the Council of Ministers reveals how diametrically opposed both sides were and the difficult position in which the OAU found itself. Morocco submitted the following arguments: 1) Morocco had a historic claim to the area; 2) various treaties concluded with France and the treaty with the Algerian provisional government in 1961 supported its position; and that 3) since the French left the frontier between Morocco and Algeria undefined, Algeria should honor the 1961 agreement.¹¹⁸ Algeria replied with the following arguments: 1) the 1961 agreement was signed under *force majeure* and, therefore, would not be honored; 2) Morocco's expansionism was contrary to the spirit of the OAU Charter and, if allowed, could destroy the OAU; and, 3) "to impose unilaterally the least revision of the Algerian-Moroccan

¹¹⁴ See OKOYE, *supra* note 87, at 148.

¹¹⁵ See Amankwah, *supra* note 112, at 202.

¹¹⁶ *Id.*

¹¹⁷ See TROUT, *supra* note 108, at 427-28.

¹¹⁸ See S. O. AGBI, *THE ORGANIZATION OF AFRICAN UNITY AND AFRICAN DIPLOMACY*, 1963-1979, at 9 (1986).

borders is without doubt to create a precedent or an unfortunate jurisprudence for the future of many African states"¹¹⁹

Clearly, the Council of Ministers was in a quandary; both parties had equally strong but irreconcilable positions. Characteristically, the Council avoided dealing with the substantive issues raised by both parties and instead appointed an ad hoc committee composed of the Ivory Coast, Ethiopia, Mali, Nigeria, Senegal, Sudan and Tanzania, designed to create the "definitive settlement of the Algerian-Moroccan border dispute."¹²⁰ The parties attended several commission meetings, none of which appears to have decisively changed the status quo.¹²¹ However, the two governments announced on February 20, 1964, that they had signed an agreement and resumed diplomatic ties. A series of negotiations culminated in a temporary treaty of cooperation and solidarity between the two countries.¹²²

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

b. *The Ethiopia-Somalia-Kenya Border Conflict*

The Ethiopia-Somalia-Kenya border conflict also has its roots in Africa's colonial past. The plight of the Somalis is perhaps the best example of the arbitrary manner in which the European colonial powers went about dividing Africa.¹²³ While it is impossible to give here a full account of the history of the establishment of the colonial state in the Horn of Africa,¹²⁴ suffice it to say that the Somali people were subdivided into the four countries that constitute the Horn out of convenience.¹²⁵ The Somali people are spread across the borders of

¹¹⁹ *Id.* at 9-10.

¹²⁰ Amankwah, *supra* note 112, at 203.

¹²¹ See WORONOFF, *supra* note 10, at 340-42.

¹²² See *id.* at 343-44. The agreement was dissolved in April, 1964, and disputes continued for some time thereafter. See *id.*

¹²³ See, e.g., Peter Anyang' Nyong'o, *The Implications of Crises and Conflict in the Upper Nile Valley*, in *CONFLICT RESOLUTION IN AFRICA*, *supra* note 94, at 96, 96-102 (setting out historical roots of conflict with Ethiopia over territory).

¹²⁴ For a more detailed discussion, however, read Michael Chege, *Conflict in the Horn of Africa*, in *AFRICA: PERSPECTIVES ON PEACE & DEVELOPMENT* 87-100 (Emmanuel Hansen ed., 1987) [hereinafter *PERSPECTIVES ON PEACE*].

¹²⁵ These four nations are Ethiopia, Kenya, Somalia and Djibouti.

Ethiopia, Djibouti, and Kenya.¹²⁶ The protests by the Somalis against this balkanization went unheeded; despite consistent Somali objections, British colonial authorities signed treaties with Ethiopia that transferred the Ogaden region occupied by the Somalis to Ethiopia.¹²⁷ In addition, when the British granted independence to Kenya in 1963, they ignored the wishes of the predominantly Somali inhabitants of the Northern Frontier District (NFD) of Kenya to be unified with Somalia.¹²⁸

Consequently, the irredentist stance taken by Somalia immediately after independence in 1960 was neither unexpected nor surprising.¹²⁹ The Western Somalia Liberation Front, acting in close collaboration with the Somali government, called for self-determination for Somalis in Kenya and Ethiopia.¹³⁰ The determination of the Somali to gain Somalian autonomy, and their resentment of what they viewed as British betrayal, was registered in March, 1963, when Somalia broke off diplomatic relations with Britain.¹³¹ Tensions reached their peak in 1964, when Somali nationals raided Ethiopian and Kenyan army and police posts.¹³² Somalia's earlier attempt to introduce the dispute for discussion at the OAU inaugural conference met stiff opposition from Ethiopia, and the matter was shelved.¹³³

However, due to continued incitement of the Ethiopian Somali population, Ethiopia requested an extraordinary session of the Council of Ministers to discuss what Ethiopia considered "aggression" by Somalia.¹³⁴ The Somali government also requested that the dispute be included on the agenda of the extraordinary session. Both disputants were asked to present their cases before the Council of Ministers when it met on February 12, 1964.¹³⁵ Regrettably, the resolution passed by the Council did not address the substance of the problem, but simply implored both sides to settle their differences amicably in accordance

¹²⁶ Nzongola-Ntalaja, *The National Question and the Crisis of Instability in Africa*, in PERSPECTIVES ON PEACE, *supra* note 124, at 55, 65.

¹²⁷ See TOM J. FARER, WAR CLOUDS ON THE HORN OF AFRICA: A CRISIS FOR DÉTENTE 68-69 (1976).

¹²⁸ See *id.* at 77-79.

¹²⁹ See ZARTMAN, *supra* note 110, at 173.

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

¹³¹ See I. M. LEWIS, THE MODERN HISTORY OF SOMALILAND: FROM NATION TO STATE 192-93 (1965).

¹³² See Amankwah, *supra* note 112, at 204; Chege, *supra* note 124, at 90.

¹³³ See LEWIS, *supra* note 131, at 197-99.

¹³⁴ Amankwah, *supra* note 112, at 204.

¹³⁵ See *id.*; WORONOFF, *supra* note 10, at 350-52, 354-55.

with the OAU Charter.¹³⁶ Unfortunately, the next extraordinary Council of Ministers meeting that took place in Lagos, Nigeria did not address the heart of the dispute either.¹³⁷

Somalia emphasized the importance of self-determination for the Somali populations in the disputed region, while Ethiopia warned of the danger of attempting to revise Africa's borders.¹³⁸ The words of the Ethiopian delegate capture the dilemma that the arbitrary colonial borders placed on the OAU: "If we seek to redraw the map of Africa on the basis of so-called tribal or racial or ethnic affinities, we will have cast ourselves adrift on a wild sea in a voyage that can only end in disaster."¹³⁹ Predictably, the Somalian proposal was rejected, and both sides were asked to respect each others' territorial integrity. The Council of Ministers further ordered the continuation of the previously agreed upon cease-fire and a cessation of hostilities.¹⁴⁰ Ethiopia had succeeded in preying on Africa's worst fears by pointing out what could occur if the Council of Ministers attempted to revise the boundaries of the African countries.

The cease-fire was successful for a short time. A new government took power in Somalia and vowed to follow the expansionist policies of the previous government.¹⁴¹ However, immediate danger was averted when, through the diplomatic efforts of President Kenneth Kaunda of Zambia, the President of Kenya and the Prime Minister of Somalia signed a memorandum of understanding to end the tensions between their two countries.¹⁴² The memorandum cooled tensions between Ethiopia and Somalia for a while as well.¹⁴³

Unfortunately, a new government led by Siad Barre took power in Somalia.¹⁴⁴ Although Barre did not embark on an expansionist policy immediately, at the twenty-first meeting of the Council of Ministers in Addis Ababa in May, 1973, Somalia unsuccessfully attempted to persuade the summit to formally agree that a dispute existed between Ethiopia and Somalia. That marked the beginning of a succession of events that culminated in a devastating war between Ethiopia and

¹³⁶ See Amankwah, *supra* note 112, at 204.

¹³⁷ See AGBI, *supra* note 118, at 27-28.

¹³⁸ See *id.* at 28.

¹³⁹ *Id.* at 28.

¹⁴⁰ See WORONOFF, *supra* note 10, at 351.

¹⁴¹ See FARER, *supra* note 127, at 89.

¹⁴² See *id.* at 90.

¹⁴³ See Chege, *supra* note 124, at 93.

¹⁴⁴ See Christopher Clapham, *The Horn of Africa: A Conflict Zone*, in *CONFLICT IN AFRICA*, *supra* note 96, at 72, 76.

Somalia from 1977-78.¹⁴⁵ Participation by the superpowers on both political divides escalated the war.¹⁴⁶ Efforts by an OAU ad hoc committee to settle the conflict were ineffective.¹⁴⁷ However, due to Somalia's denial of arms and facilities to local guerrillas, this conflict was scaled down considerably.¹⁴⁸

2. Conflicts Emanating from Colonial State Succession: The Western Sahara Conflict

No other dispute has shaken the very foundations of the OAU like the protracted Western Sahara conflict.¹⁴⁹ Following the admission of the Sahara Arab Democratic Republic (SADR)¹⁵⁰ to the OAU, a Moroccan-instigated boycott brought the activities of the OAU to a halt when the nineteenth summit conference, which was to be held in Tripoli, Libya, failed to take place due to the lack of a quorum.¹⁵¹

This conflict can be put into perspective by looking at its history. Spain acquired the territory of what is now Western Sahara between 1884 and 1934.¹⁵² The Kingdom of Morocco, which pre-existed the presence of Spain in the area, protested the occupation of this territory by Spain and claimed sovereignty over it.¹⁵³ Mauritania, the southern neighbor, also claimed this territory.¹⁵⁴

Under pressure from these expansionist regional states, and desirous of keeping its colonial acquisition, Spain declared Western Sahara as one of its provinces in 1958. Spain's decision created furor and opposition within the United Nations General Assembly, as well as from Morocco and Mauritania.¹⁵⁵ After prompting by the United Nations

¹⁴⁵ See *id.* at 78.

¹⁴⁶ See *id.*

¹⁴⁷ See Amankwah, *supra* note 112, at 204.

¹⁴⁸ See Chege, *supra* note 124, at 93-95.

¹⁴⁹ Other than illustrating the intricacies of conflict resolution in Africa, the Western Sahara conflict is also a study in the problem of state succession, imperatives of state membership in the OAU, and the legal problem of attributing statehood to a territorial entity. For details, see Naldi, *supra* note 55, at 152.

¹⁵⁰ See JEREMY HARDING, *THE FATE OF AFRICA: TRIAL BY FIRE* 105 (1993).

¹⁵¹ See Naldi, *supra* note 55, at 152.

¹⁵² See Azzedine Layachi, *The OAU and Western Sahara: A Case Study*, in *THE OAU AFTER THIRTY YEARS*, *supra* note 25, at 27, 29.

¹⁵³ See *id.*

¹⁵⁴ See Radha Krishna Ramphul, *The Role of International and Regional Organizations in the Peaceful Settlement of Internal Disputes (With Special Emphasis on the Organization of African Unity)*, 13 GA. J. INT'L & COMP. L. 371, 382 (1983).

¹⁵⁵ See Layachi, *supra* note 152, at 29-30.

Security Council, Spain agreed to hold a referendum to determine whether the Sahawi, the inhabitants of the contested territory, preferred to rule themselves, to join Morocco or Mauritania, or to remain under the protection of Spain.¹⁵⁶

Spain's attempts to carry out the demands for a referendum from the United Nations General Assembly in 1965¹⁵⁷ and the OAU in 1972,¹⁵⁸ however, were preempted when, largely due to Morocco's and Mauritania's diplomatic efforts, the General Assembly adopted a resolution seeking an advisory opinion from the International Court of Justice.¹⁵⁹ The Court was asked to answer the following questions:

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

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

2. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?¹⁶⁰

The Court found that some "legal ties of allegiance" existed between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara, and that equally legal ties existed between the Mauritanian entity and the territory of Western Sahara. The Court held, however, that the evidence presented did not establish any ties of sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. The Court, therefore, found nothing preventing the General Assembly from implementing "the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."¹⁶¹

Although the decision of the International Court of Justice unequivocally rejected any claim by Morocco or Mauritania to Western Sahara, the intransigent King Hassan II of Morocco interpreted the Court's decision in his favor and proceeded to organize the "Green March," an invasion of Western Sahara by Moroccan troops and civil-

¹⁵⁶ See *id.* at 29; Ramphul, *supra* note 154, at 382; Yahia H. Zoubir, *The Western Sahara Conflict: A Case Study in Failure of Prenegotiation and Prolongation of Conflict*, 26 CAL. W. INT'L L.J., 173, 175 (1996).

¹⁵⁷ See Zoubir, *supra* note 156, at 175 n.7.

¹⁵⁸ See *id.* at 175 n.8.

¹⁵⁹ See *id.* at 175 n.9.

¹⁶⁰ See *id.* at 176.

¹⁶¹ *Id.* (quoting Advisory Opinion, Western Sahara, 1975 I.C.J. 68 (Oct. 16)).

ians.¹⁶² Problems at home, coupled with pressure from the United States, forced Spain, under the terms of the Madrid Accords, to cede Western Sahara to Morocco and Mauritania.¹⁶³

Algeria, the main backer of the Sahrawi nationalist movement (POLISARIO),¹⁶⁴ which had been waging a guerilla war against Spanish occupation, was outraged by the turn of events.¹⁶⁵ With Algeria's support, POLISARIO shifted its attacks to Morocco and Mauritania until the latter withdrew from the region due to internal problems.¹⁶⁶ The tensions had reached their peak in 1976, when POLISARIO proclaimed the Western Sahara an independent state under the name Sahrawi Arab Democratic Republic (SADR).¹⁶⁷

Two Council of Ministers meetings, held in February and July, 1976 in Addis Ababa and Mauritius, Mauritania, respectively, affirmed the right of the Sahrawi people to self-determination, but did not develop concrete proposals on how to end the conflict.¹⁶⁸ Between 1976 and 1978, attempts to call an extraordinary meeting of the OAU failed due to lack of a quorum.¹⁶⁹ Subsequently, a summit took place in Khartoum, Sudan, where an ad hoc committee consisting of Mali, Guinea, Nigeria, the Ivory Coast and Tanzania was formed to look into the conflict.¹⁷⁰ At the 1979 Monrovia conference, the OAU passed a resolution calling for a cease-fire and the holding of a free referendum for the inhabitants of Western Sahara in order to exercise their right of self-determination.¹⁷¹ Meanwhile, the United Nations General Assembly recognized POLISARIO as the legitimate representative of the Sahrawi people.¹⁷²

At the Nairobi summit in 1981, the ad hoc committee proposed a three-point plan for the resolution of the conflict which contained the following provisions: (1) cease-fire and direct negotiations between the parties; (2) establishment of a multinational peace-keeping force

¹⁶² See Layachi, *supra* note 152, at 31; see also TONY HODGES, *WESTERN SAHARA: THE ROOTS OF A DESERT WAR* 211 (1983).

¹⁶³ See Zoubir, *supra* note 156, at 177 n.16.

¹⁶⁴ See A. Peter Mutharika, *The Role of the United Nations Security Council in African Peace Management: Some Proposals*, 17 MICH. J. INT'L L. 537, 549 (1996).

¹⁶⁵ See HARDING, *supra* note 150, at 103-05.

¹⁶⁶ See Ramphul, *supra* note 154, at 383.

¹⁶⁷ See HARDING, *supra* note 150, at 105; Layachi, *supra* note 152, at 32.

¹⁶⁸ See Layachi, *supra* note 152, at 32.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.* at 32-33.

¹⁷¹ See Zoubir, *supra* note 156, at 183-84 n.162.

¹⁷² See *id.* at 184.

and an interim administration; and (3) a referendum organized by the OAU and the United Nations.¹⁷³ However, the plan was never effectuated because the Implementation Committee appointed to succeed the ad hoc committee failed to bring the parties to a negotiating table.¹⁷⁴

In February, 1982, events took a new turn when, in a Council of Ministers' meeting, the OAU Secretary-General, Edem Kodjo, admitted the SADR to the OAU's membership.¹⁷⁵ Among other problems, this decision caused a crisis which led to the cancellation of the OAU Tripoli summit.¹⁷⁶ By 1984, Morocco completed the construction of a wall surrounding what it termed the "useful triangle."¹⁷⁷ POLISARIO, in turn, planned its most ambitious attack, "the Maghreb offensive," on Morocco which proved to Morocco that the wall was ineffective.¹⁷⁸

However, by 1988 circumstances seemed to change and primarily economic internal problems in Morocco and Algeria forced the two to resume diplomatic ties.¹⁷⁹ Attempts at direct negotiations between Morocco and POLISARIO were also made. The establishment of United Arab Maghreb (UAM), an economic grouping in the region, further explains the thawing of the relationship between Morocco and Algeria.¹⁸⁰

At this point, the arena of efforts to resolve this conflict shifted from the OAU to the United Nations. After a series of initiatives, the Secretaries-General of the United Nations and the OAU worked out a comprehensive plan for a referendum to be held towards the end of 1990 or at the beginning of 1991.¹⁸¹ This plan was approved by both the General Assembly and the Security Council. Subsequently, the United Nations Mission for the Referendum in Western Sahara (MINURSO), consisting of a multinational force and military observers to oversee

¹⁷³ See *id.* at 184-85.

¹⁷⁴ See Layachi, *supra* note 152, at 33-34.

¹⁷⁵ See *id.* at 34.

¹⁷⁶ See *id.*

¹⁷⁷ See *id.*

¹⁷⁸ See *id.*

¹⁷⁹ See Layachi, *supra* note 152, at 34-45; see also George Joffe, *The Conflict in the Western Sahara*, in *CONFLICT IN AFRICA*, *supra* note 96, at 110, 113 (economic cost of occupation became so high that Morocco was forced to negotiate while internal unrest in Algeria shifted the focus of the Algerian government from effectively supporting SADR to resolving problems at home).

¹⁸⁰ See Layachi, *supra* note 152, at 35.

¹⁸¹ See U.N. DEPT OF PUBLIC INFO., *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING* 271-72 (3d ed. 1996) [hereinafter *BLUE HELMETS*].

the implementation of the plan, was created with both parties in agreement.¹⁸²

Unfortunately, a key obstacle to the implementation of the plan emerged—POLISARIO and Morocco could not agree on the formula of identifying the true inhabitants of Western Sahara. While POLISARIO produced a list of 74,000 people based on a 1974 census by Spain, Morocco provided a roll of 200,000 people claiming to be Sahrawi.¹⁸³ Due to this fundamental disagreement, the United Nations referendum failed to take place, and Morocco occupies Western Sahara to this day.¹⁸⁴

This is one of the conflicts in Africa that cries out for resolution. The Security Council needs to develop a formula to determine the inhabitants of Western Sahara so that the long-overdue referendum can take place and the Sahrawi can live in peace again. Any objective observer would agree that taking the 1974 census as a point of departure in determining the original inhabitants is the most realistic formula. Why the Security Council has delayed over this purely technical exercise is difficult to fathom.

3. Conflicts Involving Illegitimate and Racist Regimes Resulting from Delayed Decolonization

The Namibian and Zimbabwean struggles for independence and the South Africans' struggle against the apartheid regime may be categorized as conflicts involving illegitimate and racist regimes resulting from delayed decolonization. Unlike the other conflicts where the OAU had to act as a neutral arbiter, in these conflicts the OAU directly challenged the legitimacy of these nations' regimes.¹⁸⁵ The OAU viewed these regimes as unacceptable obnoxious vestiges of white supremacy from the colonial era.¹⁸⁶

The OAU initiatives to liquidate these illegal regimes were double-pronged: a diplomatic war within the United Nations, and financial and military support to the African liberation movements within these

¹⁸² See *id.*

¹⁸³ See Layachi, *supra* note 152, at 36.

¹⁸⁴ See Zoubir, *supra* note 156, at 211–13.

¹⁸⁵ See ESEDEBE, *supra* note 4, at 201–10.

¹⁸⁶ See Cervenka, *supra* note 99, at 15–18 (OAU Resolutions on Decolonization and Apartheid). For a detailed discussion of the OAU diplomatic strategy against apartheid, its involvement in Rhodesia, and its support for liberation movements, see RENERA GERTRUDIS SYBESMA-KNOL, *THE STATUS OF OBSERVERS IN THE UNITED NATIONS* 123–26, 129–31 (1981).

states.¹⁸⁷ The Southern Rhodesia crisis illustrates this category of conflicts.

Both the full potential and the inherent weaknesses of the OAU were revealed in the Rhodesian crisis. The crisis was triggered by the 1964 Unilateral Declaration of Independence (UDI) of the minority settler community in Rhodesia (now Zimbabwe), led by Ian Smith. This was not a sudden declaration; preparations had been going on for some time.¹⁸⁸ The settler community's quest for "independence" started immediately after the dissolution of the Federation of Rhodesia and Nyasaland in March, 1963, when it formally requested independence from Britain.¹⁸⁹ The basis for the settler community's demand for independence was the 1961 class and racially-based constitution that had granted the country *de facto* self-government. Under this regime,

¹⁸⁷ Cervenka outlines six strategies adopted by the OAU Liberation Committee resolution to tackle colonialism:

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

CERVENKA, *supra* note 99, at 16-17.

¹⁸⁸ See generally L. H. GANN, A HISTORY OF SOUTHERN RHODESIA: EARLY DAYS TO 1934 (1965) (tracing colonial history of European contact with Rhodesia to 1934); PERCY F. HONE, SOUTHERN RHODESIA (Negro Universities Press 1969) (1909) (history of white settler community and original inhabitants of Rhodesia until early twentieth century).

¹⁸⁹ See WORONOFF, *supra* note 10, at 234-35; Layachi, *supra* note 152, at 30.

the propertied minority white settlers formed the ruling class and the poor black people were relegated to the underclass of society.¹⁹⁰

The OAU did not hide its consternation at the events unfolding in Southern Rhodesia. The Second Ordinary Session of the Heads of State and Government meeting in Accra, Ghana in October, 1965, passed a resolution which recommended convening a broad-based constitutional conference that would "obtain universal adult suffrage, free elections, and then independence."¹⁹¹ The OAU member states warned that they would oppose a unilateral declaration of independence by the settlers and that they would support a liberation front in Rhodesia, with the goal of establishing a majority government in the country.¹⁹²

The Assembly established a Committee of Five member states to examine the resolution and take appropriate measures for its effective implementation.¹⁹³ However, this did not deter the white minority government from its efforts to gain independence, nor did it stop them from continuing to emasculate the black African nationalist movements.¹⁹⁴ Urban violence increased as black Africans increasingly became frustrated by oppression and discrimination which permeated every sector of government, while the right wing Rhodesian Front Party (RFP) gained further support from the white settler community.¹⁹⁵ The worst fears of the OAU were realized when Ian Smith made a flamboyant unilateral declaration of independence in November, 1965.¹⁹⁶

Against this background, the OAU called an extraordinary meeting of the Council of Ministers to discuss what they regarded as a "treasonable seizure of power by the racists of Southern Africa."¹⁹⁷ The Council repeated the earlier calls made by the Assembly of Heads of State and Government and called on the Afro-Asian group in the United Nations General Assembly to take appropriate actions to ensure that Britain adhered fully to the United Nations Resolutions on Southern Rhodesia. The Council also resolved that "if the United Kingdom does not crush the rebellion and restore law and order, and thereby

¹⁹⁰ See WORONOFF, *supra* note 10, at 234.

¹⁹¹ *Id.* at 238.

¹⁹² See *id.* at 240.

¹⁹³ See *id.*

¹⁹⁴ See Stephen John Stedman, *The End of the Zimbabwean Civil War*, in STOPPING THE KILLING: HOW CIVIL WARS END 125, 128-29 (Roy Licklider ed., 1993).

¹⁹⁵ See B. VULINDLELA MTSHALI, RHODESIA: BACKGROUND TO CONFLICT 117-21 (1967).

¹⁹⁶ See WORONOFF, *supra* note 10, at 240.

¹⁹⁷ AGBI, *supra* note 118, at 75.

prepare the way for majority rule in Southern Rhodesia by December 15, 1965, the Member States of the OAU shall sever diplomatic relations on that date with the United Kingdom."¹⁹⁸ The deadline arrived, but neither Britain nor Rhodesia heeded the OAU's ultimatum. The OAU membership was divided on what action to take next. Only nine states ultimately implemented the Council of Ministers' resolution.¹⁹⁹

It is difficult to point to the OAU's contribution to the resolution of the Southern Rhodesia dispute. However, several issues are clear. The OAU's rhetoric and diplomatic pressure contributed to the isolation and pariah status that the Ian Smith regime acquired. The Smith regime eventually realized that the war against the African guerilla forces that had infiltrated the rural areas of the country was unwinnable.²⁰⁰ There is, however, no denying that the liberation of Mozambique from Portuguese colonialism,²⁰¹ the consequent ascendancy of an independent African government to power, and the subsequent closure of the Beira rail link to the sea sealed the economic fate of landlocked Rhodesia and finally brought down the UDI government.²⁰²

The polarization of the membership of the OAU as to whether or not to break diplomatic ties with Great Britain reflected the weaknesses of a house divided from within. Some writers have questioned the legal validity of the Council of Ministers resolution, arguing that the Council has no power under the OAU Charter to make decisions binding on the member states and that the member states, therefore, had no obligation to implement the resolution.²⁰³ While this position seems legally correct, this argument does not absolve the OAU from its

¹⁹⁸ ELIAS, *supra* note 64, at 149. See generally GRAHAM C. KINLOCH, *RACIAL CONFLICT IN RHODESIA: A SOCIO-HISTORICAL STUDY* (1978).

¹⁹⁹ See ELIAS, *supra* note 64, at 149. Several factors explain the OAU's helplessness in dealing with Ian Smith's regime, and the division within the African ranks on what action to take. See *id.* at 155. A military confrontation between the African states and the Smith Regime was ruled out—the OAU was ill-equipped to cope with a conventional warfare with Rhodesia. See AGBI, *supra* note 118, at 79. Economic sanctions could not be strictly enforced because neighboring Malawi and Zambia were weak and their economies were so closely dependent on Rhodesia that they could ill-afford to impose sanctions on Rhodesia. See ELIAS, *supra* note 64, at 155. Finally, severance could not be unilaterally declared by the OAU because each member state had to settle whether and how it should take effect. See *id.*

²⁰⁰ See Stedman, *supra* note 194, at 135–36.

²⁰¹ See BLUE HELMETS, *supra* note 181, at 321.

²⁰² See AGBI, *supra* note 118, at 85–86. For a thorough discussion of the Rhodesia crisis, see generally RALPH ZACKLIN, *THE UNITED NATIONS AND RHODESIA: A STUDY IN INTERNATIONAL LAW* (1974) (detailing source of conflict, international actions taken, and their impact on Rhodesia).

²⁰³ See ELIAS, *supra* note 64, at 158–59.

responsibility of ensuring that its organs act in unison and make decisions that member states are ready to implement. This is how to ensure the credibility of the OAU.

4. Internal Conflicts Arising from Secessionist Movements

A number of secessionist movements have sprung up in Africa's post-independence history.²⁰⁴ They have been unsuccessful due to the fact that the OAU, as evidenced in its Charter, has opposed any attempts at revising the borders which existed before independence.²⁰⁵ This opposition stems from self-interest on the part of the African ruling elite and the genuine fear that revising African borders will throw the continent into unprecedented instability.²⁰⁶ So far, only Eritrea has successfully seceded from Ethiopia.²⁰⁷ The Congo crisis and the Nigerian civil war illustrate this category of conflicts.

a. *The Congo Crisis*

The facts surrounding the Congo crisis are well-known.²⁰⁸ The Congo (later Zaire and now the Democratic Republic of the Congo) was granted independence by Belgium in 1960, with Joseph Kasavubu and Patrice Lumumba as president and prime minister, respectively.²⁰⁹ The paternalistic colonial regime did little to prepare the Congo for independence and, therefore, any keen observer of the local situation could have foreseen an impending crisis.²¹⁰

²⁰⁴ See Peter Lyon, *The Ending of the Cold War in Africa*, in CONFLICT IN AFRICA, *supra* note 96, at 171, 171–72. The most memorable ones (discussed in the paragraphs that follow) are the Katanga and Biafra secessionist provinces of Congo and Nigeria, respectively. See *id.*

²⁰⁵ See OAU CHARTER, *supra* note 29, at art. III, § 3.

²⁰⁶ See Abdullahi Ahmed An-Na'im, *Eritrean Independence and African Constitutionalism: A Sudanese Perspective*, in ERITREA AND ETHIOPIA: FROM CONFLICT TO COOPERATION 115 (Amare Tekle ed., 1994) (asserting that ill-defined borders present problems in Africa).

²⁰⁷ See RUTH IYOB, *THE ERITREAN STRUGGLE FOR INDEPENDENCE: DOMINATION, RESISTANCE, NATIONALISM, 1941–1993*, at 1 (1995).

²⁰⁸ See BLUE HELMETS, *supra* note 181, at 182–83. The Congo's first constitutional crisis was triggered by secessionist machinations in 1960. See *id.* The second crisis illustrates how the involvement of superpowers in a local conflict can complicate the situation and render its resolution daunting. See Yashpal Tandon, *The Internationalization of the Civil War: Lessons from the Congo, Nigeria and Vietnam*, in AFRICA IN WORLD AFFAIRS: THE NEXT THIRTY YEARS 63, 66–67 (Ali A. Mazrui & Hasua H. Patel eds., 1973) [hereinafter AFRICA IN WORLD AFFAIRS]. See generally GEORGE MARTELLI, *LEOPOLD TO LUMUMBA: A HISTORY OF THE BELGIAN CONGO, 1877–1960*, at 223–32 (1961) (background of political events from 1958–1960).

²⁰⁹ See Rene Lemarchand, *Footnote to History: How Lumumba Came to Power*, 5 AFR. SPECIAL REP. 2, 13–15 (1960); see also MARTELLI, *supra* note 209, at 228–30.

²¹⁰ See BLUE HELMETS, *supra* note 181, at 175–76.

The crisis was triggered by the Belgian-sponsored secession of the mineral-rich Katanga province²¹¹ and the subsequent assassination of the left-leaning Prime Minister Lumumba shortly after independence.²¹² A moderate government led by Prime Minister Cyrille Aduola that emerged after the demise of Lumumba continued to confront the same problems.²¹³ Political forces in the Congo were deeply divided despite the fact that by 1963, the secessionist forces led by Moise Tshombe had given up their bid for an independent state.²¹⁴

By March, 1963, the Congo was engulfed in another conflagration. Forces loyal to the deceased Prime Minister Lumumba regrouped under the name of the Congolese National Liberation Committee (CNL) and launched an attack on the Aduola government from the neighboring region of Brazzaville.²¹⁵ Moise Tshombe, with the support of the United States, Belgium, and other foreign mercenaries, launched his second bid for power.²¹⁶ Due to the ensuing turmoil and the ineffectiveness of his government to contain the situation, Aduola resigned and Tshombe was sworn in as Prime Minister in July, 1964.²¹⁷

This turn of events shocked the OAU. Tshombe was widely regarded as a traitor responsible for both the assassination of Prime Minister Lumumba and the escalation of the crisis by bringing in mercenaries from Rhodesia and South Africa.²¹⁸ It was hardly surprising that in October, 1964 the OAU member states threatened to walk out of a non-aligned movement summit in Cairo, Egypt, if Tshombe was allowed to attend.²¹⁹

The CNL forces reacted to Tshombe's ascent to power by launching an attack against government forces and capturing Stanleyville.²²⁰ A bloody civil war followed, pitting the superpowers against each other with the local protagonists as pawns. The support of Tshombe by the United States was countered with the backing of the CNL by the USSR and, to a lesser extent, China.²²¹

²¹¹ See *id.* at 177.

²¹² See PHILLIPPA SCHUYLER, WHO KILLED THE CONGO? 243-47 (1962).

²¹³ See BLUE HELMETS, *supra* note 181, at 187-88.

²¹⁴ See *id.* at 188-96.

²¹⁵ See AGBI, *supra* note 118, at 41.

²¹⁶ See *id.* at 46-48.

²¹⁷ See *id.* at 41.

²¹⁸ See Ramphul, *supra* note 154, at 379.

²¹⁹ See Amankwah, *supra* note 112, at 205.

²²⁰ See Ramphul, *supra* note 154, at 379. See generally SCHUYLER, *supra* note 212 (discussing Congo from its 1960 independence to 1962).

²²¹ See Ramphul, *supra* note 154, at 380.

Attempts by the OAU to resolve the conflict were unsuccessful.²²² An extraordinary session of the Assembly of Heads of State and Governments met in September, 1964 to discuss the crisis. The Assembly appointed an ad hoc committee under the chairmanship of President Jomo Kenyatta of Kenya with a mandate to reconcile the warring parties and normalize relations between the Congo and its neighbors. The OAU also called for the withdrawal of foreign mercenaries, the formation of a caretaker government, and the holding of elections.²²³

Calls by the OAU went unheeded, and initiatives by the Kenyatta Committee to reconcile the factions similarly failed.²²⁴ In the continuing civil war, the CNL forces appeared to gain an advantage over Tshombe's forces. However, the famous Stanleyville operation effectively caused the defeat of CNL forces and the emergence of Tshombe as the *de facto* leader.

Thus, the OAU displayed its impotence in yet another regional conflict.²²⁵ However, the active involvement of extra-regional forces in this conflict absolves the OAU from any true indictment. After all, the endorsement of the OAU's call for the withdrawal of mercenaries by the United Nations Security Council went unheeded, and even the United Nations peacekeeping forces utterly failed to maintain peace.²²⁶

Moise Tshombe later met his match in the person of Lieutenant Marshal Mobutu who, in a military coup, liquidated all of his opponents and assumed power.²²⁷ Mobutu presided over a corrupt government, looting and plundering the resources of Zaire until recently, when rebel forces led by Laurent Kabila launched an offensive against Mobutu's regime.²²⁸ Mobutu fled to exile in Morocco where he later died of prostate cancer.²²⁹

²²² See *id.* at 379-80; Amankwah, *supra* note 112, at 205.

²²³ See Ramphul, *supra* note 154, at 380.

²²⁴ See AGBI, *supra* note 118, at 50-52.

²²⁵ The impotence of the OAU can partly be explained by lack of a unified approach at the beginning of the crisis with the radical states calling for intervention, the conservatives favoring noninterference in the internal affairs of the Congo, and moderate states desiring a middle way. For more details of the division of the African camp by the Congo crisis, see Robert C. Good, *Four African Views of the Congo Crisis*, 6 AFR. REP. 3 (1961).

²²⁶ See ARTHUR LEE BURNS & NINA HEATHCOTE, *PEACE-KEEPING BY U.N. FORCES: FROM SUEZ TO THE CONGO* 23-35 (1963). The intractability and complexity of the conflict is best illustrated by the fact that the then United Nations Secretary-General, Dag Hammarskjöld, lost his life in the Congo while on a peace mission. See *Martyrdom in the Congo*, 6 AFR. REP. 2 (1961).

²²⁷ See Kaye Whiteman, *Mobutu Sese Seko: Thief Who Stole a Nation*, THE GUARDIAN (London), Sept. 9, 1997, at 18.

²²⁸ See Marguerite Michaels, *The Bleeding Heart of Africa*, TIME, Mar. 15, 1999, at 62-63.

²²⁹ See *id.*

b. *The Nigerian Civil War*

The Nigerian civil war is a microcosm of internal contradictions within the African nation-state.²³⁰ Nigeria was a country of promise when it gained independence from the British in 1960.²³¹ It was a showcase of liberal democratic experimentation.²³² If what a newly independent country required was a democratic institutional base, Nigeria had just that—the federal constitution adopted after independence contained an elaborate and generous bill of rights.²³³ Furthermore, the principles of separation of powers and the rule of law were deeply ingrained in the federal constitutional order.²³⁴

Yet, behind this constitutional facade of democracy and rule of law, seeds of civil strife were slowly germinating in the political arena; the tribal inclination of Nigeria's political parties illustrated the precarious political balance that could be tilted at the slightest push.²³⁵ For example, the National Council of Nigerian Citizens (NCNC) was dominated by the Igbo of Eastern Nigeria; the Northern People's Congress of Nigeria (NPC), by the Hausa people of Northern Nigeria; and the Action Group (AG), by the Yoruba of the Western region.²³⁶ Nigeria's federal government was a quasi-national loose coalition of the Igbo and Hausa.²³⁷ Like other newly independent countries, allegiance to the tribe was the norm. Indeed, Nigeria was an amalgamation of tribes and not a nation per se.²³⁸

In January, 1966, a military coup d'état engineered by Igbo officers occurred, and Prime Minister Tafawa Balewa was assassinated.²³⁹

²³⁰ For a review of literature on the Nigerian civil war, see generally ZDENEK CERVENKA, *THE NIGERIAN WAR, 1967–1970* (1971); JOHN DE ST. JORRE, *THE NIGERIAN CIVIL WAR* (1972); A. H. M. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA: A DOCUMENTARY SOURCEBOOK, 1966–1970* (2 vols.) (1971); Laurie S. Wiseberg, *An Emerging Literature: Studies of the Nigerian Civil War*, 18 AFR. STUD. REV. 117 (1975).

²³¹ See B. O. NWABUEZE, *A CONSTITUTIONAL HISTORY OF NIGERIA* 59–60 (1982).

²³² See generally OLUWOLE IDOWU ODUMOSU, *THE NIGERIAN CONSTITUTION: HISTORY AND DEVELOPMENT* (1963) (detailing "democratic" measures implemented while Nigeria was a colony, such as constitutions, limited voting power to Nigerians, and Nigeria's history of local self rule).

²³³ See ELIAS, *supra* note 64, at 142–58 (describing "Fundamental Rights Provisions" contained in the constitution).

²³⁴ See T. O. ELIAS, *NIGERIA: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION* 117–40 (1967) (outlining structure of Nigerian Constitution).

²³⁵ See JOHN J. STREMLAU, *THE INTERNATIONAL POLITICS OF THE NIGERIAN CIVIL WAR, 1967–1970*, at 4 (1977).

²³⁶ See WILLIAM D. GRAF, *THE NIGERIAN STATE: POLITICAL ECONOMY, STATE CLASS AND POLITICAL SYSTEM IN THE POST-COLONIAL ERA* 31, 33 (1988).

²³⁷ See *id.* at 27, 33.

²³⁸ See WORONOFF, *supra* note 10, at 397; Amankwah, *supra* note 112, at 206.

²³⁹ See Amankwah, *supra* note 112, at 206.

Later, Major General J.T.U. Aguiyi-Ironsi, the Igbo leader of that coup, was executed in a counter-coup that catapulted General Gowon to power.²⁴⁰ This retaliation was unacceptable to the Igbo.²⁴¹ The Military Governor of Eastern Nigeria, Lieutenant-Colonel Odumegwu Ojukwu, declared the eastern region an independent state called Biafra. A bloody civil war ensued, pitting the federal government against the secessionist Biafra. The war claimed the lives of an estimated one million people.²⁴²

What role did the OAU play in ending this unfortunate conflict? The OAU's capacity to resolve the Nigerian conflict was inhibited by the Charter's principle of non-interference in the internal affairs of member states, which prevented the OAU from getting fully involved in the crisis.²⁴³ Although the OAU was aware of its impotence, it did not want to appear to be doing nothing while a devastating civil war raged on in an African country. Therefore, the crisis was discussed at the Assembly of Heads of State and Government's summit meeting in Kinshasa, Zaire in September, 1967.²⁴⁴ The resolution passed at the end of the conference recognized that the conflict was Nigeria's internal affair, but placed the "services of the Assembly at the disposal of the Federal Government of Nigeria."²⁴⁵ The conference also decided to send a consultative mission to the head of Nigeria's federal govern-

²⁴⁰ See *id.*

²⁴¹ The coup was followed by a slaughter of Igbos in the northern part of the country. See WORONOFF, *supra* note 10, at 401. This precipitated the ill-fated secession of the new republic of Biafra, on May 30, 1967. See GRAF, *supra* note 236, at 43.

²⁴² See Ramphul, *supra* note 154, at 381.

²⁴³ See *id.* at 375-76. In reference to why the OAU failed to resolve the Nigerian crisis, Yashpal Tandon gives a summary of reasons that also explain the failure of the OAU in the other African intra-state conflicts. He writes:

The O.A.U. framework collapsed because of the following factors: The first was that the OAU is, by design and constitution, an essentially conservative organization. It is anti-secessionist, anti-interventionist, and anti-border changes. . . . The second weakness of the OAU with reference to the Nigerian situation was its inability to enforce its decisions on Member States. The OAU could do nothing to prevent four Member States (Tanzania, Zambia, Ivory Coast and Gabon) from recognizing Biafra. The OAU has no sanctions, except those of collective disapprobation of defaulting states, but even these the OAU was unprepared to invoke against the four states. . . . The third factor was the weakness of the OAU with respect to the outside world. Neither the OAU, nor any of its members, possesses the power to insulate African problems from extra-regional intervention.

Tandon, *supra* note 208, at 68.

²⁴⁴ See STREMLAU, *supra* note 235, at 93.

²⁴⁵ *Id.*

ment to "assure him of the Assembly's desire for the territorial integrity, unity and peace of Nigeria."²⁴⁶

One wonders why the head of Nigeria's government needed this assurance from the OAU's Assembly. The Assembly was not fighting to dismember, nor was it violating the territorial integrity of, Nigeria. In any case, why did the OAU send a mission to convey such an assurance when sending one head of state or dispatching a letter to the federal government would have served the purpose? Whatever logic lay behind the Assembly's confused response to the Nigerian civil war, several issues are apparent. The tension between the desire to resolve the conflict and to remain faithful to the OAU Charter explains the Assembly's confused state of mind and unmitigated diplomatic blunder. However, by sending the mission to the federal government, the OAU did what it had all along pledged never to do—interfere in the internal affairs of a member state. Unfortunately, the OAU interfered not as an impartial umpire bent on genuinely mediating between the parties and ending the conflict, but as a supporter of the federal government.

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

Most of the previously examined cases are also manifestations of internal conflicts resulting from challenges to the legitimacy of power. Revisiting the Congo crisis case study illustrates this point. The Congo problem started as a conflict between the secessionist movement of Moise Tshombe and the government of Prime Minister Patrice Lumumba and President Joseph Kasavubu.²⁴⁷ At that point, there was no regional body within which the African states could launch an initiative. The African states, therefore, endorsed a United Nations peace-keeping operation.²⁴⁸ However, when internal conflicts grew between Lumumba and Kasavubu, the African states became deeply divided.²⁴⁹ The radical Casablanca group saw the ouster of Lumumba as an unacceptable challenge to the legitimate authority of the Congo, while the conservative Monrovia group viewed any overt support to a specific group in the Congo as interference with the internal affairs of the

²⁴⁶ *Id.*

²⁴⁷ See BLUE HELMETS, *supra* note 181, at 177.

²⁴⁸ See Frey-Wouters, *supra* note 106, at 467 (discussing peace talks and humanitarian aspects becoming focus of OAU negotiations).

²⁴⁹ See generally ALAN P. MERRIAM, CONGO BACKGROUND OF CONFLICT 253-67 (1961). Indeed, Lumumba and Joseph Kasavubu ousted each other. See *id.*

Congo. Because of this polarization, the African states could not act in concert within the United Nations.²⁵⁰

When Cyrille Aduola was installed as the successor to Lumumba in 1961, the situation seemed to improve.²⁵¹ However, his government proved ineffective and the conflict was renewed when Tshombe, supported by the Americans, Belgians, and other foreign mercenaries, invaded from the Kivu and Kwilu provinces.²⁵²

In reaction to this externally supported offensive, CNL forces loyal to the late Lumumba received direct support from the neighboring states of Congo (Brazzaville), Burundi, Uganda, and the Sudan, while the United Arab Republic (UAR), Algeria, and Ghana supplied the CNL with arms.²⁵³ A majority of African state leaders questioned the legitimacy of Tshombe's rule over the Congo and viewed him as a "neo-colonialist puppet."²⁵⁴

Other conflicts like the Sudanese civil war, the Rhodesian crisis, and the Namibian civil war similarly resulted from challenges to the legitimacy of the government in power, although they have other distinct characteristics mentioned elsewhere.²⁵⁵

6. Conflicts Involving External Intervention

A number of intra-state conflicts in Africa have involved external intervention from nations either within or outside of Africa. Some African countries in the early years of independence were accused of interfering in the internal conflicts of neighboring states.²⁵⁶ In fact, it was Ghana's alleged involvement in a coup in Togo that prompted the Addis Ababa conference to incorporate Article III, clause five into the OAU Charter.²⁵⁷ Probably the most famous unilateral intervention by an African state into another was the 1979 Tanzanian intervention and ousting of dictator Idi Amin in Uganda.²⁵⁸ The OAU, through its

²⁵⁰ See Frey-Wouters, *supra* note 106, at 467.

²⁵¹ See *id.*

²⁵² See *id.*

²⁵³ See *id.*

²⁵⁴ Leon Gordenker, *The OAU and UN: Can They Live Together?*, in AFRICA IN WORLD AFFAIRS, *supra* note 208, at 105, 115.

²⁵⁵ See *supra* Part V.A.3 and *infra* Part V.A.7.

²⁵⁶ See Jonah, *supra* note 25, at 9.

²⁵⁷ See Cervenka, *supra* note 99, at 2 & n.4, 39. This author condemns political assassinations and subversive activities on the part of neighboring states or any other states.

²⁵⁸ See ANTONIO TANCA, FOREIGN ARMED INTERVENTION IN INTERNAL CONFLICTS 174 (1993) (Appendix, Case #20).

Liberation Committee indirectly gave aid to rebel groups who were fighting the last colonial regimes in the former Portuguese colonies of Mozambique and Angola, as well as the racist white minority regimes in Rhodesia, Namibia, and South Africa.²⁵⁹

A more recent unilateral involvement by African states in an internal conflict was the military support by Uganda, Angola, Burundi, and Rwanda of the rebels of Laurent Kabila in Zaire, which helped him gain the presidency.²⁶⁰ Mobutu's attempts to maintain power did not change the situation this time; he was eventually ousted by Kabila's forces.²⁶¹

The Cold War manifested itself in Africa through superpower intervention in African internal conflicts.²⁶² External support of the Stanleyville operation and the Russian and Chinese involvement in the Congo crisis have already been discussed. The Angolan civil war was likewise sustained by Cuban and Russian support of the incumbent government and the sponsorship of the rebel movement by the former South African government and the United States.²⁶³ This article has already described the United States and Russian involvement in the conflict between Somalia and Ethiopia. France also has unilaterally intervened in its former colonies numerous times to save incumbent governments threatened by civil war or mutiny.²⁶⁴

7. Conflicts with Strong Religious and Ethnic Underpinnings

The Hutu-Tutsi conflict within Rwanda and Burundi is an example of an ethnic conflict exacerbated by the colonial divide-and-rule policy of playing ethnic groups against each other.²⁶⁵ Another example

²⁵⁹ See SYBESMA-KNOL, *supra* note 186, at 130-31.

²⁶⁰ See Michaels, *supra* note 228, at 62. See generally Whiteman, *supra* note 227.

²⁶¹ The intervention by ECOWAS in Liberia and Sierra Leone, as well as the involvement of the great lakes regional states in the Burundi conflict, will not be discussed here due to space limitations, but they are other instances of external involvement. For a study of the Liberian crisis see generally REGIONAL PEACE-KEEPING AND INTERNATIONAL ENFORCEMENT: THE LIBERIAN CRISIS (M. Weller ed., 1994) [hereinafter THE LIBERIAN CRISIS].

²⁶² See Douglas Rimmer, *The Effects of Conflict, II: Economic Effects*, in CONFLICT IN AFRICA, *supra* note 96, at 295, 301-02.

²⁶³ See Kathryn O'Neill & Barry Munslow, *Angola: Ending the Cold War in Southern Africa*, in CONFLICT IN AFRICA, *supra* note 96, at 183, 183-88.

²⁶⁴ See CONFLICT IN AFRICA, *supra* note 96, at 9. France has intervened on many occasions in Chad, the Central African Republic, Congo-Brazzaville, Gabon, Mauritania, and Niger. See *id.* While Britain has intervened to quash army mutinies in Kenya, Uganda and Tanzania. See *id.*

²⁶⁵ See Neil Weiner, *Hutu and Tutsi of Rwanda and Burundi*, May 1, 1994 (visited Mar. 12, 1999) <<http://www.backgroundbriefing.com>>.

of a conflict with both religious and ethnic undercurrents is the Sudanese civil war. Sudan is a country that is ethnically and religiously divided between the North and the South.²⁶⁶ Shortly after Sudanese independence from joint Egyptian and British rule in 1956, the predominantly black, Christian South took arms to fight for autonomy from the Khartoum government, which was controlled by the Muslim and Arabic North.²⁶⁷ A settlement of the bloody war was reached in 1972, whereby the South assumed greater autonomy within a federal system of government.²⁶⁸ The war resumed in 1983, when the increasingly fundamentalist government in Khartoum reneged on the 1972 agreement by adopting Islamic policies like Sharia law and imposing them on the southerners.²⁶⁹

The Sudanese People's Liberation Movement and other liberation movements in the South have continued to fight what they perceive as internal colonization by the North, while the Khartoum government has attempted to crush what it views as an insurgency by infidels against Islam.²⁷⁰ Given this degree of polarization, a negotiated settlement in the near future is inconceivable. The OAU, in affiliation with the Intergovernmental Authority on Development (IGAD), a sub-regional body in the Horn of Africa,²⁷¹ has attempted to mediate an end to the Sudanese conflict, but has avoided direct involvement for fear of precipitating a fallout between the Islamic states in North Africa and sub-Saharan states that could destroy the unity within the continental body.²⁷²

²⁶⁶ See Mohamed Omer Beshir, *Conflict and Conflict Resolution in Africa—With Special Reference to Sudan*, in ORGANIZATION OF AFRICAN UNITY: 25 YEARS ON 131, 141 (Kwesi Krafona ed., 1988) [hereinafter 25 YEARS ON].

²⁶⁷ See *id.* at 141–44; Peter Woodward, *Sudan: War Without End*, in CONFLICT IN AFRICA, *supra* note 96, at 92, 92–95.

²⁶⁸ See Donald Rothchild & Caroline Hartzell, *The Peace Process in the Sudan, 1971–1972*, in STOPPING THE KILLING, *supra* note 194, at 80, 85.

²⁶⁹ See Woodward, *supra* note 267, at 92, 100–02.

²⁷⁰ See generally Angela M. Lloyd, Note, *The Southern Sudan: A Compelling Case for Secession*, 32 COLUM. J. TRANSNAT'L L. 419, 442–51 (1994).

²⁷¹ IGAD is composed of Kenya, Ethiopia, Sudan, Uganda, Eritrea, Somalia and Djibouti. See Hagos Ghion, *IGAD Ministerial Meeting Opens Tuesday*, Aug. 3, 1998 (visited Mar. 17, 1999) <<http://search.nando.net/plweb-cgi/...gency%20on%20development%29%3ATEXT>>; UN, *OAU Agree to Cooperate Further in Peace-Keeping*, May 2, 1998 (visited Mar. 17, 1999) <<http://search.nando.net/plweb-cgi/...gency%20on%20development%29%3ATEXT>>.

²⁷² See Jonah, *supra* note 25, at 11.

VI. ASSESSMENT OF THE ROLE OF THE OAU IN CONFLICT RESOLUTION AND DISPUTE SETTLEMENT

The performance of the OAU in conflict resolution can be characterized by modest success in a few cases and dismal failure in most others. It is important to identify inroads that the OAU has made and the challenges it has faced in its endeavors to establish a lasting peace in Africa.

Internal conflicts have presented the most daunting challenges to the OAU for two reasons. First, where outside powers have been involved, the capacity of the OAU to deal with them was substantially eroded.²⁷³ This is explained by the fact that extraterritorial forces, as part of the United Nations, have more resources and authority than the OAU.²⁷⁴ For instance, the superpower interventions in the Congo crisis were so pervasive and overwhelming that the OAU efforts to nullify them proved fruitless.²⁷⁵ Secondly, the OAU lacks the power to intervene in internal conflicts. Article III, clause two of the OAU Charter explicitly prohibits member states from interfering with the internal affairs of other member states.²⁷⁶ This provision has been conservatively interpreted and applied so that conflicts within a state are placed beyond the purview and jurisdiction of the OAU. The result is an artificial and conceptually unrealistic dichotomy between inter-state and intra-state conflicts, with the OAU having jurisdiction only to deal with the former. As is evident to any casual observer of the African scene, this distinction is unrealistic. All intra-state conflicts have a trans-border "spillover" effect that cannot be ignored by other states.

As the above case studies show, it is impossible for the OAU to be faithful to this distinction. The OAU intervened in one way or another in each of the conflicts that could be viewed as internal. In the case of Nigeria, for example, the OAU was unable to stay aloof, but because the Nigerian federal government insisted that the conflict was an internal affair, the OAU intervened in support of the federal government.²⁷⁷ Perhaps with its hesitant support of the federal government, the OAU thought that it had insulated itself from being accused of undermining the sovereign integrity of Nigeria.

²⁷³ See Gordenker, *supra* note 254, at 115.

²⁷⁴ See *id.*

²⁷⁵ See *id.*

²⁷⁶ OAU CHARTER, *supra* note 29, at art. III, § 2.

²⁷⁷ See STREMLAU, *supra* note 235, at 212.

However, the OAU has registered some success in the sphere of border conflicts, although this was the area that originally presented the OAU with the biggest challenge.²⁷⁸ While the colonial boundaries established in Africa are arbitrary and unsatisfactory,²⁷⁹ writers and observers of the African scene have nonetheless conceded that attempts to redraw the map of Africa will invite unprecedented problems and even more conflicts.²⁸⁰ The maintenance of the status quo has proven more prudent than attempting to revise borders.²⁸¹ The OAU has consistently conformed to this rule.²⁸² The rule has found juridical expression in the legal doctrine of *uti possidetis*.²⁸³ Although some scholars feel otherwise,²⁸⁴ the stability with which the colonial borders have been maintained in Africa is astounding, especially when compared to "the three major wars in Latin America fought over frontier issues, the three wars between India and Pakistan, the 1962 Sino-Indian war, and the extraordinary carnage of the 1980-88 Iran-Iraq war, which originated over disputed territory."²⁸⁵

Moreover, the role played by the OAU in decolonization cannot be overemphasized. Many conflicts in Africa have been initiated by the African independent states and liberation movements within the colonial regimes. From its inception, the OAU dedicated itself to the eradication of all vestiges of colonialism from the continent.²⁸⁶ Through its

²⁷⁸ See Gordenker, *supra* note 254, at 114. For instance, the OAU contributed to the end of the Ethiopia-Somali-Kenya border conflict and the Morocco-Algeria border conflict. *See id.*

²⁷⁹ See Mutua, *supra* note 16, at 1114-15.

²⁸⁰ *See id.* at 1114.

²⁸¹ See William J. Foltz, *The Organization of African Unity and the Resolution of Africa's Conflicts*, in CONFLICT RESOLUTION IN AFRICA, *supra* note 94, at 347, 352-53.

²⁸² *See id.*

²⁸³ See Crawford Young, *Self-Determination, Territorial Integrity, and the African State System*, in CONFLICT RESOLUTION IN AFRICA, *supra* note 94, at 320, 328. *Uti possidetis* is a prescriptive doctrine that asserts the continuity of African state entities, the transfer of sovereignty from the colonial regimes notwithstanding. *See id.*

²⁸⁴ See Mutua, *supra* note 16, at 1114. Mutua writes:

The juridical statehood attained with the decolonization of the colonial state has in the last four decades proved inadequate. It is becoming increasingly apparent that these concepts and principles may have trapped Africa in a detrimental time capsule; they now seem to be straight jackets with time bombs ready to explode. The imposition of the nation-state through colonization balkanized Africa into ahistorical units and forcibly yanked it into the Age of Europe, permanently disfiguring it.

Id. at 1114-15. Mutua beautifully describes the problem of colonial borders but does not address the fundamental issue of how Africa can go about redrawing its map. *See id.*

²⁸⁵ Young, *supra* note 283, at 332.

²⁸⁶ See OAU CHARTER, *supra* note 29, at art. II, § 1(d), art. III, § 6.

Liberation Committee, the OAU gave material and military support to various liberation movements and also put diplomatic pressure on the United Nations to act.²⁸⁷ For instance, many anti-apartheid resolutions, sanctions against South Africa,²⁸⁸ and resolutions establishing steps towards independence for Namibia were drafted at the prodding of OAU members at the United Nations.²⁸⁹ The OAU has contributed to the independence movements of Angola, Mozambique, and Zimbabwe.²⁹⁰ Now that apartheid in South Africa has ended, it can be argued that Africa is finally free from any form of colonial rule.²⁹¹

Another significant effort by the OAU to contribute generally to peace and stability in the world has been through disarmament. It cannot be denied that the presence of highly sophisticated weaponry in the world increases insecurity, especially in Africa. The OAU has adopted a convention making Africa a denuclearized zone.²⁹² Through this, it has saved Africa from the costs of an arms race. The OAU has also charted a new path in the ongoing search for peace and stability based on trust instead of militarism.²⁹³

All conflicts have a human rights dimension. Conflicts may be caused by human rights violations or triggered by attempts to stop human rights violations, and they certainly entail human rights violations.²⁹⁴ The adoption of the African Charter on Human and Peoples' Rights²⁹⁵ is a milestone on the long road towards establishing a culture of human rights in Africa, a prerequisite for peace and stability. The

²⁸⁷ See SYBESMA-KNOL, *supra* note 186, at 130-31.

²⁸⁸ See United Nations: General Assembly Resolution 48/258 on the Elimination of Apartheid and the Establishment of a United, Democratic and Non-Racial South Africa, 33 I.L.M. 1055 (1994).

²⁸⁹ See United Nations: General Assembly Resolutions on the Question of Namibia, 20 I.L.M. 516 (1981).

²⁹⁰ See generally AGBI, *supra* note 118, at 95-111 (discussing liberation of former Portuguese colonies of Angola and Mozambique), 72-91 (discussing formation of Zimbabwe into an independent state).

²⁹¹ Cf. David A. Kay, *The Politics of Decolonization: The New Nations and the United Nations Political Process*, in INTERNATIONAL ORGANIZATIONS: POLITICS AND PROCESS 307, 323-24 (Leland M. Goodrich & David A. Kay eds., 1973) (South Africa considered white colonial regime under apartheid).

²⁹² See Organization of African Unity: African Nuclear-Weapon-Free Zone Treaty, 35 I.L.M. 698 (1996).

²⁹³ For a discussion of the extensive post-colonial militarization in Africa, see generally Robin Luckham, *The Military, Militarization and Democratization in Africa: A Survey of Literature and Issues*, 37 AFR. STUD. REV. 13 (1994).

²⁹⁴ See generally Pirouet, *supra* note 101, at 275-94; Oloka-Onyango, *Beyond the Rhetoric: Reinventing the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT'L L.J. 1 (1995).

²⁹⁵ See Banjui Charter on Human and Peoples' Rights, *reprinted in* 21 I.L.M. 58 (1982).

regionalization of human rights through the adoption of the Charter is a significant step in African human rights movements in that it marks a radical departure from the OAU policy of the 1970s whereby issues pertaining to human rights were seen as internal affairs of member states. This policy allowed the OAU to close its eyes to the massacres of tens of thousands of Hutu in Burundi in 1972–73 as well as mass violations of human rights by the notorious regimes of Jean-Bedel Bokassa in the Central African Republic, Marcias Nguema in Equatorial Guinea,²⁹⁶ and Idi Amin in Uganda.²⁹⁷

VII. LIMITATIONS AND IMPEDIMENTS TO EFFECTIVE CONFLICT RESOLUTION IN AFRICA

The limitations that have impeded or hindered the capacity of the OAU to effectively resolve regional conflicts originate inside and outside of the OAU. Hence, this section will first discuss limitations and obstacles which denote conceptual, normative, and structural improprieties within the OAU Charter. Next, this section will identify non-Charter based problems—meaning external factors such as budgetary problems and political inertia—that are not attributable to the OAU per se, but are products of the economic and political milieu within which the OAU operates.

A. *Charter-Based Limitations and Obstacles*

Perhaps the best way to explore the Charter-based limitations and obstacles to effective conflict resolution is to examine the conception of the OAU. Two competing visions influenced the process and permeated the Addis Ababa conference which drafted the OAU Charter. The first vision, prominently advocated by the late President Kwame Nkrumah of Ghana, conceived of a unitary government, a united state of Africa, that would be able to overcome the historical internal contradictions in Africa and check external forces.²⁹⁸ For President Nkrumah, this unity was the only way to guarantee security, independence, and prosperity for Africa. He eloquently painted his vision:

²⁹⁶ See U. O. Umozurike, *The African Charter on Human and Peoples' Rights*, 77 AM. J. INT'L L. 902, 903 (1983).

²⁹⁷ For longer discussion of Amin's regime and atrocities committed under it, see generally DAVID GWYN, *IDI AMIN: DEATH-LIGHT OF AFRICA* (1977); *IDI AMIN AND UGANDA: AN ANNOTATED BIBLIOGRAPHY* (Martin Jamison compiler, 1992).

²⁹⁸ See OPOKU AGYEMAN, *NKRUMAH'S GHANA AND EAST AFRICA: PAN-AFRICANISM AND AFRICAN INTERSTATE RELATIONS* 30–31 (1992).

Our essential bulwark against the sinister threats and other multifarious designs of the neocolonialists is in our political union. If we are to remain free, if we are to enjoy the full benefits of Africa's rich resources, we must unite to plan for our total defence and the full exploitation of our material and human means, in the full interests of all our peoples. To go it alone will limit our horizons, curtail our expectations, and threaten our liberty . . . Unless we meet the obvious and very powerful neocolonialists threats with a unified African front, based upon a common economic and defence policy, the strategy will be to pick us off and destroy us one by one.²⁹⁹

The second vision articulated at the Addis Ababa conference was conceived by the Monrovia group of states and advocated forcefully by Nigeria. This group of states envisioned an amalgamation of African states into a continental body based on equal sovereignty of all states, which would deal with issues of common concern:

Nigeria's stand is that if we want unity in Africa, we must first agree to certain essential things. The first is that African States must respect one another. There must be acceptance of equality by all the states. No matter whether they are big or small, they are all sovereign and their sovereignty is sovereignty.³⁰⁰

The Charter that emerged from the conference was therefore a compromise document which represented both views of Africa, but used the second vision as the core of the Charter. Like all compromise documents that are tailored to meet political expediency³⁰¹ rather than designed to confront the problems and challenges facing the member states, the OAU Charter lost its cutting edge.³⁰²

²⁹⁹ Kwesi Krafona, *Introduction to 25 YEARS ON*, *supra* note 266, at 1, 1 (quoting KWAME NKRUMAH, *AFRICA MUST UNITE* xvii (1985)).

³⁰⁰ AGBI, *supra* note 118, at 116 (quoting Nigerian Prime-Minister, Sir Abubakar Tafawa Balewa).

³⁰¹ See, e.g., John Marcum, *How Wide is the Gap Between Casablanca and Monrovia?*, 7 AFR. REP. 3 (1962) (describing the numerous positions being taken by African nations just before the formation of the OAU and its Charter in 1963).

³⁰² See, e.g., Thomas Nsenga Kanza, *Africa Must Change*, in 25 YEARS ON, *supra* note 266, at 146, 146 (noting that 25 years after founding of OAU, Africa has "no peace, no stability, and no credibility"); W. Scott Thompson & Richard Bissell, *Legitimacy and Authority in the OAU*, 15 AFR. STUD. REV. 17, 27 (1972) (reviewing the first nine years of the OAU and concluding that it is ineffective).

However, attributing the weaknesses of the OAU to its process of creation is to address the problem only partially. The OAU is a creature of international law, and the weaknesses of the OAU are, by and large, those of the international legal system itself. Over the centuries, international law has exalted the concept of sovereignty as the bedrock of relations between nations.³⁰³ State borders are considered sacrosanct, and a state's attempt to exert influence over what happens within another state's borders is considered contrary to international law.³⁰⁴ The international organizations that emerged were, therefore, loose associations of sovereign states designed to promote only the essential and minimum international relations, without offending the tenet of sovereign equality between member states. The member states still functioned as self-contained units with full decision-making power. Ellen Frey-Wouters eloquently captures the weakness inherent in regional organizations based on this flawed conceptualization of international relations:

The limited character of existing regional institutions shapes their response to internal conflict. The decision-making process of the Organization of American States, the Organization of African Unity, and the League of Arab States is of an intergovernmental character. There is no supranational regional center of power above the member states; the regional system is limited to direct interaction between the power centers of the member units. The regional secretariats are merely administrative organs, exercising no executive power and entrusted with little scope for independent initiative.³⁰⁵

³⁰³ The classical definition of sovereignty is provided by Jean Bodin as "that absolute and perpetual power" within a single state's boundaries. JEAN BODIN, *SIX BOOKS OF THE COMMONWEALTH* 25 (M.J. Tooley trans., 1955). Although the concept of state sovereignty has evolved over the years, starting from the Treaty of Westphalia in 1648, the modern concept of sovereignty still poses monumental problems. See generally CAROLINE THOMAS, *NEW STATES, SOVEREIGNTY AND INTERVENTION* (1985).

³⁰⁴ See THOMAS, *supra* note 303, at 48. The crisis of the OAU is, therefore, to a large extent the crisis of international law itself, as it grapples with the challenge of confronting the realities of the ever changing nature of the subjects and objects of international relations. Grossman and Bradlaw capture this crisis when they write: "The deficiencies of the present international legal order based on the *de jure* sovereignty of the nation-state and a relatively clear distinction between international and domestic legal issues are obvious. The nation-state is no longer functionally 'the master of its own territory.'" Claudio Grossman & Daniel D. Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM. U. J. INT'L L. & POL'Y 1, 22 (1993).

³⁰⁵ Frey-Wouters, *supra* note 106, at 460.

The founders of the OAU were, therefore, following the edicts of international law by incorporating its classic norms into the OAU Charter. An examination of the normative and institutional structure of the OAU will clarify this point.

1. Conceptual and Normative Weaknesses

The classic international law principle of sovereign equality of all states, enshrined in Article III, clause one of the OAU Charter, forms the core of the OAU's normative structure.³⁰⁶ All other norms only serve to reinforce this overarching principle. For example, the principle of non-interference in the internal affairs of member states and the prohibition of subversive activities are geared towards the protection of state sovereignty.³⁰⁷ Additionally, the OAU Assembly of Heads of State and Governments and the Council of Ministers passed many resolutions aimed at safeguarding state sovereignty. As Professor Borella observes, it is understandable that the infant OAU sought to strengthen the weak African states that were emerging from colonial subjugation: "Created only a few years after the independence of many African States it was normal that the continental Organization should devote itself to the OAU Charter objective of defending their sovereignty, their territorial integrity and their independence."³⁰⁸

That may be so, but there is a need for the OAU to evolve parallel to international law and the changing times. There is no denying that the concepts of non-intervention and non-interference in the internal affairs of states are fundamental concepts in the United Nations Charter and customary international law.³⁰⁹ However, while the United Nations Security Council has interpreted these concepts restrictively and utilized its Chapter VII powers to deal with internal situations within member states, especially after the end of the Cold War, the OAU has dogmatically and conservatively continued to observe these norms, allowing conflicts to rage on in Africa unabated.³¹⁰ This contrast be-

³⁰⁶ OAU CHARTER, *supra* note 29, at art. III, § 1. Article III, § 1 reads: "The Member States . . . solemnly affirm and declare their adherence to the following principles: 1. The sovereign equality of all Member States." *Id.*

³⁰⁷ See Michel-Cyr Djiéna Wembou, *The OAU and International Law, in THE OAU AFTER THIRTY YEARS*, *supra* note 25, at 15, 17.

³⁰⁸ *Id.* at 16.

³⁰⁹ See U.N. CHARTER, *supra* note 31, at art. 2, para. 4, 7.

³¹⁰ See S.K.B. Asante, *The Role of the Organization of African Unity in Promoting Peace, Development and Regional Security in Africa*, in *PERSPECTIVES ON PEACE*, *supra* note 124, at 123, 127.

tween the global United Nations and the regional OAU is illustrated in the following examples.

In December, 1992, the United Nations Security Council adopted Resolution 794, authorizing the Secretary-General, in tandem with cooperating member states, "to help create a secure environment for the delivery of humanitarian aid in Somalia."³¹¹ The Security Council was interpreting its Chapter VII powers expansively to deal with an internal conflict within a member state when it expressed a determination to "restore peace, stability, and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation in Somalia."³¹² Although it failed to achieve its objective, the Somalia operation unequivocally marked the beginning of activist post-Cold War Security Council interventions in matters previously regarded as internal affairs of member states.³¹³

United Nations Security Council Resolution 940 on Haiti³¹⁴ represents a further step away from the concepts of absolute sovereignty of states and non-interference with internal affairs of member states. Through this Resolution, the Security Council authorized the intervention of a multinational force in Haiti to restore ousted President Jean-Bertrand Aristide and remove the military junta that ousted him from power.³¹⁵ Such is the elastic interpretation of Chapter VII that a coup d'état can be termed as "a threat to the [international] peace" necessitating Security Council enforcement action.³¹⁶

While this evolution is occurring within the United Nations,³¹⁷ the OAU continues to stringently observe the norms of sovereign equality of member states and non-interference with internal affairs of member states in a fashion clearly out of tune with present reality. Since all

³¹¹ BLUE HELMETS, *supra* note 181, at 294.

³¹² 1993 U.N.Y.B. 209 (quoting Security Council Resolution Number 794).

³¹³ See Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L L. 519, 544-45 (1994).

³¹⁴ See BLUE HELMETS, *supra* note 181, at 623.

³¹⁵ See *id.*

³¹⁶ Richard B. Lillich, *Humanitarian Intervention Through the United Nations: Towards the Development of Criteria*, 53 ZAÖRV (HEIDELBERG J. INT'L. L.) 557, 564-66 (1993).

³¹⁷ It may be recalled that the reassertion of the principle of sovereignty over natural resources and economic programs even within the United Nations during the first few decades after World War II was spearheaded by the members of the OAU within the United Nations in tandem with other developing countries, through a series of resolutions in the General Assembly. For a discussion of these resolutions see generally CHANGING PRIORITIES ON THE INTERNATIONAL AGENDA: THE NEW INTERNATIONAL ECONOMIC ORDER (Karl P. Sauvant ed., 1981).

member states are regarded as equal sovereigns, their territorial integrity must be observed by all, which involves religiously adhering to the norm of non-interference with internal affairs of member states and the inviolability of state boundaries.³¹⁸ Devastating conflicts and concomitant humanitarian crises are raging from the Horn of Africa (Sudan and Somalia) to the heart of Africa (Rwanda, Burundi and Zaire).

This state of affairs does not bode well for the future of the OAU. The OAU needs to re-evaluate its role. If the OAU does not develop its own formula for dealing with internal conflicts, unilateral intervention by member states will become the new norm and, slowly but surely, the OAU will be pushed to political limbo. Tanzania's intervention in Uganda in 1979 is a case in point.³¹⁹ The intervention of ECOMOG in the Liberian civil war, if successful in restoring civil order and stability in Liberia, may mark the beginning of a shift of power from the continental body of the OAU to sub-regional groups that have the will and the means to act.³²⁰

2. Institutional and Structural Limitations

Apart from the normative weaknesses inherent in the OAU Charter, various institutional and structural anomalies constrain the capacity of the OAU to play an effective role in resolving regional conflicts. Chief among them is the division of duties among the OAU's principal organs. As previously explained, the Charter creates four "principal institutions": the Assembly of Heads of State and Government, the Council of Ministers, the General Secretariat, and the Commission of Mediation, Conciliation and Arbitration.³²¹ The Charter further clothes these institutions with varying degrees of powers.³²²

Closer scrutiny reveals, however, that the Assembly is the organ with real power; the other organs are just ancillaries to the Assembly with no meaningful powers of their own.³²³ The Assembly is the "su-

³¹⁸ See William J. Foltz, *The Organization of African Unity and the Resolution of Africa's Conflicts*, in CONFLICT RESOLUTION IN AFRICA, *supra* note 94, at 347, 352.

³¹⁹ See TONY AVIRGAN & MARTHA HONEY, WAR IN UGANDA: THE LEGACY OF IDI AMIN 53-95 (1982).

³²⁰ For a study of this precedent-setting peace-keeping initiative by the Economic Community of West African States (ECOWAS) read THE LIBERIAN CRISIS, *supra* note 261.

³²¹ See OAU CHARTER, *supra* note 29, at art. VII.

³²² See *id.* at arts. VIII-XIX.

³²³ See *supra* Part III.A.

preme organ," combining executive and judicial powers with general supervisory power over all of the other organs.³²⁴ The Assembly may "review the structure, functions and acts of all the other organs and any specialized agencies"³²⁵ In contrast, the Council of Ministers is confined to preparing conferences for the Assembly, implementing its decisions and taking "cognisance of any matter referred to it by the Assembly."³²⁶ As for the Secretariat, the Charter does not confer any significant role for the Secretary-General under whom the Secretariat is supposed to function.³²⁷

An examination of the history of the OAU reveals that the founders wanted to retain all important duties for the Assembly and prevent the Secretary-General from playing any politically significant role—hence the title "Administrative Secretary-General."³²⁸ This asymmetry of power and monopolization of initiative by the Assembly has not worked very well for the OAU. Indeed, Boutros Boutros-Ghali's prediction shortly after the OAU inaugural conference that drafted the Charter remains true today:

It would be presumptuous to pass judgment on the Organization at this stage, but one cannot help noticing that extremely broad powers have been bestowed upon the Assembly of Heads of State. When these powers are considered in relation to those already enjoyed by each head of state in his own country, it becomes obvious that the Assembly is the only real organ of the OAU The Council [of Ministers] has virtually no authority of its own. If this is true of the second ranking organ of the OAU, it applies even more to the other organs There does seem to be a trend toward an "Africa of Heads of State."³²⁹

A comparison of the role of the OAU Secretary-General and that of his or her United Nations counterpart reveals the minimal role that the OAU Charter drafters intended the Secretary-General to play.³³⁰ Apart from the administrative duties endowed on the United Nations Secretary-General by Article 97 of the United Nations Charter, Article

³²⁴ See OAU CHARTER, *supra* note 29, at arts. VIII, IX, X, XXVII.

³²⁵ *Id.* at art. VIII.

³²⁶ *Id.* at art. XIII.

³²⁷ See *id.* at art. XVI.

³²⁸ Jonah, *supra* note 25, at 5.

³²⁹ BOUTROS-GHALI, *supra* note 28, at 45.

³³⁰ See Jonah, *supra* note 25, at 4–5.

98 confers the Secretary-General with the authority to make and submit annual reports to the General Assembly on the work of the United Nations. More importantly, Article 99 empowers the Secretary-General "to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."³³¹ The powers of the United Nations Secretary-General to investigate situations that are likely to endanger peace and use his or her "good offices" to resolve conflicts, emanate from these provisions.³³²

Provisions similar to Articles 98 and 99 of the United Nations Charter are missing in the OAU Charter.³³³ The founders of the OAU did not want the Secretary-General to proactively use his or her good offices to resolve conflicts or take any independent diplomatic initiative, lest it be interpreted as arrogating to the office a visible policy-making role.³³⁴ It takes a Secretary-General of exceptional personal abilities to overcome these legal hurdles and play a meaningful role in dispute resolution.

One might argue that sitting OAU Chairmen have been able to fulfill this crucial role and that, therefore, it is not necessary to confer such powers on the OAU's Secretary-General.³³⁵ While it is true that sitting OAU Chairmen have, in practice, played this role traditionally meant for the Secretary-General, the OAU Charter does not envision such a role for the occupants of this office.³³⁶ It is acceptable to the Assembly of Heads of State and Government that the Chairman play such a role since, as a head of state, he is at par with his peers in the Assembly and it is essentially the Assembly exercising that power. Thus, the danger of a powerful Secretary-General does not arise. However, the problem is that the Chairman is too busy with other state responsibilities to find time to personally play an effective and meaningful role in conflict resolution. Ideally, this role belongs to the OAU Secretary-General.

³³¹ U.N. CHARTER, art. 97, 98, 99, *reprinted in* U.N. CHARTER, *supra* note 31, at xxxv-xxxvi.

³³² *See* Jonah, *supra* note 25, at 5.

³³³ *See id.*

³³⁴ *See* ESEDEBE, *supra* note 4, at 197.

³³⁵ *See* Jonah, *supra* note 25, at 5-6.

³³⁶ *See* BASIC DOCUMENTS, *supra* note 18, at 79. Rule 10 of the Rules of Procedure of the Assembly of Heads of State and Government describes the role of the chairman as that of chairing and directing meetings, and ensuring order and decorum of the proceedings of the Assembly. *See id.* The diplomatic role played by the Chairman in resolving conflict is a creature of practice that has no basis in the OAU juridical order. *See id.*

The lack of an enforcement organ akin to the United Nations Security Council is another problem within the OAU "constitutional order."³³⁷ There is a definite need to create such an organ with the primary responsibility for the maintenance of regional peace and security. The Assembly of Heads of State and Government, like the United Nations General Assembly, is too large and contains too many diverse opinions to be able to make timely decisions of magnitude and to implement them with the necessary speed. The Assembly of Heads of State and Government is not even bestowed with disciplinary or enforcement powers.³³⁸

Another anomaly of the OAU Charter is its proscriptive decision-making process. For a meeting of either the Assembly of Heads of State and Government or the Council of Ministers to take place, two-thirds of the members must be present to constitute a quorum, and furthermore, any decision of the Assembly must be agreed upon by two-thirds of the total membership of the organization.³³⁹ This threshold for a quorum may jeopardize the proper functioning of the organization. This lends credence to the assertion that the OAU Charter has an inherent tendency to encourage inaction, delay, and ineffectiveness.³⁴⁰

Closely connected to this is the OAU's over-reliance on consensus in general decision-making and on informal structures in dispute resolution. Consensus and diplomatic resolution of disputes are important, but there are limitations. The OAU's over-reliance on diplomacy and ad hoc procedures has resulted in temporary resolutions of many disputes which resurface later in greater magnitude because diplomatic solutions rarely address the underlying substance of a dispute.³⁴¹ Therefore, the creation of a judicial organ within the OAU legal regimes is necessary as an alternative or supplement to diplomatic means.

³³⁷ See generally U.N. CHARTER Chapter V, Chapter VII, *reprinted in* U.N. CHARTER, *supra* note 31 (describing basic composition and powers of Security Council and the powers available when there is a breach of "international peace and security").

³³⁸ See Asante, *supra* note 310, at 128.

³³⁹ See Rules 14 and 25 of the Rules of Procedure of the Assembly of Heads of State and Government, and Rule 18 of the Rules of Procedure of the Council of Foreign Ministers of the Organization of African Unity, *reproduced in* BASIC DOCUMENTS, *supra* note 18, at 80, 82, 88.

³⁴⁰ See Foltz, *supra* note 281, at 350.

³⁴¹ For example, the Ethiopia-Somalia border conflict was superficially solved by the OAU only to resurface later in a greater magnitude. See *supra* Part V.A.1.b.

B. *Non-Charter Based Obstacles*

Many other factors external to the mechanics of the OAU have similarly curtailed the effectiveness of the OAU. While it is beyond the scope of this article to examine them in detail, it is important to mention some of them briefly. The dominant external factor is the OAU's general lack of financial resources. More than any other regional organization, the OAU, since its formation, has experienced debilitating budgetary problems.³⁴² It is impossible to divorce an organization from the socio-economic environment within which it functions. The financial ill-health of the OAU is intertwined with the economic conditions of the African states which form its membership. As the economic situation in Africa improves, the financial position of the OAU should follow suit.

Political inertia also continues to bog down the organization.³⁴³ The OAU could be reinvigorated by re-drafting its Charter. Closely related to this problem of political inertia is what has been referred to as a legitimacy crisis within the OAU. Due to a lack of effectiveness in enforcing its will and its general aloofness in the face of internal conflicts, some member states have dared to take independent positions on conflicts without receiving any sanctions from the OAU.³⁴⁴

In sum, the OAU Charter is replete with structural and normative anomalies which render the OAU a very weak body for regional conflict resolution. There is an urgent need to overhaul the Charter in order to strengthen its institutional and normative structure and eliminate its archaic international law concepts that have no place in today's increasingly interdependent world. In particular, a new Charter should create an effective executive organ that can respond to the conflict resolution and management needs of a highly volatile region. The office of the Secretary-General also needs to be empowered. Furthermore, the OAU would benefit from the creation of a judicial organ buttressed with compulsory jurisdiction over inter-state disputes. Anachronistic norms such as non-interference with internal affairs of member states and inviolability of state frontiers must be discarded or

³⁴² See Asante, *supra* note 310, at 129.

³⁴³ See Foltz, *supra* note 281, at 350.

³⁴⁴ See Thompson & Bissell, *supra* note 302, at 18. For example, four member states recognized Biafra without any protest from the OAU. See *id.* Others do not pay their dues and other financial obligations and the OAU cannot do anything. See *id.* at 29, 32-33. For a discussion of these and other factors that show the erosion of legitimacy and authority of the OAU, read generally Thompson & Bissell, *supra* note 302.

reinterpreted to cope with the conflict resolution needs of our time and of Africa.

CONCLUSION

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

The paper goes further to characterize conflicts in Africa and to examine the OAU conflict resolution initiatives. Although the OAU has been effective in resolving inter-state conflict, its performance in resolving intra-state conflicts is found to be wanting. This is attributed to the practically and theoretically untenable dichotomy the OAU Charter creates between intra-state and inter-state conflicts, placing intra-state conflicts beyond the purview of the OAU. In a world so interdependent and closely linked together, such compartmentalization of conflicts is simplistic and unrealistic. Purely internal or international conflicts do not exist. Inter-state conflicts have internal causes, while so-called internal conflicts have international repercussions (like outflows of refugees and armed insurgencies into neighboring states) that cannot be ignored by the affected states.

Impediments to effective conflict resolution on the part of the OAU have also been explored. These impediments are found to be both Charter based and non-Charter based. At the institutional level, an asymmetry of power between the Assembly of Heads of States and

Government and other organs of the OAU is built into the Charter. The juridical and extra-juridical power of the Assembly is found to be so complete and pervasive that it overwhelms and emasculates the other organs. Specific suggestions on how this unsatisfactory state of affairs can be rectified include the empowerment of the office of the Secretary-General and the creation of a judicial and enforcement organ within the OAU institutional framework.

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

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