A LEGAL AND POLITICAL ANALYSIS OF ARTICLE 111(2) OF THE O.A.U. CHARTER - NON-INTERFERENCE IN THE INTERNAL AFFAIRS OF STATES.

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE LL.B DEGREE, UNIVERSITY OF NAIROBI.

By

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Nairobi. June, 1975.

CHAPTER ONE

INTRODUCTION

The title of the Dissertation topic is:

A LEGAL AND POLITICAL ANALYSIS OF ARTICLE III(2) OF THE O.A.U. CHARTER-NON-INTERFERENCE IN THEIINTERNAL AFFAIRS OF STATES.

As the title clearly suggests, the main task of the essay will be to analyse critically article 111(2) of the O.A.U. charter. The central concern of the writer in the course of this analysis will be to investigate whether or not the provision is functional or dysfunctional vis-a-vis the aims and purposes of the Organisation (as enshrined in the charter).

Perhaps one may wonder as to why such as attention is devoted to only article 111(2) of the charter. The fact that this article is crucial to the functioning of the organisation cannot be over-emphasised. The opening clauses of article 111 says:

> "The member states, in pursuit of the purposes stated in article 11 solemnly affirm and declare their adherence to the following priciples ..."

It is clear from this that reliance is to be placed upon this article, inter alia, for the full fulfiment and realization of the purposes of the Charter as stipulated in article 11. This, ipso facto, underscores the crucial aspect of the article. Speaking about non-interference in international law Stowell echoed the above feelings when he said;

> "non interference is the most important rule of international law. To deny it would be to remove from international law the salutary system of territorial sovereignty and to deprive the principle of the independence of states of all meaning." (1)

To the founding fathers of the organistion, the importance of non-interference was significally underlined in their condemnation of subversion and political assassinations. Presidint Horphovet Boigny's speedhaat the Addis Ababa Conference bear tacit testimony to this. He said:

> "What we consider contrary to the spirit of unity that animates all of us is assassination or murder organised from abroad, or with the tacit complicity or regime that does not enjoy the favour of the African

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(1) E.C.Stowell: International law, a Restatement of Principles.

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states organising or encouraging such actions. It is the duty of our conference, in such cases, to define their common attitude: this must be clear that and without any possible ambiguity towards these false brothers, for otherwise Africa will slip, fall, plunge and flounder in those revolutions which have for decades torn certain countries to pieces on the instigation of a few ambitious men, thirsty for honours, to the certain detriment of the unfortunate masses who thus pursue their crimeless existencec in destitution which is the inevitable consequence of such trouble." (2)

President Boigny's speech, and many others as well, was follwed as a corollary by an inclusion of the article of non-interference in the affairs of states which principle he said, should be observed, as a matter of imperative necessity otherwise, as he put it, Africa would slip, fall, plunge and flounder into revolutions' - the antithesis of unity. In these words he summed up the importance of the article.

Having established the importance of the article, we proceed to investigate in the rest of the essay, the way the article operated. It is this investigation that will tell us whether or not the article has been functional. Has it lived to the expectations of the hopes of the founding fathers and Africa? This is to say, has the article been effective or ineffective in playing it's role to protect and prevent Africa from falling and slipping into revolutions that destroy unity? The worth of any law or principle or rather the yardstick of it's sucess is the degree to which it fulfils the intentions the hopes or the goals of it's makers. In looking at the article the writer will pay attention to the question whether or not the article has fulfilled it's goals. The judgement of such an issue can only be meaningful if judged against the background of the aims and purposes of the charter. The charter says that member states shall adhere to the principles in article lll in fulfilment of the purposes stipulated in article ll. The two therefore go hand in hand. This means therefore that an assessment of the perfomance of article lll(2) can only be successful if article ll(1) is taken into account, after all, it may be said that article ll(1) sets the main goals of the organisation which must be considered in an evaluation of the performance of the article. (1) (P 3)

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2. SCIAS/GEN/INF/31, Page 9 - President Houphouet Boigny's speech at Addis Ababa in May 1963

The purposes of the organization as stipulated in article 11(1) are;

(a) To promote the unity and solidarity of the African states;

(b) To co-ordinate and intnsify their co-operation and efforts to achieve a better life for the peoples of Africa;

(c) Todefend their sovereignty, their territorial integrity and independence;

(d) To eradicate all forms of coloniolism from Africa; and

(e) To promote international co-operation, having due regard to the charter of the United Nations and the Universal Declaration of Human rights.

In judging the role of the article, as a part of the analysis certain issues will have to be resolved to find whether really the article as at present constituted can be able to meet the challenging and demanding tasks of article 11(1) - quoted above. First, the issue ~~what~~ as what interference is all about will be investigated. We will also investigate the question of as to what effect a lack of defination has on the ~~seeiuady~~ efficacy of the article.

The issue regarding what matters oconstitite or fall within domestic jurisdiction will be explored along with the question as towhat essentially is domestic jurisdiction. The article is about non-interference in the internal affairs of states hence the above issue has relevance to the determination and resolution of what domestic jurisdiction is. If domestic jurisdiction is not defined in the charter, then this uncertainty may have negative effects on the operation of the article as violators of the said article will always hide behind this uncertainty. This will be explored further in the essay. The important question as to what matters constitute interference investigated. If the Article does not say what matters constitute interference, ~~constitute interference~~ the again, this uncertainty will have adverse ~~ce will be investigated~~ consequences on the operation of the ~~Charter~~ Article, for the simple reason that an uncertain obligation cannot be binding. The offence must be prescribed. The law must be clear as to what is seeks to enforce ~~ad~~ and forbid, It can thus be seen at once, although, it will be clear in the essay, that it it is not defined (i.e. interference and what constitutes it) this

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By performance of the article is meant the way in which the article has been applied by member states in seeking to fulfil the purposes set out in article 11(1) quoted above. Have the member - states s adhered to it ? Has it been ineffective ornot?

does not contibute to the effectiveness of the article.

Further, the writer will look at the question as to what the consequences of a breach of the are. The question as to whether there are any prescribed consequences will be investigated. For if there are not prescribed consequences how can the article be enforced? without Consequences, the article, it can safely be said, does not have any legal effect and is therfore sterile. These issues when explored will tell us whether the article is effective or not, whether it is has done or is doing what it should do vis-avis article 11(1) of the charter. At this juncture it will become necessary to look at the reasons why the article is ineffective in order to have a full picture of the article in an operational perspective. Finally an anlysis of the aricle would be incomplete if no suggestion was made as to what can be done to rectify the weaknesses of the article. It is therefore deemed necessary to devote a part of the essay to a discusson of the solutions that the writer thinks may help the article out of it's past, current and future difficulties.

In this connection. I intend to divide the essay into six chapters. The first chapter will be devoted to the introduction; the second to an appraisal of the charter in historical perspective; the third chapter will deal with interference; the fourth with consequences othat follow in the event of the breach. The fifth will be specifically on the inefficacy of article 111(2) and last but by no means the least, there will be the chapter on the solutions to the problems the article is experincing.

CHAPTER TWO

THE CHARTER IN AN HISTORICAL PERSPECTIVE

In order to understand the roles and weaknesses or the ineffectiveness of the article, properly, a brief appraisal of the experiences of the organisation in historical perspective is requisite. Before going into the history of the organisation perhaps it may be necssary for an analysis of the article.

First, article 11(2) is a part of the charter. To say that the history of the origins of the organisation that gave rise to charter where in the aricle is found is relevant to an anlysis of the article is not to go off the mark. The whole after all is the sum of the parts. To understand the parts it is also c necessary to understand the whole.

Secondly, we have also said that the article is crucial as far as the proper functioning of the organisations is concerned. The roots of the article lie in the charter whose roots also lie in history. Logically it becomes necessary to probe into the history if the organisation to gain a fuller understanding of the article. This will be clear when we remember that nothing is without what was.

Thirdly, it will be noted in passing here that the article is the compromise of a struggle between two groups which will be mentioned later in the chapter. One of these groups emerged as the victor, the other as the looser according to historical interpretation of this rivalry. The article is the living symbol of the victory of one of the groups as well as the living symbol of the defeat of the other group. This apparent dichotomy has had negative effects on the application of the charter. For if the article represented the interests of one group which were opposed by the other group., then as long as this conflict subsisted the charter would always be flouted. It is the history of this conflict that has affected the efficacy of article III that we now turn to.

First we will look at Pan-Africanism. Let me hasten to state at this juncture that the charter owes it's origins to the history of the philosophy of Pan-Africanism. The history of Pan-Africanism

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dates as far back as 1900 and perhaps even earlier. It began to take roots out of the work of many notable figures like Marcus Garvey, Dr Edward Wilmot Blyden, Casely Hayford and many others. But perhaps the greatest contribution to the growth of the philosophy of Pan-Africanism came from Dubois. He is historically reported to be the father of Pan-Africanism. His single most important achievement lay in his efforts in the convention of the Manchester Conference in 1945 in England. Featuring prominently in the agenda at this conference was the global problem of imperialism. Members spoke vocally and articulately about the imperative cardinal necessity and obligation of ridding the world and especially mother Africa of this affliction. The delegates passed a resolution that said:

"The delegates of the fifth Pan-African Congress believe in peace. How could it be otherwise when for centuries the African peoples have been victims of violence and slavery. Yet, if the western world is still determined to rule mankind by force, then Africans, as a last resort, ~~resort~~, may have to appeal to force in effect to achieve freedom, even if force destroys them and the world. We are determined to be free..... we demand for Black Africa autonomy and independence; so far and no further that it is possible in this one world for groups and peoples to rule themselves subject to inevitable world unity and federation. We are unwilling to starve any longer while doing the world's drudgery, in order to support by our poverty and ignorance a false aristocracy and a discredited imperialism. We condemn that monolopy of capital and the rule of private wealth and industry for private profit alone. We welcome economic democracy as the only real democracy. Therefore we shall complain, appeal and arraign. We will make the world listen to facts of our condition. We will fight in every way we can for freedom, democracy, and social betterment."

From this conference henceforth the momntum of agitation for freedom proceeded in a scale hitherto unprecedented, and by late fifties and early sixties many African states had achieved their independendce. During this time the flame and light of pan-Africanism continued to glow, In 1958, in ~~Ghana~~ Accra, Ghana, another major Pam-African Conference was held

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This was a feat without historical prcedent, never before had such a meeting of like greatness and moment been on mother Africa soil. To add to the significance it took place in an independent African state. The struggle for liberation a had liberation concretly assumed Continental dimensions. It will be recalled that the theme of the conference was "Hands off Africa, Africa must be free."[1]

Alongside this Pan-African struggle for independence was the idea of Pan-African unity. With regard to this unity African leaders did not see eye to eye as to what kind of unity was needed. They were divided into two rival groups along ideological lines. The two groups were the casablancans and the Monrovians.

The Casablanca group comprised of what were called the radicals states like Egypt, Ghana, Mali, Guinea, Tunisia and Morocco. The Monrovia group known as the Conservative group comprised of Nigeria, Liberia, Ivory coast, Ethiopia and majority of the Francophone states.

It was the radicals more than the conservatives who kept alive the spirit and fire of Pan-Fricanism. They were left of centre and earned for themselves the epithets, the 'progressive', 'militants', 'revolutionaries' and 'radicals'. They subscribed to the fundamental objectives of democrative socialism with state control of the basic means of production and distribution. They opposed imperialism and all it's forms:- Capitalism, Colonialism and Neo-colonism.

They wanted a unite Africa that could withstand and conquer this might of imperialism. They therefore advocated a tight political union. Nkrumah, the leading exponent of Pan-Africanism said:-

"What is at stake is not the destiny of a single country but the freedom and destiny of the African Continent, the [illegible] prelude to [illegible] African Union and the fullest development of [illegible] comprising the continent. Just as we are [illegible] to [illegible] of a world [illegible]

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[1] The challenge to the colonial powers [illegible] re-affirmed [illegible] in colonial and Coloured Unity – a programme of action, ed. G. [illegible], Pan-African service, Manchester 1947, p. 5

is half-slave and half-free, so we are alert to the perils of an African Continent split between states that are wholly sovereign and states that are only half-independent. Such a pattern can only impede the real independence of Africa and it's transformation into an industrialised continent exercising it's rightful influence upon world affairs."

The radicals wanted therefore a completely united A frica, hence questions of national separateness or sovereignty upon which the principle of non-interference is based did not arise. They wanted one Africa.

The gradualists, the Monrovians favoured a loose political union of states and a gradual approach to unity. They were opposed strongly to a tight political union. They therefore opposed the radicals accusing them of carrying on subversive activities against other states and interfering with their internal affairs. Their main concern was their sovereignty and territorial integrity. Sir Albert Margai of Sierra Leone, a strong proponent of gradualism said:-

"We pledge co-operation in the defence of territorial integrity and so sovereignty of all freedom-loving states in Africa, and particularly with a view to curbing any internal subversion against the lawfully constituted government of any friendly state, and are prepared at the same time to do everything to safeguard the territorial integrity and the sovereignty of any African state which might be threatened from within or outside the African Continent." 2

So, when the President of Togo was assassinated, the Monrovia group laid the blame at the doors of the Casablancans. To them, who believed strongly in national sovereignty and not Pan-African Union, interference with their affairs was to be considered a great crime. Subversion too was not to be taken lightly. Admittedly, the Casablancans would not agree to either of the above acts, however they did not place national sovereignty at the same level with the conservatives . They believed in Pan-African Unity. It is out of this dichotomy that the conflict arose. At Addis Ababa, the Monrovians insisted on being left alone, the Casablancas insisted on Pan-African conflict that accounts for the emergence of articles 111 (2) and article 111 (5) on non-interference and non-subversion respectively. The Monrovians wanted

2 KWAME NKRUMAH: A frica Must Unite, London Heineman, 1963, at page 187. quoted at p.

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to protect their sovereignty against the Casablancans who were accused of interfering with affairs of other states. Since the Casablancans wanted a tight political union and the Monrovians a loose union, their conflict could not even be resolved by the signing of the charter in 1963. The cleavage still existed and it is this main difference between the two rival groups that had great influence on the form and structure of the charter. Whether with this confliot and the charter that emerged, the principles of the charter could be carried through to their fruitful conclusion is a moot point. All that need be said here is that the difference between the states were and still are, fundamental, inspite of the adoption of a single charter for all Africa in May, 1963. The problems of disunity, of interference and others, still bedevil the organization in it's immense task of implementing the charter. The reasons for this lie in history as indicated above.

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Sir M.MARGAI; Text of speech delivered on behalf of the English speaking states at Monrovia in 1961.

CHAPTER THREE

INTERFERENCE

SECTION I: What is non-interference?

As has been hinted earlier in the previous chapters, the meaning of non-interference has not been given in Article 111(2) of the O.A.U charter. Recalling that the task of this paper is to investigate the effectiveness of the article in the fulfilment of the aims and purposes of the charter, it will be observed that the lack of defination as to what interference is, does not contribute to the effectiveness of Article 111(2). The charter of the O.A.U. as Okoye says "is a body of doctrine as well as constituition. It is a contractral document-------- the legal obligations being derived from the international law principle that states are bound by their agreements and must carry them out in good faith." Article 111(2) only says that members states should not interfere with other states' internal affairs. If this obligation is to be effective (or binding on the members), the article must clearly and precisely state those matters that constitute interference in order to give the principle it's required meaning. This is to say that those matters that create the obligation of non-interference must be stated in the charter as set out in article 11(1). A framework must be defined upon which the article is to operate. This is to suggest that the meaning of non-interference must be given in the charter.

~~Okoye, F.C. International Law and the New African States P. 126~~

The fact that the meaning of the article is not given in the charter prompts one to ask the question, how are member states going to obey the obligation of non-interference if they do not knowwhat it is all about? Is this not a locphole that member states are likely to exploit in order to avoid the charter obligations? Conversely, if interference or non-interference was defined, wouldn't member states find it difficult to circumvent charter obligations? It is suggested that member states should, in the light of their experience revise the charter and especially Article 111(2) in order to give it meaning and effect, the necessary prerequsites for the fulfilment of the purposes of the charter.

International lawyers writing on the principle of non-interference

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Okoye, F.C, International Law and The New African States, p. 126.

have attempted to define the principle .. perhaps as a result of a lack of defination of it either in the United Nations or the O.A.U charter. Their defination may help the O.A.U in defining the principle in their respective charters as recommended above.

Proffesor Stowell has defined interference thus; "Interference as between states may be defined as the unwarranted reliance upon force to constrain an independent state to adopt or to refrain from a particular course of action. International law, that law which governs nations in their intercourse, is based upon the principle that no state may interfere with the manner in which another uses its sovereign right of indepedent action to carry on its international relations, and to fulfill within the confines of its sovereign jurisdiction its obligations as a member-state of international society."1 Proffesor Stoweell here says that interference includes force which one uses to constrain another independent state to take or not to take a particular course. Stowell lays emphasis on use of force. However, one may argue that it is not only force that is necessary to contribute to interference, other matters such as attaching another state in the press, on radio or television may also contribute to interference.

Proffesor Elias says that,

> "no one sovereign state should have the rightto interfere in the domestic affairs of another sovereign state. The desire to be left alone, to be allowed to choose it's particular political, economic and social systems and to order life of it's community in it's own way, is a legitimate one for large and small states alike, and the freedoms thus claimed are inalienable attributes of the sovereignty of every state."2

Elias is saying here (as Stowell above) that nations should be left alone to perform tasks of development without interference from outside. Any action tending to disturb this national process of development will amount to interference. This defination is not satisfactory for states are likely to pick on the slightest excuse to accuse others of interfering with their affairs. Further national processes of development are diffemant

NOTES:
1 STOWELL, E. C., International law, a Restatement of principles, p,38
2 ELIAS: Africa and the Development of International Law. p. 127

and what may amount to interference in one country's affairs may not be deemed by another to constitute interference. For example in East Africa a member of the East African Community may suggest to the other partner either in t it's press, on radio or television what it should do to achieve progress. Ideologically the three states are different hence if one of the states suggests a policy contrary to the ideological commitment of the other country, even though the suggestion may be very sincere and with the best of intentions.

What will be gathered from the above definations is that states exist as sovereign independent states in international law possessing the inalienable and inviolable right to shape and plan their future without external interference.

"The unjustifiable interference to which this role applies prohibits not only the actual use of force, but also any compulsion of an independent state, through the menace of force, to constrain it's action. The principles of non-interference assures to every state the right to exercise it's full discretion in the conduct of it's foreign affairs. In internal affairs freedom from interference leaves each sovereign state the liberty to use it's reasonable discretion as tothe manner in which it will police its territory and enforce adquate respect for the rules of international law." 1

An indepedent sovereign state should have the peace to conduct it's external and internal affairs peacefully without interference form outside.

The above writers are only giving their views as to what they think interferences means. The O.A.U. drawing from its experience beginning ~~their views as to what they think interferences mean. The O.A.U. drawing from its experience beginning from it's experience beginning~~ from it's foundation should now be in a position to come out with a more appropriate and comprehensive answer than the one given above.

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1 STOWELL: E.C. International Law. Page 88

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SECTION 12 Domestic Jurisdiction

The corollary to the principle of non-interference is the concept of domestic jurisdiction. The principle of non-interference finds meaning from this concept. States should not interfere with matters within the domestic juridiction of an independent state. This relationship shows how the two concepts are intertwined. Before looking at what domestic jurisdiction is it is necessary to look at the principle of territorial sovereignty which is closely linked with the above concepts.

The principle of territorial sovereignty especially in relations between states signifies indepedence. Independence in regard to a position of the globe is the right to exercese therein, to the exclusion of any other state, functions of a state.

"Territorial sovereignty involves the exclusive right to display the activities of a state. The right has a corollary duty; the obligation to protect within the territory the rights of other states, in particular the rights to integrity and inviolability in peace and in war, together with the rights which each state may claim for it's national in foreign territory." 1

This principle therefore demands that states exercise their activites within their own political limits as sovereign states and obey the reciprocal obligation of respect on the other sovereign states independent existence. It is when this duty is breached that the principle of interference is evoked because it has in turn been violated. To a large extent therefore, the principle of territorial sovereignty embodies both the concept of domestic jurisdiction and the principle of non-interference.

H.A. Amankwah and O.T. Wilson writing jointly have terminolgised the concept of domestic jurisdiction as the doctrine of

"Reserved domain." 2

This carries with it the clear implication that states which help fashion international law must retain some freedom unfettered by any external force at international law. The assumption here is that the 'Reserved domain' possesses the attributes of statehood much like the bundle of rights essential to the concept of ownership. In other words the possession of such rights as sovereign independent state at international law forbids

NOTES:
1 SCHWARZENBERGER: International Law, page 115
2 AMANKWAH? H.A & WILSON, T.O. University of Ghana Law Journal volume 7, 1970, page 125

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forbids any other state from interfering with them. They are inalienable and inviolable as long as they are exercised within their proper limits and in consonance with accepted interntional law principles like respect of human rights.

As Amankwah and Wilson(1) say, the concept of domestic jurisdiction in international law is analogous to the treatment of political matters at the municipal law level. Just as in municipal law political matters are condidered inappropriate for judicial scrutiny, so in international law domestic matters are political in nature and their sensitivity demands that other states keep off from interfering with the way they are exercised.(2). This concept to a large extent reveals what domestic jurisdiction is all about it is about the relationship that exists between states and international law. It helps in elucidating what interference is about and how it affects states in thier intercourse and their relationship to internationl law. It is suggested therefore that in defining interference reference should be made to define it in order to make clearer the principle as at present s constituted in Article 111(2) of theCharter. Because as it is now the article is unclear and that extent inefficient in the sense thaton one does not know when a matter is within domestic jurisdiction or even what domestic jurisdiction is all about. It would be suggested that the charter should have a definations or interpretations section as appears on some statutes. This section would attempt to define or interprt terms or concepts which may be unclear or ambiguos.

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(1) Ibid Page 125

(2) However this claim must be judged in the light of the relative nature of domestic jurisdiction as expounded in the Nationality Decress Case, (1923, P.C.I.J.B.4,23). In this case thr right caimed to fall automatically within domestic jurisdiction was that of granting nationality. The court observed that: "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations." The court is saying here that there are certain matters which are not within a states domestic jurisdiction. The court in this case therefore gave the opinion that at the matter of nationality was not within France's domestic jurisdiction.

SECTION 111 What matters co stitute interfere ce?

It has been said above (~~front page~~) that the charter does not say what matters constitute interference. This is a setback to t e effectiveness of Article 111(2). If the charter does not define these mat ers member-states may fi d an excuse of going round the article after committing ac ts which other states claim amount ot interference, on the pretext that they did not know that those acts would amount to interferenc. In such a case it would be difficult for the organisation to condemn or arraign any state t at it suspects of interference with the inter al affairs of other states. The O.A.U. s ould therefore review the charter and say what matters they think constitutes interference.)

In this section we will look at certain matters which may be thought of as constituting interference.

Many nations have an inclination of talking about otner nations on their radios, televisions and in the press. Does this constitute interference? Strictly speaking, one may say no. This is because a state may be reporting on what is happening in the other state, and if the report is true then a state cannot be accused of interference. However, the problem arises where a state uses it's radio or press to attack or to comment or criticize the activities of another independent state. The attack in the press or on the radio may bd on the policies of another member-state, would this constitute interference? The reactions of states may help to explain this. Before and during the shifta war in Kenya. Kenya used to accuse Somalia of conducting hostile propaganda against her on radio Mogadishu,(1) Would this accusation by Kenya of Somali attacks on her be interpreted to mean that radio or press attacks constitute interference with a member-state's internal affairs? The answer is not clear.

Similar accusations of radio attacks have been levelled against Somalia by Ethiopia. Somalia lays claim on a part of Ethiopia (known as Ogaden) ~~occupied~~ occupied by Somalis. She says that this region belongs to her. For this she has attacked Ethiopea incessantly on her radio. Ethiopia like Kenya

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(1) Daily Nation, De.,1966, statement by Kenya's defence Minister saying inter alia, "Radio Mogadishu should stop pouring venmours broadcasts against our Head of State and the government of Kenya."

.../15

has also complained that this amounts to interference. As to whether this constitutes interference is not clear. It will be noted however that there have been many allegations in the O.A.U by some member states accusing others of engaging in hostile radio and press propaganda against other states. The accustion has been that this violates the principle enshrined in the O.A.U charter - Article III (2) forbidding states not to interfere with each other's affairs. The O.A.U should come out with a clarification of this in the Charter and stipulate precisely whether such attacks are tantamount to interference or not. This is necessary if the article is going to be effectve.

Now, turning to international bodies like the O.A.U and U.N., would one say that they have anything to do with interfering with a state's internal affaies? This question may tentativly be answered in the affirmative.

With regard to these intenational organisations, few questions may be advanced. First, does placing a matter on the agenda constitute interference? Does discussion or establisment of a commission of study or inquiry constitue interference? Does the making of reccommenations constitute interference with the affairs of an member-state?

Most international lawyers (1) answer these questions in the affirmative. Lauterpacht however answers the question in the negative. He argues that anything short of dictorial interference in the internal affairs of another state for the purpose of mainting or alteriing the actual conditios of things constitute interference in international law. He says that

> "intervention is dictatorial interference by a state in the affairs of a other state for the purpose of maintaining or alteriing the actual conditions of things" (2)

He says that interfere he is something like a premptory demand accompanied by enforcement or by threat of enforcement in case of non-compliance.

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(1) ROSALYN H. The Development of International Law through the polititical rgans of the United Nations. In this book at page 69, she argues due t to procedural asafeguards in the U.N. it cannot be argued that placing a matter on the agenda constitutes interference.

(2) LAUTERPACHT, 70 HR (1947), as 31 n. 2.

*One may argue that due to this concern exhibited by member-states as regards other states behavior towards them, radio and press attacks may probably constitute interference.

One may agree with Lavterpacht if dictatorial interfernce is one aspect of interference. But if his view of interference is inteded to be exclusive to mean that dictatorial then one may hestitate to agree with him. Other matters which may constitute interference, the General should be considered. Let us look at these matters.

Looking at U.N., although there have been many questions on whether placing a matter on the agenda constitutes interference, the General Assembly has never given support to the proposition that placing a matter on the agenda constitutes interference. The reason for this is that there are procedural safeguards for this. Rosalyn Higgins explains this this:

> "In the security council, when a complaint under Article 35 is received, it is practice that the Secretary General who circulates it among members of the council and places it on the provisional agenda. If the complaint is made to the Assembly, the Secretaty General will place it before the standing committee which will make a reccommendation to the General Assembly. The procedural rules of the Assembly provide for a vote on the propriety of placing the matter on the agenda only immediately prior to a vote on the proposal on the substance of the question." (1)

In the O.A.U the procedure is not the same. According to Article XIII of the O.A.U charter the matter goes through the council of ministers; this council is responsible to the Assembly of Heads of States. It is entrusted with the responsiblity of preparing conferences of the Assembly. So in the O.A.U. the matter of discussion only goes through the council of ministers stage. This procedure it may be said does not constitute a safeguard against placing matters on the agenda that a member-state may consider as constituting interference. The procedure being not as tight as the U.N's one may amount to interference. It is suggested that the O.A.U should find a procedure preferably along the lines of the U.N where there are less chances of matter in the agenda constituting interference.

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(1) ROSALYN H., The development of International law through the polical organs of ULN, page 69

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are less chances of matters in the agenda constituting interference. Alternatively, it may be suggested that the O. A. U. should set up a committee to look into the matters to be discussed by the Heads of States in their periodical meetings. This committee should comprise of persons with legal qualifications chosen from among the member-states. This committee should give it's report to the foreign affairs ministers who will look through the recommended agenda and where necessary make changes and thereafter, after being satisfied, deliver the list of agenda to the Heads of States meeting of placing matters on the agenda likely to constitute interference and thereby help to give effect to Atticle 111(2)

The next issue is to investigate whether discussion of a matter in either the O.A.U (or the U.N) constitutes interference. There are some international lawyers (1) who hold that it does not. Their arguement might be that the procedure of placing a matter in the agenda in the U.N ensures that matters that are finally brought to the General Assembly for discussion do not constitute interference - that is having gone through this process. Others who contend that discussion constututes interference argue that the procedure is not enough to prevent interference. South Africa has always accused the U.N of interfering with her internal affairs whenever the U.N has discussed matters pertaining to her policies regarding treatment of her citizens. The U.N. has however argued that were human rights are endangered she will not be deemed to have violated Article " 2(7) of her charter if she takes steps into redress the situation(2)

The question regarding O.A.U is: can discussion amount to interference? The procedure of placing amatter on the agenda for discussion is not like U.N's so it may be argued that the O.A.U procedure cannot guarantee discussoin of a matter that may not consitutue interference. Hence an arguemt may be advanced that discussion may amount to interference. Perhaps this is the reason why Nigeria during the civil war protested against the O.A.U that it should not discuss it's internal affaira because

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(1) GILMOUR D.R; International Comparative Law Quarterly, 1967 vol. 16 "It was the intention of the those present at San Francisco to prevent any organ of the U.N discussing or making recommendations concernin g matters which were essentially within the domestic jurisdiction of states". page 349.

(2) ROSALYN H.; In her book quoted Ibid, Higgins argues from page 118-130 that the General Assembly may assume jurisdiction where human rightd are involved.

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doing so would amount to violating Article 111(2). (1)

The position whether discussion constitutes interferednce is not clear as regard the O.A.U. The O.A.U it is suggested, should clarify in it's charter whether disussion of matters touching on member-states affairs constitutes interference or not. The O.A.U should also state in the charter that it will discuss matters that affect the peace and security of the continent including those matters that pertain to human rights. The Nigerian ad Burundi examples are cases in point. In both instances, human life and Pan-African unity were at stake. The O.A.U was caught helpless. If the O.A.U is to be effective in future it must provide in the charter those areas i will explore for the fulfilment of it's purposes, whether such matters constitute interference or not.

It is frequently asserted that the instigation of a study, or the setting up of a commission of inquiry constitutes interefence. This question arose sharply in the Greek situation. Initially the communist bloc was opposed to the setting up of a commission of inquiry by the U.N to examine alleged frontier incidents, declaring that this would be an infrignement of the sovereignty of Yugoslavia, Albania, ad Bulgaria. The United States delegate, however, supported by the Belgian representative was of the opinion that the council could, however, determine what violation had taken place, and could choose to do so by investigation. This proposal failed due to the Soviet veto. The Russina delegates insisted that establisshing a commission would amount to a violation of Article 2(7) of U.N To this day it is not clear whether this constitutes interference or not. The arguement that it constitutes interference may be valid in either way depending on who is looking at it. For instance, South Africa has always objected to the establishment of a commission of inquiry to look into the affairs of Namibia on grounda that this constitutes interference; but the U. N. has always disregarded her arguments saying that the principle does not apply in such situations where human righta are violated. It is not

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(1) CERRENKA Z; The Organisation of African Unity, page 195.

also clear in the O.A.U whether the establishment of a commission of inquiry or study constitutes interfereence. It may be that the existence of the commission or arbitration, conciliation and mediation prevents such issues of interference on the setting up of a commission of study from arising probably because the commission is there to settle disputes arising between member-states; this is to say that maybe the existence of the commissiom of arbitration, mediation and conciliation erases the need of appointing a commission of inquiry. However, this is only one view. Another view may be that the commissiion of inquiry may be set up in cases of emergency to look into some urgent matters. The O.A.U charter does not say whether the establishment of a commissiim if inquiry would violate Article lll(2) or not. It is necessary that the charter make this clear.

The most acute area of controversy however, occurs in relation to the recommendations and resolutions. Lavterpacht argues that a recommendation calling forth the adjustment of a situation to conform with the charter can never amount to inferferen e. He says nothing short of coercive action can amount to interference.(1) However opponents of Lavterpacht would argue that all sovereign states are equal - this bing the funda - mental basis of the priciple of non-interference. This being so, no state (or organisation) would have the power to legislate on matters that fall within the exclusive domestic domain of a member-state. Therefore if a state (or organiz tion) makes legislation or reccommensaion on matters touching on the domestic jurisdic ion of another state, then such recom- mendation vis-avis that other states will constitu te interference. The whole controversy is far from resolved. Each case should be decided on it's own merits. Where the resolutions or reccommendations are for the purpose of safeguarding the welfarew of member-states, then the recommendatio n is welcome; if it is not conclusive to the organization welfare then it should not be allowed . As regardst the O.A.U., this matter of remmendaations and resolutions does not seem to have been investigated. It is suggested that the ~~tions will be dismissed and will be deemed not to constitute interference.~~ Should stipulate when and in what circumstances recommendations will be binding and will be deemed not to constitute interference. This buttress Article lll(2)

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(1) Of discussion, study, inquiry and recommendations he has stated that: "None ot these steps cna be considereda as amounting to Intervention. None of them constitute premptory dictatorial interference". (International Law & Human Rights (1950, 169-170).

Let us look at other aspects which may be deemed to constitite interference.

A state which engages in conquest of other states or parts of other states, is according to internatio l law guilty of interference.

"The rule of noninterference with the independence of a soverign state includes, of course, andafortiori, the obligation of to refraim from unjustifiable attack or aggression. The purpose and fthe fruit of aggresseion is conquest, whih later may be defined as any advantage secured by aggression or abuse of force. Otherwise expressed, conquest is the f forci le seizure or the enforced cession of territory or rights from a state without the authorization of internatio al law. Conquest is therefore, it is hardly necessary to repeat, a violation of international law". (1) Any act of aggression or perhaps threat of aggression, or any act of conquest by a state on a sovereign indepedent state is a violation of the principle of interference. One may argue that when the President of Uganda threatens to acquire a part of Tanzania, this constitutes an act of interference with the internal affairs of Tanzania.

If a state allows it's territroy or uses it's territory as a base for attack against a sister-state then this act may constitute a breach of the priciple of the principle of non-interference. The obligation of a atate not to interfere with the independence of another state is not confined to official action by governmental officers. The responsibility also includes the obligation to show reasonable or due diligence in preventing it's nationals and others from making use of it's territory and resources as a hostile base from which to carry on operations intended to embarass or overthrow the goernment of anothers state. When Uganda a accussed the government of Tanzania of harbouring in its territory persons wanting to attack it, she was saying in essence that Tanzania. had violated Article 111(2) of the charter.

One may wonder whether harbouring dissidents or political refugees constitutes interfereence. Here onemay say that this humanitarian gesture cannot constitute interference. However if the refugees or the dissidents conspire to do ~~harmful~~ harmful acts against another state, then they can no longer

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(1) STOWELL, E. C. International law, P. 88

be protected by internatio al lawand the state hat is responsible for harbouring such ersons may be deemed guilty of interference with the internal affairs of another state. In Africa t ere are many instances where refugees have had tosettle in neighbouring states. In such cases the O.A.U. should make provisions regarding the behaviour of such persons. This will regulate the relationship of member-states and prevent the break-out of friction between sister-states.

Another question that may arise is in regard to those cases where a section of the territroy of sovereign indepedent state decides to secede from the rest of the country. Would a courntry helping the seceding section, even out of humanitariam concern be deemed to have violated the charter? During the Nigerian Civil War Nigeria accused states that were helping Biafra of interfering with her internal affairs. Similary, during the civil war within the Congo in early Sixties the Congo government accused two certain states of interfering with matters that were exclusively her internal affairs. These acases illustrarte one point that it is not proper to help a region of a sovereign state that is attempting oto secede. Drading from these two examples the o.A.U. should define what interference means and whether the article should be waived in certain situations of gravity (like the above two instances). It will be remembered that the two cases were so serious that they at one point, and especially the Congolese case, threatened to wreck the organisation. This may be due to the fact that member-states did not know that actively taking sides in a conflict may amount ot interference with the affairs of another country. This may not have been their fault. The charter thati is binding on the members did not stipulate what constituted interfereence and what does not. It is high time that the charter made this clear if it is going to be useful now and in future.

Another issue that may be sorted is whether the making of an arrest in a member state constitutes a breach of Article 111(2). In the U.N. the Argentinian governmentq accused Israel of violating Article 2(7) of the U.N. charter. The accusation was based on the arrest of a former Nazi officer, Eichman, by Israeli officers, without the permission of the Argentinian government on whose soil the arrest took place. The genearl feeling of the members pf U:N. was that Israel had indeed

violated Article 2(7) of the U.N. charter. One cannot exclude the possibility of such an act among O.A.U. members. The O.A.U. should state in the charter what the position would be if such as event took place.

Does employment of economic pressures upon other states constitute interference? Rosalyn Higgins says with regard to U.N. that:

"THere does seem to be general agreement that the main aim of Article 2(7) was to prevent direct intervention in the domestic economy of a state." (1)

Can a similar arguement be advanced for O.A.U? The organization is based on the equality of member-states. It would be out of keeping with propriety if certain states were allowed to employ economic pressures upon other states.

The above matters that may constitute interference do not constitiute an exhaustive list. What is to be suggested however is that the O.A.U should define these matters in the charter if the charter is going to be effective.

Another aspect of interference that we should look at is those matters that are seemed not to constitute justifiable interference.

A state may offer advice to another state in the hope of rendering a service to that state. When a feeling of mutual confidence prevails, friendly advice will often prove very beneficial. But as soon as there is any idea that the advice given is to be considered obligatory, intercession changes to dictatorial interfere ce and is no longer freindly counsel or interference. (2) For example when in 1856, Great Britain and France failed to persuade Naples to stop her inhuman practices of killing people, the two withderw their legations as an intimation of their displeasure. Their request was therefore a kind of obligation they were imposing upon Naples. In this connection Prince Gortschakoff speaking for Russia said by way of remonstrance:

"To endeavour to obtain from the KIng of Naples concessions as regards the internal government of his states by threats or by a

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(1) ROSALYN H. ;Development of International Law through the political organs of the United Nations, page 118.
(2) STOWELL E. C. International Law, page 106.

menacing demonstrations is a violent usurpation of his authority, and an attempt to govern in his stead; it is an open declaration t of the right of the strong over the weak." (1)

It is clear that advice, counsel or exhortation given in friendly circumstances is proper and allowed but only within the accepted limits of international law principles. Member-states may therefore consult each other for help without violating the charter provisions. It is not however easy to define what kind of help may be given and in what circumstances considering that the states are differnet in may respects.

On the question of human rights it has been held strongly by the U.N that it may assume jurisdicat on where human rights are involved. "A first glance of the cases involved seems to indicate that the Unitesd Nations has along assumed that it has jurisiction over matters concerned with human rights and furdamental freedoms. Certainly it is difficult to think of a case primarily involving human rights were the Unites Nations has refused to pass a resolution,"(2)

Lauterpacht contends that the provisions in the U.N charter on human rights create legal obligations. (3) Accordingly if a state is in breach of an obligation concerning human rights there is no reason why a resolution condemning such a breach shoul be considered nor is there any reason why the resolution should not be addressed to the state concerned rather than be couched in terminology of a general exhortation. This has been done ot South Africa with regard tio her apartheid policies and also regarding her illegal occupation of Namibia. When the U.S.S.R. refused o to allow Soviet wives of ordinary foreign citizens and foreign diplomats to join their huabands abroad, the question was discussed in the General Assembly in spite of a claim of domestic jurisdiction by the Soviet Union. The U.N. maintained that it had jurisdictio to look into issues of humam rights and to make recommendations thereon.

The O.A.U. does not have provisions on human rights in it's charter. It willb be suggested that the organization stipulate in it's charter that

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(1) THEODORE? M. Life of prince Consort, 111: 510-511 (Quoted from Stowell's book).
(2) ROSALY, H. The Development of International Law through the political organs of the United States. Page 118.
(3) LAUTERPACHT, 70 HR 1947, at 5-11

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it will deal with matters that violate human rights. it should also be stipulated that the organisations resolutions and recommendations will not be deemed to constitute interference and they will be binding on member-states.

SECTION IV: Whom does the article affect?

A question that should be raised in reference to the article is: whom does it affect? Does it bind member-states only or does it also bind the O.A.U. as a body?

The question whether it binds the members can safely be answered in the affirmative. The members are all signatories to the charter which they pledged to abide by. Article lll says in it's opening paragraph,

"Member-states, in pursuit of the purposes stated in Article ll solemnly affirm and declare their adherence to the principles of the O.A.U. charter."

Article lll(2) is therefore binding upon member-states of the organization.

The unresolved issue is whether the O.A.U. as a body is bound by the charter provisions.

First let us look at U.N. Article 2(7) of the U.N. charter stipulates that:

"Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter."

This article clearly states the U.N. is bound is by Article 2(7). Few examples may suffice to illustrate the point the U.N. is bound by Article 2(7).

On many occasions, the U.N. has passed resolutions regarding the policies of South Africa. Each time this has happened, South Africa has opposed U.N's. actions on grounds that whatever happens in South Africa is a matter within her domestic jurisdiction and nobody should interfere with her. The U.N's. reply has always been that it is within her jurisdiction to look into matters affecting human rights and should not in such cases be accused of interference. Here the argument has not been that the U.N.

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is not bound by Article 2(7) rather the defence has been that it is doing it's work within it's jurisdiction.

Again, the U.N's. handling of the Spanish situation in 1946 came under heavy criticism from member-states. In that year the Polish representative, referring to Articles 34 and 35 of the U.N. charter brought the situation in Spain to the attention of the Security Council. He expressed the view that the continuation in power of a fascist regime and all the accompanying repressions had caused international friction and endangered international peace and security. He presented to the council a draft resolution by which member-states would sever diplomatic relations with the Fa... Govt in accordance with the relevant articles of the charter. This resolution was however opposed by some members who thought the nature of a governing regime was a question generally recognized to be within the domestic jurisdiction of a state and that the U.N. would stand in breach of Article 2(7) if it went ahead to put into effect the resolution. The U.N. did however deal with her jurisdiction and that this did not constitute a breach of Article 2(7). It did not deny that it was bound by the article.

Looking at O.A.U. one does not find anywhere in the charter a provision that the O.A.U. is bound by Article 111(2). Article 111(2) states that

> "Member-states solemnly affirm and declare their adherence to the principle of non-interference in the internal affairs of states."(1)

Looking at the Nigerian crisis and the helplessness of the O.A.U. to intervene one may argue that the O.A.U. is bound by Article 111(2). Cervenka says that:

> "The Heads of State and Government were faced with the repeated warnings of the Federal Government of Nigeria that the war was merely a police action against secessionist rebels and strictly an internal matter of Nigeria at that."

He further asserts that the

> "Nigerian Government held very strongly to the view that any intervention, even in the form of a discussion at the O.A.U. level would be

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(1) CERVENKA, Z. ; The Organization of African Unity, page 195.

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in violation of Article 111(2) of the O.A.U. charter prohibiting any interference in the internal affairs of states."(1)(last page)

Since the O.A.U. did not discuss the Nigerian crisis, one may argue that by succumbing to Nigerian government's warnings, the O.A.U. by implication is bound by Article 111(2). However the correct position as to whether O.A.U. is bound by Article 111(2) is still uncertain. It is recommended that the O.A.U. insert in it's charter a provision that it will be bound by Article 111(2). This is because there may arise situations where member-states may feel that the O.A.U. should not intervene with their internal affairs. Such a provision would remove the present uncertainty and to a large extent buttress Article 111(2).

The next issue that has to be raised is who would deal with a case of breach of Article 111(2). As regards the U.N., the General Assembly or the Security Council (1) deals with the matter. As regards the O.A.U., the position is not quite clear. It is not clear whether the Assembly of Heads of States would deal with the matter or whether it is the Council of Ministers. The O.A.U. charter should clarify this. Another issue is that: who would deal with a dispute involving the organisation and a member-state? Would the organisation be a judge in it's own cause? Such an issue needs to be resolved by the O.A.U. charter. In this respect a revision of the charter is necessary to remove all these uncertainties.

Finally the issue as to what ould be the position if there arose a dispute involving a member-state and a non-member state is far from resolved. Referring to U.N., when the Tibet case arose in 1949 the U.N. found that

"There are certain duties in the charter so basic to the general international order that they cannot be contracted out of by states not accepting the charter".(2)

The U.N. passed a resolution calling upon China to restore human rights to the people of Tibet. Perhaps the same argument may be advanced in favour of O.A.U. Yet, it would be better if it made this certain in the charter because such instances are likely to occure in future.

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(1) GILMON, D. R., International Comparative Law Quarterly, 1967 vol.16: "The controversy regarding ....Article 2(7) of the charter has existed since the foundation of the U.N. It has been productive of long wearisome debates both in the General Assembly and in the Security Council."

(2) ROSALYN H.; Ibid page 124.

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CHAPTER FOUR

CONSEQUENCES

What consequences follow in the event of Breach?

The member-states, as noted in the previous chapter must adhere to the charter. The charter is binding on all of them.

The question that arises now is whether there are any measures provided for in the charter which seek to have member-states adhere to the charter. This is to say, are there any measures provided for in the charter which seek to have member-states adhere tothe charter. This is to say, are there any penalties or legal consequences prescribed in the charter that will be visited upon those who breach charter provisions? The charter is a constitution that is legally binding on the signatories to it. And usually when a piece of legislation is passed and becomes binding on persons, penalties or legal consequences are provided therein to affect those who violate the provisions. Article 111(2) says that member-states should not interfere with other states internal affairs. Nowhere else in the charter are there any provisions as to the consequences that would befall one who breached any of the charter provisions. This means that there is no provision in the charter that seeks to enforce Article 111(2), vital as it is. If this is so, one may ask the question, how effective is the article without an enforcement clause?

On occasions member-states have asked the O.A.U. to intercede on their behalf when they have felt that a member-state was interfering with their internal affairs. In these situations the O.A.U. has not been able to do anything. The reason may be that the O.A.U. does not have the power to compel member-states to observe the charter. And even if it were to make resolutions calling on a member-state to desist from interfering with the internal affairs of other states, such a resolution would not be enforced simply because there is no enforcement provision in it's charter.(1) Yet, these may be situations that threaten the peace, security and unity of the organisation. In Congo such a situation arose

NOTES:

(1) CERVENKA Z.; The Organization of African Unity, page 45, "the charter of O.A.U. has neither created an organ with disciplinary powers to enforce compliance with O.A.U. resolutions nor provided for expulsion in case of non-compliance".

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in the early sixties. The Congolese government accused certain member-states of interfering with her internal affairs. It made this complaint to the O.A.U. The O.A.U. appointed an Ad hoc committee to look into this Congoles crisis. The committee did not come out with a solution and referred the matter to Heads of States who could not also solve the crisis. They were divided on the issue. The Congolese government therefore referred the matter to the United Nations (1) - the O.A.U. having failed to solve the crisis - that threatened to destroy the organisation.(2) The O.A.U. could not enforce observance of Article 111(2).

It is perhaps because of this powerlessness of the O.A.U. that member-states even when faced with the same problems of interference prefer to deal with it themselves rather than call on O.A.U. to help them since apparently the O.A.U. has proved that it cannot do anything other than to 'persuade' member-states to refrain from interfering with other states' internal affairs.

It may be argued that it is this powerlessness of the O.A.U. to act decisively in situations where the article is breached that has contributed to the ineffectivness of Article 111(2). Due to this it has been difficult for the organisation to achieve the purposes set out in Article 11(1). Interference conflicts which the O.A.U. cannot solve, cannot bring about peace and unity necessary for a harmonious relationship among member-states. For the charter to be included in it.

The U.N. has in it's charter, certain provisions it can invoke to enforce observance of the obligations contained therein. Article 6 of the U.N. charter stipulates that:

"A member of the United Nations which has persistently violated the principles contained in the present charter may be expelled from the organisation by the Security Council." Such an article can be effective in having member-states obey the charter due to this threat of expulsion in the event of persistent violation of the charter.

The U.N. may take other measures in enforcing the observance of the

NOTES:

(1) Daily Nation, March, 1975.

(2) Daily Nation, 12th March 1965. "Mr Kojo Botsio, the Ghana Foreign minister has said here that the Congo issue threatens to break up the struggle of African unity and solidarity.

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charter. Article 41 provides that:

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to it's decisions, and it may call upon measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic radio, and other means of communication, and the severance of diplomatic relations."

The U.N. has in fact passed a resolution calling upon member-states to sever their economic or political links with Rhodesia. The U.N. can also do this to any other state that violates the charter. Article 42 also empowers the Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of members of the United Nations." The O.A.U., it is recommended should have such a provision empowering it to act whenever a member-state violates the charter (depending on the seriousness of the violation). As regards the latter provision (Article 42) if the O.A.U. inserts it in it's charter, then Article 53 of the U.N. must always be observed whenever the O.A.U. is considering military sanctions. Such sanctions, according to Article 53, should have the authorization of the Security Council. It is hoped that such possible consequences may make member states refrain from violating the charter and contribute to giving meaning to its principles.

The O.A.U. may also gain from the experiences of the Organisation of American States. In order to enforce treaty obligations the O.A.S. has provided for sanctions to be imposed upon those who violate its charter. According to its charter Member-States may carry out political or economic sanctions against a violation of the charter. Two examples may help to explain this.

First, on 20th August 1960, the O.A.S imposed sanctions on the Dominican Republic for having organised subversive activities against the government of Venezuela, including the attempted assassination of the Venezuela President BEtancourt. Under the treaty of Rio de Janeiro, 1947, all O.A.S. members were under a duty to carry out sanctions, which considered of the severance of diplomatic relations, and a partial embargo on e

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on exports to the Dominican Republican beginning with military equipment. Later, in 1961, the embargo was extended to include petroleum, petroleum products and lorries. (1)

Second, in January 1962, the O.A.S decided to impose an embargo on exports of arms to Cuba as a sanction against Cuba for having formentated subversive activities in other Latin American countries, particulary Venezuela. (2) These two examples show that the O.A.S acted decisively in situations of crises affecting the Organisation. Perhaps the Charter of the O.A.U would be more effective if similar sanctions were incorporated in the charter. Accordingly it is recommended that the O.A.U should have in its charter provisions embodying sanctions to be imposed upon those member-states who do not adhere to charter priciples. Such provisions would include provisions on economic boycott, severance of diplomatic relations and expulsion or suspension from the O.A.U.

It is hoped that such provisions may cause members to respect the charter and particulary Article III(2):this way the article would be meaningful and effective..

In connection with the above recommendation, perhaps it would also be wise to have an Emergency Council that would deal with emergency cases that may be deemed to threaten Continental peace and security. Members of such a Council would be choosen from all the member -states (each state I representative) and would not have veto power. It would vote on a majority basis. Its main function would be to act quickly and effectively in situations of extreme urgency. If the decisions of such a Council are going to be effective then there should be a provision in the charter stipulating that the decisions of the Emergency Council are going to be binding on the Member-States.

In sum, it has been shown that lack of enforcement provisions in the O.A. U. charter makes Article III(2) ineffective especially in situations

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G. Connell-Smith, The Inter-American System (1966), p 244-50; Jerome Slater, 'The United States, the O.a.S and the Dominican Republic 1961-63', International Organiztion, 18(1964),p268-91; I.L. Claude, 'The O.A.S, the U.N and the United ates,' International Conciliation, 547(March 1964) p48-53.

I.L. Claude, 'The O.A.S, The U.N and the United States', International Conciliation, 547 (March 1964) pp 53 et seq.

of grave emergency. If this Article is going to be effective in future, the present writer feels that there should be provisions in the charter stipulating that legal consequences will be visited upon those who fail to observe the Charter.

.../31

CHAPTER FIVE

INEFFICACY OF THE ARTICLE

Section I:

Areas where the article has been applied inefficaciously

In the foregoing chapters we have looked at the article in an analytical context and have seen that so far it has not been quite effective in the fulfillment of the purposes of the charter as contained in Article II (1) of the O.A.U. charter. In this chapter we will in the first section, explore those areas where the article has been aplied ineffectively and in the second section examine why the article has been ineffective.

Boundary Conflicts

Boundary disputes are among the most explosive of conflicting interests among O.A.U. states. (1) This was even recognised at the Cairo Summit in 1964. In this meeting the heads of states and Government agreed that "border problems constitute a grave and permanent factor of dissension." (2) These conflicts, it may be said, have plagued the peace and harmony of O.A.U. member states for a long time. They have been part of the history of member-states of O.A.U. since the time of the independence struggle. The fact that this has been so is sufficient evidence to show that it is not a minor problem but a fundamental problem that affects adversely the relations of member-states. In a meeting in Addis-Ababa in 1960, (3) the head of the Somali delegation to the conference warned delegates of the possible dangers of boundary conflicts and the need for their being handled with caution. He said: "We find

Notes
1. Cervenka Z; The organisation of African Unity p(92)
2. A H G/Res 16(1)
(3)Thompson, V.B.; Africa and Unity. p.

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ourselves facing today's problems of boundaries all over the continent;these will endanger most of our African Unity for which we are here assembled here today. These problems should be treated urgently by the interested states in a friendly and co-operative manner in the African spirit and justice. " (2) In other words what the Somali delegate is saying here is that the problem of boundaries is an urgent one and attempts should be made to settle it before it destroys the peace and unity of the O.A.U member states.

Common tradition and accord have resulted in boundaries not being firmly fixed. In Africa there are few natural frontiers, geographycally separating one nation from another, and coherent tribal groupings are divided between distinct national Governments. Thus for example the Somalis are divided between Kenya Somalia and Ethiopia. The Ewe tribes in West Africa are divided between Dahomey, Togo and Ghana. This is the legacy of colonial boundaries drawn without respect for traditional political, cultural or ethnic divisions.

At the time of indepedence struggle or soon after independence, nationalistic leaders were very critical of these international borders, their anti-colonialistic leaders who wanted to abolish the entire colonial legacy, a logical corollary would have been to reject these also the colonial boundaries. These states therefore appealed to member O.A.U. to help them . Most of the states wanted the boundaries as they were. They wanted the status-quo. The O.A.U. therefore appealed to member states to respect each other's sovereignty and territorial integrity of each state and for it's inalienable right to independent existence." (1) The inclusion of this article in the charter did not solve the already existing dispute but only seved to preserve it.

These disputes have affected adversely the relations between O.A.U. member states . Few examples may illustrate this. First Kenya and Somalia have been having a dispute over the North Eastern part of Kenya occupied by Somalis. Somalia has been claiming that that part belongs to her and that the Somalis who live in that area belong to the Republic of Somalia. The Kenya government has denied this claim and has insisted that the Somali government honour Article 111(3) of the O.A.U. charter. The Somali Government has continued however to attack the Kenya Government in her radio. The Kenya government has interpreted this to mean interference with her internal affairs. (2)

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This hostility has gone on like this untill in 196 the Somalis in Kenya openly started a guerilla struggle for autonomy from Kenya so that they may join their brethren in Somalia. During this shifta war the Kenya Government accused the Somali government of aiding the shiftas in Kenya and of violating the O.A.U. charter principles. (3)

The observation we make on this conflict is that Article 111(2) has not been observed by both states. One may say that the article was ineffective in restraining the two states from engaging in hostilities against each other.

The second example is the conflict between Ethiopea and Somalia. Somalia has been claiming from Ethiopea her Eastern region called Ogaden inhabited by Somalis. She insists that on ethnic cultural and historical grounds that Ogaden is supposed to form a nation- State that Somalis under Ethiopian rule have the right to exercise the principle of self-determination and that Ethiopea has the legal duty to grant this right. (1) Ethiopea on the other hand maintains that that region belongs to her and nobody should claim it. As a result of this conflict there have been radio attacks between the two states. There have also been border clashes between the two of them. In effect they have not observed charter principles and principally Article 111(2) which forbids member states of O.A.U. from interfering with each other's internal affairs.

Notes

1) page 33. Speech of the Head of Somali delegation delivered at Addis Ababa June 1960. (Quoted from V.B.Thompson's book)
2) Article 111 (3) quoted above at page 4.
3) In his book on the frontiers of self-determination" on the Kenya-Somali dispute, Mr Okoth-Ogendo observes that "Somali radio broadcasts and other assistance to shifta raids were prima facie an interference with the territorial integrity and political independence of Kenya. "Somalia's reply to Kenya was thatt they had a constitutional obligation to assist the Somali people to unite and therefore any external opposition to Somali reunification is considered as interference in the domestic affirs of Somali people------."
4) Daily Nation, Dec. 1 1966: Statement by Kenya's foreign Minister: "It is known that The republic of Somalia is giving military training to shifta in Kenya. Modern standard military plastic mines, guns and ammunition come all into the hands of murderous bandits like these from Somalia. This is contrary to all known principles adhered to by members of both O.A.U. and U.N."

In addition there has also been a conflict between Morocco and Algeria over territo y. Morocco claims a large area os Algerian held Sahara rich in oil. Fightingbe between the two broke out in 19 3 and soon acquired the proportions of war. "This armed conflict was a violation of the charter of the O.A.U. as well as a denial of the spirit which had brought the African States together at Addis-Ababa barely five months before the conflict" (1)

The above examples illustrate to what extent boundary conflicts are a threat to the peace, unity and stability of the continent. More importantly they show that the principles of the charter have been ineffective in restraining states from interfering with each other's internal affairs.

SECESSION

The second area where the article has been applied inefficaciously has been in the area of secession. Where there have been attempts at secession in Africa, member states of O.A.U. have taken sides with either the seceding region or the constitutional government. Those who have taken sides with the former have been accused of violating the principle of non-interference in the O.A.U. charter . Few examples will illustrate this.

First let us look at Con o (now Zaire) . In 1960, soon after Congo became independent the province of Katanga decided to secede from the rest of the country. States friendly to the leader of the secessionists, Moise Tshombe, came to his aid. The Congolese government protested to these states and urged them stronly not to interfere with her internal affairs. After the fomation of O.A.U in 1963, ~~she continued asking those O.A.U. in 1963~~, she continued asking those O.A.U. member-states who were helping Katanga to desist. They continued to help Tshombe in violation of Article 111(2). When the O.A.U. intervened at the request of the Congo Government to resolve the crisis, it could not succeed to do so. The matter had to be referred to the U.N. (2) Article ~~111~~(2) was ineffective in this case.

The second exam le is the Biafran Case. In 196 7, The Eastern Region of Nigeria decided to secede ffom the rest of the country. It called itself Biafra. Once again members states of O.A.U. began to take sides. Some

Notes
(1) Cervenka, Z; The or a isation of African Unity page 97
(2) Supra page 46

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sympathised with the Nigerian Federal Government, others with the Biafrians. The Nigerian government complained that member-states were violating Article 111(2) of the O.A.U. charter by helping Biafra. The matter she argued was a purely Nigerian domestic affair and Member-states should not intervene. Unfortunately ~~some member states should not intervene.~~ Some member states continued to side with Biafra and even went as far as recognising her Nigeria in turn broke off diplomatic ties with those states that had recognised Biafra. This was a grave situation because it put in danger the unity and peace of the Continent. Here again Article 111(2) was ineffective in restraing member states from interfering with Nigeria's internal affairs.

The third example is where a member state accuses a non-member state of violating the principle of non-interference. The juridiction of O.A.U. extends only to member states. So where countries not members of the O.A.U. interfere with the ~~members~~ of the internal affairs of a country that is a member of the O.A.U., Article 111(2) is not binding on the former and it is to that extent ineffective.

So when the Nigerian Civil War broke out, Nigeria could not invoke Article 111(2) of the charter to refrain non-members of O.A.U. from interfering with her internal affairs. Similarly the Congolese Government could only complain to the U.N. when non-members of oO.A.U. interfered with her internal affairs.

The above examples serve to illustrate the fact that in many of the crises that have affected the O.A.U. involving interference with the internal affairs of a member state, Article 111(2) has been of no effect.

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SECTION 11: Why is the Article inefficacious?

The foregoing section explored the areas where Article 111(2) has been applied ineffectively. This section will be devoted to advancing likely explanations as to why non-interference principle is inefficacious.

The first explanation lies in the history of the African states before the formation of the O.A.U. As was indicated in chapter two, during the period just before the formation of the O.A.U., African states were divided in two blocs. On the one hand there was the Monrovia group that advocated a loose political union of African states, and the other hand there was the Casablanca group that preferred a tight political union of all African states under a common government. This difference was made even fundamentally greater by the fact that the two groups were ideologically different. The Monrovia group comprised of the conservatives inclining in favour of the western capitalist bloc whereas the Casablanca group was socialist inclined. The two could therefore not see eye to eye. And although they signed and adopted a single charter the cleavage however still persisted. It could not, it is admitted, be erased by the stroke of a pen. In relation to this Thomson has said:

"To have dismissed the cleavage as tenuous would have to take a simplified view. The differences were fundamental and still are inspite of the adoption of a single charter for all Africa in May 1963."(1)

An example to illustrate this will be found in the early history of the organization. Some member-states of the organization (mostly those which were formerly within the Monrovia group) accused fellow member-states of O.A.U. of interfering with their internal affairs and carrying subversive activities against members of O.A.U. A good example of this is the relationship between Ghana (a former member of the Casablanca group) and Ivory Coast (a former member of the Monrovia group). The latter during Nkrumahs time used to accuse the former of carrying on subversive activities against her. Similarly Ghana was not in good relations with Togo because of si similar accusations. Until this day the relations between Ghana and Ivory Co. Coast have not improved very much. With this kind of difference prevailing between member-states, Articl 111(2) which strives for peace, unity and harmony cannot hope to be effective.

(1) THOMPSON V. B.; Africa and Unity

Another aspect which has weakened the article is the ideological difference between African states. This is to some extent, a reflection of the cleavage between those states that belonged to the Monrovia group on the one hand and those that belonged to the Casablanca group. The ideological difference hinges on whether one is a capitalist state or a socialist state. Socialists and capitalists disagree on many things. They are different in politics and in their socio-economic organisation. One system vies for the destruction of the other. African states are either socialist or capitalist states. They are also in close geographical proximity. In some parts of the continent you will find that socialist states bo states boarder capitalist states. And since the two ideologies are opposed to each other, certain differences between the two boardering states are likely to manifest themselves with a certain amount of hostility. An example may illustrate this. Recently, there was, between Kenya and Tanzania, ra radio and press hostilities. Tanzania is a socialist state, Kenya is a capitalist state. During these attacks Tanzania called Kenya a man-eat-man society and an exploitative society. Kenya interpreted this as an act of interference with ther internal affairs. Clearly the attacks were on an ideological level. One may tentatively say that as long as ideological differences exist, article 111(2) will not be effective in restraining member-states from interfering with each other's internal affairs.

A further factor that may explain why the article is ineffective is the preparation of the charter. It will be remembered that the charter was made in a very short time. African governments were in a hurry to have the organisation formed. This means that they devoted little attention to issues that would make the charter meaningful and effective. They did not address themselves to issues like: why do we need the organization? Do we need the organization to serve us and if so how would it serve us effectively? How do we make the organization effective? Do we need the charter as a binding covenant or a non-binding one. If it is to be binding one, how do we make it binding. what are the likely problems we are likely to encounter? etc. The founding fathers do not seem to have addressed themselves to the down-to-earth issues. The result of this was that they came out with a charter whose principles have been honoured more in breach than in observance. For instance there was no provision for the enforcement

of the observance of the principles of the charter. The lack of such a provision may be said to have contributed to the ineffectiveness of the principles of the charter and most of all Article 111(2).

The factor of national chauvinism may perhaps explain why O.A.U. member-states do not honour the article thereby making it ineffective. It will have been noticed that African nations place national obligations before O.A.U's. obligations. This means that since, O.A.U. is a continental organisation with it's own obligations that member-states should discharge, these ~~obligations that member-states should discharge~~, obligations will always take second place vis-a-vis national obligations. If national obligations will then take procedence over continental ones, it means that the chances of member-states observing charter principles will be very slim since they will already be very occupied at home. For instance when Uganda says she wants a part of Tanzania she is pursuing a national objective and is to that extent unmindful of the principles of the charter that forbids such an act. Equally when Somalia says she wants a part of Kenya she is asserting that her national obligations come first before continental obligations. ~~come first before continental obligations.~~ This national chauvinism makes the charter quite ineffective.

Further, the lack of supra-national powers on the part of O.A.U. perhaps accounts partly for it's lack of effectiveness. It's powers do not extent to member-states domains. It has no power over them.

"The charter has established a loose inter-national organization based upon voluntary co-operation between states. ~~It contains none of the supra-national organization based upon voluntary co-operation between states.~~ It contains none of the supra-national characteristics which one would expect to to find in an organization of a federal or quasi-federal character".(1) The O.A.U. can therefore rely upon the good will of member-states. Unfortunately member-states have not been keen on observing the organization principles of the charter. And since the organisation cannot compel observance of the charter provisions, it has remained helpless in the face of breach of the charter.

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(1) CERVENKA (Z.), The Organisation of African Unity, page 80.

Friendships among leaders might partly explain why Article 111(2) is ineffective. This happens when one of the leaders is overthrown. When this happens he may run to his friend's country. From that country of refuge the deposed ruler may, with the help of his friend start a war of propaganda against the government that has deposed him. This is what happened when Obote, the former president of Uganda was overthrown by the army under General Amin. Obote fled to Tanzania where he was given political assylum by his friend, the president of Tanzania. Soon radio Tanzania started carrying broadcasts on Uganda, ctitizing the new government there. The Uganda government accused Tanzania of interfering with her internal affairs. Article 111(2) was of no effect, radio Tanzania continued talking ill of the government of Uganda.

We have seen previously how boundary conflict affect the effectiveness of Article 111(2). One may argue here that if the disputes remain unsolved then Article 111(2) may always be violated.

One important factor that may account for the ineffectiveness of Article 111(2) is the apparent lack of mass involvement in the process of the O.A.U that determine their destiny. Leaders have tended to make the Organization their own monopoly. An organization or an institution without the support of the grass-roots lacks legitimacy and is doomed to fail. Nkrumah once said that without the people, the organsation ~~cannot~~ of African unity is a myth. The organisation cannot truly depend on fragile accords built on the transient personal friendships of a few score super-sovereign leaders, and hope to survive. Workable unity of our has to be broadbased.(1) It must be the unity of our people in their masses.

"The inspiration and organisational means provided by the document (charter) will become a reality only if the masses of Africa are mobilised into action." (2)
If the people are uninvolved the organisation will not have much meaning. The charter as well. A meaningful institution is one that has roots deep in the masses of men it is serving.

The O.A.U. also lacks some machinery for enforcing observance of treaty obligations. The example of O.A.S. has already been referred to. The O.A.S. has provisions in it's treaty whereby member-states who violate treaty provisions is visited upon by sanctions prescribed therein. One

Wechue R, African Magazine, p.5.
Ghanaian Times, May 30, 1963 p.2.

would suggest that the O.A.U. should have sanctions provisions in the charter to be imposed upon those who violate the charter.

In sum one would say that the machinery created to make charter principles effective was not strong enough. The purposes of the charter have as a result not been fully fulfilled.

"The history of the O.A.U. since it's founding has shown quite clearly that the machinery evolved at Addis-Ababa in 1963 was not strong enough in itself to act as an immediate extinguisher of hostilities in Africa. Past and even present disputes have clearly revealed the weakness of the system devised by the charter of the O.A.U. for the settlement of disputes. Considering the high hopes which were placed in the O.A.U., it will be a blow to the prestige of the charter if the impression conveyed to the rest of the world is one of self-interest, where the private initiative of the individual African statesman continues to be given preference over the organised authority of the O.A.U."(1)

What we therefore need now is a new charter that will meet the challenging needs of the continent. A new charter that is borne out of the unhappy experience of the past willbe necessary if the organisation is going to be of any effect to the people of Africa.

"A new orientation is necessary to close the yawning credibility gap between what we have proclaimed for ten years and what we have actually done in that period. Our organisation is the victim of an outdated charter which, by stressing states rather than African people, places self-defeating emphasis on our illegical inheritance from a colonial past. This is why for the past ten years we have lived in contradictions, preaching unity whils in reality re-inforcing the chaotic absurtity of mini sovereignities that plague our continent. And this is at a time when epoch-making moves towards continental unity are taking place even in the most traditionalist quarters of the globe".(2)

In conclusion few things will be noted. If the organisation is going to be of be of any meaning; if the organisation is going to be of any effect to the people of Africa, then new directions other than the one we have used in the past past need to be found. There is an urgent need for an overhaul of the charter if the aspirations and hopes of the continent are going to be fulfilled. A new charter more meaningful and effective will be necessary for the

(1) Ivenka, Z. The Organisation of African Unity, p. 99.
(2) Wechuk, Ibid, p. 8.

the achievement of these hopes and aspirations. More importantly the masses of Africa will have to be mobilised into action.

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(1) [illegible], R.; Editor Africa Magazine; Africa, 1963, page 9.
(2) The Ghanaian Times, May 30, 1963, page 2.

Page before

(1) CERVENKA, Z.; Third page 8. The Organisation of African Unity, page 99.
[illegible]HUB R., Ibid, page 8.

CHAPTER VII

SOLUTIONS

SECTION I:

Possible solutions to the problems being experienced in the implementation of the article

The foregoing chapters have been devoted mainly to examining the functional or dysfunctional nature of the charter. The examination has revealed that Article 111(2) is, to a considerable extent, insufficient in fulfilling the purposes of the charter as laid down in Article 11(1). This section will mainly be dedicated to advancing possible solutions to the problems that have rendered the article ineffective.

Before making any recommendations we need to note one point. Our realities and experiences have unfolded themselves in the course of the past eleven years since the birth of the O.A.U. As indicated in the previous chapters, many crises have arisen which the O.A.U. found difficult to solve. Some member-states have been accused of interfering with other member-states internal affairs; some states have been accused of subversive activities; there have been instances where human life has been lost (Nigerian civil war); there have also been instances where disputes between states have almost escalated into armed confrontation, and due to these problems, the unity and peace of the continent has on occasions been in great peril. The machinery devised by our founding fathers in 1963 has not been effective in solving these disputes.

Yet, any legislation whatever it's nature must, in order to be effective be in keeping with the concrete realities prevailing within the community. This is to say that laws or principles can only be meaningful to any society if they will serve the needs and requirements of that particular society. They must be the full embodiment of the socio-political environment wherein they are applicable. This way the laws will acquire legitimacy. Our charter however, is fairly out-dated and has not as such been in keeping with the unfolding realities of the continent.

> "A new orientation is necessary to close the yawning credibility gap between what we have proclaimed for then years and what we have actually done in that period."[1]

What will therefore be recommended first is the modification of the charter. A new charter that will be in keeping with the needs and problems

of the continent, is necessary. In this connection it would be recommended that an All-Africa Constitutional Committee made up preferably of non-governmental experts be appointed to re-examine the charter of the organisation and make recommendations on ways and means of giving practical effect to the principles of the charter.

With regard to Article 111(2) the committee should address itself to issues like: what is interference? What is domestic Jurisdiction? What matters constitute interference? How can observance of the article be enforced? The lack of resolution of these issues may have contributed to the inefficacy of the article. It will be hoped that if such a committee seriously addresses itself to them, perhaps concrete solutions may be found that may give the article effect.

Another issue that will also need to be resolved is the question as to when the O.A.U. may be allwed to intervene. Many times situations have arisen warranting O.A.U.'s intervention but it has almost always been constrained by Article 111(2). Some of these situations have been so serious that they have at times threatened the peace and stability of the continent, (for instance the Congo and Nigerian crises referred to below). This has meant that Article 111(2) has played a negative role in regard to the fulfilment of the purposes of O.A.U. as stated in Article 11(1).

"The principle of non-interference in the internal affairs of states poses a serious problem for African Unity. The article emphasized the desirable formality for establishing mutual trust as well as good relations among nations but also inhibited them from pronouncing on actions by individual states which advocates of unity might consider detrimental to unity. This possibility was amply demonstrated in the discussion of the Congo, when it became increasingly difficult for African states supporting one faction or another to avoid interfering openly in what were considered the internal affairs of the Congo. What the Addis-Ababa conference failed to establish was the point at which an issue might cease to be domestic issue and became one for Pan-Africainist intervention".(2)

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(1) ~~(page before)~~

~~THOMPSON, W: Africa magazine~~

(2) THOMPSON, V. B.; Africa And Unity. P.

The Nigerian civil war demonstrated equally well how Article 111(2) rendered the O.A.U. ineffective. Here untold misery was caused on human life. Yet, the O.A.U. could not intervene. Article 111(2) prevented it to interfere with the internal affairs of a member-state.(1) It is submitted that the Nigerian situation showed the futility of deferring to sovereign states prerogatives and exclusive competence in a situation of extreme danger to humanity..."(2)

In view of this it is recommended that the charter be modified to allow the organisation to intervene in situations that affect Pan-African peace, stability and security and in situations where human life is in jeopardy. With regard to the latter, the charter should be modified to stipulate that matters affecting human rights are not within the exclusive jurisdiction of a member-state and that the O.A.U. will intervene where they are violated.

Also, in regard to peace and security of the continent, it is recommended that the O.A.U. should have its own peace keeping force whose main function would be to intervene to restore peace and calm in situations where member-states are involved in military conflicts that threaten the peace and stability of the continent. The force would comprise of persons chosen from all the member-states of the organisation. It's situation would be in any state chosen by member-states of the organisation.

Further, if there is going to be a modification of the charter to make the organisation more active in fulfilling the purposes of the charter, a strong and powerful secretariat will be necessary. The success of the implementation of the charter depends to a considerable extent upon the power of the administrative secretariat. The secretariat must be given a new lease of life, a freer hand in the regulation of inter-state matters and a more responsive instrument for action.

Sanctions provisions will be recommended. These will be necessary so that when a member-state has breached Article 111(2) or any other article for that matter, she will be visited upon by these penalties. The sanctions may be divided into three categories. First, we may have the economics sanctions provisions. Under this one, a member-state who persistently

(1) OBIYENKA, J; Organisation of African Unity. P 99
(2) OKOYE, F. C.; International Law and The New African States. P.4

violates charter provisions will suffer economic boycott from other member-states. Member states may decide to sever economic relations with the guilty state. Member-states will be required to adhere to such a resolution by the charter.

The second category of sanctions provision will be a suspension or expulsion provision. Where a member-state is deemed to be flagratly violating charter provisions, then the O.A.U. may be called upon to, either suspend or expell that member-state. Each case should however be decided on it's own merits and the circumstances surrounding the case.

The third category of sanctions would be a provision on the political boycott of a guilty state. By political boycott is meant severing diplomatic relations with another state. A state that violates the charter may incur this penalty.

The main purpose of these provisions will be to isolate the guilty state from the rest of the members. Few members would want to be isolated l like South Africa or Rhodesia. This apprehension of isolation may make member-states observe charter provisions.

Instead of having the Assembly of Heads of States and Government, it is recommended that instead we have The African Emergency Problems Council. In the past the Assembly of Heads of States and Government has done little more than talking in situations of crisis. The function of this council will be to handle situations of grave emergency that are a threat to the peace and security of the continent as well as situations where human rights are in jeopardy. It will also be given the responsibility of deciding when the peace keeping force (recommended above) will be called upon to intervene in order to restore peace among belligerent states. It is preferable that the council be a permanent one with representatives choosen from all the member-states - each state sending one representateve. In this council there should not be any state(s) with veto power. All states should be equal with resolutions being passed on a majority basis. The decisions of the council will be required to be final and binding on the affected member-states. Failure to comply with the council's resolutions will warrant the application of the sanctions provisions against the party in fault. Such a council will help the organisation fulfil the purposes of the charter if

it is properly utilized.

To help the Emergency Council another council is recommended. This is The General Assembly of Africa. This will be preferred instead of the council of ministers. This Assembly should consisit of representatives from among the member-states. It is preferable that it be a permanent one. It's situation should be a place chosen by member-states (but should be in the same place as the Emergency Council). It will be supposed to be meeting regularly to discuss and decide on contemporary continental problems. The scope of referrence will be such matters as that affect the operation and implementation of charter provisions. The resolutions of the Assembly should be binding on member-states. This Assembly will also be charged with the responsibility of referring to the Emergency Council matters of emergency nature that would warrant the intervention of the council.

If these councils are utilized by member-states, one may hope that the principles of the charter will be observed and that the charter would be effective.

The charter of the organisation of African Unity established the commission of Arbitration, mediation and conciliation.(1) This institution is charged with the important function of the peaceful resolution of disputes among member-states. Member-states have however, given little or no attention to this institution in the past. Disputes that should have been handled by this institution have gone on unattended. It is recommended that member-states use the offices of this institution whenever disputes arise among themselves. For if utilized the commission can be an important piece of machinery for the peaceful resolution of conflicts in Africa.(2)

This Organisation of African states is known as the Organisation of African Unity. Here the emphasis is on unity not division. Perhaps a solution to our problems may lie in Pan-African Unity. In unity we can fight better and much more effectively the problems that beset us than when we are divided. Presently we do not have unity among ourselves. We are divided along ideological lines; the way our economics are organized and even what friends we have (whether one is pro west or east). These divisions only serve to make us easy prey of our external enemies.

(1) Article XIX, of O.A.U Charter.
(2) Okoye, F.C. International Law And the New African States, p. 153.

"The survival of free Africa, the independence of this continent, and the development towards that bright future on which our hopes and endeavou are pinned, depend upon political unity.....The forces that unite us are far greater than the difficulties that divide us at present, and our goal must be the establishment of African dignity progress and prosperity" Instead of emphasizing on our differences we should strive for unity of th continent. A charter of one united continent would be more effective than a charter of a divided continent. In the past decade O.A.U. countries have been disunited with the result that the charter has been ineffective. Perhaps in unity then the charter would be effective. This is one constru thing worth attempting. In unity Article 111(2) may be meaningful and effective.

Finally it will strongly be recommended that the masses of Africa be involved in the processes of the organisation that determine their destiny. The preamble of the charter recognises this. It says that the founding fathers recognize the right of people to control their destiny and the need to harness the natural and human resources for the advancement of the peoples of Africa. Further Article 11(b) buttresses this and says that one of the purposes of the O.A.U. shall be to co-ordinate and intensify co-operation and efforts among member-states for the purposes of achieving a better life for the peoples of Africa. For the achievement of this end it may be said that the participation of the masses of Africa in O.A.U's. affairs is indispensable for the success of the organisation. To achieve the participation of the masses in O.A.U's. affairs few things may be recommended. First, instead of Heads of states and Governments choosing the Secretary General of the O.A.U., it is recommended that the Secretary General be chosen in an election to be held in all member-states of the organisation. The election should only include persons nominated by member-states in the General Assembly of Africa (recommended above). The electorate should comprise of those who are eighteen or above this age. The second recommendation is that representatives to the African Emergency Problems Council(recommended above) should be choosen by the

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~~(2) Article XI of the O.A.U. Charter.~~

~~(2) GROVE, P. C.: International Law and The New African States, page 153~~

Present paper

(1) NKRUMAH, K.: Africa Must Unite, p. 146

people in national elections in all member-states. Thirdly, the Secretary - General should have more contacts with the people. He should be allowed to address African masses in rallies organised by member-states so that he can inform them on the activities of the organisation. The fourth recommendation is that there should be more frequent inter-state social and cultural exchanges. Cultural inter-states' activities should be more frequent than they are now. They should take place yearly. Youth exchanges between states should be encouraged. Preferably there should be a Youth Association for young people operating under the auspices of the O.A.U. Under such an arrangement young people from member-states may have occasion to meet and exchange their views and experiences on the continents affairs. This way they may perhaps bring Africa closer to unity. Further, it may be hoped that if these recommendations are implemented, the organisat may be of more meaning and effect to the people of Africa than it has had in the past.

SECTION 111 CONCLUSION

This paper has been concerned primarily with an analysis of Article 111(2) in an attempt to investigate whether the article is functional or dysfunctional as far as the purposes of the organisation are concerned.

In the course of the analysis it has become evident that Art icle 111 (2) is very crucial to the fulfilment of the purposes of the charter it's main essence being the creation and preservation of peace, harmony and unity among member-states. In order to know whether the article has been effective or not one will need therefore to answer the question: to what extent has the essence of the article been realized?

The answer to this question lies in what has been said in the previous chapters. In these chapters it has been shown that the article is bristled with very many shortcomings. For instance it has been shown in the course of the analysis that the article lacks effect due to the fact that the article is unclear and undefined. What is more there are no provisions in the charter to enforce it's observance by member-states

It has also been indicated that the charter is outdated and out of keeping with the needs and requirements of a continent that is constantly changing each passing year. This latter fact has, most particularly, rendered the principles of the charter ineffective and to a considerable extent meaningless. Lack of unity and national chauvinism have also contributed their quota to the weaknesses of the article. On balance therefore, it may be said that the performance of the article has not been good. It has not lived to our expectations.

In this connection it has been suggested that the charter be completely overhauled if these weaknesses are going to be overcome. A new charter that will be in keeping with the hopes and aspirations of the people of Africa should be made. A new perspective is necessary if the article is going to be effective in future. The purposes of the organization will not be achieved within the framework of the present charter, a new one will have to be found to meet the challenging needs of contemporary Africa. Perhaps it should be added in this connection that Pan-African Unity will be necessary in achieving this new orientation.

"I can see no security for African states unless leaders like ourselves have realized beyond all doubt that salvation for Africa lies in unity. If we are to remain free, if we are to enjoy the full benefits of Africa's enormous wealth, we must unite to plan for our total defence and the full exploitation of our human and material resources, in the interest of our people".(1)

It will be remembered that achievement of the goals of O.A.U. will not lie in disunity, it will lie in the unity of the peoples of Africa. Only in unity can the charter have meaning and effect.

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(1) NKRUMAH, K.; Africa Must Unite. p. 189