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Contemporary Issues in Africa's Development:

*Whither the African
Renaissance?*

Edited by

Richard A. Olaniyan
and Ehimika A. Ifidon

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Contemporary Issues in Africa's Development:
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CHAPTER FOURTEEN

THE OAU, AU AND THE RESPONSE TO CONFLICT: DE-LINKING DOMESTIC JURISDICTION AND THE CAPACITY TO INTERVENE

EHIMIKA A. IFIDON

Africa is the most violent continent in the world.¹

In spite of any accomplishment in other areas of cooperation, the success of modern international organizations ... is most often judged on the basis of their handling of disputes and their utility in avoiding war. This is the case because of the destructiveness of modern warfare and because of the central role assigned to peace maintenance in establishing these organizations.²

Introduction

Africa has no idea of its progress outside the framework of modernization. The idea of development, of African development, is equated with modernization; and modernization with Europeanization, Westernization, globalization. The attempt by Himmelstrand to enunciate an African or structural (or scientific) perspective by de-Europeanizing the concept of development and returning to what is “elementary and fundamental”³ is, in the end, futile. Although he proposes to

define development primarily in terms of qualitative structures conceived with due consideration for what was possible at a particular historical juncture, and then to suggest that an assessment of levels of development could be pursued given such structures of development or underdevelopment,⁴

his four criteria of development – basic self-sufficiency, the existence of a national bourgeoisie, a “reasonably balanced” international trade and a

liberal democratic culture⁵ are embellishments of modernization theory,⁶ abstractions from the history of Euro-American states. The conclusion is therefore inevitable that a developed society is one that satisfies these criteria, and an underdeveloped society presumably the opposite.⁷

If there is an African perspective on development, it is that African societies want to be like Western societies; the latter, ever advancing, constitute the shifting goal of African development. This, however, must be qualified. Even though Africa's dominant elites express their wish for development and aspire to acquire the artifacts of Western material development, they do not wish to recreate in Africa the conditions that made such development possible, at least to the extent that their dominance is not threatened. Whenever the banner of African peculiarity (and the need to defend it) is hoisted, it does not really signify an attempt to define an autonomous scheme of African progress, but rather to protest and rally public opinion against Western pressure to implement measures that are believed would consolidate democracy and good governance, or rational economic planning. Generally, therefore, the African idea of progress is characterized by the dualisms of tradition/modernity, developing (under-developed)/developed, African/Western, the one, however, never passing into the other. The situation is best captured by the image of a Western head on an African body.

This absence of a distinct form of the idea of progress, a consequence of Africa's lack of consciousness of its past, is the source of the logic of return in African existence, and borrowing Mill's phrase, the "terrible entrapment in its own history".⁸ There is a virtual disjunction and discontinuity between the current policies and practices of its states and their individual and collective experiences. The only reminders that Africa indeed has a recent past, it would seem, are the scars of human suffering, civil wars, genocide, state privatization and political arrogance that pervade the continent. African existence is not autonomous. This is not to suggest that Africans can live in isolation of other peoples; it means that the most determinative influences on its affairs are external. These external influences and their historical milieux have been substituted for the African past as the source of policy and its reform. No wonder the quite high incidence of policy failure and the persistence of an apparently cyclical pattern of development.⁹

Such a cyclical pattern has in fact been discerned in Africa's conflicts. Africa, it has been observed, "has experienced a violent cycle of warfare" for over a century.¹⁰ The reference to the cyclical nature of warfare in Africa should not be taken merely as a statement about its persistence, or about the likelihood of recurrence in countries where it has erupted and

capped.¹¹ That Africa is a hotbed of conflicts is not a profound observation. Neither is the assessment (made in 1992) concerning the apperency of the “potential for massive conflict on the African continent”, a consequence of the end of the Cold War,¹² or that “Africa has been the most likely location for the requirement for armed humanitarian intervention over the past ten years”.¹³ It is most importantly a statement about the non-existence or failure of the mechanism for conflict prevention and resolution, about Africa’s response (capacity, process and outcome) to these conflicts within the framework of a continent-wide organization.

If, as it has been argued, a significant *raison d’être* of the African Union (AU) is the “management of endemic armed conflicts”, a cause for which the Organization of African Unity (OAU) was adjudged incompetent,¹⁴ the claim, supportive of the theory of the external motivation of social change in Africa, that it is “modelled largely after the European Union”,¹⁵ and as Buyoya put it, “closely guided by the model of the European Union”,¹⁶ contradicts and defeats its avowed purpose. The claim implies that the AU has not benefited from the experience of the OAU at conflict prevention and resolution (since its identity is anchored on the history of the European Union), that it cannot be relevant to the prevention and resolution of conflict in Africa, and that it cannot therefore surpass the OAU in those areas. Just as Africa was described as a hotbed of conflicts during the period of the OAU, it has been no less so under the AU regime; the likelihood and persistence of conflict have been no less intense. But, from the perspective of capacity to respond to conflict, is the AU different from or superior to the OAU?

The OAU and the Response to Conflict: Assessing the Narrative of Failure

As far as the response to conflict is concerned, the OAU ranks with the League of Nations as the most vilified international organization. For the League, what can be described as the narrative of failure is anchored on the fact that it was a security organization based on the idea of collective security.¹⁷ To this extent, therefore, it is possible to measure performance by matching outcome with objectives. When the League’s involvement in conflict situations was said to have had “rather patchy results”,¹⁸ it was because of the perceived dissociation between objective and process, or outcome. The narrative of failure in respect of the OAU’s involvement in conflict situations, on the other hand, has not been as systematic. The attempt to explain incapacity and structural inadequacy has been altogether legalistic and unhistorical. If there is any pattern, it is that the

OAU has been more effective in handling inter-state disputes than internal conflicts, and its incapacity in relation to the latter is attributed to the constraining force of Article III (2 and 3) of its Charter.

Akuchu's claim that the "ineffective performance" of the OAU "in the peaceful settlement of African conflicts is not a subject of debate" because of perceived consensus among scholars¹⁹ ends up being less of a consensus when placed side by side with Tekle's observation to the effect that

the record of conflicts that have been settled by the OAU, either directly or indirectly through the efforts of African leaders acting on behalf of the Organization, is far greater than the OAU is credited for.²⁰

And against Uwechue's claim that the OAU was "relatively ineffectual in the resolution of inter-state conflicts in Africa",²¹ there would seem to be a general agreement that the OAU performed creditably in handling inter-state conflicts.

The OAU's involvement in the Algeria-Morocco border dispute in 1963,²² the first inter-state dispute that the OAU responded to, has generally been considered successful.²³ Harshe would seem to have no problem with this verdict, even though he hastens to add that the dispute was resolved through the mediatory effort of Modibo Keita and Haile Selassie. The import of the reminder is to emphasize the fact that the OAU Commission on Mediation, Conciliation and Arbitration that was set up in 1964 "had no mandatory jurisdiction". Therefore, he concludes, "the OAU generally has been a poor instrument of resolving the inter-state disputes".²⁴ The implication of this analysis is that unless the conflict resolution mechanism of the OAU successfully settled an inter-state conflict, no successful settlement, even by the use of the good offices of member-states, could be credited to the OAU.

This is the basis for Cervenka's critique of the conflict resolution credentials of the OAU:

A rather striking feature of the OAU's handling of disputes is that not one has even been dealt with by the organ created specifically for that purpose, The Commission of Mediation, Conciliation and Arbitration.²⁵

Thus, the success of the OAU in the disputes between Somalia and Ethiopia, and Somalia and Kenya was "achieved by the collective authority of Africa's foreign ministers"; between Ghana and Guinea, by the ad hoc committee of Selassie, Tubman, Keita, Nyerere and Nasser; and between Senegal and Guinea, it was the ad hoc Special Mediation Commission of the OAU that was instrumental in bringing about

reconciliation.²⁶ The recourse to such ad hoc arrangements by the OAU was “not only precarious, but inconsistent and unreliable”.²⁷ But were the successes of the ad hoc committees of the OAU not also the successes of the OAU?

The apparent explanation for the successes of the OAU in intervening in inter-state conflicts is the fact that the Charter provided the legal basis for such intervention. Article III (4) declares, as one of the principles of the OAU, the “peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration”,²⁸ a principle described by Elias, one of the drafters of the Charter, as “probably the most fundamental of all the seven principles enshrined in Article 3”.²⁹ This principle applied to member-states, not to groups to an intra-state conflict, as Article XIX makes quite clear.

While the OAU thus was legally empowered to intervene in inter-state conflicts and did deploy its resources (even though not the Commission on Mediation, Conciliation and Arbitration) to achieve peaceful settlement of disputes, it was “weakest and at its most disappointing when it comes to dealing with serious internal problems of its member-states”.³⁰ But the OAU has also been credited with a “firm handling and resolution of intra-state disputes”, and “has arrested the process of disintegration of African states” by insisting on maintaining the status quo with regard to frontiers and incumbent political authority.³¹ However, this should be taken as referring to the perceived ‘do-nothing’ or reluctant disposition of the OAU to intervene in internal conflicts. The more widely held view is that the OAU had a “relatively weak score in its management of various threats to intra-African security”.³²

Thus, when Legum wrote in 1975, the “inability to make a positive contribution during the nightmare years of civil war in Nigeria” was considered as the OAU’s “greatest failure”,³³ the OAU’s intervention and peacekeeping attempt in Chad, it has been claimed, “resulted in abject failure”,³⁴ and on the Eritrean secession crisis, Selassie in 1988 concluded that the OAU “has done nothing, taken no initiative of any significance to bring the tragic war to an end”.³⁵ The conclusion would thus appear valid that the OAU “has never mediated the complete resolution of any civil war in Africa since its formation in 1963”.³⁶

But the OAU has been credited with the role of preventing the outbreak or escalation of conflict in pre-genocide Rwanda, Burundi and Comoros, and therefore hailed as “the most successful of African organizations in the area of conflict prevention”.³⁷ To thus describe the OAU, and this is much clearer in Levitt’s assessment, as “the most active African regional actor in the area of conflict prevention”,³⁸ is only to

ascribe to it relative or comparative success, and, considering the standing of the other regional organizations, this is not saying much.

It has been contended that the real source of the OAU's failure to meaningfully intervene in intra-state conflicts is the Charter itself, specifically the so-called domestic jurisdiction clause. According to the logic of this argument, Article III (2), with the supportive III (3), by prescribing "non-interference in the internal affairs of states", a presumably peculiar principle inserted into the Charter by sovereignty-conscious conservative African leaders, barred the OAU from interfering in the internal affairs of member-states: "The ground was thus set for the OAU to concern itself minimally with what it considers to be the internal affairs of its members";³⁹ and in intra-state conflict: "As a result, internal conflict, which would prove to be the most prevalent and deadly form in Africa ... was entirely outside of the jurisdiction of the OAU".⁴⁰ If the OAU was barred from involvement in the internal affairs of member-states, why then did it concern itself with the Nigerian civil war and the Chadian crisis, both of them internal conflicts? According to Rechner, the OAU's involvement in the Nigerian civil war merely "seemed to demonstrate a wavering from the strict principle of non-interference in internal state affairs that its Charter advocated"; and in the Chadian conflict, OAU involvement was prompted by "Libyan military intervention".⁴¹ Could the OAU have violated its own Charter?

The principle of non-interference in the internal affairs of states is not peculiar to the OAU Charter. It follows logically from the foundational principle of 'sovereign equality of states': if states are equal by virtue of being sovereign, then one should not interfere in the internal affairs of the other. While the Charter of the United Nations also stresses the sovereign equality of its member-states, but contrary to the opinion of Elias that Article 2(7) of the Charter is relevant in appreciating the principle of non-interference by states in the internal affairs of other states,⁴² that Charter does not in fact contain any such principle. Equally incorrect and misleading is Rechner's claim that "while both the U.N. and OAU Charters explicitly call for the organizations to avoid involving themselves in the internal affairs of their members, only the OAU would ultimately adopt a rigid adherence to this doctrine".⁴³

In the first place, the OAU Charter was clear and unambiguous about the entities to be affected by the principle. In the preamble to Article III, it states: "The Member States, in pursuit of the purposes stated in Article II, solemnly affirm and declare their adherence to the following principles", one of which is that of non-interference in the internal affairs of states. This cannot be read to mean protection of the "autonomy of member states

from interference or coercion by other members or by the organization as a whole".⁴⁴ The OAU Charter did not bar the OAU from interfering in the internal affairs of its members.⁴⁵ For the UN Charter, the principle of non-interference of states in the affairs of other states was not given special mention because it was thought to be implied by the doctrine of the sovereign equality of states.

The expression 'sovereign equality' was understood to mean that states are juridically equal and that they enjoy the rights inherent in their full sovereignty. It was further understood that this principle involves respect for the personality of a state and for its territorial integrity and political independence, an interpretation which is strengthened by the fourth principle [that is, member-states refraining from the threat or use of force against the territorial integrity or political independence of any state].⁴⁶

What Article 2(7) of the UN Charter has clearly done is to bar the United Nations and not its member-states from interfering in the internal affairs of its members: "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", and this is without prejudice to enforcement measures by the UN Security Council.

To understand the character of the OAU's response to conflict, whether inter- or intra-state, it is necessary to appreciate the circumstances of its birth. The point is hardly missed in studies of the OAU that in the beginning, there were two antagonistic ideological blocs, Casablanca and Monrovia, the former radical and the latter conservative, each regarding the other "with deep suspicion if not outright hatred".⁴⁷ The usual conclusion is that since the OAU came to house the members of these antagonistic blocs, the Charter of the OAU can only be a compromise document,⁴⁸ and according to Selassie, "much of its weakness is a reflection of this fact".⁴⁹ In spite of this tendency to see the OAU as a child of conflict, the environment of the OAU was not conflictual: African states were not at war and the OAU was not established as an organization to prevent future wars. Therefore, the OAU, unlike the United Nations, was not a security organization whose *raison d'être* was the maintenance of peace and security.

Contrary to the assertion by Amoo, the OAU was not "a collective security body";⁵⁰ neither its Charter nor practices portrayed it as a security organization. If anything, the OAU was "a collegially governed, intergovernmental organization whose essential task has been to encourage, coordinate, and harmonize voluntary cooperation and compliance among its members".⁵¹ It lacked the capacity, structure and institutions of a security organization and was therefore unable to

appropriately respond to conflict. Yet, it could not fold its hands and watch as African states rolled from one conflict into another. So sometimes, it succeeded in preventing or retarding conflicts, at other times, it did not.

Yet, while old conflicts persisted, new ones broke out. Meanwhile, Africa faced a future of marginalization with the end of the Cold War and delionization of the continent. It was to respond to the banality of conflict that the OAU attempted to reform the structure and processes of its response to conflict. The outcome of this exercise was the establishment of the Mechanism for Conflict Prevention, Management and Resolution in June 1993.⁵² The idea was to generate a new institutional framework for responding to conflict, considering the “many prolonged and destructive conflicts in our continent and our limited success at finding lasting solution to them”.⁵³ However, the Mechanism did not break new grounds, whether by way of objectives or institution, or go beyond what the OAU had been doing. The OAU was not transformed into a security organization because of the crafting of the Mechanism. Its primary objective was the “anticipation and prevention of conflicts”, and then “to undertake peace-making and peace-building functions” where conflicts had broken out.⁵⁴ Even the claim that the Mechanism “successfully challenged the principle of non interference, which too often became the last refuge for repressive systems”⁵⁵ and, presumably, would have become more interventionist, is certainly exaggerated. The Mechanism was going to be guided by the principles of the OAU Charter amongst which is that of non-interference in the internal affairs of states.⁵⁶

The African Union Security Framework: From Non-Interference to Interventionism?

When an organization is born, either anew or in a transformed capacity, two circumstances may be pertinent to the definition of its identity: the character of its environment (internal and external), and, in the case of a transformed organization, the experience of the earlier organization. For the African Union (AU), it has not been this simple to determine the motivation for its establishment. The African Union, considered, for example, as “the brainchild of ... Qaddafi, and modeled on the European Union, is the culmination of the OAU’s piecemeal process of political cooperation and economic integration”⁵⁷ already has three motivational sources: Qaddafi, the European Union and the OAU. But it has also been insisted that the AU is neither new nor transformed, but rather a “rechristening” of the OAU, and its goals “no more than a rhetorical refurbishing of the essential aims of the OAU”.⁵⁸

However, the most widely advertised motivation for the establishment of the AU is the inutility and non-responsiveness of the OAU to problems, particularly the persistence and outbreak of conflicts in Africa. The idea that the OAU was an outdated organization that was in need of transformation is not recent. Uwechue summarized this position when he remarked in 1977 that “the OAU should not remain riveted to a Charter drafted fourteen years ago under circumstances profoundly different from those of today”.⁵⁹ And it was not only in relation to the “current context” that it “performs poorly or disastrously”, but was also “poorly adjusted to the foreseeable future context”.⁶⁰ But it was in the area of conflict resolution, “its limited capacity to deal effectively with the problems of conflicts and political instability, bad governance and the rule of law”,⁶¹ that the OAU’s failure was thought to be most visible and telling.

The tradition of analysis of the OAU’s response to conflict, or of the explanation for the OAU’s failure to resolve conflicts, has been to focus on the perceived negative implications of the foundational principle of non-interference in the internal affairs of member-states. Thus, while the OAU’s Mechanism was thought to have “built up a solid experience of urgent intercessions in situations of concern” that the AU could fall back on,⁶² assuring significant continuity between the security architectures and processes of the two organizations,⁶³ the domestic jurisdiction clause in the Charter “constrained efforts and the intervention of the organization” not just in internal conflicts, but more importantly “when some African leaders embarked on repressive measures against their compatriots and indulged in arbitrary violation of human rights of these people”.⁶⁴

It is therefore understandable why there was much unqualified optimism about the capacity of the AU to respond since it is believed that the Constitutive Act has finally overridden the domestic jurisdiction clause. The analysis of this transformation has been couched in climactic and revolutionary terms. Where the OAU Charter, it has been pointed out, insists on the sovereign equality of states, the Constitutive Act on interdependence among states; and where the former declares non-interference in the internal affairs of states, the latter has “explicitly been granted authority to intervene in internal affairs of its members under certain circumstances”.⁶⁵ This transformation has been adjudged “fundamental and qualitative”.⁶⁶

The underlying conception, structure and process of the African Union reflects a strategic shift from a monocentric to a polycentric notion of state sovereignty, from emphasis on the indivisibility of state sovereignty, to an acceptance of a limited and carefully guided derogation from that sovereignty within a larger supra-national arrangement.⁶⁷

The intervention expected from the AU will even “address the vast injustices being perpetrated by some of the member nations against their own citizens”.⁶⁸ There is no better way to cap this narrative of the AU’s potential success than to recall Tiekou’s rather finalizing statement: “Unlike the OAU, the AU has real powers”.⁶⁹ How great is the difference, from the perspective of operating principles, between the OAU and the AU?

It has been demonstrated that the domestic jurisdiction clause of the OAU Charter was directed at member-states, as repeated in Article 4(g) of the Constitutive Act, and not the OAU. Even if governments made the claim of non-interference against the OAU, it does not mean that the Charter was supportive of such a claim. The OAU did intervene in some domestic conflicts, as in Nigeria and Chad. Like the OAU Charter, the AU Act also adopted the principle of the sovereign equality of states, the addition of interdependence among states is cosmetic; sovereign equality does not in any way imply a denial of interdependence. Article 4(b) on the principle of respect of borders existing on independence, repeats the addition made to the original principles in Cairo during the First Ordinary Session of the Assembly in July 1964.⁷⁰ The two differentiating principles are 4(h), empowering the AU to intervene in a state, on the authority of the Assembly, in cases of genocide and crimes against humanity, expanded in the amendment to Article 4 to cover serious threats to legitimate order; and 4(j), making it possible for states to request intervention to restore peace.

The point has been made that since intervention is consequent upon a decision of the Assembly of Heads of State and Government, there is the “risk of inaction”.⁷¹ More fundamental, however, is the fact that the Constitutive Act technically recognizes a more limited range of internal conflicts: genocide, crimes against humanity and serious threats to the legitimate order. Legitimate order here implies a properly constituted democratic political order and precludes authoritarian systems, challenge to which may not attract the attention of the AU. Although the OAU Charter did not explicitly state the right to intervene in the internal affairs of states, neither did it disavow that right. This means that the OAU did not limit itself to intervention in any particular species of conflicts, and it did intervene, even though not too successfully, in all manner of conflicts. Even though 4(j) is potentially anti-people, since it also stands against popular insurgencies, there is nothing in the OAU Charter that prevented a government from asking for assistance to restore domestic peace and order.

There would not appear to be a fundamental difference, from the perspective of operating principles, between the OAU and the AU. Considering the apparent preoccupation with conflicts and condemnation

of the response of the OAU, African leaders had the opportunity of redressing the situation by properly structuring the objectives, principles, and institutions of the AU to deal with the scourge of conflicts. The originating environment of the OAU was not conflict-ridden, explaining why the OAU was more a forum for the exchange of pleasantries by Africa's leaders. But the AU had a different originating environment. Yet, its response fell far short of what the circumstances required. Any appropriate response, that is, if the experience of the OAU was a motivating factor for its emergence, would have been the structuring of the AU as a security organization, its main objective being the maintenance of peace and security in Africa. Instead, it brought under its wings matters that ought to have been left to national governments, and ended up being far less realistic than the OAU. The AU, amongst other principles, also hopes to promote self-reliance, gender equality and social justice. By spreading itself very thin, the AU set the stage for another narrative of failure.

The African Union and the Response to Conflict: Whither Interventionism?

Even though the African Union is not a security organization, like the League of Nations or the United Nations, and even though the Constitutive Act in the statement of objectives did not give prominence to the problems of conflict and conflict resolution, it is curiously believed that a significant motivation for the establishment of the AU is the need to more adequately respond to Africa's conflicts.⁷² The OAU's inability to prevent and stop Africa's civil wars, avert the genocide in Rwanda and stop the state in Somalia from collapsing, it has been claimed, made Africa's leaders to decide to "dissolve the OAU and reconstitute it as a new organization that will address the problems of the continent".⁷³ It is no wonder then that Rechner asserts that the "most drastic differences between the Constitutive Act and the OAU Charter are with regard to intervention".⁷⁴ How then has the AU fared at intervening in the internal conflicts of African states?

A critical stage in the ten-year Burundian crisis was the ceasefire agreement reached between the government and rebel groups at Pretoria on 27 January 2003, and after a problematic implementation, reaffirmed in March.⁷⁵ To ensure that the ceasefire held, the African Union Mission in Burundi (AMIB) was mandated in early April to supervise, observe, monitor and verify its implementation,⁷⁶ as a prelude to the deployment of a United Nations Peacekeeping Mission (the UNMIB was finally deployed in 2004). AMIB has been adjudged the AU's "most successful peace

support operation”,⁷⁷ presumably for facilitating the deployment of UNMIB forces. It has been remarked that, like the OAU before it, the African Union effort was hindered by “lack of funding and a consequent breakdown of logistics”.⁷⁸

The Darfur crisis that broke out in 2003 was greatly influenced by the course of the north-south impasse, and the negotiations between the Sudanese government and the Sudan People’s Liberation Movement/Army since it held out the possibility of also forcing change in the region’s social and political order.⁷⁹ It was again a government-versus-rebels (Sudan Liberation Movement/Army and the Justice and Equality Movement) conflict that generated a substantial humanitarian crisis.⁸⁰ In July 2004, the African Union deployed an observer mission, the AU Mission in the Sudan (AMIS), and a protection force, primarily to protect the civilian population. It has been noted that AMIS succeeded in protecting AU military observers, but not the civilian population in Darfur. AMIS personnel were ill-trained and grossly under-equipped.⁸¹ Above all, even though the conditions prevailing in Darfur qualified for the activation of the intervention clause, “the AU showed no inclination to actually invoke this article”,⁸² just as it did not in the Democratic Republic of Congo, Zimbabwe and Somalia.⁸³ And in the Mwai Kibaki-Raila Odinga face-off in Kenya, the AU’s attempt to broker an agreement in early 2008 failed because Odinga’s movement was unprepared to negotiate,⁸⁴ while the Laurent Gbagbo-Alassane Ouattara problem in Cote d’Ivoire from December 2010 was sorted out not by the AU but by the assault on Gbagbo by UN and French forces. It would appear that the AU can only intervene if it is invited.⁸⁵ To what end then is the purported right of the AU to intervene in the internal affairs of member states?

Conclusion

What is the relationship between the domestic jurisdiction clause in the OAU Charter and arguably its absence in the AU Act and their capacity to respond to the internal conflicts of their member-states? The pattern of response to this question has been unnecessarily legalistic, even though, as the foregoing has shown, the interpretation of the operational principle has been faulty. There is a tendency to confuse the authority to intervene with the capacity to intervene. The OAU did not refuse to intervene or fail at intervention in the internal affairs of its member-states because of the perceived constraint of the domestic jurisdiction clause; neither has the AU succeeded in intervening in the internal affairs of its member-states just because of the belief that the ban on intervention has been lifted.

It has long been an intellectual habit to consider the OAU and its Charter as constituting a compromise between pro-sovereignty forces (represented by the Monrovia bloc) and the proponents of union government (the Casablanca bloc). This, the argument usually insists, determined the identity of the OAU. But the AU too has been conceived of as a compromise between “the conflicting pulls of sovereignty and supranationalism”.⁸⁶ It is very unlikely that the proponents of African Union interventionism will agree with the notion of a shared identity between the OAU and AU. But how could they be different when the character of the component states has not changed. Hence the conclusion that like the OAU, “the AU is to a large extent a reflection of the nature of its members – poorly governed, weak and heavily dependent on external support to survive”.⁸⁷ The AU too has become afflicted by these same maladies. These are the sources of the AU’s incapacity, irrespective of the prescription of its Act.

There is however another perspective on the question of shared identity. For this, the AU is not like the OAU; it is neither its continuation nor a transformation. The OAU had a definite identity; its Charter was a realist document. The AU Act, on the other hand, is chimerical; it is a curious mix of realist and idealist elements. The AU aspires to the status of a quasi-security organization, an economic organization, a social and even an ethical organization. In spite of the claim of current relevance to the African situation, the AU does not appear to be in tune with African problems and realities. It is not therefore surprising that regional organizations in Africa and non-African international organizations are stealing the initiative as far as involvement in conflicts is concerned “with the AU playing a more limited role, or in some cases no role at all”.⁸⁸

Notes

¹ Rasheed Draman, “Preventing Conflicts in Africa: Reality, Empty Dream or Just Difficult?”, *Civil Wars*, 4, no. 2 (2001): 21.

² A. Leroy Bennet and James K. Oliver, *International Organizations: Principles and Issues* (Upper Saddle River, NJ: Pearson Education, 2002), 38.

³ Ulf Himmelstrand, “Perspectives, Controversies and Dilemmas in the Study of African Development”, in *African Perspectives on Development: Controversies, Dilemmas and Openings*, edited by U. Himmelstrand, K. Kinyanjui and E. Mburugu (London: James Currey, 1994), 17.

⁴ *Ibid.*, 21-22.

⁵ *Ibid.*, 19-20.

⁶ See S. Eisenstadt, *Modernization: Protest and Change* (Englewood Cliffs, NJ: Prentice-Hall, 1966); and Richard A. Higgott, *Political Development Theory: The Contemporary Debate* (London: Routledge, 1989).

7. Himmelstrand, "Perspectives, Controversies and Dilemmas in the Study of African Development", 19.

8. C. Wright Mills, *The Sociological Imagination* (New York: Oxford University Press, 1959), 155.

9. African countries are always in the process of dying and being reborn: redemocratization and remilitarization; reliberalization and recentralization, restatization and state reprivatization. Niccolo Machiavelli may have been addressing the African situation when he wrote that since the study of the past is either neglected or understood, or "not applied in practice by those who rule, the consequence is that similar troubles occur at all times": *The Discourses*, edited by B. Crick (Harmondsworth: Penguin Books, 1970), 1.39.

10. Jon Woronoff, Editor's Foreword in Guy Arnold, *Historical Dictionary of Civil Wars in Africa*, 2nd Edition (Lanham, MD: The Scarecrow Press, 2008), vii.

11. This cyclical nature is not vitiated even if the anti-colonial and intra-nationalist wars are factored out. There have been no fewer than twelve full-blown civil wars in post-colonial Africa and numerous less intense conflicts. See Karl DeRouen, Jr. and Uk Heo, ed., *Civil Wars of the World: Major Conflicts since World War I*, vols. 1 and 2 (Santa Barbara, CA: ABC-Clio, 2007).

12. Jeffrey Herbst, "The Potential for Conflict in Africa", *Africa Insight*, 22, no. 2 (1992): 108.

13. Mike Denning, "A Prayer for Marie: Creating an Effective African Standby Force", *Parameters*, 34, no. 4 (2004-05): 103.

14. C. Nna-Emeka Okereke, "African Union (AU) and the Challenge of Conflict Resolution in Africa: Reflections on Cote d'Ivoire", *Nigerian Journal of International Affairs*, 33, no. 1 (2007): 83.

15. James Cockayne and David Malone, "United Nations Peace Operation Then and Now", in *International Peacekeeping: The Yearbook of International Peace Operations*, Vol. 9, edited by H. Langholtz, B. Kondoch and A. Wells (Leiden: Martinus Nijhoff, 2005), 16. Apparently in a bid to draw attention to the European Union experience of differential accession to full membership, the *New Nigerian* (July 23, 2002) Editorial extends the logic of the external motivation of change in Africa: "After all, the AU is modeled after the EU and it took the Europeans over 40 years to get to where they are today". But it has also been argued that the impetus for the emergence of the OAU, being racial African-American pan-Africanism (rather than continental pan-Africanism), is located outside Africa. See a discussion of this question in Ehimika A. Ifidon, "Did Pan-Africanism beget Nationalism? Race and Territory in the Discourse on Pan-Africanism", *Lagos Historical Review*, 8 (2008): 113-131.

16. Pierre Buyoya, "Toward a Stronger African Union", *Brown Journal of World Affairs*, 12, no. 2 (2006): 171.

17. See J. P. Dumbabin, "The League of Nations' Place in the International System". *History*, 78, no. 254 (1993): 421-442; and F. H. Hinsely, *Power and the Pursuit of Peace: Theory and Practice in the History of Relations between States* (Cambridge: Cambridge University Press, 1963), 309-322.

18. Michael Smith, "The League of Nations and International Politics", *British Journal of International Studies*, 2, no. 3 (1976): 319.

- ¹⁹ Gemuh E. Akuchu, "Peaceful Settlement of Disputes: Unsolved Problem for the OAU (A Case Study of the Nigeria-Biafra Conflict)", *Africa Today*, 24, no. 4 (1977): 39.
- ²⁰ Amare Tekle, "The Organization of African Unity at Twenty Five Years: Retrospect and Prospect", *Africa Today*, 35(3/4), 1988, 13.
- ²¹ Raph Uwechue, "The OAU – Time for a Change", in Zdenek Cervenka, *The Unfinished Quest for Unity: Africa and the OAU* (London: Africa Books, 1977), xi.
- ²² See details of the dispute in Patricia B. Wild, "The Organization of African Unity and the Algerian-Moroccan Border Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of Disputes among African Peoples", *International Organization*, 20, no. 1 (1966): 18-36.
- ²³ See, for example, Jonathan D. Rechmer, "From the OAU to AU: A Normative Shift with Implications for Peacekeeping and Conflict Management, or just a Name Change?", *Vanderbilt Journal of Transnational Law*, 39, no. 2 (2006): 549.
- ²⁴ Rajen Harshe, "Reflections on Organisation of African Unity", *Economic and Political Weekly*, 23, no. 8 (1988): 375.
- ²⁵ Zdenek Cervenka, *The Unfinished Quest for Unity*, 64.
- ²⁶ *Ibid.*, 67-68.
- ²⁷ T. A. Imobighe, *The OAU, African Defence and Security* (Benin City: Adena, 1989), 40.
- ²⁸ "African States Charter of the Organisation or African Unity", *The American Journal of International Law*, 58, no. 3 (1964).
- ²⁹ T. O. Elias, "The Charter of the Organization of African Unity", *The American Journal of International Law*, 59, no. 2 (1965): 249.
- ³⁰ Colin Legum, "The Organisation of African Unity – Success or Failure", *International Affairs*, 51, no. 2 (1975): 212.
- ³¹ Harshe, "Reflections on Organisation of African Unity", 375.
- ³² Imobighe, *The OAU, African Defence and Security*, 40.
- ³³ Legum, "Organisation of African Unity – Success or Failure", 213.
- ³⁴ G. J. Naldi, "Peace-Keeping attempts by the Organisation of African Unity", *The International and Comparative Law Quarterly*, 34, no. 3 (1985): 595. For the circumstances under which the peacekeeping force operated in Chad, see Thomas A. Imobighe, "The Analysis of Political Issues raised by OAU peacekeeping in Chad", in *Peacekeeping as a Security Strategy in Africa: Chad and Liberia as Case Studies*, Vol. 1, edited by M. A. Vogt and L. S. Aminu (Enugu: Fourth Dimension, 1996), 241-259; and G. O. Ejiga, "Analysis of the Operational Aspects of the OAU Peace-Keeping in Chad", in *Peacekeeping as a Security Strategy in Africa: Chad and Liberia as Case Studies*, Vol. 2, edited by M. A. Vogt and L. S. Aminu (Enugu: Fourth Dimension, 1996), 367-386.
- ³⁵ Bereket H. Selassie, "The OAU and Regional Conflicts: Focus on the Eritrean War", *Africa Today*, 35, no. 3/4 (1988): 65; see also Leenco Lata, "The Ethiopia-Eritrea War", in *Dealing with Conflict in Africa: The United Nations and Regional Organizations*, edited by Jane Boulden (New York: Palgrave Macmillan, 2003), 167-172.

- ³⁶ Bukar Bukarambe, "Regional Order and Local Disorder: The OAU and Civil Wars in Africa", *Nigerian Journal of International Affairs*, 14, no. 1 (1988): 95.
- ³⁷ Rechner, "From the OAU to AU", 553.
- ³⁸ Jeremy Levitt, "Conflict Prevention, Management, and Resolution: Africa – Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD", *Journal of Conflict Prevention in Africa*, 11, no. 1 (2001): 55.
- ³⁹ U. O. Umozurike, "The Domestic Jurisdiction Clause in the OAU Charter", *Africa Affairs*, 78, no. 311 (1979): 198.
- ⁴⁰ Rechner, "From the OAU to AU", 544.
- ⁴¹ *Ibid.*, 550.
- ⁴² Elias, "Charter of the Organization of African Unity", 248.
- ⁴³ Rechner, "From the OAU to AU", 548.
- ⁴⁴ William Foltz, "The Organization of African Unity and the Resolution of Africa's Conflicts", in *Conflict Resolution in Africa*, edited by Francis M. Deng and I. William Zartman (Washington, DC: The Brookings Institution, 1991), 349.
- ⁴⁵ Akuchu also so contends: "There is no Charter provision that stipulates that the principle applies to the OAU itself. In other words, there is nothing in the OAU Charter that clearly forbids it from intervening in African conflicts": "Peaceful Settlement of Disputes", 56.
- ⁴⁶ *Charter of the United Nations: Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State* (Washington, DC: US Government Printing Office, 1945), 39-40.
- ⁴⁷ Imobighe, *The OAU, African Defence and Security*, 29.
- ⁴⁸ This conclusion is not sustainable. See Ehimika A. Ifidon, "Unity without Unification: The Development of Nigeria's 'Inside-Out' Approach to African Political Integration, 1937-1963", *International Social Science Review*, 83, nos. 1&2 (2007): 40; and Christopher Clapham, *Africa and the International System* (Cambridge: Cambridge University Press, 1996), 110-111.
- ⁴⁹ Selassie, "OAU and Regional Conflicts", 62.
- ⁵⁰ Samuel G. Amoo, *The OAU and African Conflicts: Past Successes, Present Paralysis and Future Perspectives*, Working Paper 5 (Fairfax, VA: George Mason University, 1992), 9.
- ⁵¹ B. David Meyers, "Intraregional Conflict Management by the Organization of African Unity", *International Organization*, 28, no. 3 (1974): 350.
- ⁵² See details of the circumstances of its establishment and assessment of its provisions and activities in Cedric de Coning and Hussein Solomon, "Enhancing the OAU Mechanism for Conflict Prevention, Management and Resolution", *Politeia*, 19, no. 1 (2000): 13-30; and Monde Muyangwa and Margaret Vogt, *An Assessment of the OAU Mechanism for Conflict Prevention, Management and Resolution, 1993-2000* (New York: International Peace Academy, 2000).
- ⁵³ *Declaration of the Assembly by Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution*, AHG/DECL. 3 (XXIX), par.11.
- ⁵⁴ *Ibid.*, par.15.

- ^{55.} de Coning and Solomon, "Enhancing the OAU Mechanism for Conflict Prevention", 16.
- ^{56.} *Declaration of the Assembly of Heads of State and Government*, par.14.
- ^{57.} Konstantinos D. Magliveras and Gino J. Naldi, "The African Union: A New Dawn for Africa?", *The International and Comparative Law Quarterly*, 51, no. 2 (2002): 415.
- ^{58.} *The Guardian* (Lagos), Editorial, May 18, 2001.
- ^{59.} Uwechue, "OAU - Time for a Change", xii.
- ^{60.} Benoit Ndi-Zambo, "African Unity: Looking Back, Looking Forward, and a Recipe for Failure", in *A United States for Africa?*, edited by Eddy Maloka (Pretoria: Africa Institute of South Africa, 2001), 36.
- ^{61.} Lawrence, O. C. Agubuzu, *From the OAU to AU: The Challenges of African Unity and Development in the Twenty-First Century*, NIIA Lecture Series, No. 83 (Lagos: NIIA, 2004), 26.
- ^{62.} B. G. Ramcharan, "The Continental Early Warning System of the African Union", in *Conflict Prevention in Practice: Essays in Honour of James Sutterlin*, edited by B. Ramcharan (Leiden: Martinus Nijhoff, 2005), 71.
- ^{63.} The OAU's Mechanism formed the basis of the AU's Peace and Security Council. See *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, ASS/AU/4(1).
- ^{64.} Bolaji Omitola and Peace Jiboku, "Regional Integration: Challenges and Prospects of African Union", *Nigerian Journal of International Affairs*, 35, no. 2 (2009): 59.
- ^{65.} Rechner, "From the OAU to AU", 562-563.
- ^{66.} Omitola and Jiboku, "Challenges and Prospects of African Union", 71.
- ^{67.} Agubuzu, *From the OAU to AU*, 17.
- ^{68.} Robert L. Feldman, "Problems Plaguing the African Union Peacekeeping Forces", *Defense and Security Analysis*, 24, no. 3 (2008): 267-268.
- ^{69.} Thomas K. Tieku, "Explaining the Clash and Accommodation of Interests of Major Actors in the Creation of the African Union", *African Affairs*, 103, no. 411 (2004): 250.
- ^{70.} "Border Disputes among African States", AHG/Res. 16(1), Organization of African Unity, *Resolutions adopted by the First Ordinary Session of the Assembly of Heads of State and Government held in Cairo, UAR, from 17 to 21 July 1964*.
- ^{71.} Corinne A. A. Packer and Donald Rukare, "The New African Union and its Constitutive Act", *The American Journal of International Law*, 96, no. 2 (2002): 373.
- ^{72.} This would not appear to be the case. See 'Sirte Declaration', EAHG/Decl. (iv), Rev.1, Fourth Extraordinary Session of the Assembly of Heads of State and Government, Sirte, Libya, 8-9 September 1999.
- ^{73.} Paul G. Adogamhe, "Pan-Africanism Revisited: Vision and Reality of African Unity and Development", *African Review of Integration*, 2, no. 2 (2008): 13-14.
- ^{74.} Rechner, "From OAU to AU", 563.
- ^{75.} See details of the Conflict and negotiation of the ceasefire agreement in Kristina A. Bentley and Roger Southall, *An African Peace Process: Mandela, South Africa and Burundi* (Cape Town: HSRC Press, 2005).

- ⁷⁶ Henri Boshoff and Dara Francis, "The AU Mission in Burundi: Technical and Operational Dimensions", *African Security Review*, 12, no. 3 (2003): 41. See details of the AU's involvement in the conflict in Burundi in Kristiana Powell, *The African Union's Emerging Peace and Security Regime: Opportunities and Challenges for delivering on the Responsibility to Protect*, ISS Monograph Series, No. 119, May 2005, 36-41.
- ⁷⁷ Wafula Okumu, "The African Union: Pitfalls and Prospects for Uniting Africa", *Journal of International Affairs*, 62, no. 2 (2009): 97.
- ⁷⁸ Rechner, "From the OAU to AU", 568.
- ⁷⁹ Paul D. Williams, "Military Responses to Mass Killing: The African Union Mission in Sudan". *International Peacekeeping*, 13, no. 2 (2006): 174-175.
- ⁸⁰ Guy Arnold, *Historical Dictionary of Civil Wars in Africa*, 138-140.
- ⁸¹ Williams, "African Union Mission in Sudan", 178-179.
- ⁸² *Ibid.*, 180.
- ⁸³ Okumu, "The African Union", 102.
- ⁸⁴ Kieran E. Uchehara, "Regional Organizations and Conflict Management in Africa: The Case of the African Union and Conflict Management in Kenya", *Gazi Journal of Academic View*, 1, no. 2 (2008): 31-32.
- ⁸⁵ In spite of the absoluteness claimed for the domestic jurisdiction clause of the OAU Charter, it has also been claimed that "member states could only intervene on the invitation of a member state": Sharkdam Wapmuk, "In search of Greater Unity: African States and the search for an African Union Government", *Journal of Alternative Perspectives in the Social Sciences*, 1, no. 3 (2009): 653. There is, of course, no support for this claim in the OAU Charter.
- ⁸⁶ Agubuzu, *From the OAU to AU*, 33.
- ⁸⁷ Okumu, "The African Union", 97.
- ⁸⁸ Jane Boulden, "Conclusions", in *Dealing with Conflict in Africa: The United Nations and Regional Organizations*, edited by Jane Boulden (New York: Palgrave Macmillan, 2003), 310.