

**IMPACT OF LEGAL FRAMEWORK ON INTEGRATION: A CASE
STUDY OF THE ORGANIZATION OF AFRICAN UNITY (OAU)
AND THE AFRICAN UNION (AU)**

**BY DANIEL OGEMBO OGOLA
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**UNIVERSITY OF NAIROBI
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SIGN  _____
PROF. J. OLEWE NYUNYA

DATE 5.10.2006

DEDICATION

It is with great pleasure and honour that I dedicate this humble work to my late mother, Tabitha Atieno Ogola, who was my declared teacher, guide and mentor through childhood youth and to date. Mama, your foresight, firmness and integrity have indeed been my greatest inspiration in life. Though physically gone, you remain my unrivalled model and example. I pray that God may help me lead and propagate all those ideals that you held and cherished so dearly.

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ABSTRACT

The main purpose of this study was to examine the effects of legal framework of the OAU on intergration of African states and people. Secondly, the project also set out to determine whether with the enactment of the constitutive Act of the African Union with its new legal framework, African states and peoples would now achieve integration.

By far, the major inputs to this study were secondary data in the form of books, magazines, journals and commentaries. Whereas primary data in the form of interviews would have been most helpful, it was not possible to obtain any such interviews with the relevant persons, particularly those in Government who kept ignoring appointments made and were also outside the country on official duties for long periods of time. It was noted that the country has a new Government which is still fluid and unstable owing to the many changes that are taking place in national institutions on each day. Even questionnaires supplied largely remained unattended to.

However, the study managed to shed light on and prove that weak and or inadequate legal structures in the OAU Charter negatively contributed to the low level of integration in Africa. It was also possible to predict that due to the development of a new legal framework under the African Union, Africa is likely to experience closer co-operation and integration.

This being among the pioneer studies on the African Union (owing to the relative newness of the Union), it is hoped that the criticisms leveled shall be considered by African people, leaders and policy makers in order to accelerate the process of integration so that Africa may firmly hold its position among the respected people of the world.

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LIST OF ABBREVIATIONS

<u>ABB</u>	<u>DEFINITION</u>
AU	African Union
OAU	Organization of African Unity
EAC	East African Community
ECOWAS	Economic Community of West African States
EU	European Union
RDA	Rassemblement Democratique Africaine
PRA	Parti du Regroupment Africaine
UGTAN	Union Gerale des Travailleurs d' Afrique Noire
NCBWA	National Congress of British West Africa
PAFMECA	Pan African Movement of East and Central Africa
EAF	East African Federation
CIAS	Conference of Independent African States
UNO	United Nations Organization
NAM	Non-Alligned Movement
USA	United States of America
USSR	Union of Soviet Socialist Republics
COMESA	Common Market for East and Southern African States
SADC	Southern African Development Co-operation
GNP	Gross National Product
GDP	Gross Domestic Product
UDHR	Universal Declaration of Human Rights
UNITA	National Union for the Total Independence of Angola
MPLA	Peoples Movement for the Liberation of Angola
ILO	International Labour Organization
UNCTAD	United Nations Conference on Trade and Development
UNIDO	United Nations Industrial Development Organization
UNSC	United Nations Security Council
UNGA	United Nations General Assembly
NAM	Non-Alligned Movement
FAO	Food and Agricultural Organization
IMF	International Monetary Fund
WB	World Bank
SAP	Structural Adjustment Programme
ECA	Economic Commission for Africa
NEPAD	New Partnership for Africans Development
KANU	Kenya African National Union
AACB	Association of African Central Banks
AGOA	African Growth and Opportunities Act

PROJECT PROPOSAL

**TOPIC: IMPACT OF LEGAL FRAMEWORK ON INTEGRATION:
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1.0 INTRODUCTION

The Organization of African Unity as a regional institution had its origins in the activities of Henry Sylvester Williams, E.N. Burghardt Du Bois, William Marcus Garvey and other leaders of African descent domiciled in the West Indies, and the United States of America. Sylvester Williams, a West Indian Lawyer was the first to use the term Pan Africanism, and also the first to organize a Pan-African Congress. This was in the 1900 in London when he brought together a number of Africans and men of African descent then living in Europe to discuss the question of colonialism and foreign domination of black peoples, racial prejudice and treatment of African in South Africa, the future of Africa and the International standing of the only 3 black states existing in the world then, namely, Haiti, Liberia and Ethiopia.

Du Bois, one of the participants introduced the question of independence into the discussions and to get the congress to call on Britain and other colonial powers to give the right of responsible government to the black colonies of Africa and West Indies as soon as possible.

After the death of Sylvester Williams soon after the Congress, Du Bois took over as de facto African leader. He organized a series of 5 Pan African Congresses and became known as "*Father of Pan-Africanism*"². Being a Journalist, he established and ran a chain of newspapers in which he persistently called for the granting on human rights to black people of America, West Indies and Africa. He was responsible for the formulation of the Pioneer African Caucus known as the National Association for the Advancement of Coloured People (NASSCP) in the United States of America.

He organized the 1st Pan-African Congress in 1919 in Paris at a time when world leaders including President Woodrow Wilson of the United States of America, Prime Minister David Lloyd George of Britain and Prime Minister Georges Clemenceau of France were meeting to map out a new world order after the end of World War I. Over 50 delegates, 12 from Africa, attended and

² Ibid at Pg. 4.

in its final resolutions, they called on the allied powers to take steps to end foreign exploitation of the African Continent, abolish slavery and discrimination and urge the colonial powers to actively involve Africans in governments of the colonies. They also demanded that German territories of Togo land, Cameroon, South West Africa and Tanganyika be placed under international supervision.

He subsequently organized similar congresses in London, Brussels and Paris in 1921, London and Lisbon in 1923 and New York in 1927 after the colonial government in Tunisia had vetoed against its being held in Tunis.

Meanwhile Marcus Garvey, another journalist, from Jamaica had founded the Universal Negro Improvement Association (UNIA) and had initiated the Back to Africa Campaign, meant to convince the African Diaspora to return and settle in Africa, their mother continent. He organized huge black conventions in New York between 1920 and 1925 during which he called on black people to free themselves from white domination. His activities ended in 1927 when he was deported to his native Jamaica.

The works of Marcus Garvey and Du Bois had great influence on many African students who had gone to Europe and America to study and many of them would later come back to take up leadership roles in their native countries e.g. Dr. James Kwegyir Aggrey, Dr. Nnamdi Agikiwe, Dr. Mbonu Ojike, Dr. Hastings Kamuzu Banda, Peter Mbiyu Koinange and George Padmore, who though from Trinidad and Tobago had to follow Dr. Kwame Nkrumah to Ghana to try and implement the Pan Africanist ideas.

The 5th Congress that Du Bois organized was in Manchester, England in October, 1945 and he did this with active collaboration of Kwame Nkrumah of Ghana, Wallace Johnson of Sierra Leone, S.L. Akintola, Nnamdi Azikiwe and Magnus Williams from Nigeria, Jomo Kenyatta from Kenya, Peter Abrahams from South Africa and George Padmore from Trinidad. The congress declared that all African peoples should be freed forthwith from all forms of inhibiting legislation and influences and be re-united with one another.

Many organizations sprung up across Africa, particularly West Africa, with the foremost ones being the Rassemblement Democratique Africain (RDA) for the French West Africa under Felix Houphouet Boigny, Parti du Regroupement Africain (PRA) under Leopold Sedar Senghor, Union Generale des

Travailleurs d'Afrique Noire (UGTAN) under Ahmed Sekou Toure and the National Congress of British West Africa (NCBWA) for the British colonies.

The sentiments for African Unity soon expanded to the desire for a wider, all embracing Continental African Unity. On May 1, 1959, Nkrumah and Sekou Toure signed a joint declaration in Conakry, Guinea and expressed intentions to broaden the basis of their union to make it the nucleus of a wider union of independent states of Africa.

At the same time, in East and Central Africa, the Pan African Movement of East and Central Africa (PAFMECA) was formed led by Jomo Kenyatta, Tom Mboya, Julius Nyerere and Milton Obote. The aim was to form an East African Federation after independence. In 1962, other countries like Ethiopia, Zaire, Rwanda, Burundi, Mozambique, Mauritius, Botswana, Lesotho, Swaziland and Namibia joined the union.

A series of conferences were organized throughout Africa as the urge for African Unity grew. The 1st was held in Accra, Ghana in April, 1958 under the auspices of a body called the Conference of Independent African States (CIAS). The 2nd was held in Addis Ababa, Ethiopia in June 1960 and many

African countries were represented amongst which were Cameroon, Nigeria, Somalia, Sudan and the Algerian provisional government in exile. It is here at the Addis Ababa conference that a sharp difference emerged between the opinions of the countries led by Ghana and Guinea which wanted to establish African Unity on the basis of a firm political integration and those led by Nigeria and Liberia which wanted only a common platform on which independent African States could co-ordinate their efforts for the achievement of their common objectives. Other areas of divergence of the leaders included the issue of Algerian War of Independence, the division over the policy to be adopted on the issues of internal conflicts in the Congo, and there was also the Kwame Nkrumah question where many West African countries accused the Ghanaian leader of interfering with their internal affairs and of general destabilization of the whole West African region.

Merely 2 months after the Addis Ababa Conference, all French Colonies in West Africa and equatorial Africa gained independence and Felix Houphouet Boigny, who had become President of Ivory Coast invited the leaders to a conference in Abidjan in October 1960 to discuss how the newly independent countries could mediate in the Algerian War of Independence. As a follow-up, a conference was held in Brazzaville, Congo in December, 1960.

On 19th December, 1960, the 12 countries signed a declaration in Brazaville (Congo) and thereby formed the first group. They became known as the Brazaville Group comprising Cameroon, Central African Republic, Congo – Brazaville, Ivory Coast, Dahomey, Gabon, Mauritania, Upper Volta, Madagascar, Niger, Senegal and Chad. They were known to represent the moderates who preferred to retain and sustain close relationships with their former colonial master, France.

Exactly 5 days after the end of the Brazaville Conference on 24th December, 1960, President Kwame Nkrumah of Ghana, Sekou Toure of Guinea and Modibo Keita of Mali met in Conakry and issued a declaration establishing a union of 3 states to promote a common economic and monetary policy. They impliedly criticized the Brazaville Group by deploring any groupings based on the languages of the colonial powers as that would work against African Unity and strengthen what they termed neo-colonialism. They called for the Heads of State to follow a higher and more healthy concept of unity.

Incensed by the position taken by the Brazaville Group on Mauritania's independence and admission to the United Nations, King Sidi Mohamed of Morocco invited the Presidents of Ghana, Guinea and Mali to a conference in

Casablanca in January 1961. He also invited President Nasser of Egypt, King Mohamed Idri I of Libya and Prime Minister of Ferhat Abbas of the Algerian Provisional Government. This group together became known as the Casablanca Group. They disagreed with the Brazaville Group on practically every issue and declared to support by all means the African people and the Algerian Provisional Government and also expressed their support for Prime Minister Patrice Lumumba in the Congo – Kinshasa crisis.

The Casablanca Conference also took a radical position on the general liberation of Africa and African Unity. It also committed itself to giving material and financial support to all liberation movements throughout Africa. This was a more radical group and because of this, they were viewed with a lot of suspicion by the Brazaville Group.

Africa was now clearly divided and it became necessary for the leaders to take steps to bring the 2 groups together. In May 1961, President Tubman of Liberia invited all African leaders to a conference in Monrovia. 5 key members of the Casablanca Group including Guinea, Mali and Ghana did not attend, whereas the whole Brazaville Group attended. 27 states were represented and the conference subsequently became known as the Monrovia

Group, and until then, it was the largest gathering of African States with new members being Nigeria, Somalia, Sierra Leone, Togo, Ethiopia, Libya, Tunisia and Liberia. Since it was dominated in numbers by the Brazaville Group, it made the same resolutions as had been made at the Brazaville Conference.

A further conference to be held in Lagos, Nigeria in January 1963 failed to resolve the differences as only 20 states attended and the Casablanca Group largely boycotted it, citing the case of Algeria, which had not been invited. Emperor Haile Selassie of Ethiopia therefore had to wait until Algeria had gained independence on November 2, 1961 to call for a conference in Addis Ababa. The conference held in May 1963 was attended by representatives of all independent African States except Morocco who boycotted because Mauritania had been invited, and Togo who were turned away as a protest to a coup in which President Sylvanus Olympio was assassinated. It is at the conference attended by 30 out of 32 independent states that the Organization of African Unity (OAU) was founded. The founding members were, Algeria, Burundi, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Zaire, Benin, Ethiopia, Egypt, Gabon, Ghana, Ivory Coast, Liberia, Libya, Malagasy, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone,

Somalia, Sudan, Tanzania, Tunisia and Uganda. Morocco and Togo, however, also signed the charter as founding members on 25th May 1963.

From its inception, the Organization of African Unity was the symbol of unity of African people. The summit meetings of the Heads of State and Government have consistently been held annually in almost all African capitals where discussions have been held and decisions made on various issues affecting the continent of Africa. The OAU while it lasted had many successes ranging from ensuring and overseeing the total decolonization of Africa, to working very closely with both the United Nations and the Non-aligned Movement on issues that affect the world generally and Africa in particular.

The contribution that the organization of African Unity gave towards the elimination of apartheid and on the issue of racial discrimination against the African people must be stated and really stands out as major achievements of the organization.

According to Colin Legum, writing in African International Affairs. ,7

“The OAU is not faultless, but its achievements are not inconsiderate.

There are more things going on in Africa than just quarrels, among some

of its leaders, military coups, corruption, some examples of undoubted tyranny and armed struggling to emerge into the world as an equal among other continents, a process that will no doubt continue to keep it in a state of turbulence and rapid change for a long to come. In making a continent dominated for so long by outside powers, and converting it into a stable society of modern nations within a system of continental order is not an easy matter ... Africa cannot hope to avoid the pitfalls of rapid growth and transformation. Africa's future is what its emerging leaders will make it, and nobody can quite be sure what that will be by year 2000. Before the year 2000 arrives, however, one might ask, "What might Africa have been today if there had not been an OAU?"³

With total emancipation of the African Continent, and with new global challenges of present times it soon dawned on the African people that there was need for a radical transformation of their umbrella body so that a fresh approach could be designed for the emerging trends. Over time, it was variously felt that the OAU in its original structure and form had slowly been rendered redundant and had ceased to be a meaningful vehicle for achievement the African goals both internally and in the global scene.

³ Colin Legum: *International Affairs* (1967) Vol. 51 No. 2

These feelings of the shortcomings of the OAU reached a crescendo at the 4th extra Ordinary Assembly of Heads of State and Government in September 1999 where the host, Libyan President Muammar Gaddafi raised the issue of having Africa United as a political entity. This though sounded incompatible with the OAU Charter which clearly spelt out that the unity envisaged by the organization was not the political integration, but unity of aspirations and actions considered from the point of view of African Social Solidarity and political identity.⁴

This crusade gained momentum and on 10th July, 2002 at the Summit Conference in Durban, South Africa, when all the 53 African Heads of State and Government signed the constitutive Act of the African Union, thereby effectively killing the Organization of African Unity. The new Constitutive Act of the African Union was a clear departure from the rather conservative OAU Charter and gave more elaborate goals and purposes for the new Union than as were set out under the OAU Charter.

⁴ Preamble to OAU Charter.

1.1 STATEMENT OF THE PROBLEM

Among other specific functions the OAU was founded in 1963 for purposes of achieving unity (if not political unity) of aspirations from the point of view of African Social Solidarity and political entity. Indeed the OAU was founded amidst a lot of fanfare and enthusiasm. Amongst the African leaders, Sekou Toure of Guinea and Kwame Nkrumah of Ghana stood out strongly and even envisaged a United States of Africa developing from the OAU from as early as 1963. Africans had immense hope in the institution on the belief that at long last, the African people would be able to speak with one voice and articulate their issues and problems emphatically to the world community so that the continent could take up its rightful position in the world family of nations.

There is no doubt that while it existed, the OAU experienced tremendous success in many fields, especially on the question of decolonization and the freeing of Africans from the colonial yoke. One would be tempted to believe that all the energies and resources of the OAU were channeled towards the realization of total independence of African States. This fete was achieved in 1994 with the collapse and dismantling of the Apartheid regime in South Africa.

As Africa was experiencing more and more activism in the field of decolonization, it was, regrettably, experiencing less and less action on the other fields of social development. Many African States themselves instead of engaging in maneuvers which could ensure political, economic and socio-cultural cohesion and harmony of the African people, started waging wars against each other. Many of those who did not engage in physical violence against their neighbours were themselves engaged in intra-state conflicts where sections of their society took up arms against the established central government. The refugee crisis became an instant issue of focus. Political tensions heightened and even huge sub-regional integration blocks like the East African Community fell apart due to myopic differences amongst the leaders.

Because of the failure to integrate, which this project postulates is due to the inadequate nature of the legal framework under which the OAU operated, the African Continent has lagged behind compared to other regions of the world. And because of the seemingly irreconcilable differences between various sections of the African Society, African States have experienced much more conflicts, both inter-state and intra-state than other regions.

According to Ann Seidman and Frederick Anang, Africa is by far the poorest, least developed and most heterogeneous region in the world. Of 50 African countries, 32 have fewer than 8 million inhabitants and 34 are in the low-income category⁵.

In Africa, there is total backwardness. Disease is a major issue. Illiteracy is at its highest. There are insufficient basic facilities like good housing, clean drinking water and the economies of most African States have virtually collapsed. The debt burden has also got out of hand. Further, endeavours aimed at creating sub-regional economic blocks have often been looked at with suspicion. While there is rampant abuse of human rights, the effects of globalization are threatening to eat the whole structures within individual states.

According to a 1989 Economic Survey,

“There is mounting evidence that Stabilization and Structural Adjustment Programmes are rending the fabric of the African Society.

Worse still, their severest impact is on the vulnerable groups in the

⁵ Anne Seidman and Frederick Anang: 21st Century Africa: Towards a new vision of Self Sustainable Development, Pg. 69.

society, children and the aged who constitute two thirds of the population⁶.”

The effects of HIV-Aids endemic has taken its toll on Africa where its prevalence is the highest. And lack of technological advancement has ensured that Africa remains the weaker trading partner and the continent seems to have been consigned to irredeemable poverty and bliss.

In all these, the OAU had a role to play, which role it did not play satisfactorily. Through its legal framework, the OAU was continuously rendered toothless as situations degenerated further. The end result was that Africa as a continent compared to other regions of the world, lags behind in matters of political integration, socio-cultural integration and economic integration.

This project seeks to relate the lack of proper integration in Africa to the legal framework under which the OAU operated. On this facet it seeks to answer the question, “Is the lack of integration in Africa the result of an inadequate or weak legal framework of the OAU Charter?”

⁶ 1989 Economic Survey for Africa Report, Addis Ababa, 1989.

On the other hand, this project shall also determine if there has been a positive improvement in the legal framework in the Constitutive Act of the African Union which would enable the new African Union ensure integration of African States and peoples where its predecessor the OAU had failed i.e “ Does the Constitutive Act of the African Union possess a strong legal framework which can guarantee integration in Africa?

It is worth noting at this stage, that the Constitutive Act of the African Union has a striking resemblance with the European Union States. This will lead us to short comparison of the 2 constitutive documents with the focus being on how the European Society has managed to achieve a higher level of integration on the basis of the European Union Statute. It is believed that analysis will be of value in helping in helping predict the probable success of the new African Union.

OPERATIONALIZATION OF CONCEPTS

In the project, the following concepts shall refer to and have the following meaning:

STATE: Body of people politically organized under one government with sovereign rights and recognized by other states as having legal status. ^{6A}

REGIONAL ORGANIZATION: An organization of a number of states having the same interest in the maintenance of the status quo or out to protect or enhance their common interests against any threat or a system of collective security or mutual assistance ^{6B}

LEGAL FRAMEWORK: The rules, or laws forming the basis of and guiding the operations and activities of the organization. These could be in the form of constitutive guidelines, statutes, treaties, conventions or laws or any enacted amendments inserted to the same.

INTEGRATION: The bonding, togetherness or harmonization of systems, structures and feeling as opposed to nationalism.

^{6A} Orwa Katete D. Theories of international Relations in OJO. O.J.C.B.

NATIONALISM: The act of identifying with the power or the policy of a nation or an institution, or making the power and policies their own with intensity. In old days, nationalism was based on ties of blood, religion or of a common loyalty to a king. Today, it is about a desire to protect or defend freedom, aspirations, heritage and interests and it is achieved through diverse ways like law, ethics, social institutions and arrangements and organizations.

INTER-STATE: Between states of across the national boundaries of sovereign states.

1.3 OBJECTIVES OF THE STUDY:

1. To investigate the effect of the nature of the legal framework in the Organization of African Unity Charter on integration of African States and peoples.
2. To investigate and determine the legal framework in the Constitutive Act of the African Union and predict its probable effect on integration of African States and Peoples.

3. From the comparison with the European Union Statute, to predict the future of African under the African Union.

1.4 HYPOTHESIS

1. Lack of sufficient legal structures in Regional organizations hinders integration of states and people.
2. Lack of sufficient legal structures in Regional Organizations does not hinder integration of states and peoples.
3. Legal structures in Regional Organizations has no effect on integration of states and peoples.

1.5 JUSTIFICATION OF THE STUDY

1.5.1 Social Justification

The present era is an era in which the world has been considered to be a single village. With globalization, the world has become so small and what happens in one region has its impacts and effects spilling over to other regions. This has necessitated the idea of strong economies, industrialization, political stability that goes hand in hand with issues of human rights and respect for human dignity, maintenance of human environment and closer co-operation among states and peoples. It is a world that has increasingly become capitalist

in nature, particularly with the end of the cold war and the fall of the Soviet Union and Communism in 1989.

Other regions of the world including Europe, North and South America and Asia have realized that for the sake of achieving respectable living standards, they must of necessity unite, form alliances, economic blocks and integration blocks so that they can protect themselves against the bad effects of globalization. The European Union, for instance, has experienced a higher level of integration and has successfully installed a Common European Court of Justice, a European Parliament, Customs Union and even a Common Currency, the Euro. Their combined economies and currency are at the moment the main challenge to the American Dollar, and its strength is still gaining ground. Through the internal legal structures, the member states have removed all tariffs and through this, trade has been accelerated to great levels and their legal structures are such that it is unimaginable witnessing another European War i.e. a war between different member states of the European Union.

While other regions have adopted the same trends, Africa's attempts at any sort of integration have almost at all times come to nought. Wars and poverty

persists. Illiteracy levels remain high. Conflicts and their resultant effects are a common feature and sub-regional blocks have either collapsed or are merely existing in name, but for no practical or useful purposes.

It is therefore necessary that the issue of integration be looked at afresh with a view to finding a solution to this sorry state. This study dwells on the nature of the legal structures in the OAU Charter as a basis for the failure to realize integration in Africa. It further considers the existing legal structures in the new Constitutive Act of the African Union on whether Africa as a region in the world is now under adequate legal structures in its umbrella organization.

It is noted that the African Union is a recent development, which is still at its infancy stages. However, at the end of the day, this project shall still be able to make valuable predictions that could go a long way in making African policy makers, leaders, academicians and peoples generally to chart out their correct avenues towards the realization of total integration in the continent.

1.5.2 ACADEMIC JUSTIFICATION

Whereas there is enough material by scholars and researchers on the Organization of African unity, there has not been any study linking the total

lack of or low level of integration to the existing legal structures in the charter on which the organization operated. Further, the African Union, being a new creation as it is has hardly solicited any sort of research from academicians and general researchers.

It is therefore academically expedient to research, investigate and determine the effect of the nature of the legal structures on which the OAU operated on integration in Africa and further to investigate, determine and predict the element of integration in Africa under the new legal dispensation in the Constitutive Act of the African Union.

It is believed that this project, being among possibly the pioneer projects in this field shall go a long way in opening up this grey area, solicit more thought, provoke more research, criticisms and evaluations aimed at putting the African Union in the correct perspective so that it may evade the bismal fate that befell the OAU.

1.6 THEORETICAL FRAMEWORK

According to Garvin McCain and Erwin M. Segal, a theory is a set of interconnected statements, which comprise sentences introducing, terms that

refer to the basic concepts of the theory, sentences that relate some theoretical statements to a set of possible observations⁷. They therefore help to separate important issues from the trivial by pointing out what we really wish to look at and what is unimportant enough to ignore.

In this project, we shall explore the Theory of Idealism as we stress on the virtues of good governance and institutions which involve justice, obedience to legitimate rule and respect for fellow human beings, both domestically and internationally⁸. Idealism will also come in handy in explanations for collective security, rule of law, spread of democracy and as reactions to the dangers of too much power politics and maximization of power⁹. The main argument here will be that civilization means learning to co-exist in societies, operation under fair laws and institutions and burning all the laws of the jungle, which permits the survival only of the most witty, powerful and ferocious.

The project shall also rely on the Theory of Integration. This, according to Coloumbis and Wolfe¹⁰, is basically a process toward or an end product of political unification among separate units. This theory shall focus on the

⁷ Garvin McCain and Erwin M. Segal: *The Game of Science*, Pg. 99.

⁸ Theodore and Coloumbis, Pg. 35.

⁹ *Ibid* at pg. 35.

¹⁰ *Ibid* at Pg. 298.

measure of the process of integration, for instance, the flow of international transactions as advocated by Karl W. Deutsch¹¹, and formal institutions in an attempt to determine the extent to which important functions are carried out by national as opposed to international (integrated) agencies as examined by Ernst Haas¹². All these assessment shall be in tandem with the postulation by J. Galtung that a structural theory of integration is simply the process by which two or more actors form a new actor, the only 2 conditions being that the 2 actors must be nation states and the emergent new actor need not be a nation state in this same sense¹³.

1.7 METHODOLOGY

Primary data will be collected for analysis and assessment. This primary data will consist of interviews with persons who are in Government or who have been in Government including the Minister in charge of foreign Affairs. We shall also interview the "common man, the ordinary man on the street. Our interviews shall also extend to former president Daniel Arap Moi who was involved in the Organization of African Unity from inception to its demise and the commencement of the African Union. Lastly, students and professors, particularly of political Science and Law, former and serving ambassadors are

¹¹Ibid at Pg. 298.

also targeted for direct interviews. The questions to be posed shall be pre-arranged and direct and the population to be interviewed shall be chosen at random.

Secondary data will include library research on text books, journals, newspapers, archives, the OAU booklets, the OAU Charter, the Act of the African Union, the New Partnership for African Development (NEPAD) document and various other recorded works. We shall also consider the European Union (EU) Statute, and information obtained from the Internet.

¹² Ibid at Pg. 298.

¹³ J. Galtung: A Structural Theory of Integration, *Journal of Peace Research*, 1968, Pg. 377.

1.8 LITERATURE REVIEW

Much of the literature on this subject are merely declaring the operations of both the OAU and the AU or declaring the various theories in international or regional organizations with respect to developing countries.

C.O.C. Amate in his book, " Inside the OAU: Pan-Africanism in practice," is perhaps the most detailed and comprehensive assessment on the workings of the OAU. The book otherwise falls short in answering the research problem herein as it was authorized before the enactment of the African Union Act.

Thomas Hovet Jr. in, "Africa in the United Nations" only looks at the participation of individual African States in the United Nations and the role that the OAU played as the African Voice in the Un. It also gives the prelude to the formation of the OAU from Brazzaville to Casablanca at Lagos and Monrovia Conferences. Our research problem of relating the low rate of integration in Africa to the existing legal framework in the OAU Charter is not considered. Once again, the extended element of the African Union Act is also missing.

A. Leroy Bennett in "International Organizations Principles and Issues", considers the role of international organizations and the world today and justify their existence out of the proliferation of inter-state and the trans-state contacts. Whereas it gives light on the phenomenon of integration, it falls short of relating the same with existing legal structures.

The Encyclopedia of Public International Law, under the sub-heading, "Regional Co-operation and Organization: African States" postulates that by the time the OAU entered into force on 13th September 1963, African States had given serious thought to closer co-operation and integration. Regional Co-operation was viewed as a way of harmonizing the natural and human resources of the continent. It further states that the OAU operated while guided by the 7 principles in the Charter including the principle of non-interference in the internal affairs of other states. But overall, even this piece of work does not go as far as looking at the inhibitions that the framework in the OAU Charter put on the realization of African States.

While noting and acknowledging that conflict is a menace in Africa and that persistent conflicts in various spots in Africa work against efforts at integration, Makumi Mwagiru, in "Conflict Management in Africa: Lessons

learnt and Future Strategies”, confirms or assesses the role of the OAU in conflict management including peacekeeping. He also assesses the role of sub-regional organizations like the Economic Community of West African States, (ECOWAS), Inter Governmental Authority on Drought and Development (IGADD) and the Common Market for East and Central African States (COMESA). Many other sub-regional organizations would properly be considered alongside these. However, the scholar fails to study the exact extent to which the OAU’s involvement in conflict management goes or whether such involvement is curtailed by the nature of the legal framework under which the organization operated.

In his article, “Impact of the Cold War on Regional Security: The Case of Africa”, Dr. Philip O. Nyinguro argues that faced with the onslaught of the Cold War, the OAU turned out not to be well equipped, both institutionally and conceptually as an effective security machinery and that in many areas like the Angolan Crisis of 1976, the OAU membership was divided right in the middle, and it stood to watch as the super powers went about influencing decisions in particular states. The scholar does not however, go into the reasons for the OAU’s ineffectiveness, particularly on the nature of the existing legal framework.

John Baker and Martin Kolinsky on the other hand, examines the development of the concept of the European Community and the various hurdles it had to pass to reach where it is now as various states were hesitant to integrate as this would ultimately water down their sovereignty. This work will no doubt make a good comparison with the situation in Africa and help in the prediction of the destiny of Africa under the African Union.

John Spanier, writing on obstacles to development, lists a number of factors including absence of national unity, race, religion, regionalism, ethnicity, language and over population. To him these are the obstacles to integration and or development. He fails to acknowledge the impact of the legal framework of regional organizations on integration of the member states of such organizations.

The scholars above studied the organization of African Unity, International or Regional Organizations and Integrity generally. In all these pieces of work, the effect of the legal framework of such organizations do not feature. The African Union, being a new phenomenon, is also not accorded any consideration.'

CHAPTER BREKDOWN

- CHAPTER 1:** Chapter 1 will constitute this proposal which specifies the research problem and how study will be undertaken.
- CHAPTER 2:** This chapter shall deal with the theoretical aspects of the concept of integration and discuss what it entails and conditions for the same.
- CHAPTER 3:** This will look at the nature and organization of the OAU as declared in the Charter.
- CHAPTER 4:** This will be an assessment of the Legal Framework of the African Union. A closer look will be conducted on its structures. A comparison shall also be carried out with the European Union Statute.
- CHAPTER 5:** Chapter 4 will be a critical analysis of the previous chapters and the various primary and secondary data collected with direct reference to the research problem.

CHAPTER 6:

This will determine whether Africa is poised to achieve integration under the African Union.

CHAPTER 7:

This is the Conclusion of the whole project.

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CHAPTER II

STRUCTURE AND FORM OF INTEGRATION

2.0 INTRODUCTION

This project aims at discussing the question of integration of African nations, states and people and its relationship with the legal framework under which Africa's foremost regional organization, the Organization of African Unity operated under and those that the present African Union is still based on. For us to adequately understand and appreciate this problem, it is important to analyze the whole concept of integration vis- a – vis states.

2.1 WHAT IS A NATION OR STATE?

According to Karl W. Deutsch and William J. Foltz¹⁴, a nation or a state can be defined as a sizeable population or group of persons which can be called independent, in the sense that it is not ruled from outside its territory, cohesive, by virtue of its markedly more effective habits of easy and varied social communication and co-operation compared with their corresponding and co-operation with outsiders, politically organized, in the sense that it provides a constituency for a government which exercises effective rule within it,

autonomous, in that it accords to this government such acclaim, consent, compliance and support as to make it's rule effective, and internally legitimate in the sense that it's habits of compliance with and support of the government, or at least, toward mutual political co-operation and membership in a nation are connected.

From the above definition, one could consider the ingredients of a nation or state to include independence, cohesion, political organization, autonomy and internal legitimacy. In Africa's case, after the end of colonialism and the independence of the Republic of South Africa from apartheid rule, the units called African nations and states squarely qualify as such. Even such nations and states that have been engulfed in deep civil wars that have threatened to tear apart the core fabrics of statehood like the Republic of Somalia, Liberia and Sudan are still nations or states to the extent that the different factions still pursue and move towards mutual political co-operation.

Practically all African States have more than one ethnic communities as their inhabitants. The numbers of these ethnic communities, otherwise also known as tribes vary from one state to another, so is their numerical strengths and

¹⁴ Nation Building, Ed. By Karl W. Deutsch and Foltz J. William, Nation Building (Ed), Atherton Press, N.Y.

composition. These communities have been loosely defined as social, or political units which are above the kin group and are still small enough to claim common descent although they are large enough to permit intermarriage¹⁵.

The study of integration can therefore only be complete only if we consider the concept of integration as capable of operating vertically in respect of social groups and horizontally for territorial groups. It is upon this that we shall be able to make any conclusions on the people of Africa of all social groups, masses and elites, leaders and those who are ruled (vertical integration) and if in terms of inter- state relations, we shall have achieved integration or not i.e. horizontal integration.

It is otherwise worth noting here that integration depends upon 2 sets of forces, centrifugal forces pulling the entity apart like the geography, physical characteristics and shape of the political units, or centripetal forces that bind the units together like language, ethnicity and religion. On these assumptions it is assumed that units with diverse geography, physical characteristics, size and

shape experience more pressure against integration than those that have unifying factors like common language, religion and ethnicity¹⁶.

The study of state and community behaviour in Africa exemplifies the above scenario. The Northern part of Africa have states with close relations based on common language and religion as the Maghreb region. Language also plays a strong part in ensuring the close relations between the Franco- phone states of Africa and even between states of Africa and even between states that belong to the Anglo- phone Africa.

Differences in religions have worked against integration of the different communities in Sudan. Language diversity, geography, and ethnicity are also taken to be playing significant roles against integration in the same country. Ethnicity, size and geographical diversity have also been considered to be the main factors working against integration in the Democratic Republic of Congo, and the area of Africa generally referred to as the Great Lakes Region.

¹⁶ Taylor J. Peter, J. Political Geography: World Economy Nation State and Locality, Longman Group, U.K. 1993 Pg. 150.

2.2 APPROACHES TO INTEGRATION.

We have already seen that integration is the combining of 2 or more things into one. In International Relations, the product may be a unified state where there were many systems before or unified efforts to carry out functional tasks. This implies that in integration you would combine 2 or different units e.g. states and the outcome would not necessarily be a state or similar to each one of the units.

In the study of integration, there are basically 3 main approaches¹⁷.

2.2.1 Supranationalism:-

Here, nations or states must actually form common political institutions with jurisdiction in each nation or state. It could entail formal unification of separate nations or merely common institutions to meet certain specific problems. The Union of Soviet Socialist Republics (U.S.S.R.) is perhaps the best case example of the first scenario since all the republics forming the union relinquished their statehood and sovereignty to a central authority independent of each separate unit. This form of integration worked successfully for the union until 1989 when the whole system collapsed and thereby giving birth to

¹⁷ Ibid at 282.

Russia, Ukraine and more than a dozen more independent states. And the process of nationalism and urge for independence of the various regions that formed the union is still gaining momentum as exemplified by the war for independence of Chechnya region for Russia.

In respect of the latter scenario of mere common institutions, one can refer to the European Union as it is now. Whereas the European Union has managed to establish various common institutions including the Customs Union, European Parliament, the common currency known as the Euro and practically removed any traffics between it's members, the various member states of the European Union have maintained their statehood and internal judicial, administrative and legislative authorities.

Africa as a continent has not experienced this level of integration, though there have been attempts in various forms including within the Organization of African Unity, the Subsequent African Union and the various sub-regional organizations that have proliferated throughout the continent including the Common Market for East and Southern African States (COMESA), The Economic Community for West African States (ECOWAS), the Southern African Development Co-operation (SADC) and the Maghreb Union.

2.2.2 Political Community:-

This approach demands neither unification nor institutions, but rather looks for the creation of a sense of identity or mutual responsiveness between people in various nations. In the current international system, the words “global village” would aptly explain this group since this is a concept that does not seek to unify all or any political systems in the world or create common institutions. They know no political boundaries and often act irrespective of any national laws of any particular nation.

Information technology and the use of the Internet are classic examples in this category. And according to this approach, the more you have and experience this sort of community, the more integrated the society is.

2.2.3 International Cohesion:-

This approach looks mainly at increased co-operation and policy co-ordination among the world's nations. It is sometimes classified as a facet of the Supranationalism approach in as far it evaluate the co-operation and policy co-ordination of different nations. In its full extent, it leads to either formation of a common institutions or unification.

2.3 PROCESS OF INTEGRATION AND CONDITION OF

INTEGRATION

Simply put, integration is a feeling of togetherness by mutual ties of one kind or another which gives the feeling of identity and self awareness.

According to Ernest Hass¹⁸, political integration is a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new and larger center whose institutions possess or demand jurisdiction over the pre-existing national state. This implies that for one to conclude that there has been integration, there must initially have been several distinct units or states which must also shift their loyalties to a larger and newly created center which has power and jurisdiction over the former units.

Karl W. Deutsch¹⁹ writing on the same subject, notes that integration is the attainment, within a territory, of a sense of community and of institutions and practices strong enough and widespread enough to assure for a long time dependable expectations of peaceful change among its population.

¹⁸ Ernest Hass, *The Uniting of Europe*, Stanford University Press, 1958, Pg. 16.

¹⁹ Deutsch W. Karl, *Communication Theory and political Integration*, in Jacob and Ioscano, *The Integration of Political Communities*, Philadelphia, 1964, Chapter 2, Pg. 4.

From the works of the above 2 leading scholars in this field, it comes out clearly that integration as a process and condition entails integration of existing states i.e. that there must be pre-existing units or states. There must also be a new center and its institutions which are not necessarily the same as those of the pre-existing units. And as a result of this integration, there must come out a social community or the "we feeling", a sense of belonging, obedience and ownership of the new center. In addition, the whole process must bring new values which shall sustain the support of the people to it since in the absence of these new values, the new center shall surely collapse.

It is also important and mandatory that the pre-existing units transfer political attention and values to the new center so that there are no competing forces between those units and the new center created. This should then ensure new focus on the center which shall entail more loyalty by all key actors in the whole combination, including the individual states, the ruling elites, and even the masses.

Lastly, for the success of the new equation created, there must be a preservation of peace as absence of peace would lead to the dismantling of the new arrangement and above all, there ought to be a sense of solidarity and

common purpose from all the actors involved. This is because in the absence of any solidarity and common purpose, the center will not hold and the whole process and condition will collapse.

The foregoing proves that the process of integration is delicate and maintaining the condition of integration is even more delicate and to ensure success the various states and people must show consistency and seriousness.

2.4 INTEGRATION AS A CONDITION AND PROCESS OF SUPRANATIONALITY

This critique follows from the above and the point here is that to realize integration, it is not enough to merely lower tariff barriers in bilateral agreements for example. It is advocated here that in case of such economic integration, the individual states must subject trade decisions ranging from unfair competition, level of tariffs, quotas if any and dispute settlement, to a common higher authority.

It is tedious exercise to reach this level, put by Etzioni, thus,

“The increasing number of participants in a group may cause it to become so heterogeneous that one of the two things will happen: either

the ability of the group to form consensus breaks down or a new structure for the formation of consensus is built. In this structure, consensus is formed on two or more levels. On the first, participants are separated into sub-groups according to relative affinity of their beliefs and interests. Each of the sub-groups forms consensus among its members, and sends a representative to the second level. The 2nd level, composed of representatives only establishes consensus for the whole unit. This differentiation can be extended to more than 2 levels²⁰.

The process of integration therefore entails a lot of bridging of differences with a view to forming common ground. For ease of the whole process, the use of representatives at various levels is advocated and there is no limit to the number of sessions to be held in the discussion. This sheds some light on where the whole process was a failure in Africa under the Organization of African Unity since the issues of integration were only discussed by the summit of Heads of State and Government or at best by the Council of Ministers. These bodies hardly formed any committees composed of representatives of the various member states with the mandate to discuss and narrow down the presumed differences existing between the nations.

²⁰ Etzioni Amitai: *The Dialectics of Supranational Unification* in, *America Political Science Review*, LV,

2.5 INTEGRATION AND POLITICAL COMMUNITY BUILDING

In achieving community building, the process and condition of integration looks beyond the nature of the center created. After the various political units i.e. states have transferred their loyalties to the center, the focus now moves to political parties, individual leaders, unions, cities, e.t.c. of individual states. The aim is to disseminate the virtues and new values that are created by the new center of integration.

Karl W. Deutsch,²¹ once again writing in this process, maintains that membership in a people essentially consists in a wide complementarity of social communication and that this consists in the ability to communicate more effectively and over a wide range of subjects with members of one large group than with outsiders.

Here, the advocacy is that of communication, sharing of ideas and commodities on the assumption that the more and the better the communication and sharing the higher the rate of transactions or interconnectedness i.e. the transactional analysis. And the degree of integration depends on the level of this transactional analysis.

(1962), Gardent City, N.Y. 1962, Pg. 131-132.

So, for states to integrate, they must communicate and share ideas. They must also transact and the better approach is to engage one group at a time rather than address the whole population. In this sense, channels should be availed on sharing of particular information on various fields ranging from politics, culture, economics and legislatively. After these particular areas have been adequately tackled, then the whole set of information and ideas shared will be combined to instill the total values of the new institution.

2.6 INTEGRATION AND INTERACTION

In a study of integration, it is important that a distinction be made between integration itself and interaction. In common parlance, the two words and concepts are synonymous and they both mean one and the same thing. In International Relations however, whereas it is confessed that the two are related, they do not mean exactly the same thing.

E.H. Fedder and Frederic S. Pearson²² contend that the distinction lies on the depth and level of the relationship. They give an example that whereas transaction flows may give some knowledge about the attention spans of key elites in various countries, these transaction flows may not necessarily signify

²¹ Karl W. Deutsch, *Nationalism and Social Communication*, Cambridge, The M.I.T. Press, 1966, Pg. 97.

integration since you would not get much knowledge of political loyalties or attitudes of those respective elites and countries. In essence therefore, interaction does not imply cohesion.

On this score, the period immediately after World War II is often illustrated as the best examples. The main trading partner of the Soviet Union during this period was Germany while Germany's top trading partners were Britain, United States of America and France. On the other hand, Germany ranked number 1 on Britain's imports list and 2nd on her export list.

From the above it is clear that whereas these states which had just been in opposing camps in the just concluded war could sustain such great magnitude of trade and interactions between them, one could hardly talk about integration between the different states and peoples. Hence, one would obviously conclude that whereas for integration, interaction is a necessity, one would nonetheless experience interaction without integration.

Closer in the African context, one could give various examples. Whereas states like Malawi maintained trade ties and interacted with apartheid South

²³ E.H. Fedder & Frederic S. Pearson; *Four Ambiguities of International Integration*, in *Political Science*

Africa, these interactions did not stretch further to the level of integration. In the period covering late 1980's and early 1990's, Kenya maintained close trade relations with its neighbour Uganda whereas one could hardly speak of integration between the 2 states. What with the frequent border skirmishes between Kenyan and Ugandan security personnel and open hostilities between President Daniel Arap Moi of Kenya and President Yoweri Museveni of Uganda, occasionally even at personal levels.

2.7 CONDITIONS FOR COMMUNITY INTEGRATION

Integration as a process requires certain conditions that must prevail if it were to be achieved. It is important to note that one can hardly exhaust the full list of these conditions and that these conditions are complimentary to one another²³.

For integration to be realized, there must be mutual compatibility of the main values. These are the values that the two units hold dear and whose compatibility upon may initially be considered hard. Through negotiations and communication, however, the parties would be able to bridge the gaps and achieve compatibility. On top of this, there must be expectation of stronger

Annual, 1972, Ed. By James A. Robinson, Pg. 281.

economic ties and gains. This is because without such expectations, no parties would be willing to move even a single step towards integration.

There ought also to be marked increase in political and administrative capabilities expected by the relevant parties. These expectations must of necessity extend to those of superior economic growth. There must also be unbroken links of social communication between the different territories or else all the expectations would come to nought.

Broadening of the political elites in the relevant territories is also a necessity as the larger the number of elites accepting the designs, the easier it shall be to include and convince the masses. There must also be an increase mobility of persons at least among the politically relevant strata. This would imply that the more the physical interactions between the respective members of the relevant territories, the easier it could be to achieve integration.

Communications and transactions between the various units must also be sustained at increasingly higher levels never witnessed before. This would enable the respective people to understand each other well and reduce

²³ Ibid.

incidences of suspicions or any forms of hostilities. Above all it is necessary that we do not experience too frequent interchange of group roles. Revolutions, coup detats, or any frequent change of leadership must be discouraged since they work against all the above efforts aimed at integration. And the more frequently we have these undesirable interruptions, the less likely it is that the parties shall realize integration.

The parties must then be able to cultivate considerable mutual predictability of behaviours of each other. The import of this too, is to erase any suspicions that would still linger in the minds of any of the parties. Predictability would ensure that the other parties would always know and read well the behaviour of others and if need be adjust accordingly in a manner least injurious to the common intentions of integration.

As already declared above, these conditions are not exhaustive as listed, but they are certainly complimentary to one another. In the case of African States and people, the subject of this project, the set conditions shall be examined.

2.8 FACTORS AFFECTING INTEGRATION

Two scholars, Jacob E. Philip and Teune Henry²⁴ writing on the subject of factors affecting integration, list a number of phenomena. Amongst these are:-

- (a) Geographical proximity is important on the question of integration. States and people who are neighbouring or close to one another are more likely to integrate than those that are far apart. It would be foolhardy to imagine an integration involving Kenya in Eastern Africa and Chile in the Southern end of South America before one considers that of Kenya and Uganda and Tanzania. No wonder that integration blocks start of as regional or sub-regional organizations.
- (b) It is important that there is homogeneity between the members of the integrating units. Here, culture, language, race and even customs matter and it is easier to realize integration where they are uniform.
- (c) The level of transactions between persons and groups also affect integration. As already discussed, the more intense the transactions, the higher the chances of achieving integration.

²⁴ Jacob Philip E; d Tenne Henry: *The Integration Process: Guidelines for Analysis of Bases of Political Community*, in Jacob Philip E. and Toscano James V.; (Editors), *The Integration of Political Communities*, Philadelphia, 1964, Pg. 4.

- (d) There must also be shared functional interests. In effect the parties must share interests like economic, cultural and political unification. Of course without these shared values, integration would be elusive.
- (e) Communal character or social motive has also been listed as relevant in integration. A more accommodative community can easily integrate as opposed to a repulsive, nationalistic and recalcitrant one.
- (f) Another factor is the structural frame or system of power and decision making. Here, the focus is on how or to what extent decision making and power have been personalized. The more personalized they are the lesser the chances that such units could integrate. Therefore, monarchies and dictatorships would hardly embrace the concept of integration basically because integration would in effect take away some powers from the leaders. Democracies, on the other hand would find it easier to integrate since no single authority would have the monopoly of power or instruments of power.
- (g) Sovereignty or the dependency state of the state also affects integration. Here, the argument is that a state which is less dependent would be unlikely to be very enthusiastic about integration. One which is highly dependent on the other hand, would most likely favour integration since

it would lose less or nothing at all by unifying its institutions to some common center.

- (h) Last but not least, previous integrative experience also affects integration. The presupposition here is that a state which has bad experience or has bad memories of a failed exercise would be reluctant to get involved in another endeavour towards integration. At the same time, a state with fond memories about a previous experience would almost readily accept integration again.

In the context of East Africa, it is believed that the United Republic of Tanzania has bad memories of the past experience from the former East African Community (EAC), which collapsed in 1977 before achieving full integration. Basing its dissent that Kenya was having an advantage over Tanzania by virtue of relatively higher level of development, critics have asserted that it is this past experience that has made Tanzania drag its feet and only move cautiously towards the full implementation of conditions of co-operation agreed upon under the newly inaugurated East African Co-operation. Kenya, considering herself or having fond memories of the old East African Community has been steadfast in its resolve to ensure the complete revival and enhancement of this sub-regional organization.

One must hasten to add at this stage that there are no set indices for integration. The formula is usually integration when we see it and the focus of identifying it is on social, cultural, political and economic homogeneity within the groupings.

2.9 GENERAL INTEGRATION INDICATORS

According to a survey conducted in the United States of American,²⁵ integration leads to a movement from a null states where there is complete disunity among a population to a complete state in which there is complete identity of views and internationalization of values among that population. The same survey also lists a number of indicators of integration amongst which are:-

- (a) The Gross National Product (GNP) is a major indicator of integration in that if at the end of the process there is improved Gross National Product, then one would conclude that the parties have integrated.
- (b) Urban population percentage of the total population is also significant. This is because urban centers are usually the melting points of communities from different regions and so the bigger the urban

²⁵ 1967, Ohio University, Graduate Seminar Conclusion.

population as a percentage of the total population, the more accurate one would be to assert integration.

(c) Percentage adult literacy levels are also important indicators in that adult literacy levels always show the standard of development in a given society.

(d) Just as the percentage adult literacy, one would also look at inhabitants per say 100,000 physicians, lawyers, engineers and other between the inhabitants and the professionals, the higher the chances that there has been integration.

(e) Radios, and even television sets per 1000 population are also indicators to the extent that they show higher standards of living and harmony amongst the population.

(f) Military personnel and police officers as percentage of population also show integration. If we have too many military personnel and police officers, we would conclude that there is little integration.

(g) Freedoms of the masses and the population also signify. This is because a more integrated society is more tolerant and accords its population freedoms ranging from speech, assembly, to hold own ideas or conscience and all the rights that humanity should enjoy in a society that professes and upholds the principles of the rule of law.

While acknowledgement that various forms of integration are interrelated and are necessary it must also be clear that integration in one sphere need not bring integration in another. So economic integration need not bring about political integration. At the same time, unsuccessful integration in one sphere need not affect the success in another sphere. For instance, economic integration may be halted by lack of political integration or political incompatibility.

A case in point is the respect reasons advanced by the Uganda and Tanzania against each other for the collapse of the East African Community in 1977. Whereas the community had experienced community integration in terms of roads and harbours, postal services and customs union, ideological differences between presidents Julius Nyerere of Tanzania and Idi Amin of Uganda ensured the demise of the organization.

2.10 CONCLUSION

By looking at integration generally in this chapter and considering its various types, its approaches, its relations, factors affecting it and its indicators, it is hoped that a basis has been formed for the consideration of the consideration of the research problem herein, which is the link between the lack of integration in Africa and the legal framework under which the organization of African unity operated

and whether under the African Union, African States shall move towards and achieve integration.

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CHAPTER THREE

THE OAU CHARTER

3.1 INTRODUCTION

This chapter seeks to look at the legal framework under which the organization of African Unity operated. This will entail a discussion on the nature of the constitutive document, otherwise known as the organization of African Unity Charter. It is in this Charter. It is in this Charter that African leaders and policy makers entrenched their wishes and hopes for Africa as a continent, African States and African as a people.

3.2 BACKGROUND TO OAU CHARTER

As has been seen in chapter 1 here before, African leaders were divided into different groups in the period leading to the formation of the Organization of African Unity. At the conference of Ministers OF foreign Affairs who met in Addis Ababa, Ethiopia, a week before the first assembly of the Heads of state and Government, 4 different charters were submitted. There was the Casablanca Charter submitted by states forming the Casablanca Group. The Monrovia Charter, for the Monrovia Group, and two others submitted individually by Ghana and Ethiopia, the host.

Despite deliberations and attempts at reconciling the various Charters submitted, the Council of Ministers failed to make any headway as each presenter insisted that their documents should be accepted to the exclusion of all others. As a result, the Assembly of the Heads of State convened before these differences could be resolved.

As the Host Head of State, Emperor Haile Selassie of Ethiopia, thus had to declare the following at the plenary session in a keynote address,

“This conference cannot close without adopting a single African Organization with the Charter we have described. If we fail in this, we will have shirked our responsibility to Africa and to the people we lead. If we succeed, then and only then, will we have justified our presence here”²⁶.

Among his prominent supporters were presidents Nasser of Egypt and Houphouet Boigny of Ivory Coast. However, whereas there was a consensus that there was need for an organization of African States, the nature of such organization remained a major area of divergence.

²⁶ The OAU Charter.
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Whereas Kwame Nkrumah of Ghana was advocating for a continental government with a bicameral legislature, common currency monetary zone and a central bank, without necessarily sacrificing each other's sovereignty, Prime Minister Obote of Uganda held that indeed time had come for independent African States to surrender some of their sovereignty in favour of an African legislative and executive body. President Julius Nyerere of Tanzania, on his part, was more cautious in calling for a step-by-step approach to any sort of political union.

After the initial deliberations, it was unanimously agreed that the Ethiopian model of organization be adopted. This was an important step since even the most ardent opponents of a loose union like the Ghanaian delegation favourably changed their position and voted together with the other members in favour of the Ethiopian motion.

The next issue of controversy at this stage came on the matter of the name to be adopted for the new organization. It was President Hubert Maga of Dahomey, who suggested that the Assembly should adopt the name Organization of African Unity. This did not go down well with the President Philibert Tsiranana of Malagasy who insisted that the organization should be known as

the Organization of African and Malagasy States to incorporate the name of his state. The conference debated on the same and managed to convince Malagasy that it was necessary to remove the name of Malagasy from the organization's identity if the organization was to avoid future demands by other island states that surrounded mainland Africa and which rightly belonged to Africa.

The Malagasy delegation was only convinced after the delegates agreed to insert in Article 1 of the Charter that the organization shall include continental African States, Madagascar and other islands surrounding Africa. As a formality and at the insistence of President Tubman of Liberia, it was confirmed that the name be organization of African Unity and not Organization for African Unity.

3.3 THE OAU CHARTER

The OAU Charter is divided into 2 parts, the Preamble and a total of 33 Articles outlining the aspirations of the founding fathers of Africa.

3.4 THE PREAMBLE

This indicates that declarations made in the preamble and in the Charter were made by the African heads of States and Governments assembled in Addis

Ababa, Ethiopia. It goes on to declare many rights of the people ranging from the inalienable right of all people to control their own destiny, freedom, equality, justice and dignity as essential for African peoples, the right to harness the natural and human resources of the African Continent for the benefits of African Peoples and a common determination to promote co-operation among African Peoples.

The preamble further declares the necessity for the proper conditions for human progress, conditions for peace and security and the safeguarding of Africa's independence and sovereignty, territorial integrity, neo-colonialism and generally a dedication to the progress of Africa.

It is also clear from the preamble that the founders of the OAU were conscious of the demands of the United Nations and the Universal Declaration of Human Rights as there is imposed therein, a commitment to the United Nations and Principles of the Universal Declaration of Human Rights. They also undertook to provide a foundation for peaceful and positive co-operation among the states and encourage states to unite to ensure the welfare of the peoples.

Above all, the leaders resolved to reinforce the links between the states by establishing and strengthening common institutions. This, in the view of the founders would enable African Peoples to feel closer to each other so that the common aspirations of the continent could be realized.

It is significant to note that debate on the preamble went on fairly smoothly and the Heads of State did not make any major amendments to the draft except the clause that declared that the aim of government is the well being of the governed. The Heads of States, one can only conclude, feared that this clause would have bound them to ensure good governance in their respective countries.

It is therefore accurate to pre-suppose that even before the Heads of States and Government could embark on any close debate on the Charter, they had by way of the preamble set the tone of what is to be expected. And true also is the fact that the preamble contained declarations of issues that were dear to the whole continent of Africa at the time and even to-date including matters of good governance, rule of law, Human Rights, building of strong institutions, relations with the United Nations, adherence to the principles contained in the Universal Declaration of Human Rights, Neo Colonialism, Independence,

development, closer co-operation between African States and the safeguarding and protection of Africa's independence, sovereignty and territorial integrity. These are issues that are still dear to the hearts of African Peoples and States.

3.5 THE ARTICLES

Basically speaking, the articles in the Charter, a whole 33 of them form the legal framework on which the organization operated while it existed. The articles were to the OAU what the constitutions are to the various states. A closer look at each of these articles would shed light on what the Charter entailed.

3.5.1 ARTICLE I

This is a short article merely pronouncing the creation of the organization established shall include Continental African States, Madagascar and other islands surrounding Africa. The importance of this article lie, first on the fact that at last African States were able to establish one continental body for the whole of Africa, and secondly, they allayed any fears that independent island states surrounding Continental Africa could have on whether or not they would rightly belong in the organization created. We have already seen the dissent raised by Malagasy on the name to be adopted for the organization.

With the declarations in Article I therefore, it became clear that all African States and the islands surrounding Africa could be members of the Organization of African Unity.

3.5.2 ARTICLE II

This is the article with the heading purposes and it is the one that lists the various purposes for which the organization was being created. Among the major objectives and purposes listed are:-

- (i) To promote the unity and solidarity of the African States
- (ii) To co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa.
- (iii) To defend their sovereigns, their territorial integrity and independence
- (iv) To eradicate all forms of colonialism from Africa
- (v) To promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights

This article further lists the following areas as being those in which member states shall co-ordinate and harmonize their general policies:-

- (i) Economic cooperation including transport and communications
- (ii) Political and diplomatic cooperation
- (iii) Educational and cultural cooperation
- (iv) Health, sanitation and nutritional cooperation
- (v) Scientific and technical cooperation
- (vi) Cooperation for defence and security

From the reading of this article, it comes out that the word cooperation is used in every sub-section under the second part dealing with co-ordination and harmonization. Does this mean that the OAU was established merely to promote co-operation and not to go all the way towards achieving political union? Does it mean that by having a purpose of defending sovereignty, integrity and independence of states, the question of total unity and integration was not envisaged?

3.5.3 ARTICLE III

This article deals with the principles that were enacted to guide the operations of the organization, and it lists the following:

- (i) Sovereign equality of member states

- (ii) Non-interference in the internal affairs of states
- (iii) Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence
- (iv) Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration
- (v) Unreserved condemnation of political assassination as well as of subversive activities on the part of neighbouring or any other states
- (vi) Dedication to total emancipation of African territories that are still dependent
- (vii) Policy of Non-alignment with regard to all blocs.

These are the principles that guided and directed the operations and activities of the OAU and at its enactment, lively debates occurred. President Nasser of Egypt affirmed that Egypt would not sit back and watch the bloody conflict between 5 million whites and 200 million blacks in Africa, while Nkrumah asserted that the independence of Ghana was meaningless unless it is linked up with the total liberation of Africa. Ahmed Ben Bella of Algeria on his part called on leaders to be ready to die a little or completely so that the people under colonial domination may be freed.

It is believed that the condemnation of political assassination and subversive activities principle was inserted following the assassination of Togo's President Sylvanus Olympio on 13th January 1963, just shortly before the Addis Ababa Conference. The Togolese incidence in which the popular president died holds the unenviable distinction as being the first *coup de tat* in independent Africa.

If there is any article in the OAU Charter that raised controversies, it must be Article 3 containing the principles as seen above.

3.5.4 ARTICLES IV, V AND VI

These are short articles that declare that all independent African States are entitled to become members of the organization and that all members have equal rights and duties under the Charter. There is also contained therein a declaration that all members shall observe the principles of the Charter.

3.5.5 ARTICLES VII

This is the article that creates the principal institutions of the organization, namely, the Assembly of Heads of State and Government, Council of Ministers, The General Secretariat and the Commission for Mediation, Conciliation and Arbitration.

3.5.6 ARTICLES VIII TO XIX

These various articles generally prescribe the various functions of the institutions created under Article VII. It may perhaps be important to pin point the significant provisions contained therein:

- (i) That the Assembly of the Heads of States and Government is the supreme organ of the organization with functions amongst others of reviewing the structure, functions and acts of all organs created, and that the Assembly shall meet once a year.
- (ii) That each member state shall have one vote and all resolutions shall be determined by a two-thirds majority of the members.
- (iii) That the council of ministers or other ministers as designated by Governments and that the council shall meet at least 2 times in a year.
- (iv) That the Council of Ministers shall be responsible to the Assembly and it is entrusted with implementation of Assembly decisions and co-ordinating inter African co-operation. Its resolutions are by a simple majority.
- (v) That the Secretary General, an appointee of the Assembly is the head of the secretariat and that he owes allegiance only to the organization and not to any particular member.

- (vi) That all members states pledge to settle all disputes among themselves by peaceful means under a commission of mediation, Conciliation and Arbitration to operate under a separate protocol to be approved by the Assembly of heads of State and Government.

It is important to note here that the Secretary Generals functions are merely administrative whereas the summit of the Heads of States and government has all decision making powers. This means that other organs including the Council of ministers and Secretary General would merely carry out the functions assigned to them by the Assembly.

3.5.7 ARTICLES XX TO XXII

Under these articles, the Economic and Social Commission, Educational, Scientific, Cultural and health Commission and Defence Commission are created. It is also declared that they shall be composed of the ministers concerned or those designated by members states and that their functions are to be carried out in accordance with the provisions of the Charter and on regulations approved by the Council of Ministers.

3.5.8 ARTICLE XXIII

This is another controversial article since it deals with the Budget of the organization. It is the responsibility of the Secretary General to prepare the budget for approval by the Council of Ministers. The said budget shall be provided by contribution from member states in accordance with the scale of assessment of the United Nations with a provision that no member shall be assessed an amount exceeding twenty per cent of the yearly regular budget of the organization. The member states also affirmed to pay their contributions regularly.

3.5.9 OTHER PROVISIONS IN THE CHARTER

Article XXIV dealing with signature and ratification of charter confirms that the charter is open for signature to all independent Sovereign African States and its ratification is in accordance with the respective constitutional processes. It goes further to confirm that the originals of the Charter done in English and French have equal authenticity and shall be deposited with the government of Ethiopia. It otherwise gives room for African languages without specifying which ones.

Article XXV declares that the Charter shall enter into force immediately upon receipt by the Government of Ethiopia of the instruments of ratification from two-thirds of the signatory states, while Article XXVI demands that after due ratification, the Charter shall be registered with the Secretariat of the United Nations through the Government of Ethiopia.

On the issue of interpretation of the Charter, Article XXVII stipulates that this shall be determined by vote of two thirds of the Assembly of Heads of States and Governments. The question of adhesion and accession is dealt with in Article XXVIII which allows any Sovereign African State of any time to notify the Secretary General of its intention to adhere or accede to this Charter. The Secretary General shall upon receipt of the same notify and communicate a copy of it to all the member states and admission shall be decided by a simple majority of the members.

Article XXIX declares that the working languages of the organization shall be English, French, Arabic and Portuguese with an allowance given of African languages. Once again, the Article does not specify which ones of African languages shall be admitted.

An interesting provision is in Article XXX which declares that the Secretary General may accept on behalf of the organization, gifts, bequests and other donations to the organization, but only upon the approval of the Council of Ministers. Article XXXI puts the responsibility of deciding on the privileges and immunities to be accorded the personnel at the secretariat on the Council of Ministers.

Renunciation of membership is contained in Article XXXII dealing with cessation of membership. Under this provision, any member which wishes to renounce its membership shall forward a written notification to the Secretary General and if at the end of one year the said notification is not withdrawn, the Charter shall cease to apply with respect to the particular member and it shall cease to belong to the organization.

The last Article in the Charter, Article XXXIII declares that the Charter may be amended or revised if any member makes a written request to the Secretary General and all members have been duly notified and a period of at least one year has elapsed. Approval of the amendment must be by two-thirds majority of the member states.

3.6 SALIENT OBSERVATIONS

Through a close observation of the OAU Charter as above, one can make a number of observations that could in one way or the other impact positively or negatively on the question of integration in Africa. One can list and examine the following observations:-

- (a) That under Article II the term used is co-operation, clearly implying that the organization was only intended to be an organ for co-operation and not the all out Political Union that some African leaders like Kwame Nkrumah had wished. It thus becomes clear why the organization while it existed did not attempt to achieve any sort of union that would have meant the limitation of any sovereign authorities and powers of any member states.
- (b) That the first four (4) of the seven principles in Article III of the Charter are similar to the provisions of the United Nations Charter. This perhaps would signify the fact that at the inception of the OAU, the founding members were already aware and conversant with the global and or international demands such as were enacted and contained in the United Nations Charter. This also shows and or indicates the reason why under Article XXVI, a demand was made that the OAU Charter as enacted had

to be deposited at the secretariat of the United Nations. Clearly therefore, there were intentions to create an organization that would operate side by side other regional organizations and the United Nations itself.

- (c) It is worth being observed here that whereas Article IV of the Charter gives guidelines on membership, there is absolutely no mention of any authority or power which could legally and within the Charter suspend or even expel any errant member or one that significantly operates outside the requirements of the Charter. There have been cases however, when member states have attempted to circumvent this by trying to pass resolutions with the required majority.
- (d) Whereas Article V of the Charter declares that the member states shall have equal rights and responsibilities, the said rights and responsibilities are not defined in the Charter. One can only take it to mean rights and responsibilities ordinarily expected of states generally.

Under this heading, it is also worth noting that under the OAU Charter member states are not stratified and there is no single member enjoying any veto power as is the case under the Charter of the United Nations.

(e) An irony to be detected is that whereas the states are equal under the Charter (Article V), Article XXIII dictates that each member shall make contributions in accordance with the scale of assessment of the United Nations. In effect therefore, member states whose economies are advanced and large would pay more than their poorer counterparts.

Here, a comparison could be made between a relatively rich member like Nigeria and a poorer state like Burkina Faso or smaller economy like Gambia.

(f) Whereas at inception and soon after, there were a total of 7 specialized commissions under XX, namely, Economic and Social Commission, Education and Cultural Commission, Health, Sanitation and Nutritional Commission, Scientific, Technical and Research Commission, Transport and Communication Commission, and the Commission of Jurists, in 1965, the Assembly of Heads of States decided to cut down the number of the Commissions to only 3. These, are now known as Economic and Social Commission, also dealing with Transport and Communications, Education and Cultural Commission, also dealing with Health,

Sanitation, Nutrition, Scientific, Technical and Research matters, and the Defence Commission, which remained intact.

The Commission of Jurists was done away with altogether.

- (g) Also striking is the provision in Article XXIII where one would wonder why the heads of States did not deem it fit to seek the Assembly's approval on the organization's budget. This has to-date remained the responsibility of the Council of Ministers.

The issue of the budget seem to have been taken lightly by the Assembly who even left it on the shoulders of the Ethiopian Government upto 1965.

3.7 AMENDMENTS IN THE CHARTER

By the nature of their operations, African States have felt rather reluctant to insert any amendments to the OAU Charter. The Charter therefore, has remained largely the same as the one first signed in 1963. One major amendment that has been affected in the Charter was in the change in the number of the specialized commissions as already seen. Another major

amendment was in the change in the designation of the Administrative Secretary General to Secretary General, thereby limiting the functions of the office to purely administrative ones.

It has been suggested that the Assembly decided to effect this amendment to the original Charter in order to avoid the situation that had arisen in the United Nations whose Secretary General at the time Dag Hammorskjold had acted in the Zaire crisis in a manner that certain members considered were in excess of the powers of that office. By declaring that the Secretary General only had administrative duties, the Assembly made sure that all important decisions of the organization were only made by the Assembly of the heads of State.

3.8 CONCLUSION

This chapter has looked at the OAU Charter critically in terms of content as they appear. A number of salient observations have also been made on the various articles. It is believed that light has been thrown on the OAU Charter so that a basis is laid for the better understanding of the research problem herein. This was necessary because, the legal framework of the OAU, the subject or focus of this project lies on the various articles in the OAU Charter.

CHAPTER 4

4.0 THE LEGAL FRAMEWORK OF THE NEW AFRICAN UNION

4.1 INTRODUCTION

The Organization of African Unity was formed amid high expectations and excitement across the whole African Continent. It was indeed a great relief to Africa that on 25th May, 1963, African leaders found common ground and signed the Charter of the Organization of African Unity. One could easily say that the formation of the organization by the contribution of practically all the independent African States then was the first major positive incident in Post Colonial Africa. At long last, the feeling that the African people could speak with one voice on all issues of concern to the continent under a common body created an atmosphere of hope and confidence as more and more of colonies became independent.

However, it soon dawned on the continent that despite the creation and continued existence of the OAU, there was still manifest failure to integrate of African States and peoples. The African Continent lagged behind compared to other regions of the world on all scales of social development. Inter and intra-state conflicts became rampant throughout the continent of Africa. On top of

this a myriad of other problems plagued the continent ranging from poverty, disease, illiteracy, low or no levels of inter-state trade, and backwardness, amongst many more.

Out of colonialism, Africa simply drifted back and became engulfed in neo-colonial links as the developed world directly or through their agents like multi-national corporations moved in to take advantage of the desperate situation to the benefit of the richer nations of the world.

Towards the end of the 20th Century however, a new awakening emerged in Africa and one of the areas of focus instantly became the Organization of African Unity and its guiding Charter. Feelings grew in favour of a transformation of the Organization and the legal framework on which it operated. These feelings culminated in the signing of the Constitutive Act of the African Union in the Summit Conference held in Durban, South Africa on 10th July, 2002, by a record 53 independent African Heads of State and Government in attendance.

With the signing of the Constitutive Act of the African Union, the Organization of African Unity was formally transformed into the African Union and the

OAU Charter signed on 25th May, 1963 was replaced by the Constitutive Act of the African Union, complete with its own legal framework.

4.2 PREAMBLE TO THE CONSTITUTIVE ACT

The preamble to the Constitutive Act starts with the affirmation that it is a document initiated by and agreed upon by the Heads of State and Government of the member states of the Organization of African Unity (OAU). This clearly shows the continuity and link between the OAU, which the leaders had hitherto belonged to and the African Union that they were about to initiate. In effect therefore, the same member states that had constituted the OAU are the ones that by their endorsement of the new Act, became members of the new organization.

It goes ahead to list generally by their designation, the leaders represented at the summit conference and therefore the ones enacting the new Charter, a whole 53 of them.

Immediately after the list of attendants, the preamble goes into specific ideas that inspired the process. From a reading of these ideas, it comes out clearly that the African leadership while giving credit to the organization being

transformed also acknowledged the important part that it had played. Of course the leaders also give a reflection of the areas of concern for the continent. They affirm that they are inspired by the original Africanism in the determination to promote unity, solidarity, cohesion and co-operation among peoples and states in Africa.

They have considered the principles and objectives in the OAU Charter and Treaty establishing African Economic Community. So, whereas the organization was being transformed, its principles would be considered in the statute of the new organization. On top of this the leaders recall the struggles for decolonization in Africa, a function superbly carried out by the organization. And in clear terms, they also consider the direct success of the OAU including liberation of the continent, common identity and as a framework of action for the whole continent.

In acknowledgement of the fact that the continent is indeed faced with serious challenges the leaders indicate their determination to confront the social, economic and political changes taking place in the world. This is an indirect admission of the fact that even in the leaders' view, the new challenges in the world could not be effectively tackled through the OAU. On top of this, they

show that they are convinced of the need to accelerate the process of implementing the Treaty establishing the African Economic Community so as to tackle the effects of globalization. The need for economic integration and development within Africa is therefore acknowledged.

In the long pre-amble, the leaders also venture into areas until then handled just superficially like partnerships between governments and all segments of the civil society including women, youth and the private sector. This clear acknowledgement is a significant introduction to the perception that African leadership has always had of the concept, of development, solidarity and cohesion amongst states and peoples.

Further, the leaders state that they are conscious of the fact that conflicts in the continent have been an impediment to the socio-economic development and they advocate for peace, security and stability be achieved if the development or integration agenda of the continent are to be achieved. They are also out to ensure the promotion and protection of human and people's rights, consolidation of democratic institutions and culture and to ensure good governance and the rule of law. They give a pledge to avail the necessary powers and resources for the strengthening of the relevant institutions.

All these, the Heads of State and Government recall, they are pledging pursuant to the Declaration adopted at the 4th Extra-ordinary session of the Assembly in Sirte, Libya of 9th September, 1999. This is the session at which the Assembly first resolved to establish an African Union after the motion was moved by the host leader, Muamar Gadaffi.

From the pre-amble to the Act, therefore, the stage is set by the leaders and it is clear that they understand or intend to incorporate modern or new concepts in the new union to achieve integration that had eluded the Organization of African Unity. The list of these new concepts is long and includes solidarity, cohesion, political independence, human dignity, economic emancipation, globalization, partnership, civil society, women, youth, private sector, conflicts, integration agenda, human and peoples' rights, democracy, good governance, rule of law and common institutions. An irresistible conclusion here is that these are the prime issues to the Assembly as they sign the Constitutive Act.

4.3 THE CONSTITUTIVE ACT OF THE AFRICAN UNION

The Constitutive Act of the African Union is a fairly comprehensive document encompassing a total of 32 Articles all interrelated and dealing with different items. A closer look at each of these Articles will help us understand better the nature of the legal framework of the African Union.

4.3.1 ARTICLE 1

The first Article in the Constitutive Act is the definition article and it merely defines the more recurrent and important references contained in the Act. The terms and references defined in this Articles Act, Assembly, Charter, commissions, Committee, Council, court, Executive Council, Member State, OAU, Parliament AND union. Without belabouring to give the definitions given, it is to be noted that the meanings of these terms and institutions would come out clearly as we explore the subsequent Articles.

4.3.2 ARTICLE 2

-Among the shortest Articles in this Act, it merely confirms that the African Union is established in accordance with the provisions of the Act. In effect therefore, it is the Constitutive document of the Union created in place of the moribund OAU.

4.3.3 ARTICLE 3

This is the article that deals with the objectives of the Union. A total of 14 objective are listed in this Article including.

- (i) Achieving greater unity and solidarity between African countries and people
- (ii) Defence of the sovereignty, territorial integrity and independence of member states.
- (iii) Acceleration of political and socio- economic integration
- (iv) Promoting and defending African common position on common interests issues
- (v) Encouraging international co-operation regard being had of the Charter of the Union Nations and Universal Declaration of Human Rights. This echoes one of the objectives of the OAU
- (vi) Promoting peace, security and stability in the continent.
- (vii) Promoting democratic principles and institutions. popular participation and good governance.

- (viii) Promoting and protecting human and peoples' rights based on the African Charter on Human and Peoples Rights and other relevant instruments
- (ix) Promoting sustainable development at the economic, social and cultural levels as well as integration of African economies
- (x) Establishing the necessary conditions to ensure Africa becomes a player in the global economy
- (xi) Promotion of co-operation in all fields with a view to ensuring rise of living standards of the people
- (xii) Co-ordinating and harmonizing policies of existing and future regional communities
- (xiii) Promoting research in all fields, in particular in science and technology
- (xiv) Working with international partners in matters of health.

Article 3 of the Act is like a list of areas where the continent of Africa had fared on badly and which needed urgent redress. It lays the basis for an attempt to correct the situation while introducing many new ideas and concepts never so freely acknowledged in Africa under the OAU. These include such as political and socio-economic integration, democracy, Human and Peoples Rights, Globalization, Sustainable Development, Regional Economic

Communities or blocks, Science and Technology and International Partnerships.

The focus here seems to be development and partnership, rather than stressing “us” and “them” to refer to Africa and the rest of the world respectively as seemed to have been implied under the OAU.

4.3.4 ARTICLE 4

Along Article containing some 16 principles upon which the new union would be operating and lists the following as the major principles.

- (i) Sovereign equality and independences of members
- (ii) Respect for existing boundaries
- (iii) Participation of African Peoples in the Union.
- (iv) Establishment of a common defence policy for the continent.
- (v) Peaceful resolution of disputes among members
- (vi) Prohibition of the use of force or threat to use force among member states
- (vii) Non – interference in internal affairs of fellow members
- (viii) The right of the Union to intervene in a member state in grave circumstances like war crimes, genocide and crimes against humanity

- (ix) peaceful co-existence of member states and their right to live in peace and security
- (x) the right of member states to request intervention from the Union in order to restore peace and security
- (xi) promotion of self reliance
- (xii) promotion of gender equality
- (xiii) respect for democratic principles, human rights, rule of law and good governance
- (xiv) promotion of social justice to ensure economic development
- (xv) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities
- (xvi) condemnation and rejection of unconstitutional changes of governments.

Again the principles seem to suggest a willingness on the part of the member states to cede some of the authorities the leaders enjoyed and placing them on the hands of the people or at the doorsteps of the Union being created. And just summed up under Article 3, the focus under Article 4 is the political socio-economic development of the member states and peoples generally.

4.3.5 ARTICLE 5

Article 5 of the Act, entitled Organs of the Union merely the organs as the Assembly, the executive Council, the Pan African parliament, the Court of Justice, the Commission, the permanent Representatives Committees, the Economic, Social and Cultural Council and the Financial Institutions. Whereas these are the organ expressly created under this article, Leeway or authority is also grated to the assembly to establish any other organs that it may decide.

4.3.6 ARTICLE 6

This deals with the Assembly, which comprises of heads of States and Government or their duly accredited representatives. The Assembly, is stated to be the supreme organ of the Union and is scheduled to meet one each year of in an extra- ordinary session if petitioned by tow- thirds majority of the members. It also confirms that the office of the Chairman of the Assembly shall be held by a Head of State or Government for a period of 1 year and the chairman must be elected by member states.

4.3.7 ARTICLE 7

It confirms that the decisions of the Assembly are made by consensus or by a two-thirds majority except procedural matters, which are to be determined, by a

simple majority. Quorum at meeting of Assembly shall be two-thirds of the membership.

4.3.8 ARTICLE 8 AND 9

Whereas Article 8 is a one line Article simply declaring that the Assembly shall adopt its own rules of procedure, Article 9 gives detailed powers functions of the Assembly. These include determining policies for the Union, receiving reports from other organs, considering requests for membership, establishing organs for the union, monitoring implementation of policies, adopting the Union budget, directing the Executive council, appointing and terminating the appointment of Judges at the Court of Justice, and appointing the Chairman of the Commission, Commissioners and their Deputies and also determining their functions.

In discharging their duties, the Assembly is at liberty to delegate to any organ of the Union.

4.3.9 ARTICLE 10,11,12 AND 13

These deal with the executive council as an Organ of the union. It is composed of Ministers for Foreign Affairs or such other authorities as are

designated by member states' governments, and the council meets 2 times in a year in ordinary session, or in an extra ordinary session petitioned by two-thirds of members. Again, their majority except in procedural matters which are determined by simple majority and the quorum at their sessions are two-thirds of the Union members.

Under Article 12, the Executive Council also adopts its own rules of procedure. Their functions in Article 13 include coordinating and taking policy decisions on foreign trade, energy, industry and mineral resources, food, agricultural and animal resources and irrigation, environmental protection, humanitarian action and disaster response and relief, transport and communications, insurance, education, culture, health and human resource development, science and technology, nationality, residency and immigration matters, social security and upto the establishment of an African awards, medals and prizes.

For accountability, they are answerable to the Assembly and as it also considers issues referred to it also monitors their implementation with power to delegate its powers and functions to the specialized Technical Committees established in Article 14.

In effect therefore, it is the Executive Council, which has the powers of formulation of the policies of the Union and also overseeing their implementation.

4.3.10 ARTICLE 14,15 AND 16

These relate to the specialized Committees established under the Union. These committee, to be responsible to the Executive council are the Committee on rural Economy and Agricultural Matters, the Committee on Monetary and Financial Affairs, the Committee on Trade, Customs and immigration Matters, the Committee on Industry, Science and Technology, Energy, Natural Resources and Environment, the Committee on Transport, Communications and Tourism, the Committee on Health, Labour and Social Affairs, and the Committee on Education, Culture and Human Resources.

Whereas these committees are responsible to the Executive Council, their restructuring is a function of the Assembly and they are supposed to be composed of ministries or senior officials responsible for sectors falling within their respective areas of competence.

Under Article 15, the functions of these specialized committees include preparation and submission of projects to the Executive Council, supervising and evaluating the implementation of decisions taken by organs of the Union, co-ordination and harmonization of projects, submission of reports to the Executive Council and any other functions that may be assigned to it under the Act.

Even from a casual look at the nature of the specialized committees, it can be noted that they cover just about all technical areas of any economy, all geared towards the success of the overall development agenda of the respective member state. It is also worth noting here that membership in these committees require competence in specific areas.

These committees are authorized or at liberty under Article 16 to meet as often as deemed necessary and whereas they prepare their own rules of procedure, they are compelled to present the same to the Executive Council for approval. They therefore enjoy freedom in their time schedule and are not inhibited by any particular provision of the Act.

4.3.11 ARTICLE 17

Article 17 regulates or provides for the African Parliament whose purpose is indicated as being to ensure the full participation of African peoples in the development and economic integration of the continent. The only function is that the same shall be defined in a relating thereto.

4.3.12 ARTICLE 18

As in Article 17 on the creation of the Pan African parliament, this Article creates a Court of Justice whose statute, composition and functions shall be defined in a protocol relating thereto.

4.3.13 ARTICLE 19

This Article establishes the financial institutions of the Union, namely, The African Central Bank, The African Monetary Fund, and The African Investment Bank. The functions, compositions and operations of these financial institutions have not been discerned though.

4.3.14 ARTICLE 20

Article 20 establishes the Commission of the Union that shall be the Union Secretariat. Its composition are listed as Chairman, The Commissioners and

their disputes and the assisting staff. With regard to their structure and functions, it is the Assembly that makes the determination.

4.3.15 ARTICLE 21

There is established under this Article, the permanent Representatives Committee, composed of permanent Representatives to the Union. It shall discharge the functions of preparing the work of the Executive Council and taking instructions from then said council. It otherwise has the powers of setting up sub-committees or working groups.

4.3.16 ARTICLE 22

The organ established under this Article is the Economic, Social and Cultural Council, which is an advisory organ, composed of different social and professional groups of member states of the Union. It is the Assembly that determines its functions, powers, composition and organization.

4.3.17 ARTICLE 23

This is a penalty Article. It empowers the Assembly to impose appropriate sanctions on any member state that defaults in the payment of its contributions and such sanctions are listed as denial of the right to speak at meetings, vote,

present candidates for positions or benefit in whichever way. Other sanctions are denial of communication and transport links with other member states and any other political or economic measures that the Assembly may determine.

To note here are wide powers of the Assembly in determining the nature of sanctions that could be meted out to a member state.

4.3 18 ARTICLES 24,25 AND 26

They merely confirm what were in the OAU Charter by ascertaining that the headquarters of the Union shall be Addis Ababa in Ethiopia. It otherwise allows for establishment of offices of the Union as Assembly may determine.

Article 25 confirms that the working languages of the Union are African languages if possible, Arabic, English, French, and Portuguese. Noted here is the fact that African languages have been accorded the first opportunity in the hierarchy of languages.

Under Article 26, it is the court that has the duty to interpret matters arising under the Act and before its establishment that responsibility lies with the Assembly.

4.4 OTHER ARTICLES IN THE ACT

The requirements of signature, ratification and accession under Article 27 are the same as they appear in Article XXIV of the OAU Charter already seen. The Acts entry into force under Article 28 is 30 days after the deposit of instruments of ratification by two-thirds of member states of the OAU from which the Union evolved.

Except for the requirement that on admission, An intending member state need to notify the Chairman of the Commission of its intention, and not the Secretary General, Article 29 is the same as Article XXVIII of the OAU Charter already considered.

Article 30 demands that Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union, while Article 31 allows for cessation of membership i.e. how a

member state may renounce its membership by giving the requisite 1 year notice to the Chairman of the Commission.

Amendments and revision of the Act are covered in Article 32 of the Act and they are essentially similar to Article XXXIII of the OAU Charter.

The last Article in the African Union Act (Article 33) confirms that the Act replaces the Charter of the OAU, but allows the Charter and its organs the leeway to operate in the transitional period pending ratification and coming into force of the Act. It also demands that the Act in 4 original texts be deposited with the Secretary General of the OAU and the Secretariat of the United Nations.

From the close scrutiny of the Constitutive Act at the pre-amble stage, the leaders have brought forth the problems that they consider to be plaguing the continent of Africa. They clearly indicate that it is their determination that they tackle these problems in whatever form ranging from matters of, unity, cohesion and co-operation, to the establishment of an Economic Community, to political independence, human dignity and economic emancipation, to common identity, to current matters of globalization, to partnership building

between the state and all sectors of the society including civil society, women, youth and the private sector, to eradication of conflicts, promotion of peace, security and stability, to protection of human peoples rights, strengthening democracy and its institutions with a view to ensuring good governance and rule of law, and to strengthening common institutions.

As earlier seen, it had been commonly realized and perceived that the continent of Africa lacked and or failed to achieve any meaningful integration under the Organization of African Unity and that that failure had a lot to do with the factors above. All these issues of concern had worked against integration that all African Peoples and States had always desired.

Prior to the Durban Summit Conference of 2002, it had been acknowledged and appreciated by all in the continent that in order to accelerate movements towards integration, it was necessary to completely overhaul the Organization of African Unity and its legal structures and replace it with another entity with suitable legal framework. And as was desired, at the said conference, the Organization of African Unity was accordingly replaced with the African Union with its own legal structure.

As has been seen earlier, the new Constitutive Act has come up with a totally different legal framework and created institutions that the defunct Charter did not incorporate, ranging from the Assembly of the Union formerly known as Assembly of Heads of States and Government, the Executive Council formerly known as Council of Ministers, the Pan-African Parliament, the Court of Justice, the Commission formerly referred to as the Secretariat, the permanent Representative Committee, the Specialized Technical Committees, the Economic, Social and Cultural Council and the Financial institutions comprising of the African Central Bank, the African Monetary Fund and the African Investment Bank.

One of the hypothesis of this project is that the failure to achieve integration of African States and Peoples was due to the nature of or the weak legal framework under which the OAU functioned. Conversely, this project would aim at determining the end of it whether with the enactment of the new Act and the institution of the new legal framework, African States and peoples are sure to gain and achieve integration.

The African Union, being still in its infancy stages, one can not be in a positive conclusion that it is indeed a success. However, one can be able to make

valuable predictions as to the probable impact of the creation of the Union and enactment of its legal framework. Of course, this is in line with the requirements of social research, which allows for valuable predictions based on scientific research as is intended in this project.

In order to make predictions there would be need to make any necessary comparisons between the African Union as constituted now and other similar regional organizations. This project proposes to make that comparison with the European Union being a premier regional organization which is tonted and a leading light and a success story on regional integration. It is therefore necessary to clearly know what the European Union is.

4.5.0 THE EUROPEAN UNION

4.5.1 WHAT IS THE EUROPEAN UNION?

Before the Second World War, Europe was guided by individual state constitutions. It took the total collapse of Europe at the war to give a new impetus to the idea of a new European order.

According to Klaus – Dieter,²⁷ the idea of the European Union developed from the French Foreign Minister Robert Schuman in his declaration of 9th May, 1950 in which he put forward the plan to combine European Coal and Steel Industries into a European Community for Coal and Steel. The plan resulted in the Treaty of the European coal and Steel Community (ECSC) on 18th April, 1951 in Paris or simply the Treaty of Paris which came into force on 23rd July, 1952.

A subsequent Treaty of Rome of 25th March, 1957 created the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). As the European Society developed, these three (3) communities merged to form one European Union (EU) by the signing of the Treaty of Maastrich which came to force on 1st November, 1993.

The European Union comprises the 6 founder members, Belgium, German, France, Italy, Luxembourg and the Netherlands, Denmark, Ireland and the United Kingdom which all joined in 1973, Greece which joined in 1981, Spain and Portugal which all joined in 1986, and Australia, Finland and Sweden who joined in 1995. On 16th April, 2003, the European Union celebrated the

²⁷ Klaus – Dieter Borchardt, the ABC of Community Law, 2nd Ed., European Ed., 1986.

signing of the Treaty of Accession to enlarge its membership to 25 countries and an additional 75 million people. The 10 new countries are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Further accessions for Romania and Bulgaria are scheduled for 2007. With the enactment of the Union Treaty, the citizens have become community citizens and not of the villages, towns or their respective countries.

The purpose of the European Union is listed as being to oversee an organized and vital Europe, and to lay the foundations of an ever closer Union among the peoples of Europe and to combine efforts for their constant improvement of the living and working conditions of their peoples. The community has wide functions ranging from the community wide administration of coal and steel industries which play a key role in the economies, to research for and utilization of atomic energy, and the establishment of a common market which unites the national markets and economic policies e.g. free movement of goods, free movement of workers, freedom of establishment, freedom to provide services, freedom of capital movements, agriculture, transport policy, social policy and competition. In doing all these functions, the community is guided by its statute.

The functions withheld from the community are matters of defence, diplomacy and foreign policy, education and culture. These are still the functions enjoyed by individual member states of the community.

In the case of the European Union, there is total supranationality in that whereas the Union is not a state with sovereign powers, it is an independent authority and member states are subject to it and their citizens are community citizens. It otherwise depends on the will of members while it is guided by the values of lasting peace, unity, equality, freedom, solidarity and economic and social security.

4.5.2 INSTITUTIONS UNDER THE EU

The European Union as an entity has institutions created by its statute including:-

- (i) The commission composed of members appointed by the Governments and with functions of setting the community policy and at the same time acting as guardians of community treaties and community interests. It is the executive body of the community.

- (ii) The council composed of representatives of governments with functions of reconciling individual members interests.
- (iii) European parliament also called European Assembly, elected by citizens of member states, and carrying out symbolic functions of a state. This is because the Union is not a state. The parliament also supervises the work of the commission.
- (iv) The Court of Justice which supervises community rules and also interprets the same to ensure uniformity. They deal in all community matters and the community laws lie in their Judgements.
- (v) There are also auxiliary institutions in specific areas. First, there is the Economic and Social Committee, which advises the council and the Commission of Economic matters. It is composed of experts and it has a technical mandate.

Thirdly, is the European Court of Auditors, which has the power to examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the overall financial management has been sound. They publish their reports annually in official Journal of the European Communities.

In a nutshell, the above show the nature of the European Union, and it is through the above structures that the European Society has managed to integrate more closely and achieved a high living standards, better social development, common market, no tariffs and free trade, common citizenship and even a common currency the EURO.

4.5.3 CONCLUSION

This chapter has looked at the legal framework of the African Union. We have also grossed through the European Union framework to ease any future comparative study. It is believed that this background has been necessary as we focus next on the question of integration in Africa in relation to the statutory structures both under the Organization of African Union and the African Union.

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5.0 CHAPTER FIVE

LEGAL FRAME WORK OF THE ORGANIZATION OF AFRICAN UNITY AND INTEGRATION IN AFRICA

5.1 INTRODUCTION

From the reading of the organization of Africa Unity Charter, one gets the strong feeling that the Organization was meant, amongst its other functions, to ensure, hasten and realize the integration of both Africa peoples and states.

This is because whereas the charter does not expressly declare that the issue of integration was a prime objective of the Organization, and even though in the Charter, the term integration is only used sparsely, many declarations, issues, insinuations, illustrations and references and made time and again which leads one to unavoidable conclusion that indeed regional integration was indeed the focus of the whole exercise of founding the organization by the founding fathers.

The issue at the inception was therefore not all the purpose for creating the organization, but rather, the scope of the organization created. It is no wonder that Kwame Nkrumah of Ghana could propose the creation of a complete

political integration unit with one continental government, one national flag, one national anthem and one military high command at this initial stage.

In line with this original vision of the founding fathers, the Charter uses and adopts on diverse occasions words and phrases like African peoples, unity, our continent, common determination, co-operation, the net result of which would be tantamount to be aiming at achieving the “We” attitude towards the organization by all peoples of Africa.

It is upon this background that this project proposes to establish a nexus between the legal framework under which the OAU operated and the apparent lack of and or level of integration in Africa.

5.2 WEAK LEGAL STRUCTURE IN THE CHARTER

If it is one element of the OAU that was largely responsible for the apparent failure of the Organization in its endeavours at trying to realize integration in the African Continent, must be the Charter itself. Apart from being an institutional hindrance to any efforts towards integration, the charter as drafted and as it remained had latent omissions that incapacitated the operations and

functions of the Organization and its set up. The weak legal structure in the Charter conclusively either inhibited the whole process of integration in Africa or slowed it down. In other times, they came in handy as excuses that unwilling leaders and states readily resorted to while taking particular repellant actions.

According to Chris J. Bakwesegha²⁸, an experienced and respected officer at the OAU General Secretariat, the Charter was inept and in bad taste straight from the commencing words of the pre-amble. He asserts that in the preamble the Heads of State and Government speak as if the OAU is their exclusive domain rather than something which belongs to all the peoples of Africa when they commence, "We the Peoples of Africa". The argument here is that the Heads of State and Government made it appear that the Organization that they were creating was theirs exclusively. A mere reading of the preamble could easily lead one who is not a Head of State to regard the whole organization with suspicion and minimize the chances of owning the unit. No wonder that to the ordinary African, the Organization always remained a sort of "Members Only Club" of Heads of State and Government.

²⁸ Chris J. Bakwesegha, *Conflict Resolution in Africa, A new Role for the Organization of African Unity*, in *Out of Africa Conflict; from War to Peace in Africa* ed. By Gunnar M. Sorbo and Peter Vale, Nordiska African Institute, Uppsala, 1997, Pg. 79.

Further to this, throughout the Charter, there is hardly any responsibility placed on the peoples of the continent. All responsibilities and obligations were placed on the Organization itself and the Heads of State and Government since every other institution under the Charter were answerable to the summit of Heads of State. The organization was therefore by the nature of its Charter, controlled from the top i.e. the Assembly of the Heads of State and not from the base i.e. the masses.

Writing on the same subject, Basil Davidson says,

“The aims and means of the OAU Charter would be able to become a reality only if the masses of Africa are mobilized for action²⁹”.

The Charter, being silent on the duties and responsibilities of the masses surely worked against efforts at integration. It is also this silence in the Charter that perhaps ensured that there were never even attempts at mobilizing the masses into the organization's systems and ideals.

²⁹ Basil Davidson, *Modern Africa, A Social and Political History*, Longman N.Y. 3rd Ed., Pg. 253.

The Charter of the Organization of African Unity in its various declarations in the preamble, as already shown above in the introduction separately declares themes that would wholesome constitute the single concept of integration. Whereas the term integration was used over and over during the debates leading to the signing of the Charter, the Charter itself failed to give any emphasis or prominence to the word. This was a flaw since by reading the Charter as drafted to the exclusion of the lively debates that preceded its enactment, one would be left wondering whether or not integration was the prime goal of the organization set.

And this anomaly continues to the section dealing with purposes and principles, in Articles II and III. These too employ the words unity, solidarity, coordination, cooperation, integrity, sovereignty and absolute dedication with abandon with reference to politics, diplomacy, economics, transport and communications, educational and cultural, health, sanitation and nutrition, science and technology, defence and security, emancipation and non-alignment without mentioning the word integration. The flaw in this is that it was more appropriate to specifically mention the definite term integration so that full effect of the purposes and principles illustrated could be ascertained.

At times, the Charter was utterly vague in its purposes as being for the promotion of unity and solidarity of the African States and to coordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa. It does not however indicate precisely the extent of the unity or even the better life to be achieved. Would the Union between Tanganyika and Zanzibar in 1964, be regarded as the one envisaged by the Charter? Or would unity be limited only by the act of speaking with one voice on matters of concern like de-colonization or apartheid? Or both? This vagueness obviously played a part in slowing down the integration process in Africa.

The one provision in the Charter that has received a level of notoriety as having played a major role in inhibiting integration in Africa is Article III (2) i.e. the principle of non-interference in the internal affairs of states or the non-interference clause. Apart from being vague on what constitutes non-interference in internal affairs, this provision was widely abused by undemocratic regimes in Africa whose policies were all against the interest of the continent. It was even used to prevent effective mediation of some of the internal crises that arose. A case in point is the way the Nigerian Federal Government under General Yakub Gowon invoked it during the Nigerian Civil War of 1967-70 by issuing warnings that recognition of

secessionist state of Biafra would be an interference in the internal affairs of Nigeria. The same government even declined offers for external mediation of the crisis by insisting that the crisis was an internal matter for the Nigerian Civil Police and any external involvement would be treated as an interference in the internal affairs of the State of Nigeria³⁰.

For the case of Angola, the invasion of Angola's territory by South African forces in support of the rebel group UNITA (The National Union for the Total Independence of Angola), was used as an effective argument by MPLA (Peoples Movement for the Liberation of Angola) government to justify the invitation of Cuba to support the defence of Angola and to station troops in the country. This was a peculiar case because the non-interference clause was not this time used to prevent external intervention, but rather as an excuse to invite another external power into the country to help counter the activities of the intruding state.

The irony of this case of Angola extended to absurdity when many governments including Nigeria supported the Angolan government after the intervention by South Africa, and thereby shifting their previous refusal to

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³⁰ Amate C.O.C, Inside the OAU, Pan Africanism in Practice, Macmillan Publishers, Pg. 58.

recognize any single faction and insisting that they form a government of national unity upon independence from Portugal. Of course their support for the Luanda government technically constituted non-interference in Angola's internal affairs and their action as a response to South African intervention in Angola was not justifiable.

Many other African States resorted to use of the non-interference clause whenever it suited them including; Morocco over the OAU's apparent support of the independence of Mauritania and also over Western Sahara, Uganda against Tanzania for hosting Uganda's dissidents in Dar-es-salaam, Congo Kinshasa when Prime Minister Moise Tsombe used it to curtail foreign mediation of the Congo crisis of 1964, Ethiopia and Kenya against Somalia over the latter's claims over the Ogaden province of Ethiopia and Northern Frontier District of Kenya, and the various claims by Togo, Ivory Coast, Burkina Faso, Senegal, Liberia, Niger, Nigeria, Cameroon, Chad, Benin, Gabon and even Madagascar of interference by Kwame Nkrumah, president of Ghana. The list and examples of misuse of this clause abound and are numerous.

In many cases, the resort to the non-interference clause were made amid tension and hostilities and such claims have had the effect of prolonging or ensuring the deterioration of such conflicts, to huge human costs. One can imagine that the huge and regrettable human catastrophes experienced in the Nigerian Civil War, Liberia, Somalia, Rwanda, Burundi, Sudan and other African hot spots could be prevented or at least minimized were the neighbouring and other countries free to move in and help in resolving the disputes. And it is the OAU Charter, carrying this infamous clause that would bear the full brunt and blame for ensuring the escalation of negative effects of integration i.e. violence and hostilities.

And so steadfast to this principle have the member states been that they have remained very reluctant to intervene even in very serious cases like Somalia which has been without any central government or law and order since the overthrow of President Siad Barre in 1991. Neighbouring states including Kenya and Ethiopia have maintained their unwillingness to intervene and cited the OAU Charter Provision. Effectively therefore, this provision has directly abetted or encouraged the flourishing of conflict and violence and in the process worked against integration.

Article II (i) (c), which outlines the defence of each states sovereignty, territorial integrity and independence is another undesirable provision in the Charter in as far as it instill strong nationalistic tendencies on the various member states. As seen in Chapter II herein, for the process of integration to be achieved, different states must of necessity reduce on elements of nationalism and sovereignty and be ready to surrender some of the same to the central unit created. If all states were to jealously protect their sovereignty as provided in the Charter, all efforts at integration would fail and indeed the OAU's efforts at integration achieved minimal positive results, thanks to such provisions in the Charter. It is worth noting that though the provision is such undesirable, is also reproduced in Article III (3).

Article X of the Charter is another flawed provision. This provides that each member state has one vote and that all resolutions (other than those UN procedures would require a two-thirds majority of the members of the organization and further that a quorum shall be constituted by two-thirds of the total membership. The achievement of the required majority has often proved too difficult for the member states as each of such states have had one interest or other on the various issues raised.

According to C.O.C. Amate in his book, "Inside the OAU", the primary concern of the African leaders at the time was to avoid the situation that existed in other international organizations in which certain member states by virtue of their size, wealth and military power or technological advancement, tended to dominate the other members³¹. Whereas this was the case in Article X, the same Charter in Article XXIII dealing with the budget, implies that the states are in fact not equal in that it stipulates that the contributions from member states will be in accordance with the scale of assessment of the United Nations. This in effect means that the states were not expected to make equal contributions to the organization.

The two-thirds majority rule has been cited as a major hindrance to the operations of the organization. For instance, it has been alleged that it was largely responsible for the belated response towards the 1994 Rwanda crisis by the organization after the members failed to secure the necessary majority to pass a resolution to send in peace keeping.

From the Charter in Article VIII, it is clear that the Assembly of the Heads of States is the supreme organ of the organization and it is the organ which must

³¹ Ibid at Pg. 65.

pass all the important resolutions of the organization. The irony however, resurfaces in Article XXIII dealing with the Budget. This is a very important aspect of the organizations ability to perform its tasks. The founding fathers however, only found it fit to leave the matter of the budget on the hands of the Council of Ministers. The conclusion that one derives from this is that to the leaders, the budget was merely secondary to the core issues of the organization and the casual treatment of the question of funding by the Charter perhaps explains why the organization found itself at all times with insufficient funds.

Once again, the two-thirds majority rule appears with reference to the operations of the Council of Ministers in Article XIV. The difficulty in attaining this majority both in attendance to constitute a quorum and in voting would obviously be Herculean. This would have the net effect of dragging the debates on and on and achieving little in the process of voting. This clumsy rule extends further with the same probable result to Article XXVII that deals with interpretation of the Charter. One would surely wonder why interpretation of a provision of the Charter would require a two-thirds majority vote.

THE CHARTER

Apart from the various weakness that we have looked at in relation to the Charter, a closer look and assessment of the Charter gives an instant impression of a document that is utterly insufficient for its purposes and one that make serious glaring omissions in its body structure. It is the opinion in this project that these omissions may have contributed immensely to the failure of the organization in ensuring the integration of Africa.

Margaret Aderinsola Vogot, in the article entitled, "Conflict Resolution and Peace Keeping- The Organization of Africa Unity and the United Nations",³² gives a number of the glaring omissions.

First, she urges that the OAU Charter was faulty in its effectiveness by omitting any provision of the veto powers similar to the Security Council created under the United Nations Charter. The author argues that the sheer numbers of the member state to the organization necessities that provision for a few strategic member to form a unit similar to the UN Security Council.

This would for instance hold prompt sessions to discuss matters of security

³² Margeret Aderinsola Vogot, Conflict Resolution and Peace Keeping- The Organization of Africa Unity and the United Nations, in Out of Africa, ed By Gunnar M. Sorbo and Peter Vale, Nordiska Afrikainstitutet, Uppsala, 1997, at 59.

erupting in various spots in the continent and making immediate and urgent resolutions on the same for rapid deployment. The argument seems to be that it is easier to convene and secure a resolution from a select small caucus of states than the whole organization summit as required by the Charter.

Through having a select caucus of strategic states, one can argue that instances of conflicts, coups and hostilities that have erupted in Africa, like the 1994 Rwanda crisis or the Somalia crisis that commenced in 1991 would not have had such devastating effects and or taken that long to quell.

Secondly, the author argues that unlike the United Nations, the OAU Charter and body unit had no regional offices in member states. Whereas the UN has offices and representatives in almost all its member states, the OAU had to operate from its Secretariat in Addis Ababa Ethiopia. It therefore lacked any early warning system or centers for collection of necessary information. And due to this lack of a comprehensive and reliable warning system, crises throughout Africa easily spread and got out of hand to only receive the OAU's belated responses.

Thirdly, the OAU Charter did not provide for and did not compel members to ensure political will and enforcement of the resolutions and affairs of the organization. The net result is that the members would keep participating in the meetings of the organs but end up not implementing them at all. In the absence of implementation, the good ideas that the leaders and technocrats proposed, advised and resolved remained largely irrelevant and the organization's ability to speed up the process of integration was greatly impeded.

One example here is when the OAU reacted to the Chad crisis by resolving peacekeepers to Djamena. Out of the whole membership, only Zimbabwe, Sierra Leone, Guinea, Angola, Burundi, Algeria, Ethiopia, Togo, Liberia and Zaire contributed fully. Seychelles and Lesotho only contributed partially. All others did not contribute at all. It became a total burden to states that had contributed troops i.e. Benin, Togo, Congo and Guinea. As a show of logistical failure, even the uniforms meant for the troops did not reach Djamena by the time the troops pulled out. Zairean contingent at doctors-even went without any drugs.

The Charter does not even spell out any punishments of any states that failed to meet their budget requirements to the organization. Various states accumulated huge arrears towards the organization's budget and no penal or disciplinary measures were ever meted out to them. Member states even adopted a formular for requesting for exemption from paying their shares of the budget as happened in 1973 when Mauritania, Senegal, Mali, Upper Volta, Niger and Chad appealed to the Council to exempt them due to severe droughts experienced in their countries. Angola, Cape Verde, Guinea Bissau, Mozambique and Sao Tome and Principe also applied for exemption to the Council in 1977.

The question of the budget was so crucial when even at the center of the merger of the original seven (7) specialized commissions to form on three (3) and the removal of the defence commission altogether from the Charter.

The OAU Charter had absolutely no provision for peacekeeping. Considering that one of the major problems that Africa has had to grapple with and which has been a major hindrance to integration is war and conflict, it is hard to imagine why the Heads of State and Government failed to insert any provision for peacekeeping. This is not to say that the OAU has never engaged in

peacekeeping. The organization has indeed engaged in peacekeeping out of specific resolutions, not pursuant to direct provisions in the Charter. It intervened in the Zaire (Congo crisis) in 1964 by virtue of various resolutions. It also sent troops to Chad after the Lome Resolutions in January 1981. Many other examples abound, where ad hoc committees and good offices were used in settling disputes in Africa. The point however, is that these attempts were made based on resolutions pursuant to the principle of peaceful settlement of disputes, without the Charter expressly providing for such peace keeping missions.

An important issue to raise at this stage is the existence the Central Organ composed of the Bureau and States representing the five (5) regions of Africa. The Organ is charged with the functions of providing a political frame for the member states to review peace and security within the continent. It consists of 16 nations. The criticism over this has been the inability of the Organ to operate thanks to its procedural rule that provides that it operates through unanimous decisions. It is not routinely practical to obtain unanimous decisions from all the 16 member states. In effect therefore, this Organ has been ineffective and can be referred to as redundant.

Apart from the above omissions, there are many other later day and current concepts, ideas and principles that were totally lacking in the OAU Charter. All these acted negatively against the OAU's effectiveness in tackling the question of integration. Since these are dealt with at a later stage, it would suffice here to mention just a few of them as examples here including human rights, environmental degradation and sustainable development, civil society, gender, multi-national co-operations, private sector, good governance and rule of law, popular participation, information technology, integration, war crimes and genocide, and interdependence. These are all modern day concepts completely lacking in the OAU Charter and their absence quite obviously impeded the operations of the organization.

Another group of omissions in the Charter are the provisions that deal with institutions. These are institutions that are necessary for the process of integration and whose absence from the Charter had a serious negative effect at the attempt towards integration. Mere mention of some of them would suffice at this stage as they are also dealt with elsewhere. They include institutions like Continental Parliament, Court of Justice, and Financial Institutions.

Perhaps the words of Dr. Philip Nyinguro in his article, "The Impact of the Cold War on Regional Security; the Case of Africa", amply shows the inadequate nature of the OAU Charter as it existed, when he states.

"The OAU still remains largely a talk shop and lacks the funds, strength and political unity necessary for action; it has yet to re-appraise, scrutinize and review its Charter in order to remove certain unfortunate principles, resolutions and decisions that have straitjacketed it in its role as a conflict resolution machine"³³.

Whereas the same is an accurate assessment of the OAU's ability on conflict resolution with emphasis on its Charter, the same is also true in other areas like economic integration, development and independence, the field of politics, social development, all general all the facets of development.

In his assessment, Dr. Nyinguro particularly for a total remodification and or removal from the Charter of all the clauses that overemphasize on sovereignty of the member states³⁴. This is because putting too much emphasis in

³³ Philip O. Nyinguro, *The Impact of Cold War on Regional Security. The Case of Africa*, in *The United States and Africa: From Independence to the End of the Cold War*, Ed. By Macharia Munene, J.D. Olewe Nyunya and Korwa Adar, Pg. 78.

³⁴ *Ibid* at 79.

sovereignty (and nationalism) of the individual member states would have a converse effect of increasing the reluctance of the individual member states to cede their authorities to the regional organization. In effect therefore too much stress of sovereignty works against all efforts towards integration, and the faster we remove the particular clauses and provisions the more likely we could see positive results towards integration i.e. we should ensure that the Charter is regional looking rather than national looking.

The scholar goes on to postulate that the ability of Africa to grapple with the challenges of post cold war security depends on good housekeeping both at state and regional levels. And the greatest task is to create socio-political and economic environmental institutional framework to minimize, maintain and safeguard security. In such a framework, democratization is a pre-requisite for peace and security. There must also be economic development side by side high literacy levels, good health care, family planning, equitable distribution of wealth, food, security, collective security for states, conflict resolution mechanisms, trade and good housekeeping. The list here is still long, but the overall impact from the combination of all these factors is closer co-operation and harmonization, eventually leading to integration.

A reading of the Charter of the OAU and the general operations of the organization reveals that whereas it adopted the use of ad hoc committees and commissions, individual leaders and good offices try and solve the various misunderstandings and conflicts throughout the region, these were never provided for under the Charter. The organization time and again passed resolutions for such purposes based on the principle of settlement of disputes by peaceful means as passed in Article III (4).

In most occasions, the member states showed great reluctance to submit themselves to and conform with the resolutions of these commissions and good offices. This is exemplified by the many conflicts that raged on even after specific commissions and good offices had been appointed. At other times, there were total rejection of these bodies mandated and the concerned member states simply ignored them. An example in mind was in March 1979 when President Nyerere simply refused to meet the members of a committee set up to arbitrate in the war between Tanzania and Uganda. The committee had no alternative, but to conclude their report prematurely and present it to the Secretary General.

Such were unfortunate incidences and had the committees, commissions and good offices been given the strength by being inserted in the Charter and had the Charter also had a penalty clause for default (as already seen), there may have been negotiations leading to less distinction of human lives and property. A better understanding may have been achieved at the utmost.

Though the Charter created the Commission of Mediation, Conciliation and Arbitration in Article VII (4) and Article XIX no guidelines were given on how the commission would operate and no attempts were made to activate it. Records show that apart from its initial sittings in December, and September 1967, this commission remained largely dormant even though various conflicts and misunderstandings went on throughout the continent where it would have positively participated had the Charter given it adequate mandate and authority.

The failure of the commission further illustrates the failures of the other Organs purely because of the inadequate regulatory machinery in the Charter. The Assembly itself, because it was not compelled by the Charter did not refer any disputes to the commission. There was also never any funding to the commission and it remained totally nonfunctional. And it was not the only commission that faced the same fate.

The defense Commission created under Article XX only met once in November 1975 in Kampala and all its recommendations were disregarded by the council of Minister's meeting in Monrovia in July 1997 who only regarded it as a good working document. It too remained absolutely dead though its participation could have helped alleviate the various conflict situations that arose from time to time.

In a nutshell therefore, one concludes that the OAU Charter as it remained was not comprehensive and articulate enough to ensure that the continent and peoples of Africa could rely on the organization to foster and achieve integration. Apart from the archaic and redundant clauses being retained therein, the Charter was silent and failed to contain major ideas and legal or structural framework which could ensure the smooth and unhindered operations of the organization and make it the engine of the vehicle for achieving integration in all its forms throughout the length and width of the continent.

5.4 MAJOR SUCCESSES OF THE OAU

The organization of Africa Unity existed from its inception in 1963 to its demise in 2000. Obviously the organization had its own achievements while it

existed despite the weak nature of the Charter on which it operated. It would therefore be unfair to totally overlook such success as these contributed tremendously towards the semblance of integration that African States and people have achieved from the time of their independence.

Foremost among these successes is the question of de-colonization of Africa. The question of de-colonization was the first item that the founding fathers of the OAU considered after the establishment of the organization, and it indeed experienced very lively debates. It was Prime Minister Ben Bella of Algeria who kicked off the debate by suggesting that liberation of remaining colonial territories in Africa should be the first priority of the new organization. The Assembly also suggested that they put a collective weight behind the liberation war. To prove his commitment, Ben Bella confirmed that he had put 10,000 Algerian troops at the disposal of Angolan freedom fighters. He received unanimous support from the delegates and Prime Minister Milton Obote on his part offered his country as training ground for African troops engaged in the freedom struggle.

Sekou Toure of Guinea even suggested a radical step of setting a date when all of Africa would be expected to be independent and upon which date Africans

could physically eject the colonialists from the continent, and further that all independent states should allocate at least one percent of their annual national budgets to liberation movements. A liberation committee comprising nine (9) states i.e. Algeria, Egypt, Ethiopia, Guinea, Nigeria, Senegal, Uganda and Zaire was established to oversee and co-ordinate the issue of liberation throughout the continent. A fund was also established for donations to be used in the freedom struggles.

Though there were difficulties in late payments by members to the fund and other logistical problems, the liberation committee and indeed the OAU in general did a splendid job in ensuring that Africa became free from colonialism. Due to concerted efforts, even the Portuguese territories of Mozambique, Equatorial Guinea, Guinea Bissau and Angola gained their independence. Credit must go to certain sub-regional organizations especially the frontline states of Southern Africa who worked tirelessly in ensuring that Southern Africa, which was the last bastion of colonialism in Africa became independent.

After the independence of Mozambique and Angola, the OAU in conjunction with the frontline states ensured the independence of Zimbabwe and Namibia.

Addition efforts both at the OAU and the United Nations saw the collapse of the Apartheid regime in South Africa when it became the latest independent African State in 1994. With this independence of the Republic of South Africa under President Nelson Mandela Africa had now become fully free from direct colonial rule and domination. Among the institutions that no doubt would get accolades for this tremendous achievement was the OAU which in Articles II (d) and III (6) had fixed as a purpose and principle to totally emancipate Africa from colonialism.

A notable achievement of the OAU that one could consider is the fact that by virtue of the enactment of the OAU Charter, OAU member states through the annual Assembly of the Heads of State and Government have met consistently and share ideas and issues of common concern from inception. It is worth noting that all independent African States became members of the organization and a part from temporary withdrawals by a few members like Morocco in 1984 over the question of Western Sahara and Zaire in 1965, the OAU at least at the level of Assembly remained intact and committed to its annual meetings. Even the states withdrawing their membership soon rejoined and at the time of its demise in 2000 the OAU membership was a full 53 independent African States.

The Organization of African Unity also became the only rallying voice of the African People in the world scene including the United Nations. The OAU through its member states became an important element at the United Nations General Assembly where they articulated the African case. Various examples can be given here like Resolution AHG/Res 46 (II) which declared that the Economic Commission for Africa created by the United Nations could work with and even act as a consultant to the OAU in its activities. The OAU also through its Organs and Commissions worked closely with the United Nations own Organs like The International Labour Organization (ILO), United Nations Conference on Trade and Development (UNCTAD), United Nations Industrial Development Organization (UNIDO), The United Nations Security Council and Practically all Organs of the United Nations.

During the Cold War, the OAU served a successful role of being a well correlated and coordinated voice for independent African States in the Non-Aligned Movement (NAM). This ensures that the new and fragile African States could maximumly take advantage of the super power rivalry that prevailed in the international system. Arguments have been made on whether or not various African states were truly non-aligned, but this is not the focus of this project. The issue is that through the OAU's declaration in Article III

(7). African states, though nascent at the time, successfully managed to manoeuvre themselves through the Cold War period without any major catastrophes. Perhaps the ideologically based civil wars like the ones in Angola, Mozambique and Congo and the Ethiopia- Somalia conflict marked the epitome of ugly effects of super power rivalry in Africa.

The achievements of the OAU under its Charter are innumerable and not all can be extensively discussed here. All these were carried out in the context of the existing Charter. One can only suppose that had the Charter been drafted to scratch to give proper leeway, the OAU would have truly been the engine of the train to integration.

5.5 OTHER CAUSES OF LACK INTEGRATION IN AFRICA

The general perception and data collected clearly show that Africa suffers from very low levels of integration. Whereas the weak legal framework of Africa's umbrella organization has already been seen as having contributed to this awkward state, studies and research show that many other factors may have contributed to this phenomenon. This project would be incomplete if we do not mention these other factors, as they would be useful in helping us prove or disprove our project hypotheses.

And from research carried out and data collected, these other factors are various with the utmost ones being: -

5.5.1 SOCIO- ECONOMIC CAUSE

Africa states are about the poorest in the world, particularly Sub- Saharan Africa. Ann Siedmann and Fredrick Anang thus say;

“ With a land area 3 times the size of the United States, Africa’s vast rich continent possesses all the resources for modern development. 3 decades after the people of Africa began to throw off the bitter yoke of colonial rule, some 28 African Countries, mainly in Sub- Saharan Africa still rank among the world’s 42 poorest nations”³⁵ .

Colin McCarthy³⁶ - using the measurement of development by way of the Gross Domestic Product, says that South Africa’s GDP of US Dollars 103,651 million in 1992 was slightly smaller than the Norwegian GDP which then was US Dollar 112,906 million, while it was approximately 3 times larger than that of Algeria which was the second largest in Africa and 3½ times larger than

35 Ann Siedmann d Fredrick Anand 21st century Africa. Towards a New Vision of Self Sustainable Development, Africa World Press, Trenton (N J) Pg 5

36 Colin McCarthy, size of Economy in ,Religion Integration Part of the Solution or part of the Problem in Africa Now? Ed By Stephen Ellis, Heinmann, USA, 1996 Pg 214

that of Nigeria, which was the 2nd largest in economy in Sub-Saharan Africa. In other words, Africa's largest economy by far is approximately the same size when measured in terms of GDP, as that of a small European Economy.

This small size of the economies restricts the ability of the countries to benefit from the lower unit costs (derived from economics of scale) and viable import substituting opportunities, hence a need to create customs unions or common markets. This will enable manufacturers to produce at lower unit costs for a larger protected market.

Writing on the agrarian sector in Africa, C.S. Whitaker³⁷ notes that a critical problem for Africa is that of food availability and distribution by declines in food production, widespread hunger and famine. He gives various reasons ranging from ecological deficits, to climatic and natural conditions, to depletion on fertile soil, scarcity of financial resources, debt burden, falling terms of trade, weak rural infrastructure and archaic socio-economic structures. All these factors add up to the food crisis that Africa finds itself in.

³⁷ C.S. Whitaker, in *Agenda for Action; Africa - Soviet - US Co-operation*, Ed. By Anatoly A. Gromyko and C.S. Whitaker, Institute of African Studies of Academy of Sciences of the USSR, Lynne Rienner Publishers, 1990 at Pg. 11.

The special Report of the United Nations Food and Agricultural Organization³⁸ notes that Sudan is only one of a number of African nations where the problem of food supply has once again reached desperate proportions. In that year 1988, a severe food crisis continued in Mozambique, Ethiopia, Angola and Chad. The United States Department of Agriculture also noted in its 1981 report that per capita food production in Sub-Saharan Africa was falling by about 1 percentage point per year³⁹.

Already it is clear that such serious food crisis the various states are putting more efforts at achieving food sustainability while the tendency to put the issue of continental integration takes a back seat.

Other areas of economics have not fared any better. Africa has found itself indebted to both international and local donors who have now held Africa hostage, siphoning an unproportionally high percentage of the local wealth into debt reseriving and leaving very little or nothing at all for any sort of economic development. The debt crisis has worsened to the extent that according to the Economic Commission for Africa Report in 1997 noted that African debt (without South Africa) exceeds 200 billion Dollars, while

³⁸ FAO, Food Supply situation and Crop Prospectus in Sub-Saharan Africa: Special Report, June 1988 iii.

³⁹ U.S. Department of Agriculture, Economic Research Service, Food Problems and Prospects in Sub-Saharan Africa, Decade of the 1980's, Washington D.C., 1981, of Pg. 46.

tentative International Monetary Fund (IMF) data showed that by the end of 1987, the debt would be about 138 billion Dollars or about $\frac{2}{3}$ of their Gross National Product. These surely are huge figures that would leave nothing for the development of the continent.

Various reasons have been given for this level of poverty as seen above. In the eyes of the bilateral donors however, Africa suffered from poor governance, corruption and poor economic managed. It was this perception that led to the introduction of Structural Adjustment Programmes (SAPS) by mainly the IMF and the World Bank. Focusing on better economic performance, the adjustments advocated for ranged from liberalization of prices and tariffs, allowing exchange rates to be set by the market, abolishing subsidies relaxing controls over private investments, privatization, rationalization of administrative institutions, taxation, credit and budgetary mechanisms, debt management and control over state funds.

However well intentioned, studies and experience have shown that these structural changes have worsened the poverty situation and affected the masses tremendously leading to even lower production levels. According to the 1989

Economic Commission for Africa Report, endorsed by all African Ministers of Economic Planning, Development and Finance,

“There is mounting evidence that stabilization and structural Adjustment Programmes are rending the fabric of the African Society. Worse still, their severest impact is on the vulnerable groups in society, children and the aged, who constitute two-thirds of the population”⁴⁰.

The age we now live in is often referred to as the information age where the world has been regarded as a single village. This implies that information technology is an important facet and a necessary partner to development. In Africa however, we still live in the dark ages with inadequate or no telecommunications at all. According to Rayment O. Akwule⁴¹, in Africa, telephone availability averages 0.7 per 100 population compared to 2.8 per 100 in Asia and 5.3 per 100 in Latin America and 5 or more per 100 in Europe and North America. He also asserts that there are more telephone lines in Tokyo than in all Africa put together. The net result is that there is no or very little information that is exchanged between African States and between Africa and

⁴⁰ Daniel Arap Moi, *Kenya African Nationalism: Nyayo Philosophy and Principles*, Macmillan Publishers, 1986, 34.

⁴¹ Economic Commission for Africa, *African Alternative Framework to SAPS for Socio Economic Recovery and Transformation*, Addis Ababa, 1989.

the rest of the world. This coupled with poor road, railway and air transport network mean that Africa's chances at integration are greatly diminished.

In the field of trade, whereas there is very negligibly trade between African states themselves, the figure is even smaller when it comes to trade with other parts of the world. Locally, all African countries produce the same commodities, basically agricultural, and due to the uniformity of the production very little state to state trade is carried out. At the international level, Africa only exports small quantities of basic agricultural commodities whose prizes are very little. To the contrary, Africa is a net importer of finished goods. The result of this heavy imbalance of trade is that Africa spends all its hard earned foreign exchange, not for development but in importation of basic finished goods. This explains the permanent circle of poverty in the continent.

Many other causes for the lack of integration in Africa could fall under this sub-heading. Africa on its part has tried many avenues of getting out of the whole quagmire to little success.

The Lagos plan of Action that came out of the 2nd extra ordinary session of Assembly of Heads of State in Lagos in April 1980 was one such step taken.

Focusing on good economic management, creation of African Market, privatizing food production, improvement of the environment, medical care, draught and desertification, the whole plan regrettable became another failure and did not take off the ground after differences between the OAU under Eden Kodjo and ECA under Adelbayo Adedeji presented separate documents making the final peace be neither satisfactory to the OAU or ECA Executive Secretariats. The Abuja Treaty of 1991 and their attempt merely affirmed ideas of Lagos Plan of Action and re- stated the commitment of the OAU's Heads of state to an integrated economy in the continent. It too did not get the ground.

5.5.2 WARS AND HOSTILITIES

Wars and hostilities have been a major problem in Africa and to a large extent have contributed to the low levels of integration in the continent. At practically every Assembly of the OAU the delegates had to consider the issue of Africa's inter and intra wars. And various reasons have been for this ranging from population pressures, minerals in border areas, religion, tribalism and regionalism, economic disparity, lack of democracy, and human rights violations, poverty and territorial claims

The list of African states that have gone to war either with their neighbours or suffered internal civil wars is long and includes, Morocco and Algeria, Ethiopia and Somalia, Somalia and Kenya, Tanzania and Uganda, Chad, Congo Kinshasa, Congo Brazzaville, Sudan, Ethiopia and Eritrea, Mozambique, Angola, Rwanda, Burundi, Uganda, Somalia, Nigeria, Liberia, Sierra Leone, Ivory Coast and Gambia. From this list, it is clear that no specific region of the continent has been spared the crisis, and the effect have been felt greatly in terms of deterioration of development, refugee crisis, open hostilities between neighbours, loss of human lives and destruction of property. There has also been an arms race in Africa.

Speaking on this subject Salim Ahmed Salim, then Secretary General of the OAU had this to say,

“If we can not arm ourselves enough to represent a credible deterrent to the outside powers, why do we stock pile arm? The tragic character of the arms race in Africa is its inherent motivation to arm against neighbours, against sister countries”⁴².

⁴² Raymond O. Okwule, African Communications in an Information Age: What Role for a Joint Soviet – US Development Programming, in USSR and Africa, Pg. 130.

Because of this arms race, many African countries have tended to keep and sustain huge armies which have just been but a drain on their economies. Time and again such armies have also caused mischief both in the neighbouring countries and internally.

President Moi illustrates this,

“Members of the OAU have unusually large and unstable national armies relative to the productive national base upon which they depend. They either engage in inter or intra state conflicts”⁴³.

To him therefore, these large armies and the conflicts that they have perpetrated have not been to the advantage of Africa in terms of development and integration in general. He advocates for a stop in all these wars and instability since the weakening of one or more member states of the QAU reduces the effectiveness of the continental institution. Indeed this is true if one considers the cases of Somalia, Liberia and Sierra Leone.

⁴³ Moi, Kenya African Nationalism at pg. 161.

5.5.3. POOR GOVERNANCE IN AFRICA

Africa is well known for poor leadership. Such government has been on the basis of tribalism or religious differences, inept leadership of various semi-illiterate leaders (Uganda under Tito Okello and Amin) and corruption which is a major issue in many African states. As a result, development has been retarded throughout the continent. Mutual understanding has been a very rare commodity in Africa as exemplified by President Nyerere's refusal to recognize Idi Amin as President of Uganda due to the latter's low level of understanding.

Another serious outcome of this has been recurrent coup de tats. This, in Africa context, has meant the unconstitutional change of government, mainly by the country's military. It is worth noting that due to the first coup in Africa in which President Olympio was dethroned in Togo barely 2 weeks to the inaugural OAU Conference in Addis Ababa in May 1963, the founding fathers saw it fit to denounce assassinations in Article III (5) of the charter. Of course this provision in the Charter has not aided matters much.

Professor Peter Wanyande writing on this issue confirms,

“Coups have been so frequent in Africa that by 1986, out of 49 independent countries 2/3 were under a military government of one type or another with some having experienced several coups since the became independent⁴⁴”

The human rights record of OAU member states became so bad over the years that in the Monrovia Assembly meeting in July, 1979, while dealing with the refugee crisis the meeting among others called for respect for the OAU Charter Principles and the UN Charter on Human Rights. With such a bad record, there existed permanent tension throughout the continent with a backlash effect on efforts towards integration.

5.5.4 COLONIAL LEGACY

Colonial legacy in its various forms was major hindrance to integration and they still are. Top on the card here is the way the partition of Africa was carried out by the colonial powers and thereby giving Africa the boundaries that they have to date. These boundaries were often curved out criss crossing between communities and even families. This led to people of the same communities and families being government by different powers and now

⁴⁴Peter Wanyande, Democracy in the one-party: the African experience, in government and Politics in Africa; Ed. By Okwudiba Nnoli, AAPS Books, Harare, Zimbabwe

belonging to different states. This has tended to create nationalistic tendencies which obviously worked against integration.

The OAU Charter in Article III (3) declared the respect for existing boundaries and despite this, the issue of boundaries have always come up. A case in point is that of Somali speaking people who were divided into 5 different regions during colonialization i.e. French Somaliland, Italian Somaliland, British Somaliland, Ethiopia and Kenya. The resultant nationalistic activities of the Somali resulted in the Ethiopia – Somalia War over Ogaden and the Kenya – Somalia skirmishes over the Northern Frontier District, now North Eastern Province of Kenya.

Other conflicts have included Ghana and Burkina Faso, Niger and Benin, Uganda and Tanzania, Gabon and Equatorial, Guinea and Chad and Libya. To this extent, these colonial legacies have acted against efforts aimed at integration. Perhaps one may mention other legacies as including strong language and cultural affiliation, system of education and groupings with former colonial masters like the Commonwealth of Nations and the Francophone Union.

5.5.5 EXTERNAL FACTORS

The main factor here is the super power rivalry that spilled over to cause conflicts and wars in Africa. Both USSR and USA were guilty in this respect for their selfish interests and these rivalries were experienced in the Congo crisis in the 1960's in the Angolan Civil War and Mozambiqan Civil War.

Even the Apartheid regime in South Africa was sustained through these super power rivalries, and Ethiopia and Somalia went to war with the support of opposite super powers. The end result to all this was the retardation of growth and development in specific areas of Africa.

5.6 CONCLUSION

From the analysis in this chapter, it is clear that the OAU Charter was deplorably adequate and had a lot of contribution against integration in Africa. On other hand, it is also clear that other also contributed to the failkure by Africa to experience integration.

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CHAPTER SIX

6.0 IS AFRICA GOING TO ACHIEVE INTEGRATION UNDER THE AFRICAN UNION?

INTRODUCTION

We have already seen how the weak legal structures in the OAU Charter in fact contributed and were largely responsible for the organization's inability to ensure effective and total integration of African States and peoples. The effect of this lack of integration are all there for one to see, what with military coups, dictatorships, lack of respect for human rights, environmental degradation, civil wars, inter-state conflicts, poor governance, low levels of production and interstate trade, political animosity, illiteracy, poverty, poor health facilities, tribalism, poor infrastructure and communication facilities, backwardness, lack of any meaningful industrialization, suspicion amongst states and peoples and disrespect for the principles of rule of law and natural justice, etcetera etcetera.

We have seen how other factors other than the weak legal structures in the OAU Charter also participated in the poor integration of African States and peoples. It is the lack of integration that made African leaders seek to improve'

on the continental body and the most obvious area of focus was the Charter of the organization. Thus the new Constitutive Act of the African Union signed by all the 53 African Heads of States made many and important changes that the people of Africa have a firm believe, will lead the whole continent to total integration.

6.1 EFFECT OF THE NEW AND ENHANCED LEGAL STRUCTURES IN THE CONSTITUTIVE ACT

From the preamble to the Constitutive Act, it is clear that the Heads of State and Government are aware that they are developing what the OAU had set in motion. They in fact consider the Charter of the OAU. This is proof that the enactment was in fact aimed at improving on the Charter that the organization had operated under from 1963.

The Heads of State are also aware of the fact that unlike in the OAU Charter, it was no longer an objective to completely emancipated to continent from colonialism. They in fact consider the new organization as able to enjoy the total liberation that the continent already enjoys. In a way, this too is a confirmation of the achievements of its predecessor, the OAU.

As an improvement on the provisions of the OAU Charter, the new preamble incorporates additional ideas and issues. These include economic emancipation, common identity, collective action, globalization, government partnerships with civil society, women, youth, and private sector, acknowledgement that conflicts are a hindrance to peace and development, human and peoples rights, democracy, culture, good governance and rule of law, and strengthening of common institutions. All these are important areas not comprehensively covered in the previous Charter and they give the new Union a lot of leeway to manouvre in its bid to ensure the carrying out of its objectives. From the mere reading of the preamble therefore, one already sees the improvement made on the previous Charter, the intention obviously being the attainment of integration.

It is worth noting that even the naming of the Continental Organization has changed from the Organization of African Unity to the African Union. This signifies the direct intention of ensuring that the continent fully integrates into a Union. One would distinguish this with the rather refreshing debate postulated by President William Tubman of Liberia who suggested at the inaugural meeting of Heads of States and Government in May 1963, that the name of the organization should read "Organization of African Unity," and not

“Organization for African Unity”⁴⁵. The adoption of the new name clearly confirms the intention of the organization.

Just as in the preamble, the objectives of the Union as listed in Article 3, are a great improvement on the objectives as they appeared in the old Charter. The objectives are now diverse and contain some of the latter day concepts, issues and ideas including, achieving greater unity and solidarity, political and economic integration, African common positions in world affairs, promotion of peace, security and stability in the continent, promotion of democratic principles and institutions, popular participation and good governance, protection of human and people’s rights, sustainable development in all levels and integration of African economies, raising the living standards of peoples, coordination and harmonization of policies, promotion of research and technology and eradication of preventable diseases and promotion of good health on the continent.

As already seen, these issues addressed and indicated as the objectives of the Union are the culprits in the race to integration. It is therefore gratifying to note that they have been clearly spelt out in the Act. This, it is supposed will

⁴⁵ Amate Pg. 59.

go a long way in helping reduce the apparent suspicions that African states have always had against one another on matters of unity or co-operation in specific fields like science and technology or commerce. And the sure result of co-operation in all these fields is the realization of integration.

Article 4 on principles of the new Union is another very comprehensive provision that are truly an improvement of the legal framework on which Africa's continental body shall act. Just as much as it covers diverse areas, it also incorporates relevant and modern day issues of concern to all. These include interdependence among member states, participation of African peoples in the affairs of the Union, common defence policy and peaceful resolution of disputes as determined by the Assembly. The concept of interdependence would acknowledge and encourage trade and interaction, necessary ingredients of integration. Common defence policies would go a long way in making the various members acquire and maintain professional armies and reduce inter-state conflicts that also work against integration.

The principles go further to cover the prohibition of the use of force or threat to use force amongst members of the Union. This is a very significant development since inter state hostilities have been a major hindrance to

integration in Africa. Similarly, whereas the non-interference clause is retained in clause (g), this provision is diluted this time around by clause (h) which allows the Union to intervene in other members affairs in grave circumstances like war crimes, genocide and crimes against humanity. African states shall therefore not be able to use the non-interference clause as an excuse for preventing the Union from getting involved in internal disputes of the various countries. In effect therefore, the Union could this time round get involved in states for hitherto neglected acts like tribal clashes, ethnic cleansing, rampant abuse of human rights and other crimes under the realm of international criminal law. One hopes therefore that the continent shall never see such regimes as those of Amin in Uganda, Mobutu in Zaire, Bokassa in Central African Republic, to mention but a few.

Peaceful co-existence of member states has also been recognized as a principle, principally to discourage states from harbouring any hostile attitudes against their neighbours. This, is because such hostilities would only but work against integration. It is even a right of a state to request the Union to get involved in its own affairs for the restoration of peace and security. Is this supposed to sound the death knell to Africa's intra-state conflicts? Is it therefore possible

that we may not experience another Rwanda, and Liberia, or Somalia? One hopes so.

The continent undertakes to pursue self reliances. This will go a long way in ensuring economic development, alleviation of poverty and the raising of standards of living since with reduced importation form other regions of the world, and African States shall be able to retain foreign exchange and finances for development of the continent.

The promotion of gender equality, democratic principles, and human rights, rule of law and good governance are another welcome legal insertion in the Act. This gives equal opportunities to all portions in society in the production process rather than only one facet (the male) getting the upper hand as it was practiced under the OAU. The various rights acknowledged would ensure a free African Society where all citizens would be free to take their positions in the production process. We are therefore hoping that such disruptive incidences like the influx of refugees, prisoners, lack of free flow of information, imprisonment and discrimination would not be realized again. In the absence of these restrictions, the hurdles on the path to integration would

surely diminish. The same result would be realized by the principle of promotion of social justice.

As the last nail on the coffin violence and war, it is a welcome principle of respect for the sanctity of human life, condemnation and rejection of political assassination, acts of terrorism and subversive activities, and the condemnation and rejection of unconstitutional changes of governments. If these principles are carried out, the political violence that the African continent has always witnessed would be greatly reduced if not eliminated altogether. This will leave the path to integration smoother than it was under the OAU.

The wholesome picture of the principles in the new Act smells of the African Heads of State and Government sitting down and considering all the factors that have hindered integration and development in the continent and then systematically outlawing them. In as far as they unearth the reasons for the failures of the past, they chart out a new beginning for the whole process of desired development.

The new Act also makes fundamental changes in the organic structure of the organization. The Assembly dealt with in Articles 6 up to 9 have been given

wide ranging responsibilities from determination of Union's policies, consideration of members' requests, establishments of Unions Organs, implementation, budget, appointment of judges and of the chairman of the commission. Whereas all these responsibilities are vital, it is interesting particularly to note that the issue of budget has been brought under the authority of the Assembly. This signifies the seriousness with which the Heads of State are treating the issue of finances since it runs to the core of all operations of the Union. There is hope therefore, that more funding shall be allocated to the secretariat so that it may have a bigger capacity to tackle Africa's many problems.

The regulations regarding the Executive Council (formerly Council of Ministers) have been expanded to also include responsibilities in all the sectors of development. One notes the emphasis in these functions as only meant to foster closer ties and unity in all these sectors so that the central unit may thrive. The specialized committees contained in Articles 14 and 15 have also been expanded from 3 under the OAU to a total of 7, covering all the areas of development from agriculture, finance, immigration and customs, trade, science and technology, transport and communications, health, labour and social affairs, and education, culture and human resources. ' Of course, these

composed of experts in the various fields are meant to ensure unity and closer co-operation in these areas by all member states of the Union.

Article 17, is a totally new introduction to the continental organization's framework. This Article creates the Pan African Parliament for purposes of ensuring the participation of African peoples with a view to accelerating the process of economic integration in the continent. For the first time therefore, Africa is able to establish a continental legislature in which common issues would be discussed and the necessary legislation passed. This would greatly augment the functions of the Assembly and the Executive Council. We therefore expect a steady movement towards total integration in Africa.

Similarly, Article 18, dealing with the Court of Justice is another new development. With the court operational, disputes that have always been handled by way of ad hoc committees shall be channeled to this formal institution and verdicts made in accordance with the principles and objectives of the Union. Again, the court will come in handy in helping with interpretation of various terms, issues and concepts which may be controversial as between the member states of the Union. One hopes that the court shall enjoy an expanded jurisdiction to entertain even claims by individual persons

or citizens against states. This will go a long way in handling matters to do with crimes like abuses of human rights, genocide, ethnic cleansing and crimes against humanity. As already seen these are some of the areas in which Africa has scored poorly and the Court of Justice is therefore a most welcome development in the field of execution of Justice.

As an acknowledgement of the fact that Africa needed to undertake economic measures to ensure integration, Article 19 creates the financial institutions as organs of the Union. These 3 institutions of the African Central Bank, African Monetary Fund and African Investment Bank would help in coordinating various economic issues. The various Central Banks would have to coordinate with the African Central Bank to achieve harmony in the financial sector. The Monetary Fund and the Investment Bank would take their places as the institutions through which investment funds shall be channeled. With order in the financial and economic sector, one would expect development and integration.

Whereas Article 20 creating the commission basically the secretariat as was reflected in the OAU Charter, Article 21 creating the organ known as

Permanent Representatives Committee is an addition. It is heartening that member states are now required to second permanent representatives (ambassadors) to the Union. This will enhance the performance of both the Executive Council and the Assembly. Planning, relaying of information and implementation of various policies and resolutions would also be enhanced, with the end result being the realization of closer co-operation and integration.

For the first time, the Union has realized that indeed member states were rather lethargic in their duties to pay their contributions towards the budget and Article 23, now allows the Assembly to impose punishment on such defaulting members. This will instill some sense of responsibility on individual member states to honour their financial obligations to the Union. The commission will consequently have a wider latitude within which to operate and its capacity to respond to various crises will expand. There will also be enough funds at the financial institutions to be given out on concessionary terms for development of different regions.

In order to strengthen democracy, good governance and rule of law throughout the Continent of Africa, Article 30 now bars governments which have come to power through unconstitutional means from participating in affairs of the

Union. This provision is expected to counter incidences of coups and internal civil wars that could easily degenerate into conflicts. With stable constitutional governments based on the principles of rule of law and natural justice, there will be less deprivation and one would expect the strengthening of both internal and continental institutions and integration.

In deed Africa had become tired and bored with the OAU towards the end of its tenure. These frustrations stemmed basically out of the failure of the organization to effectively ensure integration in Africa either through its inability to act by reasons of limitations in its Charter, or pure lack of machinery to enforce the organization's resolutions and policies. The creation of the African Union complete with its new Act was and is therefore a very welcome development.

The excitement that existing at the OAU's inception has been rekindled by the new developments to the continental body. A new hope has dawned throughout the continent.

6.2 INDICATORS TO NEW DEVELOPMENT

The African Union is still in its infancy stages. It is therefore too early to conclusively determine its success. However, one is in a position to pick out some areas that have witnessed remarkable improvements and which give hope to the African people. Among the recent developments that one can refer to are the following:

- (ii) The new African Union in the realization that Africa is poor and may not achieve significant development on its own, has come up with a new development focused initiative, known as the New Partnership for Africa's Development (NEPAD) whose implementation and supervision has been placed on the hands of 5 eminent African leaders, Olusegun Obasanjo of Nigeria, Thabo Mbeki of South Africa, Abdoulaye Wade of Senegal, Abdelaziz Bouteflika of Algeria and Hosni Mubarak of Egypt. This initiative, hailed as the "Marshall Plan" for Africa aims at the development of human economic resource, production diversification, political governance, infrastructures, ICT, environment, energy, economic governance and capital flows. It

has been argued that these are the key factors that need to be developed for Africa to achieve development and integration.

The NEPAD document is a detailed masterpiece that comes up with well researched assessment of the situation in Africa and the costs to be incurred towards achieving the development goals. This document, forming the basis of Africa's development under the Union has been discussed and extensively circulated to all bilateral partners and there is hope that the attention it has received will translate into tangible results. It gives hope too to see the enthusiasm with which the Implementing Committee of the 5 Heads of State have steered the formally. The Heads of States met and discussed the document with the G8 leaders in June 2000 in Japan, and in July 2001 in Genoa, Italy and the G8 have shown willingness to assist this entirely African initiative. Many other subsequent meetings have been held between the NEPAD Committee members and the G8 leaders collectively and individually.

(ii) Under the African Union, there has been noticed a renewed commitment to the affairs of the sub-regional integrations units that have been created. The East African Community, (EAC), The Common Market for Eastern and Southern Africa (COMESA), The Southern African Development Co-ordination Conference (SADCC), The Economic Community of West African States (ECOWAS), just to mention but a few, have taken tremendous steps to ensure that the respective sub-regions are fully liberalized and become single markets. Issues that have been handled range from removal of tariffs, duty, encouragement of trade, customs issues, particularly with regard to visas and permits which hinder free movement of goods and people. It is hoped that once common markets are created in these sub-regions, the Union will find it easy to consolidate these gains and realize a continental market for the whole of Africa.

The sub-regional organizations have also been very active in the political fields whereas East African states have managed to bring the warring parties in Burundi to the negotiating table and agree on a power sharing formula, West Africa under ECOWAS have

successfully intervened in the Liberian and Sierra Leonian Conflicts. The last intervention was on 11th August 2003 when president Charles Taylor of Liberia formally stepped down and went to exile in Nigeria to give way to a ceasefire and a government of national unity. Significant steps have also been gained in the Sudanese and Somalia Peace Talks both conducted in Kenya. With this involvement of the sub-regional units, the Union finds it easier to move in and realize its goals.

- (iii) Principles of democracy and the rule of law seem to be slowly taking root in Africa and elections that have passed the test of being free and fair have been common lately. The outcome of the elections held in Kenya in December 2002 is testimony of this as there was a smooth change of leadership from the then Governing Party, Kenya African National Union (KANU), to a coalition of opposition parties. Successful elections have also been concluded in Rwanda in September, 2003 in which President Paul Kagame retained his position

Further parties in the Democratic Republic of Congo have agreed on a power sharing formula which has significantly reduced hostilities in this traditional hot spot in the continent. And the anti-corruption war is raging in Zambia under President Levi Mwanawasa. With these developments, the atmosphere, both for economic development and closer international co-operation has no doubt improved.

- (iv) No significant inter state war has erupted between any African States, clearly signifying a change of attitude of the African people. Perhaps this is also out of the realization that the African Union as constituted would probably move in with peace keepers to maintain peace in case of war. Such members could also face sanctions or suspension from the Union.

Even coup de tats seem to be less frequent and when they have occurred, the African Union in conjunction with the sub-regional units have moved in to restore constitutionalism. A case in point is the one of the coup in Equatorial Guinea in August 2003 in which the African Union moved fast to restore the deposed government then held up in Nigeria.

Zimbabwe in its worst civil, economic and political crisis is receiving very close attention both from the African Union and SADCC. Similarly Cote D' Voire is receiving the same attention.

(v) Also encouraging is the fact that some of the new organs created in the Act have started to co-ordinate. In the economic fields, the governors of African Central Banks under a unit called Association of African Central Banks (AACB) met in Kampala, Uganda where they acknowledged that a common currency and monetary co-operation is already a reality, and thereby called for political commitment similar to the one that saw Europe with a single currency after 40 years after the launch of the European Union (and its predecessors). One hopes that such meetings and associations will form the basic structures of the organs created in the Act for the sake of realizing integration.

(vi) More and more African countries have given attention to matters of gender; civil society, multi-national corporations and the youth so that all segments of the society are effectively involved in the

production process. On gender matters, countries like Uganda, Republic of South Africa and Malawi have even adopted various degrees of affirmative action.

- (vii) New opportunities seem to have also come up for African States, which shall surely lead to more exports and foreign exchange earnings. The African Growth and Opportunities Act (2001) of the United States of America had encouraged production of agricultural and other export commodities for the American Market with little hindrance. The Union is aiming at achieving similar results on other markets of the World.

The above are just but a few areas in which positive changes can already be seen. The list is long and may not be exhausted. However, so far, one can also discern a few areas where the Union has not performed as expected.

6.3 INTEGRATION STILL NOT AN IMMEDIATE REALITY

It is important that we also consider factors that may work against the well set intentions of the Union as contained in the Charter. Among those can be listed the following:-

- (i) Though the Act creates the new structures already seen, it is regrettable that many of these are still not operational with no time table or frame are given for the Pan African Parliament, the Court of Justice and even the Financial Institutions. In the Union's failure to establish the organs, one can argue that it shall more or less merely operate like its predecessor the OAU and end up the same way. It would be recommendable that immediate action should be taken to put to effect all the ideals in the Act.
- (ii) Though the Union has good intentions on the economic front through the NEPAD, it is another regrettable fact that the whole budget and projections are expected to be footed by foreign donors. This has not immediately been forthcoming and unless the funds are available immediately, NEPAD may have to suffer the failure experienced earlier by Lagos Plan of Action.
- (iii) Above all else, African States still suffer from the age old deficiencies that would still hinder efforts towards integration and they are many i.e. poverty, disease, illiteracy, low level of

industrialization, low GDP's, over population, low life expectancy rate, low trade, poor communication network etcetera etcetera.

- (iv) There has been no serious mobilization of the masses to participate in the affair of the Union and the Heads of State still in the preamble regard the Union as their own. Unless the masses may not be guaranteed of the desired results. Moreover, the Union itself has not decentralized by opening up other offices in the respective member states for ease of co-ordination and information flow. This, as already seen was a big hindrance to the operations of the OAU.

6.4 CONCLUSION

In this chapter, we consider the legal framework of the African Union and their probable effect on integration in Africa. It came out clearly that indeed the Union operates under a good Constitutive Act which is drawn along the lines of the European Union Statute. It is therefore possible to positively conclude that just like in the case of the European Union, Africa is poised to realize closer integration under the African Union. This is because the Constitutive Act now gives the Union enough latitude to intervene and get actively involved

in the affairs of member states. Such active involvement would be a welcome contribution towards efforts at tackling the various problems already seen that have retarded growth, development and cohesion of African States and peoples.

But whereas the Union has the good legal framework that would surely lead to integration, the success will only be achieved if the hurdles inherent and prevailing in the African Society at present are tackled as a matter of urgency. If they are not removed, the continent shall still not achieve the desired results.

7.0 CHAPTER SEVEN

CONCLUSION

This project was premised on 3 main objectives namely:

- (i) To investigate the effect of the nature of the legal framework in the organization of African Unity on integration of African States and Peoples.
- (ii) To investigate and determine the legal framework in the Constitutive Act of the African Union and predict its probable effect on integration of African States and Peoples.
- (iii) Lastly, from the comparison with the European Union Statute, to predict the future of Africa under the African Union.

In pursuit of and in carrying out the research to satisfy the above objectives, the whole exercise was based on 3 hypotheses namely:

- (i) Lack of sufficient legal structures in Regional Organizations hinder integration of states and peoples.

- (ii) Lack of sufficient legal structures in Regional Organizations do not hinder integration of states and peoples.
- (iv) Legal structures in Regional Organizations have no effect on integration of states and peoples.

The project traced extensively the operations of the Organization of African Unity (OAU) from its inception to its demise with special emphasis on the legal structures as contained in the OAU Charter. It was illustrated how the OAU operated as an institution to ensure closer co-operated and unity amongst the African States and factors. It was seen how the various factors prevailing i.e. Africa's internal factor or external ones, contributed towards ensuring that Africa did not achieve integration.

We have also considered the various proofs showing that Africa is indeed the least integrated in the world. Such were phenomena like civil and inter state wars, poverty, illiteracy, poor health facilities, poor governance, lack of trade or production, unfair set up of the international system, just to mention but a few.

At the end of the above assessment and consideration, it became clear that the OAU had in fact operated under a weak legal framework lacking insufficient structures that could guarantee the organization's success in creating harmony, co-operation and unity that could lead to integration. It is for the reason that the OAU Charter had insufficient structures that the organization often found itself unable to intervene in certain cases that threatened the very fabric of African Society e.g. wars, since the warring parties would simply invoke the same provisions of the Charter and declare the intervention of the OAU or any other of its member states an interference in internal affairs of under sovereign state. The OAU therefore time and again found itself incapacitated by its own Charter. It would therefore be correct to summarize that lack of sufficient legal structures in Regional Organizations hinder integration of states and people.

While considering the effect of the nature of legal structures on integration, an analogy with the European Union was made, purely because as a fact, the European Society under the European Union has been considered to be the best integrated society. The comparison with the European Union Statute was made vis-à-vis the Constitutive Act of the African Union, the successor to the OAU. It was observed that the Constitutive Act has a striking semblance with the European Union Statute and that it is able to give much latitude to the African

Union in ensuring that integration which has been set as its objective is realized in Africa. AT the same time that we have seen the improvement on the new Act, we have also witnessed a fresh excitement and change of attitude towards the whole concept of integration. This was shown by the indicating the rather serious way in which African leaders now hold the new Union as opposed to the I-don't-care attitude exhibited during the OAU. Initial successes of the new OAU was also illustrated.

Just like the European Society managed to reach their high level of integration based on their statute, one would be correct to predict that Africa under the African Union shall surely achieve integration. It may not be realized immediately. Even the European Union matured up over decades and passed through difficult moments. African Union shall also go through certain trying moments. But if it is accepted that the Union shall be the propeller to Africa's growth, unity, co-operation and cohesion, then these shall be achieved because the legal structures to streamline these processes have been put in place.

One caution however, is that the new Union and its component structures must be given the authority, leeway and funds with which to operate. Members must go by the principles and objectives set and obey their obligations to the

fund. If this is carried out by the members, the Union shall automatically move in to fill the void created by the member states still hold. The African masses must also be incorporated in the whole process more than ever before. It is only through this that African people shall develop more and faster the "we", "us" or "ours" practical attitude towards the new center created i.e. the African Union, and thus integration.