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

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
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CHAPTER ONE

INTRODUCTION

The title of the Dissertation topic is:

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

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

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

"The member states, in pursuit of the purposes stated in article 11

solemnly affirm and declare their adherence to the following principles ..."

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

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

To the founding fathers of the organisation, the importance of non-interference was significantly underlined in their condemnation of subversion and political assassinations. President Houphouët Boigny's speech at the Addis Ababa Conference bear tacit testimony to this. He said:

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

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

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

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

Having established the importance of the article, we proceed to investigate in the rest of the essay, the way the article operated. It is this investigation that will tell us whether or not the article has been functional. Has it lived to the expectations of the hopes of the founding fathers and Africa? This is to say, has the article been effective or ineffective in playing its role to protect and prevent Africa from falling and slipping into revolutions that destroy unity? The worth of any law or principle or rather the yardstick of its success is the degree to which it fulfils the intentions of the hopes or the goals of its makers. In looking at the article the writer will pay attention to the question whether or not the article has fulfilled its goals. The judgment of such an issue can only be meaningful if judged against the background of the aims and purposes of the charter. The charter says that member states shall adhere to the principles in article 111 in fulfilment of the purposes stipulated in article 11. The two therefore go hand in hand. This means therefore that an assessment of the performance of article 111(2) can only be successful if article 111(1) is taken into account, after all, it may be said that article 111(1) sets the main goals of the organisation which must be considered in an evaluation of the performance of the article. (1)(p.3)
The purposes of the organisation as stipulated in article 11(1) are:

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

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

(c) To defend their sovereignty, their territorial integrity and independence;

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

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

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

The issue regarding what matters constitute or fall within domestic jurisdiction will be explored along with the question as to what essentially is domestic jurisdiction. The article is about interference in the internal affairs of states hence the above issue has relevance to the determination and resolution of what domestic jurisdiction is. If domestic jurisdiction is not defined in the charter, then this uncertainty may have negative effects on the operation of the article as violators of the said article will always hide behind this uncertainty. This will be explored further in the essay. The important question as to what matters constitute interference investigated. If the article does not say what matters constitute interference, it will be hard to determine interference, and thus the uncertainty will have adverse consequences on the operation of the article. The law must be clear as to what is seeks to enforce and forbid, it can thus be seen at once, although, it will be clear in the essay, that it is not defined (i.e. interference and what constitutes it) this.

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By performance of the article is meant the way in which the article has been applied by member states in seeking to fulfill the purposes set out in article 11(1) quoted above. Have the member states adhered to it? Has it been ineffective or not?
does not contribute to the effectiveness of the article.

Further, the writer will look at the question as to what the consequences of a breach of the article. The question as to whether there are any prescribed consequences will be investigated. For if there are not prescribed consequences, the article, it can be said, does not have legal effect and is therefore sterile. These issues when explored will tell us whether the article is effective or not, whether it has done or is doing what it should do vis-à-vis article 11(1) of the charter. At this juncture it will become necessary to look at the reasons why the article is ineffective in order to have a full picture of the article in an operational perspective.

Finally an analysis of the article would be incomplete if no suggestion was made as to what can be done to rectify the weaknesses of the article. It is deemed necessary to devote a part of the essay to a discussion of the solutions that the writer thinks may help the article out of its past, current and future difficulties.

In this connection, I intend to divide the essay into six chapters. The first chapter in historical perspective; the second is an appraisal of the charter in historical perspective; the third chapter will deal with interference; the fourth with consequences other than the event of the breach. The fifth will be specifically on the effectiveness of article 11(2) and lastly no means the least, there will be the chapter on the solutions to the problems the article is experiencing.
CHAPTER TWO

THE CHARTER IN AN HISTORICAL PERSPECTIVE

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

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

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

Thirdly, it will be noted in passing here that the article is the product of a struggle between two groups which will be mentioned later in the chapter. One of these groups emerged as the victor, the other as the loser according to historical interpretation of this event.

The article is the living symbol of the victory of one of the groups as well as the living symbol of the history of defeat of the other group. This apparent dichotomy has had negative effects on the application of the charter.

For if the article represented the interests of one group which were opposed by the other group, then as long as this conflict subsisted the charter would always be flouted. It is the history of this conflict that has affected the efficacy of article that we now turn to.

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

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

From this conference henceforth the momentum of agitation for freedom
proceeded in a scale hitherto unprecedented, and by late fifties and
early sixties many African states had achieved their independence.
During this time the flame and light of pan-Africanism continued to glow,
In 1956, in Accra, Ghana, another major Pan-African Conference was held
This was a feat without historical precedent, never before had such a meeting of like greatness and moment been on mother Africa soil. To add to the significance it took place in an independent African state. The struggle for liberation had liberation conceptually assumed Continental dimensions. It will be recalled that the theme of the conference was "Hands off Africa, Africa must be free."

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

The Casablancan group comprised of what were called the radical states like Egypt, Ghana, Mali, Guinea, Tunisia and Morocco. The Monrovian group comprised of Nigeria, Liberia, Ivory Coast, Ethiopia, and majority of the Francophone states.

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

They stated a unity of Africa that would withstand and conquer this reign of imperialism. They therefore advocated a tight political union. Nkrumah, the leading exponent of Pan-Africanism:

"What is at stake is not the destiny of a single country, but the freedom and dignity of the African Continent, the continued presence to a united Africa and the African development of the world's greatest continent. Just as we are not going to be a part of a world that..."
is half-slave and half-free, so we are alert to the perils of an African Continent split between states that are wholly sovereign and states that are only half-independent. Such a pattern can only impede the real independence of Africa and it's transformation into an industrialised continent exercising it's rightful influence upon world affairs."

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

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

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

So, when the President of Togo was assassinated, the Monrovia group laid the blame at the door of the Casablancaans. To them, who believed strongly in national sovereignty and not Pan-African Union, interference with their affairs was to be considered a great crime. Subversion too was not to be taken lightly. Admittedly, the Casablancaans would not agree to either of the above acts, however they did not place national sovereignty at the same level with the conservatives. They believed in Pan-African Unity.

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

NOTES:
Sir M.MabGAI: Text of speech delivered on behalf of the English speaking states at Monrovia in 1961.
CHAPTER THREE
INTERFERENCE

SECTION I: What is non-interference?

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


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

International lawyers writing on the principle of non-interference
have attempted to define the principle perhaps as a result of a lack of
definition of it either in the United Nations or the O.A.U charter. Their
definitions may help the O.A.U in defining the principle in their respective
charters as recommended above.

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

Professor Elias says that, "no one sovereign state should have the right to interfere in the domestic affairs of another sovereign state. The desire to be left alone, to be allowed to choose its particular political, economic and social systems and to order life of its community in its own way, is a legitimate one for large and small states alike, and the freedoms thus claimed are inalienable attributes of the sovereignty of every state." Elias is saying here (as Stowell above) that nations should be left alone to perform tasks of development without interference from outside. Any action tending to disturb this national process of development will amount to interference. This definition is not satisfactory for states are likely to pick on the slightest excuse to accuse others of interfering with their affairs. Further national processes of development are different

NOTES:
1 STOWELL, E. C., International law, a Restatement of principles, p. 38
2 ELIAS: Africa and the Development of International Law, p. 2
and what may amount to interference in one country’s affairs may not be deemed by another to constitute interference. For example in East Africa a member of the East African Community may suggest to the other partner either in its press, on radio or television what it should do to achieve progress. Ideologically the three states are different hence if one of the states suggests a policy contrary to the ideological commitment of the other country even though the suggestion may be very sincere and with the best of intentions.

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

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

An independent sovereign state should have the peace to conduct its external and internal affairs peacefully without interference from outside.

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

Notes:
1 STOWELL: E.C. International Law. Page 88
The corollary to the principle of non-interference is the concept of domestic jurisdiction. The principle of non-interference finds meaning from this concept. States should not interfere with matters within the domestic jurisdiction of an independent state. This relationship shows how the two concepts are intertwined. Before looking at what domestic jurisdiction is it is necessary to look at the principle of territorial sovereignty which is closely linked with the above concepts.

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

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

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

H.A. Amankwah and O.T. Wilson writing jointly have terminologised the concept of domestic jurisdiction as the doctrine of "Reserved domain." 2

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

NOTES:
1 SCHWARZ-BERGER: International Law, page 115
forbids any other state from interfering with them. They are inalienable and inviolable as long as they are exercised within their proper limits and in consonance with accepted international law principles like respect of human rights.

As Amankwah and Wilson (1) say, the concept of domestic jurisdiction in international law is analogous to the treatment of political matters at the municipal law level. Just as in municipal law political matters are considered inappropriate for judicial scrutiny, so in international law domestic matters are political in nature and their sensitivity demands that other states keep off from interfering with the way they are exercised. (2). This concept to a large extent reveals what domestic jurisdiction is all about it is about the relationship that exists between states and international law. It helps in elucidating what interference is about and how it affects states in their intercourse and their relationship to international law. It is suggested therefore that in defining interference reference should be made to define it in order to make clearer the principle as at present is constituted in Article 111(2) of the Charter.

Because as it is now the article is unclear and that extent inefficient in the sense that no one does not know when a matter is within domestic jurisdiction is all about. It would be suggested that the charter should have a definitions or interpretations section as appears in some statutes. This section would attempt to define or interpret terms or concepts which may be unclear or ambiguous.

Notes
(1) Ibid Page 125
(2) However this claim must be judged in the light of the relative nature of domestic jurisdiction as expounded in the Nationality Decrees Case, (1923, P.C.I.J.4:23). In this case the right claimed to fall automatically within domestic jurisdiction was that of granting nationality. The court observed that: "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations." The court is saying here that there are certain matters which are not within a states domestic jurisdiction. The court in this case therefore gave the opinion that the matter of nationality was not within France's domestic jurisdiction.
It has been said above that the charter does not say what matters constitute interference. This is a setback to the effectiveness of Article 111(2). If the charter does not define these matters, member-states may find an excuse of going round the article after committing acts which other states claim amount to interference, on the pretext that they did not know that those acts would amount to interference. In such a case it would be difficult for the organization to condemn or arraign any state that it suspects of interference with the internal affairs of other states. The O.A.U. should therefore review the charter and say what matters they think constitute interference.

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

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

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

Notes
(1) Daily Nation, Dec., 1966, statement by Kenya's defence Minister saying inter alia, "Radio Mogadishu should stop pouring venomous broadcasts against our Head of State and the government of Kenya."
has also complained that this amounts to interference. As to whether this constitutes interference is not clear. It will be noted however that there have been many allegations in the O.A.U by some member states accusing others of engaging in hostile radio and press propaganda against other states. The accusation has been that this violates the principle enshrined in the O.A.U Charter - Article III (2) forbidding states not to interfere. The O.A.U should come out with a clarification of this in the Charter and stipulate precisely whether such attacks are tantamount to interference or not. This is necessary if the article is going to be effective.

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

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

Most international lawyers (1) answer these questions in the affirmative. Laterpacht however answers the question the negative. He argues that anything short of dictatorial interference in the internal affairs of another state for the purpose of maintaining or altering the actual conditions of things constitute interference in international law. He says that "interference is dictatorial interference by a state in the affairs of another state for the purpose of maintaining or altering the actual conditions of things." (2)

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

Notes
(1) ROSALYN H. The Development of International Law through the political organs of the United Nations. In this book at page 69, she argues due to procedural safeguards in the U.N. it cannot be argued that placing a matter on the agenda constitutes interference.
(2) LATERPACHT, 70 HR (1947), as 31 n. 2.
One may agree with Laysterpacht if dictatorial interference is one aspect of interference. But if his view of interference is intended to be exclusive to mean that dictatorial action is the only one may hesitate to agree with him. Other matters which may constitute interference, the General Assembly should be considered. Let us look at these matters.

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

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

In the O.A.U, the procedure is not the same. According to Article XIII of the O.A.U charter the matter goes through the council of ministers; this council is responsible to the Assembly of Heads of States. It is entrusted with the responsibility of preparing conferences of the Assembly. So in the O.A.U, the matter of discussion only goes through the council of ministers stage. This procedure it may be said does not constitute a safeguard against placing matters on the agenda that a member-state may consider as constituting interference. The procedure being not as tight as the U.N’s one may amount to interference. It is suggested that the O.A.U should find a procedure preferably along the lines of the U.N where there are less chances of matters being discussed without consideration.

Notes
(1) ROSALYN H., The development of International law through the political organs of U.N, page 69
are less chances of matters in the agenda constituting interference. Alternatively, it may be suggested that the O. A. U. should set up a committee to look into the matters to be discussed by the Heads of States in their periodical meetings. This committee should comprise of persons with legal qualifications chosen from among the member-states. This committee should give its report to the foreign affairs ministers who will look through the recommended agenda and where necessary make changes and thereafter, after being satisfied deliver the list of agenda to the Heads of States. This list of placing matters on the agenda likely to constitute interference and thereby help to give effect to Article III(2).

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

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

Notes
(1) GILMOUR, D.R. International Comparative Law Quarterly, 1967 vol. 16. "It was the intention of the those present at San Francisco to prevent any organ of the U.N discussing or making recommendations concerning matters which were essentially within the domestic jurisdiction of states", page 319.
(2) ROSALYN H.; In her book quoted Ibid, Higgins argues from page 118-120 that the General Assembly may assume jurisdiction where human rights are involved.
doing so would amount to violating Article III(2). (1)

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

It is frequently asserted that the instigation of a war or the setting up of a commission of inquiry constitutes interference. This question arose sharply in the Greek situation. Initially the communist bloc was opposed to the setting up of a commission of inquiry by the U.N to examine alleged frontier incidents, declaring that this would be an infringement of the sovereignty of Yugoslavia, Albania, and Bulgaria.

The United States delegate, however, supported by the Belgian representative was of the opinion that the council could, however, determine what violation had taken place, and choose to do so by investigation. This proposal failed due to the Soviet veto. The Russian delegates insisted that establishing a commission would amount to a violation of Article 2(7) of U.N.

To this day it is not clear whether this constitutes interference or not. The argument that it constitutes interference may be valid in either way depending on who is looking at it. For instance, South Africa has always objected to the establishment of a commission of inquiry to look into the affairs of Namibia on grounds that this constitutes interference; but the U.N. has always disregarded her arguments saying that the principle does not apply in such situations where human rights are violated. It is not

Notes:

(1) CEZONKA Z; The Organisation of African Unity, page 195.
also clear in the O.A.U. that the establishment of a commission of inquiry or study constitutes interference. It may be that the existence of the commission or arbitration, conciliation and mediation prevents such issues of interference on the setting up of a commission of study from arising probably because the commission is there to settle disputes arising between member-states; this is to say that maybe the existence of the commission of arbitration, mediation and conciliation erases the need of appointing a commission of inquiry. However, this is only one view. Another view may be that the commission of inquiry may be set up in cases of emergency to look into some urgent matters. The O.A.U. charter does not say whether the establishment of a commission of inquiry would violate Article 111(2) or not. It is necessary that the charter make this clear.

The most acute area of controversy however, occurs in relation to the recommendations and resolutions. Lavterpacht argues that a recommendation calling for the adjustment of a situation to conform with the charter can never amount to interference. He says nothing short of overt or active action can amount to interference. (1) However opponents of Lavterpacht would argue that all sovereign states are equal - this being the fundamental basis of the principle of non-interference. This being so, no state (or organisation) would have the power to legislate on matters that fall within the exclusive domestic domain of a member-state. Therefore if a state (or organisation) makes legislation or recommendation on matters touching on the domestic jurisdiction of another state, then such recommendation vis-a-vis that other state will constitute interference. The whole controversy is far from resolved. Each case should be decided on its own merits. Where the resolutions or recommendations are for the purpose of safeguarding the welfare of member-states, the recommendation is welcome; if it is not conclusive to the organization welfare then it should not be allowed. As regards the O.A.U., this matter of recommendations of resolutions does not seem to have been investigated. It is suggested that the terms will be studied and will be deemed not to constitute interference. Should the case, however, in which circumstances recommendations will be binding (such as in situations of emergency) be examined, they may constitute interference. This buttresses Article 111(2).

Notes
(1) Of discussion, study, inquiry and recommendations he has stated that: "None of these steps can be considered as amounting to intervention. None of them constitute preemptory dictatorial interference". (International Law & Human Rights (1950, 169-170).
Let us look at other aspects which may be deemed to constitute interference.

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

"The rule of noninterference with the independence of a sovereign state includes, of course, and a fortiori, the obligation of to refrain from unjustifiable attack or aggression. The purpose and the fruit of aggression is conquest, which later may be defined as any advantage secured by aggression or abuse of force. Otherwise expressed, conquest is the forcible seizure or the enforced cession of territory or rights from a state without the authorization of international law. Conquest is therefore, it is hardly necessary to repeat, a violation of international law". (1)

Any act of aggression or perhaps threat of aggression, or any act of conquest by a state on a sovereign independent state is a violation of the principle of interference. One may argue that when the President of Uganda threatens to acquire a part of Tanzania, this constitutes an act of interference with the internal affairs of Tanzania.

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

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

Notes

(1) STOWELL, E. C. International law, p. 88
be protected by international law and the state that is responsible for
harbouring such persons may be deemed guilty of interference with the
internal affairs of another state. In Africa there are many instances
where refugees have had to settle in neighbouring states. In such cases
the O.A.U. should make provisions regarding the behaviour of such persons.
This will regulate the relationship of member-states and prevent the break-
out of friction between sister-states.

Another question that may arise is in regard to those cases where a
section of the territory of sovereign independent state decides to
secede from the rest of the country. Would a country helping the seceding
section, even out of humanitarian concern be deemed to have violated the
charter? During the Nigerian Civil War Nigeria accused states of having
helped Biafra to interfering with its internal affairs. Similarly, during
the civil war, the Congo government accused certain states of
interfering with matters that were exclusively its internal affairs. These
cases illustrate one point that it is not proper to help a region of a
sovereign state that is attempting to secede. Drawing from these two
examples the O.A.U. should define what interference means and whether the
article should be waived in certain situations of gravity (like the above
two instances). It will be remembered that the two cases were so serious
that they at one point, and especially the Congolese case, threatened to
wreck the organization. This may be due to the fact that member-states
did not know just actively taking sides in a conflict may amount to inter-
ference with the affairs of another country. This may not have been their
fault. The charter that is binding on the members did not stipulate what
constituted interference and what did not. It is high time that the
charter made this clear if it is going to be useful in future.

Another issue that may be sorted is whether the making of an arrest
in a member state constitutes a breach of Article III(2). In the U.N.,
the Argentinian government accused Israel of violating Article 2(7) of
the U.N. charter. The accusation was based on the arrest

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

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

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

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

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

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

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

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

Notes
(1) ROSALYN H. Development of International Law through the political organs of the United Nations, page 118.
(2) STOWELL E. C. International Law, page 106.
menacing demonstrations is a violent usurpation of his authority, an attempt to govern in his stead; it is an open declaration of the right of the strong over the weak." (1)

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

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

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

The O.A.J.I. does not have provisions on human rights in its charter. It will be suggested that the organization stipulate in its charter that

Notes
(1) THEODORE M. Life of prince Consort, III: 510-511 (Quoted from Stowell's book).
(2) ROSALY, H. The Development of International Law through the political organs of the United States. Page 118.
(3) LAUERZPACTH, 70 HR 1947, at 5-11
it will deal with matters that violate human rights. It should also be stipulated that the organization's resolutions and recommendations will not be deemed to constitute interference and they will be binding on member-states.

SECTION IV: Whom does the article affect?

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

The question whether it binds the members can safely be answered in the affirmative. The members are all signatories to the charter which they pledged to abide by. Article 111 says in its opening paragraph,

"Member-states, in pursuit of the purposes stated in Article 11 solemnly affirm and declare their adherence to the principles of the O.A.U. charter."

Article 111(2) is therefore binding upon member-states of the organization.

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

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

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

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

On many occasions, the U.N. has passed resolutions regarding the policies of South Africa. Each time this has happened, South Africa has opposed U.N.'s actions on grounds that whatever happens in South Africa is a matter within her domestic jurisdiction and nobody should interfere with her. The U.N.'s reply has always been that it is within her jurisdiction to look into matters affecting human rights and should not in such cases be accused of interference. Here, the argument has not been that the U.N.
is not bound by Article 2(7) rather the defence has been that it is doing its work within its jurisdiction.

Again, the U.N.'s. handling of the Spanish situation in 1966 came under heavy criticism from member-states. In that year the Polish representative, referring to Articles 31 and 35 of the U.N. charter brought the situation in Spain to the attention of the Security Council. He expressed the view that the continuation in power of a fascist regime and all the accompanying repressions had caused international friction and endangered international peace and security. He presented to the council a draft resolution by which member-states would sever diplomatic relations with the relevant articles of the charter. This resolution was however opposed by some members who thought the nature of a governing regime was a question generally recognized to be within the domestic jurisdiction of a state and that the U.N. would stand in breach of Article 2(7) if it went ahead to put into effect the resolution. The U.N. did however deal with her jurisdiction and that this did not constitute a breach of Article 2(7). It did not deny that it was bound by the article.

Looking at O.A.U. one does not find anywhere in the charter a provision that the O.A.U. is bound by Article 111(2). Article 111(2) states that "Member-states solemnly affirm and declare their adherence to the principle of non-interference in the internal affairs of states."(1)

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

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

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

NOTES:
(1) CERVENKA, Z.; The Organization of African Unity, page 195.
in violation of Article 111(2) of the O.A.U. charter prohibiting any interference in the internal affairs of states."

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

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

Such an issue needs to be resolved by the O.A.U. charter. In this respect a revision of the charter is necessary to remove all these uncertainties.

Finally the issue as to what could be the position if there arose a dispute involving a member-state and a non-member state is far from resolved. Referring to U.N., when the Tibet case arose in 1949 the U.N. found that "There are certain duties in the charter so basic to the general international order that they cannot be contracted out of by states not accepting the charter". (2)

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

NOTES:
(1) GILKES, D. R., International Comparative Law Quarterly, 1967 vol.16: "The controversy regarding Article 2(7) of the charter has existed since the foundation of the U.N. It has been productive of long weighty debates both in the General Assembly and in the Security Council.
(2) ROSALYN H.; Ibid page 121.
CHAPTER FOUR

CONSEQUENCES

What consequences follow in the event of breach?

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

The question that arises now is whether there are any measures provided for in the charter which seek to have member-states adhere to the charter. This is to say, are there any measures provided for in the charter which seek to have member-states adhere to the charter. This is to say, are there any penalties or legal consequences prescribed in the charter that will be visited upon those who breach charter provisions?

The charter is a constitution that is legally binding on the signatories to it. And usually when a piece of legislation is passed and becomes binding on persons, penalties or legal consequences are provided therein to affect those who violate the provisions. Article 111(2) says that member-states should not interfere with other states internal affairs.

Nowhere else in the charter are there any provisions as to the consequences that would befall one who breached any of the charter provisions. This means that there is no provision in the charter that seeks to enforce Article 111(2), vital as it is. If this is so, one may ask the question, how effective is the article without an enforcement clause?

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

NOTES:

(1) CERVENKA Z., The Organization of African Unity, page 145, "the charter of O.A.U. has neither created an organ with disciplinary powers to enforce compliance with O.A.U. resolutions nor provided for expulsion in case of non-compliance."
in the early sixties. The Congolese government accused certain member-states of interfering with her internal affairs. It made this complaint to the O.A.U. The O.A.U. appointed an Ad hoc committee to look into this Congo crisis. The committee did not come out with a solution and referred the matter to Heads of States who could not also solve the crisis. They were divided on the issue. The Congolese government therefore referred the matter to the United Nations. (1) - the O.A.U. having failed to solve the crisis - that threatened to destroy the organisation. (2) The O.A.U. could not enforce observance of Article 111(2).

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

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

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

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

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

NOTES:
2 Daily Nation, 12th March 1965. "Mr. Kojo Botsio, the Ghana Foreign minister has said here that the Congo issue threatens to break up the struggle of African unity and solidarity."
The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic radio, and other means of communication, and the severance of diplomatic relations.

The U.N. has in fact passed a resolution calling upon member-states to sever their economic or political links with Rhodesia. The U.N. can also do this to any other state that violates the charter. Article 42 also empowers the Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of member states of the United Nations."

The O.A.U., it is recommended should have such a provision empowering it to act whenever a member-state violates the charter (depending on the seriousness of the violation). As regards the latter provision (Article 42) if the O.A.U. inserts it in its charter, then Article 53 of the U.N. must always be observed whenever the O.A.U. is considering military sanctions. Such sanctions, according to Article 53, should have the authorization of the Security Council. It is hoped that such possible consequences may make member states refrain from violating the charter and contribute to giving meaning to its principles.

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

First, on 20th August 1960, the O.A.C imposed sanctions on the Dominican Republic for having organised subversive activities against the government of Venezuela, including the attempted assassination of the Venezuela President Betancourt. Under the treaty of Rio de Janeiro, 1947, all O.A.C members were under a duty to carry out sanctions, which considered of the severance of diplomatic relations, and a partial embargo...
on exports to the Dominican Republican beginning with military equipment. Later, in 1961, the embargo was extended to include petroleum, petroleum products and lorries. (1)

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

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

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

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

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

INEFFICACY OF THE ARTICLE

Section I:

Areas where the article has been applied ineffectually

In the foregoing chapters we have looked at the article in an analytical context and have seen that so far it has not been quite effective in the fulfillment of the purposes of the charter as contained in Article 11 (1) of the O.A.U. charter. In this chapter we will in the first section, explore those areas where the article has been applied ineffectively and in the second section examine why the article has been ineffective.

Boundary Conflicts

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

Notes
1. Carnavka Z; The organisation of African Unity p(92)
2. A H G/Res 16(1)
3) Thompson, V.B.; Africa and Unity, p.
ourselves facing today's problems of boundaries all over the continent these will endanger most of our African Unity for which we are here assembled here today. These problems should be treated urgently by the interested states in a friendly and co-operative manner in the African spirit and justice. " (2) In other words what the Somali delegate is saying here is that the problem of boundaries is an urgent one and attempts should be made to settle it before it destroys the peace and unity of the O.A.U member states.

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

At the time of independence struggle or soon after independence, nationalist leaders were very critical of these international borders, their anti-colonial leaders who wanted to abolish the entire colonial legacy, a logical demand leading to respect boundaries and newly imposed by colonial forces. The colonial political and right-wing political and military leaders that had been to respect them also the colonial boundaries. These states to respect each other then appealed to O.A.U. to help them. Most of the states wanted the boundaries as they were. They wanted the status-quo. The O.A.U. therefore appealed to member states to respect each other's sovereignty and territorial integrity of each state and for it's inalienable right to independent existence. (1) The inclusion of this article in the charter did not solve the already existing dispute but only served to preserve it.

These disputes have affected adversely the relations between O.A.U. member states. Few examples may illustrate this. First Kenya and Somalia have been having a dispute over the North Eastern part of Kenya occupied by Somalia. Somalis has been claiming that that part belongs to her and that the Somalis who live in that area belong to the Republic of Somalia. The Kenya government has denied this claim and has stated that the Somali government honour Article 111(3) of the O.A.U. charter. The Somali Government has continued however to attack the Kenya Government in her radio. The Kenya government has interpreted this to mean interference with her internal affairs. (2)
This hostility has gone on like this until in 1966 the Somalis in Kenya
realistically started a guerrilla struggle for autonomy from Kenya so that they may
join their brothers in Somalia. During this shift war the Kenyan Government
accused the Somali government of aiding the shifts in Kenya and of violating
the O.A.U. charter principles. (3)

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

The second example is the conflict between Ethiopia and Somalia. Somalia
has been claiming from Ethiopia her East region called Ogaden inhabited
by Somalis. She insists that an ethnic and cultural ground
at Ogaden is supposed to form a nation-state that Somalia was under
Ethiopian rule have the right to exercise the principle of self-determination
and that Ethiopia has the legal duty to grant this right. (1) Ethiopia on
the other hand maintains that that region belongs to her and so only should
claim it. As a result of this conflict there have been radio attacks
between the two states. There have also been border clashes between the
two of them. In effect this has not observed charter principles and principally
Article III(2) which forbids member states of O.A.U. from interfering with each
other's internal affairs.

Notes
1) Speech of the head of Somali delegation delivered on Addis Ababa,
June 1960. (Quoted from W.A. Thompson's book)
2) Article III (3) quoted above at page 64.
3) On his book on the frontiers of self-determination on the Kenya-Somali
dispute, Mr Croth-Ogendo observes that "Somali radio broadcasts and other
assistance to shifts raids as even preface an interference with the
territorial integrity and political independence of Kenya. "Somalia's reply
to Kenya was that they had a constitutional obligation to assist the
Somali raids to unite and therefore any external opposition to Somali re-
nationalisation is considered as interference in the domestic affairs of Somaliland."
In addition there has also been a conflict between Morocco and Algeria over territory. Morocco claims a large area of Algerian held Sahara rich in oil. Fighting between the two broke out in 193 and soon acquired the proportions of war. "This armed conflict was a violation of the charter of the U.A.U. as well as a denial of the spirit which had brought the African States together at Addis-Ababa barely five months before the conflict" (1)

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

**SECESSION**

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

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

The second example is the Biafran Case. In 1967, The Eastern Region of Nigeria decided to secede from the rest of the country. It called itself Biafra. Once again members states of O.A.U. began to take sides. Some

Notes
(1) Cervenka, Z; The Organisation of African Unity page 97
(2) Supra page 46
sympathised with the Nigerian Federal Government, others with the Biafrans. The Nigerian government complained that member-states were violating Article III(2) of the O.A.U. charter by helping Biafra. The matter she argued was a purely Nigerian domestic affair and member-states should not intervene. Unfortunately some member states did intervene. Some member states continued to side with Biafra and even went as far as recognising Biafra. Nigeria in fury broke off diplomatic ties with those states that had recognised Biafra. This was a grave situation because it put in danger the unity and peace of the Continent. Here again Article III(2) was ineffective in restraining member states from interfering with Nigeria’s internal affairs.

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

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

The above examples serve to illustrate the fact that in many of the crises that have affected the O.A.U. involving interference with the internal affairs of a member state, Article III(2) has been of no effect.
The foregoing section explored the areas where Article III(2) has been applied ineffectively. This section will be devoted to advancing likely explanations as to why non-interference principle is ineffectuous.

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

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

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

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

A further factor that may explain why the article is ineffective is the preparation of the charter. It will be remembered that the charter was made in a very short time. African governments were in a hurry to have the organisation formed. This means that they devoted little attention to issues that would make the charter meaningful and effective. They did not address themselves to issues like: why do we need the organisation? Do we need the organisation to serve us and if so how would it serve us effectively? How do we make the organisation effective? Do we need the charter as a binding covenant or a non-binding one? If it is to be binding on us, how do we make it binding? what are the likely problems we are likely to encounter? etc. The founding fathers do not seem to have addressed themselves to the down-to-earth issues. The result of this is that they came out with a charter whose principles have been honoured more in breach than in observance. For instance there was no provision for the enforcement
of the observance of the principles of the charter. The lack of such a provision may be said to have contributed to the ineffectiveness of the principles of the charter and most of all Article 111(2).

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

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

"The charter has established a loose international organisation based upon voluntary co-operation between states. It contains none of the supra-national organisation based upon voluntary co-operation between states. It contains none of the supra-national characteristics which one would expect to find in an organization of a federal or quasi-federal character". (1)

The O.A.U. can therefore rely upon the good will of member-states. Unfortunately member-states have not been keen on observing the organisation principles of the charter. And since the organisation cannot compel observance of the charter provisions, it has remained helpless in the face of national aggression.

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

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

One important factor that may account for the ineffectiveness of Article 111(2) is the apparent lack of mass involvement in the process of the O.A.U. that determine their destiny. Leaders have tended to make the Organisation their own monopoly. An organization or an institution without the support of the grass-roots lacks legitimacy and is doomed to fail. Nkrumah once said that without the people, the organisation cannot of African unity is a myth. The organisation cannot truly depend on fragile accords built on transient personal friendships of a few score super-sovereign leaders, and hope to survive. Workable unity must has to be broad-based. (1) It must be the unity of our people in their masses. (2) "The inspiration and organisational means provided by the document (charter) will become a reality only if the masses of Africa are mobilized into action." (2)

If the people are uninvolved the organisation will not have much meaning. The charter as well. A meaningful institution is one that has roots deep in the masses of men it is serving.

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

(1) The inspiration and organisational means provided by the document (charter) will become a reality only if the masses of Africa are mobilized into action. (2)
would suggest that the O.A.U. should have sanctions provisions in the charter to be imposed upon those who violate the charter.

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

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

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

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

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

References:


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CHAPTER III

SOLUTIONS

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

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

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

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

"A new orientation is necessary to close the yawning credibility gap between what we have proclaimed for these years and what we have actually done in that period." (1)

What will therefore be recommended first is the modification of the charter. A new charter that will be in-keeping with the needs and problems
of the continent, is necessary. In this connection it would be recommended that an All-Africa Constitutional Committee made up preferably of non-governmental experts be appointed to re-examine the charter of the organisation and make recommendations on ways and means of giving practical effect to the principles of the charter.

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

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

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

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

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

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

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

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

(1) GIBBON, G; Organisation of African Unity. p. 99
(2) CHOYE, F. C.; International Law and The New African States. I.-d
violates charter provisions will suffer economic boycott from other member-states. Other member-states may decide to sever economic relations with the guilty state. Member-states will be required to adhere to such a resolution by the charter.

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

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

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

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

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

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

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

This Organization of African States is known as the Organisation of African Unity. Here the emphasis is on unity not division. Perhaps a solution to our problems may lie in Pan-African Unity. In unity we can fight better and much more effectively the problems that beset us than when we are divided. Presently we do not have unity among ourselves. We are divided along ideological lines; the way our economics are organized and even what friends we have (whether one is pro West or East). These divisions only serve to make us easy prey of our external enemies.
"The survival of free Africa, the independence of this continent, and the development towards that bright future on which our hopes and endeavors are pinned, depend upon political unity. ... The forces that unite us are far greater than the difficulties that divide us at present, and our goal must be the establishment of African dignity, progress, and prosperity." Instead of emphasizing on our differences we should strive for unity of the continent. A charter of one united continent would be more effective than a charter of a divided continent. In the past, O.A.U. countries have been disunited with the result that the charter has been ineffective. Perhaps in unity then the charter would be effective. This is one constructive thing worth attempting. In unity Article 111(2) may be meaningful and effective.

Finally it will strongly be recommended that the masses of Africa be involved in the processes of the organization that determine their destiny. The preamble of the charter recognizes this. It says that the founding fathers recognize the right of people to control their destiny and the need to harness the natural and human resources for the advancement of the peoples of Africa. Further Article 11(2) buttresses this and says that one of the purposes of the O.A.U. shall be to co-ordinate and intensify cooperation and efforts among member-states for the purpose of achieving a better life for the peoples of Africa. For the achievement of this end it may be said that the participation of the masses of Africa in O.A.U.'s affairs is indispensable for the success of the organization. To achieve the participation of the masses in O.A.U.'s affairs very little things may be recommended. First, instead of Heads of states and Governments choosing the Secretary General of the O.A.U., it is recommended that the Secretary General be chosen in an election to be held in all member-states of the organization. The election should only include persons nominated by member-states in the General Assembly of Africa (recommended above). The electorate should comprise of those who are eighteen or above this age. The second recommendation is that representatives to the African Emergency Problems Council (recommended above) should be chosen by the...
people in national elections in all member-states. Thirdly, the Secretary-
General should have more contacts with the people. He should be allowed to
address African causes in rallies organised by member-states so that
he can inform them on the activities of the organisation. The fourth
recommendation is that there should be more frequent inter-state social
and cultural exchanges. Cultural inter-states' activities should be more
frequent than they are now. They should take place yearly. Youth
exchanges between states should be encouraged. Preferably there should be
a Youth Association for young people operating under the auspices of the
O.A.U. Under such an arrangement young people from member-states may have
occasion to meet and exchange their views and experiences on the continents'
affairs. This way they may perhaps bring Africa closer to unity. Further,
it may be hoped that if these recommendations are implemented, the organist-
may be of more meaning and effect to the people of Africa than it has
had in the past.

SECTION 111 — CONCLUSION

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

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

The answer to this question lies in what has been said in the previous
chapters. In these chapters it has been shown that the article is bristled
with very many shortcomings. For instance it has been shown in the
course of the analysis that the article lacks effect due to the fact
that the article is unclear and undefined. What is more there are no provisions in the charter to enforce its observance by member-states
It has also been indicated that the charter is outdated and out of keeping with the needs and requirements of a continent that is constantly changing each passing year. This latter fact has, most particularly, rendered the principles of the charter ineffective and to a considerable extent meaningless. Lack of unity and national chauvinism have also contributed their quota to the weaknesses of the article. On balance therefore, it may be said that the performance of the article has not been good. It has not lived to our expectations.

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

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

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

NOTES:
(1) NRHUMAR, K.; Africa Must Unite. p. 18. 