

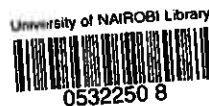
University of Nairobi
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“ The principle of Non-Interference in International Relations: A Comparison of OAU and AU Practices. ”

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R50/72057/2008

A research Dissertation submitted in partial fulfillment of the requirements for the award of the Master of Arts in International Studies, at the Institute of Diplomacy and International Studies, University of Nairobi.



September 2010



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Declaration

I declare that this research dissertation is my original work and has not been presented to any other university for an academic award.

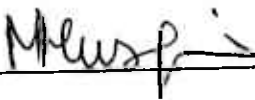
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Abstract

This study investigates the relevance of the principle of non-interference in internal affairs of a sovereign state provided for in the UN, the AU and its predecessor the defunct OAU. The practices of the OAU and AU in the context of the non-interference principle are compared with a view of showing how the AU has been able to inject innovation in circumventing this principle which is founded on another principle of international law: sovereignty. The aim of the study is to investigate the relevance of non-interference principle in the current globalised world system. The study adopted a descriptive research design which involves certain predictions and narration of facts and characteristics. The study relies mostly on secondary data from written and recorded material that include both secondary documents and primary documents. The secondary documents used are textbooks, journals, newspapers, internet searches, AU pamphlets, articles and policy papers. Primary documents used include official government documents, minutes of meetings and speeches of relevant personalities and selected official UN, OAU and AU documents. This study is based on the theoretical tool of *liberalism* which assumes that anarchy and war can be policed by institutional reforms that empower international organizations. *Liberalism* probes the conditions in which diverse interests among independent transnational actors lead to cooperation hence regional integration. To liberals sovereignty hence non-interference is not sacrosanct so intervention is necessary in permitted circumstances especially in the protection of human rights as provided for by the Constitutive Act of the AU, this transcends national interests and sovereignty. The theory as an analytical tool focuses on how influences such as international law and organizations, democracy, free trade, collective security, mass education and multilateral diplomacy can improve life globally. The analytical tool therefore sits on two broad themes of this study: regionalism and non-interference principle. The conclusion reached is that the principle of non-interference in internal affairs of another state meant to protect the newly independent African states became an inhibition to the working of the OAU. The OAU therefore found it hard to handle massive human rights violations, crimes against humanity and genocide on the premise that internal conflicts attracted the non-interference principle. New developments like globalization, internationalization of human rights and conflicts, escalation of intra-state conflicts, interdependency and cross cutting environmental issues have diminished sovereignty and made it necessary for the AU to device policies that go beyond the OAU charter provisions. The change from OAU to AU involved a major charter shift to tackle new challenges of the 21st century. The new organization was to respond to these developments including spurring the continent to economic development. The AU has learnt from the loopholes and weaknesses of the OAU by providing for intervention and employing versatility in the interpretation of the non-interference principle, unlike the OAU which interpreted the non-interference principle dogmatically. The AU has focused on good governance, human rights, democracy and economic development. It has also employed creative ways to circumvent non-interference like the practice of peacekeeping, good offices mediation diplomacy, NEPAD and its process of APRM. The threat of coups and endemic internal conflicts like in Somalia are among the challenges to the AU which force the Union to seek ways of going beyond indifference to being a brother's keeper through collective security interventions.

Dedication

To my mother Maneah Nalyaka Kusimba, the sole anchor of a six-member family. I live because you lived. Thanks mother.

To my grandparents Mr. Peter Muliro Nasong'o and Mrs. Mary Nafula Muliro; thank you for bringing us up. Your strict morals run in me forever.

To my Professor Makumi Mwangiri; I now know what it is to be a professor. You have motivated and allowed me to drink from the purest stream of academia.

To all of you: it is my wish that this dedication will not imperil your immeasurable honour.

Acknowledgements

I hasten to acknowledge the input and tolerance of my dear wife Fatuma Awadh Muliro and my two angels Sallysadia and Mariamariam. My sisters Mulongo and Mukhwana; brothers Tonny Simiyu, Morphat Wanjala and David Wanyonyi, I thank you all for your selfless support materially and morally.

For Augustine Mellu and Everline Kusimba may God bless you for the time you put in typing my research work.

I also thank my supervisor Prof. Makumi Mwangiru for the meticulous guidance and sincere dedication to see to it that I conclude this research project.

My lecturers remain ingrained in my destiny; they refined me through the kiln of knowledge. I wish to particularly thank the following: Prof. Makumi Mwangiru, Dr. Robert Mudida, Ms Waeni Ngoloma, Ms Emma Oketch, Mr. Martin Nguru, Mr. Gerrishon Ikiara, Mr. Patrick Maluki and Dr. Kithure Kindiki

My friend Prof. Mohammed Doodishe will not elude my gratitude for availing a place complete with internet where I did my research and studies uninterrupted.

I am equally indebted to my classmates with whom we generously shared information and experiences: Mr. kipkoech Joseph, Catherine Cherotich, Kithome Tuta, Edmond Gichuru, Vicky Mbeca and Gladys Timbomei.

List of Abbreviations

AEC – Africa Economic Community

AMIS –African Union Mission in Sudan

AMISOM- African Union Mission in Somalia

APRM- African Peer Review Mechanism

AU- African Union

CA Constitutive Act of the AU

EAC East Africa Community

ECOSOCC-Economic,social and Cultural Council

EU European Union

ICC –International Criminal Court

IDP- Internally Displaced People

NEPAD- New Partnership for African Development

NGO Non-Governmental Organization

OAU- Organisation of African Union

PSC-Peace and Security Council

REC Regional Economic Communities

UNAMID- United Nations African Mission in Darfur

UN-United Nations

WTO- World Trade Organization

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Chapter One

Introduction

The UN Charter mandates its member states to make use of regional arrangements such as AU to deal with matters relating to international peace and security provided such activities are consistent with the purposes and principles of the United Nations.¹ Due to the commonality of political and socio-economic challenges in the continent, the then post independence leadership in Africa agreed on a collective approach to these problems by forming the Organization of African Unity (OAU) on the 25th may 1963.² The OAU charter outlined the purpose of the organization as being to promote unity and solidarity among African states, defend and respect sovereignty, territorial integrity and independence of states, liberate those still under colonialism and promote international cooperation with regard to UN Charter and universal declaration of human rights. The key goals of the OAU were to promote decolonization and self-government in African states and to guarantee respect for states' territorial boundaries.

The 1999 OAU Assembly of Heads of State and Government passed the Sirte (Libya) Declaration³ to establish an African Union (AU) to address new social, political and economic realities and eliminate conflicts.⁴ On 12 June 2000 the OAU Assembly adopted the Constitutive Act (CA) of the AU. The OAU performance was a mixture of failures and successes. Its practices were greatly influenced by the principles of sovereign state, territorial integrity and

¹ United Nations Charter, (San Francisco : UN,1945), Chapter VIII article 52

² Walvaren K.R, *Dreams of Power: The Role of the Organization of African Unity in the Politics of Africa 1963 to 1993* (Ashgate, 1999) pp140-146

³ Tordoff w, *Government and Politics in Africa*, 4th edition (New York: Palgrave Macmillan, 2002) p 250

³ The Sirte Declaration available: <http://www.uneca.org/adfill/riefforts/ref/other5.htm>.

⁴ See Department of Foreign Affairs, Republic of South Africa, 'Transition from the OAU to the African Union', May 2002, http://www.au2002.gov.za/docs/background/oau_to_au.htm.

non- interference. In particular the OAU was constrained by the clause that member states could not interfere in each others' internal affairs.⁵

The end of the Cold War period brought global and continental changes that necessitated the OAU restructuring.⁶ In some quarters, the OAU was regarded as a “club of dictators”, where the leadership manipulated the principle of non-interference and national sovereignty to perpetuate political tyranny and dictatorship in their respective countries, but the OAU achieved its primary objective of the total liberation of the continent. The formation of the AU was meant to correct the perceived inadequacies of the OAU and move the regional integration agenda in a new direction after the independence of African states.⁷

The study will examine the reasons for the non-interference clause, its influence on OAU practices and its relevance to the AU. Though the AU maintained the principle of non-interference in its Constitutive Act, unlike OAU it has the right to intervene in a member state upon a decision of the Assembly in respect of war crimes, genocide and crimes against humanity. The study is a comparative analysis of OAU and AU practices within the contentious clause of non-interference.

Statement of the Research Problem

The principles of the OAU among others were sovereignty, non- interference in internal affairs of states and territorial integrity; all being self-reinforcing. The key concern of the study is

⁵ Assa Okoth, *A history of Africa, vol. 2, 1915-1995*, (Nairobi: East Africa Educational Publishers,2006) p.324

⁶ Van Nieuwkerk “Correlating African regional and security institution initiatives to the emerging global security agenda” in M. Mwangiru and O. Oculi(eds) *Rethinking Global Security : An African Perspective?*(Heinrich Boll Foundation: Nairobi, 2006) p223

⁷ Adejumoboi Said and Adebayo Olukoshi (Eds), “Introduction : Transition, Continuity and Change” in Adejumoboi Said and Adebayo Olukoshi (Eds), *The African Union and New Strategies for Development in Africa* (Nairobi: CODESRIA & DPMF, 2009), p.7

the principle of non- interference initially meant to guard territories of newly independent states that suffered arbitrary boundaries imposed by colonialists on Africa. The principle was also meant to stem negative interference in internal affairs created by the Cold War rivalry such as subversive activities, but it was later exploited by some leaders to violate human rights. The interpreted the principle of non-interference dogmatically and was therefore inhibited in its efforts to end rising internal conflicts. The AU Act has tried to be liberal by circumventing the non-interference principle; but the rising coups as in Madagascar, Guinea and Niger have challenged the AU practices where it is constrained by non-interference to fully intervene beyond mere condemning. In the 2010 AU summit in Addis Ababa, the UN Secretary General Ban Ki-Moon decried the resurgence of coups in Africa.⁸ He asked the AU to intervene in internal governance to prevent conflicts.

The advent of globalization, internationalization of human rights and conflicts, interdependent and transnational environmental concerns have diminished sovereignty and with it reduced the principle of non-interference. The AU should now adopt versatility to intervene in these areas thought 'internal affairs'. While some of the AU changes, mainly in intervention are improvements over the old OAU; questions still emanate; has the AU been able to plug loopholes and weaknesses of the OAU? Is the principle of non-interference still relevant in the changing international relations?

Objectives of the Study

The main objective of this study is to compare the practices of the OAU and AU within the principle of non-interference. The specific objectives are:

⁸ Argaw Ashine, "Ban Hits at AU over Coups as Gaddafi finally Hands over" *Daily Nation*,(Nairobi),1 February 2010,p.16

1. To examine the relevance of the non- interference principle in OAU and AU practices
2. To identify lessons learnt by the AU from OAU practices.

Literature Review

Introduction

The literature review looks at the relevance of the non- interference principle in modern state relations. This was broadly looked at under the theoretical debates and the changing international relations. Therefore the review covers the following themes: debates on sovereignty and non-interference in the changing global system; state system, integration and international institutions; the changing international relations and Case studies: non-interference principle. These themes are analysed within the frameworks of debates between realism, Liberalism and constructivism.

Debate on Sovereignty and Non-interference in Changing Global System

Non-interference is the corollary of the traditional legal rule of sovereignty. The UN Charter states that nothing in the Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state.⁹ This is criticized as a constitutional weakness which impedes quick intervention since the definition of domestic jurisdiction or affairs is not given. Although the clause goes further to add that the principle shall not prejudice application of enforcement measures under Chapter VII; it still does not define breach to peace and gives the UN wide scope to determine what amounts to threat, breach of peace or acts of aggression. Both the OAU and its successor also provided for sovereignty and subsequent non-

⁹ UN Charter Op Cit Chapter I Article 2(7)

interference in their charter and Constitutive Act respectively. In international law, sovereignty means that a government possesses full control over its own affairs within a territorial or geographical area or limit.¹⁰ Hedley Bull illustrates this well by stating that the starting point of international relations is the existence of *states*, or independent political communities, each of which possess a government and asserts sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population.¹¹

Most scholars have debated on the influence and relevance of sovereignty and resulting non-interference principle in the changing international relations. According to Holger, the problem of flawed colonial boundaries and the fear of intervention in internal affairs especially during the Cold War alliance rivalry led to non-interference in the internal affairs of other states becoming one of the principles of the organization.¹² Gomes observes that the most prominent principles reflected in the OAU Charter and Constitutive Act of the AU, which have influenced their conflict management experience are the principles of "sovereign equality of states" and "non-interference". These principles are mutually self reinforcing and barred the OAU from any successful intervention especially in internal conflicts. Some African leaders also exploited these principles to suppress internal dissent. This made the OAU unsuited to deal with second liberation against internal tyranny.¹³ For Kegley, a liberalist, conflicts within countries are raging throughout the world. Many civilians are targets of overt oppression and violence by governments presumably created to preserve law and order. Great powers need to intervene to

¹⁰ Bull, Hedley, *The Anarchical society: A Study of Order in World Politics*, (London: Macmillan Press Ltd, 1977), p. 42

¹¹ *Ibid*, p.8

¹² Holger Hestermeyer, *German Law Journal: Review of Developments In Germany, Europe and International Jurisprudence*, 2008. *African Union replaces Organization of African Unlty*

¹³ Gomes, S. "The Peacemaking Role of the OAU and the AU: A Comparative Analysis" in J, Akokopori,A,Ndinga and T, Murithi(eds) *The African Union and Its Institutions* (Cape Town: CCR,2008)p117

end human rights abuses.¹⁴ He adds that human rights law in principle now provides unprecedented protection for people everywhere.

The traditional rule of sovereignty and the resulting non-intervention norm prohibiting external interference in the internal affairs of states has been revised. UN Secretary Koffi Annan described the redefinition when he noted that states are now widely understood to be instruments at the service of their people not vice versa.¹⁵ The principle is one thing; reality of human suffering is another. To Annan, traditional notions of sovereignty should be transcended for they have been an obstacle to effective action in humanitarian crises that still encourages states to stand idly by while the horror unfolds instead of intervening to enforce international human rights law. Martin Luther Jr. makes a similar argument that injustice anywhere is a threat to justice everywhere.¹⁶

A classical realist Morgenthau, however argues for non-interference; that sovereignty of a state manifests itself in the 'impenetrability' of a nation. That is on a given territory only one nation can have sovereignty and no other state has the right to perform governmental acts in its territory without its consent¹⁷ Neoliberalists believe that anarchy and sovereignty are the problem and not solutions.¹⁸ But Constructivists, like Wendt, differ with realists and liberals by insisting that world politics is socially constructed. Conditions acquire meaning from socially shared knowledge; so socially constructed concepts like anarchy and sovereignty are simply what states

¹⁴ Kegley Charles, Jr. *World Politics: Trend and Transformation*, 12th edition. (Belmont: Cengage Learning, 2009). p.560

¹⁵ Ibid. p.561

¹⁶ Martin Luther Speech, Delivered in Washington DC on August 28, 1963

¹⁷ Kegley Charles, Jr. *World Politics: Trend and Transformation*, 12th edition. (Belmont: Cengage Learning, 2009). p.330

¹⁸ Barret. S, *Why Cooperate? The Incentive to Supply Global Public Goods*, 3rd Edition (New York: Oxford University Press,2007)544

make of them and they can be changed.¹⁹ To Morgenthau, it has become obvious in recent years that the main stumbling block that has vitiated all attempts at restraining the struggle for power on international scene is national sovereignty itself. While people everywhere are anxious to free themselves from the threat of war, they are also anxious to preserve sovereignty of their states. It is hard to achieve national sovereignty and international order.²⁰

To functionalists who sometimes claim to be realists, sovereignty should be slowly abolished through gradual approach towards regionalism.²¹ With time the state would be rendered obsolete. David Mitrany developed and explained the theory of functionalism. He asserts that social, political and economic cooperation is a prerequisite for solution for political conflict and elimination of war. There should be spread of a web of international activities and agencies through which the life and interests of all states will be integrated.²²

The new emphasis on intra-state conflicts and the extension of the concept of security to concerns like human rights and environment, led African leaders to expand the mandates of the OAU and its successor the AU into areas of human rights, democratization, good governance and humanitarian assistance.²³ Despite these changes the OAU's principle of non-interference in the internal affairs of member states constrained its efforts to end increasing internal conflicts.²⁴ This principle was slightly weakened towards the end of Cold War period when the international community renewed its commitment to humanitarian intervention, articulated as the

¹⁹ Wendt, A, "Constructing International Politics," *International Security* 20 (Summer, 1995),p.71-81

²⁰ Morgenthau, H. *Politics Among Nations: The Struggle for Power and Peace*, 6th Edition (New Delhi: Kalyani Publishers, 2007) p.345-346

²¹ Coulobombis, T, and Wolfe, J, *Introduction to international Relations; Power and Justice*, 3rd Edition, (New Delhi: Prentice-Hall,1986).p.305

²² Mitrany, D. *A Working Peace System*. (London, OUP, 1943), p.6

²³ Musifiky Mwanasali, 'From the Organisation of African Unity to the African Union', in M. Baregu and C. Landsberg(Eds), *From Cape to Congo: Southern Africa's Evolving Security Challenges* (Lynne Rienner Publishers,2003). P.205

²⁴ Ibid

'responsibility to protect' during the UN annual summit in September 2005.²⁵ Humanitarian intervention is a threat or use of force across state borders by a state or group of states aimed at preventing or ending widespread and great violation of human rights of individuals other than own citizens, without permission of the state within whose territory force is applied. For instance, Tanzania's removal of Idi Amin and NATO's intervention in Kosovo province to save Albanians from repression by Yugoslavia leader Milosevich was to realists, interference but liberals will assert that such intervention was a moral necessity.

However, Machiavelli, a classical realist believes that ethics and politics are divorced from each other, for Machiavelli, in an amoral (if not immoral) world, what meaning does the preaching of conventional morality have? ²⁶ Therefore international law cardinal provision of state sovereignty and non-interference should not be interpreted as a dogma.

In comparison to OAU, the AU's Constitutive Act provisions show that the principle of non-intervention has exceptions. While the defense of sovereignty and territorial integrity is still an objective of the AU and non-interference in the internal affairs of others its principle; there are now two cases in which the AU may intervene. One is "pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity"²⁷ and two upon request of a member state "in order to restore peace and security." However, it is argued that since the decision depends on the Assembly of Heads there is a tendency to protect each other against interference for leaders' self interests. Carr asserts that the exercise of power always appears to beget the appetite for more power; often war began for

²⁵ Gomes, S. "The Peacemaking Role of the OAU and the AU: A Comparative Analysis" Op cit, p118

²⁶ Machiavelli N, *The Prince and the Discourses* (New York; Modern Library, 1950), pp.xxv-xxvi

²⁷ African Union, Constitutive Act (Lome :African Union, 2000), Article 4(h)

motives of security, quickly became wars of aggression and self-seeking.²⁸ Therefore to realists if intervention is allowed it may lead to hegemonic or expansionist tendencies. Constructivists and neoliberals advocate for intervention in the changing international system which no longer emphasize sovereignty (non-interference) and anarchy. Sovereignty, according to liberals, is not sacrosanct. The international community has an obligation to use armed force to stop flagrant violations of human rights.

State system, Integration and International institutions

Carr, Morgenthau and other realists are challenged by liberals like Keohane and Nye who emphasize interdependence between states, transnational relations and non-state actors. International relations was to be conceived as a cobweb of political, economic, and social relations binding sub-national, national and supranational actors.²⁹ Although realists continued to focus on state, the events of the 1973 oil crisis revealed that non-state actors could affect international events and often compete with states. This led to the realization of complex interdependence - a model of world politics where states are not the only vital actors, security is not the dominant national goal and force not the only instrument of foreign policy. There is a complex network of public and private exchanges cutting across the state boundaries. Even in the absence of hierarchical enforcement states follow commonly acknowledged norms which regularize the pattern of cooperation thus creating an international regime in the form of institutions such as UN or AU.³⁰

²⁸ Carr. E.H, *The Twenty Years' Crisis, 1919-1939*(London: Macmillan and Co., 1962),p.112

²⁹ Keohane R, and Nye. J, *Power and interdependence*.(Boston: Little, brown, 1977).p.18

³⁰ Hansenclever et al, "Interests, Power, and Knowledge," *Mershon International Studies Review* 40 (October,1996) pp.177-228

The approach to peace has therefore evolved with emphasis being on institutional reform through democratization, open markets and international law and organization. Kegley, a neoliberalist adds that the expansion of trade, communication, information, technology and migrant labour have made countries to sacrifice portions of their sovereign independence to create new political and economic unions.³¹ But to realists like Hobbes, Morgenthau and Waltz, sovereignty is indivisible. The talk that 'surrender part of our sovereignty' to an international organization for the sake of world peace is contrary to logic and politically infeasible.³² To Waltz, interdependence promotes war as well as peace. They insist that nationalism has weakened supranational forces like universal religions, humanitarianism, cosmopolitanism, and all other personal ties, institutions and organizations that bind individuals together across national boundaries.³³ Waltz argues that the international system is anarchical; it has no central authority to impose order; and in such a system states are interested in self-survival. He claims that the struggle for power remains a feature of international relations and conflict is endemic. In such a world, he argued, cooperation between states is precarious or non-existent.³⁴ Waltz, adds that cooperation is difficult because states selfishly compete for relative gains.³⁵

Unlike the constructivists who believe shared ideas among elites can lead to state cooperation; the liberalists like Deutsch and functionalists such as Mitrany, feel that the process of integration develops from international transactions.³⁶ When states cooperate they reduce

³¹ Ibid.p.38

³² Morgenthau, H. *Politics Among Nations: The Struggle for Power and Peace*, 6th Edition Op Cit, p.341

³³ Ibid.p.350

³⁴ Devetak.R, " Postmodernism" in Burchill et al (eds), *Theories of International Relations*, 3rd Edition (London: Palgrave Macmillan, 2005)p.161

³⁵ Waltz. K, "Structural Realism after Cold War," *International Security* 25 (Summer,2000) p.5-41

³⁶ See Deutsch .K, et al, *Political Community and the North Atlantic Area* (Princeton, N.J:Princeton University Press, 1957)

chances of tension occurring hence lessen war. The AU has organs like NEPAD, ECOSOCC, which bring member states to cooperate. By working together to achieve certain goals, they reduce chances of conflict occurrence.³⁷ Liberal prescriptions for global community to get ordered by creating institutions above states as a route to global stability is rejected by realist thought.

Critics of liberalism like Kissinger and Lipson contend that most ideas supportive of international organizations appear in low politics of commerce and environment, not in high politics of national security.³⁸ That since states are power lusting they are likely to see their vital interests; making global institutions not to timely respond to aggression. On security issues states will trust in their own power and not of a supranational institution.³⁹ *Neoliberalism* tries to probe the conditions under which diverse interests among otherwise independent transnational actors may result in cooperation. The theory focuses on the ways in which influences such as international law and organizations, democracy, free trade, collective security, disarmament, mass education and multilateral diplomacy can improve life globally.⁴⁰ It bases on the hope that the application of universal ethics can lead to a more orderly, just and cooperative world; it further assumes that anarchy and war can be policed by institutional reforms that empower international organizations. The formation of the UN or the AU is meant to reduce selfish competition and overcome anarchy. According to Coulombis and Wolfe, regional organizations like the OAU (AU) are hybrid types which perform general functions.⁴¹ Even Hobbes had rooted for a supreme authority to overcome war. He explained how people would escape from anarchy

³⁷ Mitrany, D, *A Working Peace System*. Op Cit

³⁸ Kissinger, H, "Balance of Power Sustained" in Allison, G, and Trevorton, G,(eds) *Rethinking America's Security* (New York: Norton, 1992) pp.238-243

³⁹ Lipson, C, "International Cooperation in Economic and Security Affairs," *World Politics* 37 (October, 1984),p.1-23

⁴⁰ Kegley Charles, Jr. *World Politics: Trend and Transformation*, 12th edition. (Belmont: Cengage Learning, 2009).p.36

⁴¹ Coulombis, T, and Wolfe, J, *Introduction to international Relations; Power and Justice*, 3rd Edition, Op Cit, p.308

by agreeing to place all power in the hands of a Leviathan (state or supreme authority) that would maintain order.⁴² But to Carr the international Leviathan does not exist in international politics, there is no organized power charged with the task of creating harmony.

The Changing International Relations

International relations is defined as the total of political, social, economic, cultural and other interactions among states and even non-state actors.⁴³ Sometimes international politics is used synonymously with international relations. The definition of international relations has evolved to include non-state actors which were not considered by the realists. Kauppi and Viotti define international relations as relationships that exist between pairs or among groups of global actors.⁴⁴ New issues like globalization, interdependence and transnational relations have transformed the discipline of international relations. To the liberals, expansion of trade, communication, information, technology and migrant labour have made countries to forfeit portions of their sovereign independence to create new political and economic unions out of the previously separate units.⁴⁵ The world is becoming one interlinked global village, a call for departure from the dogmatic principles of sovereignty and non-interference in the relations of states. States, international organizations like AU and global corporations are currently the key actors in international relations. Even in the anarchical world states follow commonly

⁴² Thomas Hobbes, *Leviathan*, edited by M. Oakeshott (New York: Macmillan, 1974)

⁴³ Viotti and Kauppi (eds) *International Relations Theory* (New York: Macmillan Publishing Company, 1987) p.595

⁴⁴ *Ibid.* p.38

⁴⁵ Kegley Charles, Jr. *World Politics: Trend and Transformation*, 12th edition. (Belmont: Cengage Learning, 2009).pp.575

acknowledged norms which regularize the pattern of cooperation thus creating an international regime in the form of institutions such as AU.⁴⁶

The global outlook according to constructivists hinges on prevailing ideas and values. For instance, they point out that Cold War ended peacefully because of new thinking by Mikhail Gorbachev which led to the rise of new norms governing the relationship between US and Russia.⁴⁷ This is in contrast to realists' emphasis on state centrality, protection of sovereignty and struggle for power. This new thinking of interdependence has made non-interference increasingly untenable as states realize that threat to security in one part of the world affects the whole world. This is what informs the formation of regional and global organizations like AU and UN respectively. In the liberal sense, international anarchy is no longer a big problem since it can be ordered through the creation of strong global institutions.⁴⁸ Human rights have been internationalized and mechanisms like humanitarian intervention have gained prominence in state relations.

Case Studies: non-interference principle.

Globally there have been deliberate actions to side-step the principle of non-interference. For example, in the Kosovo war of 1999, the NATO Secretary General, British Premier Tony Blair and U.S President Bill Clinton all argued that intervention was a moral necessity. Although nonintervention into internal affairs of other states is a long time cardinal principle of international law, they saw military intervention against Yugoslavia and its leader Milosevic's repression of Albanians as a duty because human rights were an international entitlement and

⁴⁶ Hansenclever et al, "Interests, Power, and Knowledge," *Mershon International Studies Review* 40 9October,1996) pp.177-228

⁴⁷ Kegley Charles, Jr. *World Politics: Trend and Transformation*, 12th edition. (Belmont: Cengage Learning, 2009).p41

⁴⁸ Viotti and Kauppi (eds) *International Relations Theory (New York:Macmillan Publishing Company, 1987) p.37*

governments that violate them forfeit the protection of international law. Sovereignty, according to liberal theory, is not sacred so the international community has an obligation to use force to stop flagrant violations of human rights.⁴⁹

The *UN Agenda for Peace* of 1994 laid emphasis on the need for regional organizations to become proactive for prevention, management and resolution of conflicts. However state centrality and the principle of non-interference in OAU practices limited Africa's efforts to end increasing internal conflicts. This principle was slightly weakened by the international community towards the end of Cold War period through renewed commitment to humanitarian intervention articulated as the 'responsibility to protect' during the UN annual summit in September 2005.⁵⁰ For example, Tanzania intervened in Uganda to remove Idi Amin. The AU's CA also further weakened the non-interference principle. In 1996 major Pierre Buyoya staged a coup in Burundi. A seven-state regional sanctions coordinating committee, on which OAU was represented, mounted an economic blockade that included an embargo on fuel deliveries, a ban on exports and the severing of international links. Buyoya made political concessions when the blockade began to bite. AU also intervened in Comoros after numerous coups. Political difficulties faced by the OAU included the case of Morocco and the Western Sahara where some members of OAU like Chad recognized the Western Sahara government while others did not; in 1968 four member states –Tanzania, Zambia, Ivory Coast and Gabon-recognized the rights of 'Biafra' to secede from Nigeria. Citing the principle of non-interference the OAU failed to condemn the glaring atrocities which occurred in several black African states such as Bokassa's Central African Republic, Amin's Uganda and Equatorial Guinea under Macias Nguema.. OAU

⁴⁹ Kegley, *Op Cit*, p.39

⁵⁰ Gomes, S. "The Peacemaking Role of the OAU and the AU: A Comparative Analysis" *op cit*, p118

was accused of “conspiracy of silence.” In fact in 1975 OAU summit in Uganda, Amin was made the chairman. OAU was also powerless to halt the horrendous ethnic violence in Rwanda in 1994. It handed over the problem to UN.⁵¹ Apparently events on the scale of Chad, Rwanda, Liberia, Sierra Leone and DRC were beyond the ability of OAU to handle. The OAU possessed no powers of enforcement, had limited funding, and was ill equipped.⁵² After the OAU failed to intervene meaningfully in the dispute between Algeria and Morocco in 1963, the conflict between Ethiopia and Somalia in 1966, civil unrest in the Congo, and the Nigerian civil war (1967-1970), countries largely avoided it in favour of countries and institutions outside the continent for assistance.⁵³

Due to the economic benefits of NEPAD, Kenya and Ghana for instance subjected themselves to peer review and the recommendations suggested by the review team were meant to reform and benefit the states’ internal affairs.⁵⁴ The AU mobilizes other members and the international development partners to offer assistance to a government that is willing to correct any identified shortcomings. Where there is unwillingness and dialogue and diplomacy fails, interventions such as sanctions in line with the Union’s Constitutive Act will be taken. Kenya’s post elections violence is an instance of AU’s bold intervention. In 2008, the intervention by the AU in Kenya consisted of the use of President John Kufuor’s good offices as chairman of AU.⁵⁵ Kufuor’s good offices led to the creation of a team chaired by former UN secretary general Kofi Annan and other eminent personalities namely Graca Machel, and ex- president Benjamin

⁵¹ Tordoff w, *Government and Politics in Africa*, 4th edition (New York: Palgrave Macmillan, 2002) p 253

⁵² Walvaren K.R, *Dreams of Power* Op cit, p.175

⁵³ Sams, K and Berman, E, *Peacekeeping In Africa: Capabilities and Culpabilities*,(Pretoria: UNIDIR and ISS, 2000) P45

⁵⁴ Steve Ouma Okoth, *The APRM in Kenya: A pathway to a new state?* (Open Society Initiative for East Africa ,2007)p.4

⁵⁵ Mwangiri. M, *The Water’s Edge: Mediation of Violent Electoral Conflict in Kenya* (Kenya Institute of Diplomacy and International Studies, 2008) p 60

Mkapa under the auspices of the AU to mediate the conflict⁵⁶ leading to Kenya forming a peaceful coalition and help land locked Uganda and Rwanda that rely on Kenya's transport infrastructure.

While some of the changes, especially in intervention and human rights are certainly laudable improvements over the old OAU, the AU is still criticized. The criticism is partly due to the CA lacking a provision to bar dictatorships from entry into the AU. Any African state may be admitted by a simple majority of the member states.⁵⁷ Mugabe attended the AU meeting, despite violating the rights of settler farmers and opposition party members.⁵⁸ Realists reject intervention by emphasizing that sovereignty is synonymous to equality and independence. Independence implies each state is free to manage its affairs and that common international law imposes a positive duty upon all nations not to interfere in the conduct of foreign affairs of other nations.⁵⁹

Grotius supports that treaties or formal covenants would be binding in the sense that states are obligated to follow them even in the absence of central authority to enforce their adherence.⁶⁰ Equality as an aspect of sovereignty means states are subordinated to international law but not to each other. Realists argue that the UN Charter declaration that "the organization is based on the principle of sovereignty equality of all its members" is redundant language meant to stress the import of sovereignty principle.⁶¹ But liberalists assert that territorial exclusivity is the cause of conflicts and boundaries should be transcended. In the debates a thread that runs

⁵⁶ Ibid, p. 68

⁵⁷ AU Constitutive Act, article 29

⁵⁸ Halger Hestermeyer *African Union replaces Organization of African Unity* German Law Journal: Review of Developments in Germany, Europe and International Jurisprudence, 2008.

⁵⁹ Morgenthau, H. *Politics Among Nations: The Struggle for Power and Peace*, 6th Edition (New Delhi: Kalyani Publishers, 2007) p.332

⁶⁰ Grotius, H, *Law of War And Peace*(1625)

⁶¹ UN Charter Article 2

through is that territorial exclusivity and sovereignty face credible challenges from regionalism interdependence and globalization but non-interference remains elusively unperturbed. This study joins the debate with a view of looking at how non-interference has been and can be weakened according to liberalists' theory.

Justification

In the review various debates on non-intervention agree that borders are no longer impervious and exclusive; and sovereignty is slowly being vitiated by interdependence, technological development, universalisation of human rights and internationalization of internal and external conflicts, but non-interference remains a hindrance and the study examines how it has been weakened in the AU practices. Also since they agree that the international system is changing towards new developments away from the notion of war, sovereignty or anarchy; a gap exists where more studies are needed in examining the relevance of non-interference in this changed international system that is moving towards globalization. The study is justified because it undertakes to comparatively demonstrate that the AU is fast learning from the lessons of the OAU and is adopting a more interventionist stance despite the existence of the principle of non-interference in its Constitutive Act. Intervention enhances preventive diplomacy as espoused by the liberalists.

Theoretical Framework

To Waltz theories explain the laws of international politics or recurrent patterns of national behaviour. ⁶²This study will be guided by the *Liberal theory* of international relations. In the literature review, liberalism assumes that anarchy and war can be policed by institutional

⁶² Waltz. K, *Theory of International Politics*, (Reading, Mass: Addison-Wesley, 1979)

reforms that empower international organizations. To liberals sovereignty hence non-interference is not sacred so force can be used if human rights are violated. The theory puts human rights above national interests and sovereignty. Thus intervention is allowed in the protection of human rights as provided for by the CA of the AU.⁶³ The study's framework is to probe the relevance of non-interference by comparing the practice of regional institutions; the AU and the OAU. The theory as an analytical tool explores how influences such as international law and organizations, democracy, free trade, collective security, mass education and multilateral diplomacy can improve life globally.

Hypotheses

1. The principle of non-interference is no longer relevant in regional practices
2. AU has been able to devise better mechanism of intervention than the OAU.
3. The OAU practices were more inhibited by non-interference principle than AU practices

Research Methodology

These are research techniques used in the study of the research problem. They are research design, type of data, sampling design, data collection and data analysis.

Research Design

The design is a blueprint for the collection, measurement and analysis of data. This study will adopt descriptive research design. The design is concerned with certain predictions and narration of facts and characteristics. This is appropriate because it aims at discovering

⁶³ Constitutive Act of the AU Op cit, Article 4 (h)

relationships between variables. This study is interested in discovering the two variables: the selected AU and OAU practices and the non-interference principle.

The type of Data

This research particularly relies on secondary data. Secondary data was from recorded or written materials which include both secondary and primary documents. Secondary documents used are past research studies, textbooks, journals, internet searches, AU pamphlets, articles and policy papers. Primary documents include official government documents, minutes of meetings, charters, treaties, protocols and speeches.

Data Collection

Secondary data was collected from past research studies, textbooks, journals, internet searches, AU pamphlets, articles and policy papers. Sources of concern were UN and OAU Charters, the Constitutive Act of the AU, materials on non-interference, sovereignty and state system.

Scope of the Research

The study will be within the aforementioned research objectives. The focus will be on the relevance of the principle of non-interference and its influence on the practices of the AU and OAU, and a comparison of the OAU and AU practices in African countries.

Chapter Outline

Chapter One: Introduces the research topic, statement of the problem, objectives, literature review, theoretical framework, hypotheses, research methodology, and chapter outline.

Chapter Two: From OAU to AU: Charter shift

Chapter Three: The principle of non-interference in International Relations

Chapter Four: OAU/AU non-interference practices

Chapter Five: Conclusion

Chapter Two

From OAU to AU

Introduction

The OAU was formed in 1963 to foster African independence and unity.¹ It was meant to articulate the interests of African states as members of the international community. Pan-Africanism is a movement of the early 1900's whose ideology was important for the formation of OAU. A number of All-African Peoples' Conferences were organised in the late 1950's and early 1960's with the purpose of encouraging independence through non-violent means.² Pan-Africanism increased the desire for African unity therefore becoming the basis for OAU formation.³

Coulombis and Wolfe classify regional organizations like the OAU as hybrid types which perform general functions.⁴ Functionalists like Mitrany, declare that agencies of international or regional organizations bring member states to cooperate in various areas, hence reduce chances of conflict.⁵ Geographically states that are located in the same stretch tend to have common interests: trade, cultural spill-over and common border security issues. Also the UN Charter encourages regional organizations to solve problems within the regional context.⁶

¹ Palmers, N and Perkins H. *International Relations*. (India: CBs publishers, 2001), p.585

² Mats Öhlén, *The African Union as Promoter of Democracy and Human Rights: a comparison with the European Union Paper* presented at the conference Democracy, Human Rights and Social Justice in a New Global Dispensation – Challenges and Transformation, held in Pretoria 1-3 February 2010

³ Assa Okoth, *A History of Africa 1915-1995, Vol.2: African nationalism and the Decolonization Process*. (Nairobi: East African Educational Publishers, 2006), pp.318-319

⁴ Coulombis. T and Wolfe J, *Introduction to international Relations; Power and Justice, 3rd Edition*, (New Delhi: Prentice-Hall, 1986).p.308

⁵ Mitrany, D. *A Working Peace System*. (London, OUP, 1943), p.34

⁶ UN Charter, (San Francisco: UN 1945), Chapter VIII, article 52

History of the OAU

The independence of some states reinforced the formation of OAU leading to its establishment in 1963 at Addis Ababa, Ethiopia, by 32 independent African nations to promote unity and cooperation among all African states and to end colonialism.⁷ It was changed to AU whose aim is unity, economic development by promoting democracy, human rights and good governance.⁸ At the formation of the OAU there were already contentions over state sovereignty. States did not agree on the nature of the regional organisation therefore splitting into the 'Monrovia' bloc favouring a "confederal" approach where, sovereignty of individual states would be preserved.⁹ Conversely, other states led by Ghana's President Nkrumah, formed the 'Casablanca' bloc that signed a more federalist Casablanca Charter for economic cooperation and to eliminate colonialism.¹⁰ The final result was the 1963 Charter of the OAU, establishing an inter-governmental Organization thus mirrored the Monrovia block's expectations¹¹ of state sovereignty. More disturbing was that the diplomatic activities of the Casablanca and Monrovia groups were becoming identified with the diplomacy of the great powers blocs engaged in the Cold War.¹² Leaders of the Monrovia group, way before the formation of OAU Charter, agreed on absolute equality of African and Malagasy states, non-interference in the internal affairs of member states, cooperation, solidarity and good neighbourly relations among others.¹³

Even at its inauguration date, OAU leaders had border disputes as expressed by the boycott of Morocco over the presence of independent Mauritania, which Morocco had claimed

⁷ OAU Charter, Addis Ababa, Ethiopia, 25th day of May, 1963

⁸ Maurizio Carbone, 'From OAU to AU: Turning a Page in the History of Africa', http://ec.europa.eu/development/body/publications/courier/courier194/en/en_030.pdf, entered 2010

⁹ Murray Rachel, *Human Rights in Africa From the OAU to the African Union*, (Cambridge University Press, 2004), pp. 2-4

¹⁰ Kwame Nkrumah, *Africa Must Unite* (London, Heinemann, 1963) pp. 141-149

¹¹ Mats Öhlén, *The African Union as Promoter of Democracy and Human Rights, Op. Cit*

¹² Tordoff w, *Government and Politics in Africa*, 4th edition (New York: Palgrave Macmillan, 2002) p 240

¹³ Amate, C.O.C, *Inside the OAU: Pan-Africanism in Practice*, (London: Macmillan Publishers, 1986), p.48-49

as part of it. Togo was also barred from the meeting by African states opposed to the new government which had on 13th January 1963 had staged a coup in which President Sylvanus Olympio was assassinated.¹⁴ So at this time the principle of non-interference in internal affairs had not received much strength, unlike later when the OAU remained indifferent to violent coups terming them internal affairs. The OAU gradually increased in membership as more African countries gained independence and by 1995 it had 53 members.

The OAU Charter

The OAU Charter outlined the purpose of the organization as being to promote unity and solidarity among African states, defend and respect sovereignty, territorial integrity and independence of states, liberate those still under colonialism and promote international cooperation with regard to UN Charter and universal declaration of human rights.¹⁵ The key goals of the OAU were to promote decolonization and self-government in African states and to guarantee respect for states' territorial boundaries. The OAU structure revolved around four principal institutions.¹⁶ These were the Assembly of Heads of State and Government as the supreme organ; the Council of (foreign) Ministers, which was to prepare the OAU budget and be responsible for implementing the Assembly decisions; the secretariat based in Addis Ababa and headed by a secretary general elected for a four year term; and Commission of mediation, conciliation and arbitration. There were provisions in the charter for specialized commissions to deal with technical aspects. Besides, there was a coordination committee for Africa liberation known as African Liberation Committee (ALC) headquartered in Addis Ababa.

¹⁴ Ibid, pp.50-51

¹⁵ OAU Charter, Addis Ababa, Ethiopia, 25th day of May, 1963 Article 11

¹⁶ Charter of the Organisation of African Unity, Article VII

The principles of the OAU were sovereign equality, non-interference in the internal affairs of States, respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence; peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration; condemnation of political assassination and subversive activities; absolute dedication to the total emancipation of the African territories which are still dependent; and affirmation of a non-alignment policy with regard to all blocs.¹⁷ An analysis of the Charter provisions of the OAU reveal a strand that ties the need for sovereignty without interference and guarding the boundaries left by the colonialists. The preamble of the OAU Charter clearly indicates the desire by African leaders to maintain the sanctity of their boundaries by stating, “Determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neocolonialism in all its forms.” It appears that from the start the intention of the leaders was to reinforce the territorial integrity of the boundaries inherited from colonialists through non-interference.¹⁸

The Charter also gave the African opinion on the then international relations shaped by the rivalry of the two great powers during the Cold War, the provision on non-alignment was meant to preventing the Cold War “battles” taking place in Africa. However, the ideological polarization between the West, led by the US and the East, led by the Soviet Union still affected Africans. During this period some countries within the OAU adopted socialist policies and maintained strong links with the communist countries of Eastern Europe while others maintained strong links with the capitalist countries of Western Europe and the USA. This division weakened the Organization.¹⁹ One problem with OAU Charter was that it reflected the dominating concerns in Africa, namely to protect the newly acquired statehood, condemn the

¹⁷ The OAU Charter, Principles, Article III

¹⁸ OAU Charter opening statement, Addis Ababa, Ethiopia, 25th day of May, 1963

¹⁹ Assa Okoth, *A History of Africa 1915-1995, Vol.2: Op Cit*, pp.324

apartheid regimes and to ensure the independence of the still colonised countries. The charter centred on non-interference in internal affairs and the focus was thus on the protection of the state rather than the individual.²⁰

Performance of the OAU

The performance of the OAU since 1963 was a mixture of failures and successes. Colin Legum observed that it is difficult to imagine what might have been the fate of Africa if, at the dawn of emancipation from foreign rule in the early 1960s, its leadership failed to provide the deeply balkanized and politically divided continent with a political centre.²¹ The OAU was this centre used by Africans to provide regional order and stability through the creation of a regional political and security community with acceptable principles and norms of interstate relations.²² A key element of the Charter of the OAU is the principle of “peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.”²³ Although it is argued that the Commission of Mediation, Conciliation and Arbitration was never established in practice.²⁴ The use of ad hoc committees in mediation meant that there was no institutionalized framework for resolving disputes; consequently, conflict situations persisted throughout the life of the OAU.²⁵

The OAU, however, strengthened Africans’ multilateral diplomacy where they could speak with one voice on international forums such as the United Nations. Besides, it gave African nations a forum to discuss their various problems, with an equal chance for every

²⁰ Murray Rachel, *Human Rights in Africa From the OAU to the African Union*, Op Cit, pp 7-8

²¹ Colin Legum, “The Organization of African Unity: Success or Failure, *International Organization* 51, no.2, 208-219.

²² Sam G. Amoo, ‘Role of the OAU: Past, Present and Future’, in Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993),p.240

²³ Charter of the OAU, article 3, par.4

²⁴ Mats Öhlén, *The African Union as Promoter of Democracy and Human Rights: a comparison with the European Union Paper* presented at the conference Democracy, Human Rights and Social Justice in a New Global Dispensation – Challenges and Transformation, held in Pretoria 1-3 February 2010

²⁵ Solomon Gomes, “The Peacemaking Role of the OAU and AU: A Comparative Analysis”, in Akokpari J et al (eds), *The African Union and Its Institutions* (Cape Town, CCR, 2008),p.123

country to put across its views.²⁶ However, others argue that the OAU simply failed to deliver on many fronts, save a few areas, such as overseeing the end of white minority rule in southern Africa and the liberation of all African countries from colonial subjugation, and containing some border disputes.²⁷ The OAU was a success story with regard to African nationalism in South Africa; it was due to pressure exerted by the OAU that South Africa minority white rule found itself expelled from international bodies such as the International Labor Organization (ILO), the Food and Agriculture Organization (FAO), the World Health Organization (WHO), UNESCO and the Olympic games, while south African ships and aircraft were prohibited from ports and airports of most independent African states. This pressure assisted in the fight against apartheid in South Africa.²⁸ The OAU also used sport as a weapon for fighting apartheid in South Africa. It staged boycotts of international sporting activities in which countries with sporting links with South Africa participated; hence South Africa remained banned from international sports such as the Olympic Games until 1992. It presented the issue of Namibia to the International Court of Justice (ICJ) as part of the pressure for the liberation of Namibia from minority white rule. The OAU liberation committee functioned with some effectiveness in aiding national liberation movements in Africa parts which remained for some time under alien Portuguese (Angola and Mozambique, guinea Bissau and Cape Verde) Zimbabwe and Namibia and South Africa. The committee, which had its headquarters in Dar es Salaam, was involved primarily in diplomatic rather than military activities.²⁹ It cooperated closely with the UN and its specialized agencies that provided humanitarian assistance to liberation movements.

²⁶ Assa Okoth, *A History of Africa 1915-1995*, Op Cit, pp.321

²⁷ Olufemi Babarinde, *The EU as a Model for the African Union: the Limits of Imitation*, *Jean Monnet/Robert Schuman Paper Series*, (www.miami.edu/eucenter), Vol. 7 No.2, April 2007

²⁸ Assa Okoth, *A History of Africa 1915-1995* Op Cit, pp.321

²⁹ Ibid

At the OAU summit in Accra in 1965 adopted a resolution called 'the problem of refugees in Africa', which called on all member-states to give all possible assistance to refugees from any member-state on humanitarian grounds, while at the same time preventing refugees from engaging in subversive activities against their home member-states.³⁰ The OAU Convention of Refugees, signed in Addis Ababa in September 1969, improved the status and asylum rights of refugees by putting an end to the rejection and expulsion of refugee on the continent.¹⁰ The convention came into force in 1974, but had little impact in alleviating the conditions of refugees, who kept increasing due to the civil wars. The depiction of the OAU's accomplishments during its almost 40-year history have ranged from mild criticisms, such as "did not bring nations of the continent together," to scathing assessments, such as "did not achieve anything."³¹ First it lacked capacity and formula for preventing divisions in and between African states for example it was unable to prevent Tanzania, Zambia, Gabon and Cote d'Ivoire supporting Biafra in the Nigerian civil war. It could not prevent wars between member-state: the Ogaden war between Ethiopia and Somalia in 1977 and 1978; and the war in the Western Sahara between the Spanish Sahara's independence movement, the People's Front for the Liberation of Saquiet el- Hamra and Rio de Oro (POLISARIO), fighting for their Saharan Democratic Republic (SADR), and Morocco and Mauritania in 1976-82.

It could also not prevent the division of African states over a policy of sanctions against the *apartheid regime* in South Africa. In 1966, the Assembly of heads of state and government decided that all reports of the Liberation Committee were to be distributed to OAU member-states, except Malawi, which followed pro-south Africa foreign policy. However, the reports

³⁰ Ibid.

¹⁰ OAU Convention on Refugees, article 11

³¹ See Yassin El-Ayouty and William Zartman (eds), *The OAU After Twenty Years*, (London: Praeger, 1984)

found their way to the regimes of the white-ruled south. There was no unity over the apartheid South Africa regime sanctions. Though, the Committee gave some useful financial and diplomatic assistance to the liberation movements but far more help came directly to the movements from friendly foreign powers, mainly communist and from some African states themselves.³² With emergence of civil wars and coups, many OAU members were distracted from their financial obligations and were in arrears in their contributions to the special fund administered by the committee.

The OAU achieved some successes in management of conflict in Africa, but also failed to manage the rising intra-state conflicts in post Cold War Africa. This is because OAU had dichotomized conflicts into inter-state and internal. The OAU argument was that its conflict management focused on inter-state rather than intra-state conflicts based on an inflexible interpretation of the OAU Charter's provision of non-interference in internal affairs of states.³³ The OAU was faced by violent conflicts that exposed its gross ineptitude in achieving one of its primary aims: enhancing the unity and solidarity of African States. Before the conflict in Rwanda in 1994, the OAU had been involved in only two domestic conflicts; 1964 in Tanganyika which was rather successful and Chad 1979 not a success. The first insight drawn in the early stage of the conflict was the weak authority of the OAU to act due to its Charter inhibitions that emphasized non-interference in internal affairs of states, respect for the borders inherited at independence and the principle of sovereign equality of states.³⁴ When the rebel army RPF invaded Rwanda, the OAU could merely call for meetings, hope that the parties would participate, help them to negotiate and finally hope for the parties to implement the agreements.

³² Assa Okoth, *A History of Africa 1915-1995*, Op Cit

³³ Mwangi M., 'Who will Bell the Cat? Article 3(2) of the OAU Charter and the Crisis of OAU Conflict Mangement', *Kent Papers in Politics and International Relations*, Series 4, No. 7, 1995.

³⁴ Mwangi M., *Conflict in Africa: Theory, Process and Institutions of Management*, (Nairobi: CCR Publications, 2006), p.142 , see also OAU Charter Article III

OAU's efforts to hinder the conflict and later the tragic genocide were also complicated by the fact that its chairman at the time was the president of Uganda Museveni, who was accused by Rwanda's president to be behind the rebel army.³⁵ Only nine years after Somalia's independence in 1960, there was a coup followed by a 30 years dictatorship full of atrocities to the country's citizens. The OAU did nothing, much because of the non-interference policy of its Charter. The fall of the dictatorship in 1991 was however followed by a brutal civil war. In the absence of OAU, the UN engaged in the conflict but it failed and left the country in 1995. The possibilities for the AU to make an effort are limited because of the unstable situation in the country.³⁶ It has however at present a peace-keeping force stationed in the country.

The emerging consensus was thus that the OAU was obsolete and incapable of tackling the problems of the new millennium. To that end, Africa needed a new pact to re-invigorate its stagnant and underperforming economy.³⁷ In late 1990's, almost half of the countries in Africa were involved in some kind of conflict. The OAU was sharply criticised for being too passive, especially when it came to the genocide in Rwanda in 1994. This in turn led to demands that the OAU should also have a responsibility and competence to enforce peace keeping missions in Africa. But since the OAU charter inhibited involvement in domestic affairs, the whole organisation had to change. In 1991, a majority of OAU's members decided to reform the organisation to the African Union (AU). It would no longer be possible to use "national self-determination" to excuse atrocities towards the citizens.³⁸

³⁵ Rwanda, the Preventable Genocide, report from the International Panel of Eminent Personalities 1998, chapter 11 online: http://www.africa-union.org/Official_documents/reports/Report_rowanda_genocide.pdf

³⁶ Baldauf, Scott, "Will the African Union help Somalia?" *The Christian Science Monitor* 2007-01-31, <http://www.csmonitor.com>

³⁷ Olufemi Babarinde, 'The EU as a Model for the African Union: The Limits of Imitation', *Op Cit*

³⁸ Mats Öhlén, *The African Union as Promoter of Democracy and Human Rights*, *Op Cit*

Transition of OAU to AU was not merely a change of name but a remarkable change of substance. First, it signified a realization by African leaders of the growing marginalization of the continent reflected in the inactivity of the international Community during the 1994 Rwanda genocide. With the end of the Cold War and the marginalization of Africa in the concerns of global powers, the willingness of global powers to intervene resolutely and unilaterally in African conflicts, beyond providing inadequate funds and encouraging regional friends and nongovernmental organizations to intervene, became doubtful.³⁹ Africa has to look after itself.

Secondly, this marginalization included economic terms as reality dawned on Africa's policy makers that there is an intrinsic connection between peace and development.⁴⁰ The OAU faced limitations of lack of political will by members and lack of trust in the organization; limited capacity, a lack of financial resources and the influence of international politics.⁴¹ So a great need existed to refurbish and restructure the OAU in line with developments that have affected the continental landscape so drastically.⁴² Over the years it was felt that a shift in African diplomacy and conflict management legal framework was desirable. The internal architecture and conceptual superstructure of the OAU had to be changed.⁴³ The Charter shift culminated into a new outfit the African Union (AU).

The African Union

On 9th July 2002, African leaders gathered in Durban, South Africa, to dissolve the OAU and launch a new organization's charter the African Union (AU). The AU was designed to meet

³⁹ Sam G. Amoo, *Role of the OAU*, Op Cit, p256

⁴⁰ Abdala. B and Hussoin. S (eds) *Perspectives on the OAU/AU and Conflict Management in Africa*. (Africa Centre for Applied Research and Training in Social Development (ACARTSOD) 2004)p. 11

⁴¹ See Shannon Field (ed), *Peace in Africa: Towards a collaborative Security Regime* (Johannesburg, 20004)

⁴² Assa Okoth, *A History of Africa 1915-1995*, Op Cit, pp.324

⁴³ Mwangiru.M, *Conflict in Africa*, Op Cit, p.144

the challenges of Africa in the 21st century through its rewritten constitution that promises action and resolve in step with global economics.⁴⁴ Efforts to promote even greater African economic, social, and political integration established the AU in 2001 modeled on the European Union (EU). The AU, which succeeded the OAU in 2002 after a transitional period, can in many ways be portrayed as a copy of the EU.⁴⁵ Along the deteriorating conditions of the 1990s, it became increasingly clear to OAU to seek answers in the paradigm of unity.⁴⁶

The scope of the AU is to unify its 53 member states politically, socially and economically, and attract foreign aid and investment through the promotion of democracy, human rights and good governance.⁴⁷ Progress started when the OAU adopted the African Economic Community (AEC) treaty in 1991 in Abuja, Nigeria. In September 1999, a special summit in Libya issued the Sirte Declaration establishing the AU loosely based on the European Union model. This was later followed by the Lome (Togo) summit, which adopted the Constitutive Act of the AU and then two consecutive summits of 2001 in Zambia and 2002 in Durban, South Africa that drew the AU road map and launch respectively.⁴⁸

The AU inherited the organs of the OAU, but went further to expand the scope beyond OAU's decolonization objective. So AU's organs include:⁴⁹ The Assembly made of Heads of state and government is the supreme organ of the union. It meets annually and elects a chairperson. It decides major policies for the union, considers membership applications, adopts the budget and directs the process of conflict resolution as well as appointing judges for the

⁴⁴ Nevin Tom, "Exit OAU (Organization of African Unity), enter AU (African Union)" *African Business* September 1, 2001.

⁴⁵ Siaroff, Alan, "Following in Europe's Footsteps? The African Union and Integration in Africa", paper presented at the Biannual Congress of the European Union Studies Association, May 2007. p 1, online:

<http://www.unc.edu/euce/eusa2007/papers/siaroff>

⁴⁶ Walvaren K.R, *Dreams of Power: The Role of the Organization of African Unity in the Politics of Africa 1963 to 1993* (Ashgote, 1999) p. 359

⁴⁷ Maurizio Carbone, *From OAU to AU: Op Cit*

⁴⁸ Ibid, pp.359-360

⁴⁹ African Union, *Constitutive Act of the African Union* (Lome, Togo: African Union, 2000), Article 5-22

Court of Justice, which the AUCA proposed to establish in due course and defined its statutes in a protocol relating thereto. However, member states at a June 2004 African Union Summit decided on the African Court on Human and Peoples' Rights (AfCHPR.), a regional court that seeks compliance with the African Charter on Human and Peoples' Rights which was merged with the African Court of Justice.⁵⁰ The executive council is composed of foreign ministers and is accountable to the Assembly. It prepares agenda and decisions for Assembly to discuss and approve. Another organ is the Permanent Representatives Committee that consists of ambassadors to the AU and is responsible for preparing preliminary work for the Executive Council. The Commission is the secretariat of AU and has a chairperson, deputy chairperson, commissioners and staff. It deals with administration and implementation of the decisions of the Union. It prepares strategic plans to be considered by the Executive council and harmonizes programmes through its various desks and related areas. The economic, social and cultural council (ECOSOC) is an advisory organ with different professional groups from member states as well as civic representatives who advise on socio- economic matters. Financial institutions which include the African Central Bank, Africa Monetary Fund and the African Investment Bank are set up to provide funding for AU projects and programmes. The Pan African Parliament has representatives from the domestic parliaments. It is meant to provide a platform for African people through their representatives to discuss governance and economic integration. The Peace and Security Council (PSC) was not among the original organs of the union but was established through a protocol to the CA in pursuance of a provision for a standing decision making organ.⁵¹ The PSC protocol provides for peace, security, stability and early warning preventive diplomacy. The peace making methods include: good offices, mediation and conciliation. The PSC is

⁵⁰ Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights <http://www.african-court.org/fileadmin/documents/Court>

⁵¹ African Union, Constitutive Act, Op Cit, Article, 5(2)

empowered to recommend to the general assembly intervention in respect of war crimes, genocide and crimes against humanity. It is also supposed to approve modalities for intervention and institute sanctions in the event of unconstitutional change of government. Therefore the PSC with its mandate of intervention is one of the major innovations for the AU which marks a departure from OAU's non-interference in the member states' internal affairs. According to PSC protocol, the PSC has an early warning mechanism, a rapid deployment force, a military committee and a peace fund whose resources are derived from member contributions.⁵²

OAU and AU: The Charter Shift

The OAU was transformed into AU as a collective response to address issues of contemporary global market such as free market forces as determinants of economic development.⁵³ As the 20th century came to a close, it was necessary for African states to demonstrate the political will to resolve their disputes through peacemaking rather than through military means. The tragedies of Rwanda and the ongoing situations in Somalia demonstrated that it is imperative for African states to focus on clearly defining the norms and standards to promote peaceful co-existence across the continent.

The Constitutive Act of the AU gives human rights, good governance and democracy a considerable status. In the Preamble it is "Determined to promote and protect human and peoples' rights, consolidate democratic institutions and culture and to ensure good governance and the rule of law"⁵⁴; the main objectives in the following articles also mirror this determination.⁵⁵ Just like the OAU, the AU has made provisions for non-interference in the internal affairs of a member state, however, the AU has tried to circumvent or create clauses that

⁵²The PSC protocol of the African Union, Article 2(2)

⁵³ Dame C, et al, " *A Future of Small States, Overcoming vulnerability*" report by common wealth advisory group (commonwealth secretariat Marlborough house 1997).

⁵⁴ African Union, Constitutive Act, Op Cit, the preamble

⁵⁵ Ibid, Article 3 h and 4 c.

weaken the impeding non-interference principle. The right to intervene is especially important and it is included in the treaty's principles as "The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity."⁵⁶ The AU is the world's only regional or international organization that explicitly recognizes the right to intervene in a member state on humanitarian and human rights grounds.⁵⁷ The AU CA has set out principles that are intended to plug the loopholes inherent in the OAU Charter.⁵⁸ The Charter shift in 2001, meant the trajectory of regional integration has started to incorporate the notion and process of 'good governance'; the principle of non-indifference in internal affairs of sister African states has replaced the discredited principle of non-intervention.⁵⁹ The AU has adopted a more inclusive and collaborative approach on the involvement of civil society groups in its activities, and there is an emergence of a new generation of African leaders, who are determined to strengthen their regional cooperation so as to promote peace, stability security, integration and development.⁶⁰

The AU has expanded its structure by adopting the New Partnership for African Development (NEPAD) and the African Peer Review Mechanism (APRM) processes which are based on principles of good governance, democracy, human rights, and conflict resolution; fundamental to the creation of an environment conducive to investment and long term economic growth.⁶¹

⁵⁶ Ibid, Article 4(h)

⁵⁷ Roberta Cohen and William G. O'Neill, 'Last Stand in Sudan? Successes & Shortcomings of the AU in Darfur', *Bulletin of the Atomic Scientists*, (Washington, DC: Brookings Institutional Press, 2006)

⁵⁸ Assa Okoth, A History of Africa 1915-1995, Op Cit, pp.324-325

⁵⁹ Adekunle Amuwo, et al, *Civil society, Governance and Regionallintegration in Africa*, (Development Policy Management forum, 2009), p.1

⁶⁰ Solomon Gomes, "The Peacemaking Role of the OAU and AU: A Comparative Analysis", in Akokpali J et al (eds), *The African Union and its Institutions* (Cape Town, CCR, 2008), pp.124

⁶¹ Steve Ouma Okoth, *The APRM in Kenya: A Pathway to a New State?* (Open Society Initiative for East Africa ,2007)pp.2-4

These legal provisions have upped the conflict management diplomacy of Africa in line with the clarion call of African solutions to African problems. The AU's first military intervention in a member state was the May 2003 deployment of a peacekeeping force of soldiers from South Africa, Ethiopia and Mozambique to Burundi. At the last AU 2010 summit in Sirte, Libya, there was a decision to transform the Africa Union Commission into the Africa Union Authority as a first step towards continental integration.⁶² Soon after the creation of the AU in 2000, it was thrown into a serious conflict; that of Darfur in Sudan. The conflict between north- and south Sudan escalated when Arabic nomad-people, Janjaweed militia, invaded Darfur in 2003 and claimed ownership of land and water. This led to cases of atrocities to the civil population.⁶³ Darfur conflict became a test case for African peacekeeping. In its struggle to prevent atrocities, the African Union Mission in Sudan (AMIS) has had many small successes and has proven innovative in its methods. Despite serious handicaps, AMIS has saved lives and prevented even worse catastrophes for many internally displaced persons (IDPs). The second role of the AU was to lead the peace-talks that started in 2005. The weakness of the force and continuing insecurity due to lack of funding did however contribute to its failure to uphold the truce.

The OAU was notorious for refusing to interfere in the "internal affairs" of member states, taking no action to prevent genocide in Rwanda or the brutal acts of Idi Amin in Uganda. By contrast, the AU is constitutionally structured to be able to collectively intervene in a member state. As explained by Salim A. Salim, AU special envoy for Darfur and former OAU secretary-

⁶² Reuters, "Some Key Facts about AU" *Daily Nation*, Monday February 1, 2010.p.16

⁶³ International Commission of Inquiry on Darfur, Report to the United Nations Secretary General, 2005 p 54

general, the AU was established to ensure that Africa would deal more decisively with African conflicts, a step necessary in part because international partners were unreliable.⁶⁴

The Constitutive Act of the AU has enabled the Union to have a better leverage in diplomatic relations with the international community. In his report the UN Secretary said the international community, in particular the European Union and the Group of Eight, provided support to the African Union on the Burundi peace process.⁶⁵ In his speech as the chair of the AU said that new challenges confronted Africans today, brought about by world-wide phenomena such as globalisation and shaped by Africa's desire to see a prosperous, healthy, stable, unified and peaceful continent, fully living up to its promise and potential. He added that the Continent suffers hardships, most notably, poverty and conflict which go beyond the original, political mandate of the OAU. For this reason the leaders transformed the OAU into the AU in order to deal with the socio-economic development of the continent in tandem with the need to build political stability.⁶⁶

Another important formulation in the Constitutive Act is that "Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union"⁶⁷. This article was certainly applied to Mauritania after the 2005 coup but it is a weak statement since it does not specify what "unconstitutional" means. The question now asked is does gaining or retaining power through a massively rigged election constitute an unconstitutional usurpation of power? Secondly, as Alan Siaroff points out, this definition does

⁶⁴ Roberta Cohen and William G. O'Neill, *Last Stand in Sudan? Op Cit*

⁶⁵ Report of UN Secretary General on the Causes of conflict and the promotion of durable peace and sustainable development, 20 August 2004

⁶⁶ Message from the Chair of the African Union, the President of South Africa Thabo Mbeki, on the Occasion of the 40th Anniversary Celebrations of the Organisation of African Unity, 25 May 2003

⁶⁷ African Union, Constitutive Act, Op Cit, Article 30

only allude to governments that have come to power and not those who have been in power since the formation of the union.⁶⁸ When it comes to the practical implementation of the principles and the handling of crisis situations, it has already been mentioned that a central problem for the AU is the lack of resources. Also internal conflicts arising from elections pose the latest difficulty to the implementation of the intervention clause provided in the AU Act. The AU has opted to provide good offices for negotiation or in some cases ignored the condemnation by external observers who invariably declare the electoral processes not free and fair.⁶⁹

In summary the Charter shift to a constitutive Act entailed various fundamental changes. The OAU had the assembly of heads of state and government which was the single source of authority; while the AU has multiple sources of authority namely the assembly of heads of state and government plus judicial (court) and democratic institutions like the Pan-African Parliament (PAP). The OAU was therefore a collaboration of governments of sovereign states while AU grants respect for national authority plus right to intervene in grave circumstances.

Secondly, respect for national sovereignty was paramount for the OAU, but AU crafted a provision to suspend governments coming into power unconstitutionally.⁷⁰ Third, within the OAU practices, the principle of non-interference in internal affairs and sovereignty were absolute, while AU provision for the African Peer review mechanism (APRM) in NEPAD acted to weaken the non-interference principle.

Fourth, the OAU's prime objective was collective struggle for national liberation from colonialism and defence of national sovereignty. But AU's prime objective is to enable Africa meet challenges of the 21st century and strengthening the position of Africa vis-à-vis global

⁶⁸Siaroff, Alan, "Following in Europe's Footsteps? The African Union and Integration in Africa", paper presented at the *Biannual Congress of the European Union Studies Association*, May 2007. P.13 online: <http://www.unc.edu/euce/eusa2007/papers/siaroff>

⁶⁹ See Mwangi M, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya*, (Nairobi: IDIS Publications, 2008)

⁷⁰ Constitutive Act AU, Op Cit, Article 30

economy and international community as is evident in its organs like the ECOSCC, financial institutions and the Specialized Technical Committees.⁷¹ Fifth, structurally the OAU was separate from the African Economic community (AEC); established at Abuja treaty later merged to form OAU/AEC in 1994, but now, AEC and its regional integration programme are incorporated in the AU. The sixth shift is that the OAU secretariat changed to AU commission. The OAU secretariat under the Secretary General had executive powers with power of initiative being gradually acquired in later years. But AU commission had both executive and own power of initiative.⁷² The OAU secretariat comprised elected Secretary General and assistants, carrying out decisions of the heads of state on a purely intergovernmental approach, whereas the AU commission has elected commissioners with fully recognized political mandate, who make collegial decisions.

Overall, the AU has been creative in using the intervention provision though in other occasions its efforts to handle crisis situations have failed. The conditions have for certain been difficult but the lack of resources and in the greater aspect the lack of political will from its members to respond effectively⁷³, made it very difficult to reach the wished for results. Moreover, further expansions of the AU are unlikely to occur. It is however possible that Morocco wishes to return or that a new sovereign country will appear in Africa, for example in Somalia or in Sudan. Acceptance of a new member is anyway is relatively easy in the sense that it only requires the approval of a simple majority. The AU Constitutive Act faces the challenge of increasing self-determination as is expected in Sudan and its commitment to territorial

⁷¹ AU Constitutive Act, articles, 14, 19 and 22

⁷² Adejunmobi Said and Adebayo Olukoshi (Eds), " Op Cit p.8

⁷³see Nordiska Afrikainstitutet, "The African Union and the Challenges of Implementing the "Responsibility to Protect" Policy Notes 2009/4, Uppsala.

integrity of states. It also has to consider harmonization and support of the numerous sub-regional organizations. The subsequent questions will be: how did the OAU, the precursor of the AU, respond to the issues for which intervention is now being envisaged and what lessons are to be learned by AU from that experience? These will be tackled in chapter four of this study.

Chapter Three

The principle of non-interference in international relations

Introduction

The legal provision for non-interference in internal affairs of another state is one of the cardinal principles of international law. It is provided for in the UN Charter which states that nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state.¹ The OAU Charter also provided for non-interference in the internal affairs of member states.² The OAU emphasised the inviolability of sovereignty in its first three principles, which specify sovereign equality, noninterference in respective sovereignties and independent existence. Taslim argues that in this way the founding fathers wanted to ensure that any eventuality that could threaten the sovereign existence of their respective states was covered.³

In the analysis of the non-interference principle within the state system both international relations and international law are sides of the same coin; they are not separated. Non-interference then is both a cardinal principle of international law and international relations. The principle of noninterference in affairs that are within the domestic jurisdiction of states is the anchor to state sovereignty within the system of international relations and obligations.⁴

Hedley Bull illustrates this well by stating that the starting point of international relations is the existence of *states*, or independent political communities, each of which

¹ UN Charter (San Francisco, 26, June, 1945) Chapter I, article 2(7).

² OAU Charter, Addis Ababa, Ethiopia, 25th day of May, 1963 Article III (2)

³ Taslim Elias, "The Charter of the Organization of African Unity", *American Journal of International Law* 59, no.2 (April 1965), 154-155, 243-244.

⁴ Thomas G. Weiss and Don Hubert, 'The Responsibility To Protect: Research, Bibliography', Background: Supplementary Volume to the *Report of the International Commission on Intervention and State Sovereignty*, (IDRC 2001) pp25-37

possess a government and asserts sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population. On the one hand, states assert, in relation to this territory and population, what may be called internal sovereignty, which means supremacy over all other authorities within that territory and population. States also assert what may be called external sovereignty, by which is meant not supremacy but independence of outside authorities.⁵

The state system and development of non-interference principle

What are states for? What is the point of having a world polity arranged into diverse sovereign states? These are questions that linger which the chapter tackles. According to one major tradition, the point of organizing world politics in the state centric way is that it is a workable way of maintaining order in the world.⁶ The modern state system finds its origin in the 1648 treaty of Westphalia also called the Peace of Westphalia which denotes a series of peace treaties signed between May and October of 1648 in Osnabrück and Münster. These treaties ended the Thirty Years' War (1618–1648) in the Holy Roman Empire, and the Eighty Years' War (1568–1648) between Spain and the Dutch Republic. The treaties resulted from the first modern diplomatic congress, thereby initiating a new political order in central Europe, based upon the concept of a sovereign state governed by a sovereign. The treaties' regulations were later integrated into the constitutional law of the Holy Roman Empire and were also vital in ending the European wars of religion.⁷

⁵ Bull, Hedley, *The Anarchical society: A Study of Order in World Politics*, (London: Macmillan Press Ltd, 1977), p. 8

⁶ Frost M, 'What Ought to be Done about the Condition of States?' in Navari C (ed), *The Condition of States: A Study in International Political Theory* (Buckingham: open University Press, 1991), pp.183-196:186

⁷ http://en.wikipedia.org/wiki/Peace_of_Westphalia

The current notion of state sovereignty which was laid down in the Treaty of Westphalia (1648) codified the basic principles of territorial integrity, border inviolability, and supremacy of the state, rather than the Church. A sovereign is a supreme lawmaking authority. Hugo Grotius defined sovereignty as “ the power whose acts may not be made void by the acts of any other human will.”⁸ The concept of state sovereignty brought a greater measure of regularity to international relations. The emergence of modern constitutional state made the state’s constitution, not the rulers, the source of positive law within the state.⁹

Gross Leo however argues that the rise of states affected international law and international community of states because following the Peace of Westphalia, instead of heralding the era of a genuine international community of nations subordinated to the rule of the law of nations, it led to the era of absolutist states, jealous of their territorial sovereignty hence almost erasing the idea of an international community and making international law to depend upon the will of states more concerned with the preservation and expansion of their power than with the establishment of the rule of law.¹⁰

The philosophy behind non-interference can be traced from the Thirty Years’ War; a European religious conflict that embroiled the continent leading to the Peace of Westphalia in 1648 which established the notion of territorial sovereignty as a doctrine of non-interference in the affairs of other nations. This left the Roman Catholic Church with little ability to interfere with the internal affairs of many European states. Therefore the multi-state system followed the earlier breakup of the unity of medieval European

⁸ Wright Quincy, *A Study of war, Volume II* (Chicago, Illinois: University of Chicago Press, 1942), p.899

⁹ Hensel M. Howard, “Theocentric Natural Law and the Norms of the Global Community”, in Hensel M. H, (ed) *Sovereignty and the Global Community: The Quest for Order in the International System* (Burlington: Ashgate Ltd, 2004) p.37

¹⁰ Gross Leo, *Essays on international Law and Organization, Vol. I* (New York, Transnational Publishers, 1984), p.18

Christendom, and its development landmarks like the Peace of Westphalia in 1648 and the Treaty of Utrecht in 1713.¹¹ The idea was that no other entity could tell or interfere with a sovereign state, in this way formulators expected to achieve international order in a system that was then made up of religious territories.

International relations theorists have identified several key principles of the Peace of Westphalia, which explain the Peace's significance and its impact on the world today: the principle of the sovereignty of states and the fundamental right of political self-determination, the principle of (legal) equality between states, and the principle of non-intervention of one state in the internal affairs of another state.¹²

Following the Peace of Westphalia in 1648, states became the single most important actors within the international system; the sovereign states were given a platform to conduct international relations and diplomacy.¹³ The Peace of Westphalia is traditionally lauded as being the first of several attempts to establish something resembling world unity on the basis of states exercising unrestrained sovereignty over certain territories and subordinated to no earthly authority.¹⁴ All states were equal and no other state could interfere with another sovereign.

In international law, sovereignty means that a government possesses full control over its own affairs within a territorial or geographical area or limit. These were some of the state customs and practices that were codified by international law into rules of state relations internationally. Most states at most times pay some respect to the basic rules of

¹¹ Claude, Inis Jr., *Swords into the Plowshares: The Problems and Progress of International Organization* (4th edition), (New York: Random House, 1971), p. 22

¹² Gross, Leo (January 1948), "The Peace of Westphalia", *The American Journal of International Law* 42/1 (1): pp. 20–41

¹³ Hensel M. Howard, "Theocentric Natural Law and the Norms of the Global Community", in Hensel M. H., (ed) *Op Cit*, p.37

¹⁴ Gross Leo, *Essays on international Law and Organization, Vol. 1 Op Cit*, p. 3

coexistence in international society, such as mutual respect for sovereignty, the rule that agreements should be kept, and rules limiting resort to violence. In the same way most states at most times take part in the working of common institutions: the forms and procedures of international law, the system of diplomatic representation, acceptance of the special position of great powers, and universal international organizations such as the functional organizations that grew up in the nineteenth century, the League of Nations and the United Nations.¹⁵ These customs and practices then developed into international law such as the Vienna Conventions on Diplomatic relations and that on the law of treaties; all emanated from customary law.

Therefore concerning customary law Hedley Bull argues that states collaborate with one another in what may be called the institutions of international law, the diplomatic mechanism, the managerial system of the great powers and war. By institutions he implies a set of habits and practices shaped towards the realization of common goals.¹⁶

Non-interference principle and International Organizations

The San Francisco Conference that created the United Nations (UN), in designing an organizational system with a much broader functional range than that of the League, formulated a domestic jurisdiction clause with a correspondingly greater range of application. The UN Charter provides 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

¹⁵ Bull, Hedley, *The Anarchical society: A Study of Order in World Politics*, Op Cit p. 42

¹⁶ Ibid, p. 74

settlement under the present Charter;¹⁷ but this principle shall not prejudice the application of enforcement measures under Chapter VII. This formula was deliberately made applicable to the entire body of United Nations operations under the Chapter except those pertaining to enforcement of the peace. This point was emphasized, on the insistence of the United States, in statement for the record that the committee responsible for drafting the chapter on international economic and social cooperation was agreed that “nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of member states.”¹⁸

Moreover, the Conference deliberately refrained from indicating where the competence to decide on disputed jurisdictional issues should be lodged, and from citing international law as the relevant standard of judgment. This created varied interpretations of the non-interference principle. From one point of view, the restriction on the UN means almost nothing. Ratification of the Charter by a state puts practically every conceivable subject; from the use of force to the civil rights of citizens, from territorial disputes to the management of the national economy-into the international domain, so that there is little domestic jurisdiction left to be infringed upon. From another point of view, the domestic jurisdiction clause makes virtually the entire Charter, excluding Article 2 (7), a waste of words. Either of these extreme interpretations reduces some part of the Charter to meaninglessness.¹⁹

The UN Charter gave states the right to regionalism and these regions such as the OAU and later AU also formed the principle of non-interference in the domestic affairs

¹⁷ UN Charter, Op Cit, Article 2, paragraph 7

¹⁸ The United Nations Conference on international Organization: Selected Documents, p.637

¹⁹ Wright Quincy, *Problems of Stability and Progress in international Relations*, (Berkeley: University of California Press, 1954), p.32

of sovereign states.²⁰ The regional organizations have also formed a state system or what Hedley Bull terms a society of states (International society) based on sovereign equality, framed in territories that disallow interference in internal affairs. A *system of states* (or international system) is formed when two or more states have sufficient contact between them, and have sufficient impact on another's decision, to cause them to behave-at least in some measure-as parts of a whole. The interactions among states by which an international system is defined may take the form of co-operation, but also of conflict, or even of neutrality or indifference with regard to one another's objectives.²¹

The sovereign states, unlike the individuals within them, are not subject to a common government, and in this sense there is, in the phrase made famous by Goldsworthy Lowes Dickinson, an 'international anarchy'.²² The promoters of international order have since 1919 often tend to advocate for universality through a world organization; but the intermediate unit (regional organization) is more likely to enhance the transition from nationalism to internationalism.²³ According to Bull order in any society is maintained not merely by a sense of common interests in creating order or avoiding disorder, but by rules which spell out the kind of behavior that is orderly.²⁴ Just like in primitive societies these rules do not emanate from any central rule-making authority but arise out of practice of lineage or locality groups in their relations with one another, become embodied in 'custom' and are confirmed by a moral and religious belief.

²⁰ UN Charter, Ibid, Chapter VIII article 52

²¹ Bull, Hedley, *The Anarchical society*: Op Cit, p. 9-10

²² Goldsworthy Lowes D, (Quoted in Bull) *The International Anarchy* (London: Allen & Unwin, 1926)

²³ Carr H. Edward, *Nationalism and After* (London: Macmillan, 1945), p. 45

²⁴ Bull, Hedley, Ibid, p. 54

Custom or established practice is also a common source of rules in centralized political systems; in primitive stateless societies it is the only source of rules.²⁵

The state in international society is sovereign in that it has supreme jurisdiction over its citizens and its territory, but the rules of coexistence also include those which prescribe behavior that sustains the goal of the stabilization of each state's control or jurisdiction over its own persons and territory. At the heart of this complex of rules is the principle that each state accepts the duty to respect the sovereignty or supreme jurisdiction of every other state over its own citizens and domain, in return for the right to expect similar respect for its own sovereignty from other states. A corollary of this central rule is the rule that states will not intervene forcibly or dictatorially in one another's internal affairs. Another is the rule establishing the 'equality' of all states in the sense of their like enjoyment of like rights of sovereignty.²⁶

But Morgenthau argues that the main stumbling block to attempts at restraining the struggle for power on international scene is national sovereignty itself; because while people everywhere are anxious to free themselves from the threat of war, they are also anxious to preserve sovereignty of their states; making it hard to simultaneously achieve national sovereignty and international order.²⁷

International organizations: Discrepancies in the practice of non-interference principle

International organizations, all have the rule of non-intervention but differ in practice of the same rule. The reason lies in the varied interpretations and creativity on the part of the particular international organization. The UN for instance is more versatile

²⁵ Ibid, p. 61

²⁶ Ibid, p. 71

²⁷ Morgenthau, H. *Politics Among Nations: The Struggle for Power and Peace*, 6th Edition (New Delhi: Kalyani Publishers, 2007) p.343-346

and liberal in its interpretation and practice under the non-interference principle. The common practice is that generally there are matters, however, which, though formally comprised in domestic jurisdiction of a given State, border upon external political relations, or even encroach directly upon external political relations, threatening the peace and security of the peoples. Such matters cannot be left to be settled by the state itself, notwithstanding the principle of sovereignty.²⁸

Also the political struggle over the domestic jurisdiction issue is a confused one, in which we find for instance the USSR alternatively denounced international efforts to penetrate the sacred state sovereignty and joining readily in probing into the colonial affairs of Western European powers. Therefore the principle of domestic jurisdiction is a concept which no participant in the political process can resist invoking when it serves his purposes or denouncing when it thwarts his purposes.²⁹

The superpower Cold War conflicts limited the arenas in which the UN would be allowed to intervene. During these years most local and regional conflicts either started as, or quickly became proxy wars between governments and their opponents. Most were linked to and armed by the US or Soviet Union. From the 1950s through 1970s, the US largely kept in power old-styled colonial regimes and repressive governments following pro-Western agenda while the Soviet Union mainly backed anti-colonial forces and the non-aligned and socialist governments in power in the Third World. The end of the superpower competition meant that conflicts were transformed since proxy wars held little appeal for the rich nations. But many of the hot wars fomented by the Cold War tensions did not disappear. In areas of the world where bureaucratic socialism or

²⁸ Lauterpacht Hersch, *International law and Human Rights*, (London: Stevens, 1950), p. 190

²⁹ Claude, Inis Jr., *Swords into the Plowshares: The Problems and Progress of International Organization* (4th edition), (New York: Random House, 1971), p. 186-187

armament-rich dictators had formerly kept control, such as the former Yugoslavia and Somalia, long-simmering conflicts exploded into brutal cycles of rage and violence. The powerful nations began to turn to the UN to impose new notions of 'peacekeeping'.³⁰

Preventive diplomacy, used to circumvent non-interference, was conceived by former UN Secretary General Hammarskjold as a means for containment of the Cold War.³¹ The conduct of peace-keeping operations has been the primary means by which the United Nations has exercised preventive diplomacy. The United Nations Emergence Force (UNEF) deployed in Egypt during the Suez Canal crisis was a peace-keeping, not a peace-enforcing, mechanism.³² These are some of the creative ways the UN has adopted in the interpretation of the non-interference principle in its practices. The UN practice in relation to non-interference has been evident in promoting pacific settlement by developing a cluster of devices under the heading of the United Nations Presence, all of which involve the physical insertion into troubled areas for varying periods of time. The concept of the Presence is notably expressed in the form of the UN mediator or commissioner; the single individual of high prestige, bearing exclusively international responsibility and carrying the full authority of the UN, who performs high level political where troubled international relations exist.³³

The African Union on the other hand though less versatile than the UN, has adopted the liberal school in interpreting the non-interference principle. The AU also made provisions for non-interference in the internal affairs of a member state; but through Article 4 (h) of the Constitutive Act (CA) the Union asserted the right to

³⁰Bennis Phyllis, 'Blue Helmets for what? Under whom?', in Erskine Childers (ed), *Challenges to the UN: Building a Safer World* (New York: St. Martins Press, 1995) pp. 152-153

³¹ Introduction to the Annual Report of the Secretary General on the Work of the Organization, 16 June 1959-15 June 1960, General Assembly, Official records: Fifteenth session, Supplement No. 1 A (A/4390/Add.1)

³² Claude, Inis Jr., *Swords into the Plowshares: Op Cit*, pp. 314-315

³³ *Ibid.* p. 226

intervene in a member state pursuant to a decision by the assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.³⁴

The AU predecessor the Organization of African Unity (OAU) was more dogmatic in interpreting the principle of non interference. An analysis of the Charter provisions of the OAU reveal a strand that ties the need for sovereignty without interference and guarding the boundaries left by the colonialists. The preamble of the OAU Charter clearly indicates the desire by African leaders to maintain the sanctity of their boundaries by stating, “Determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neocolonialism in all its forms.” It appears that from the start the intention of the leaders was to reinforce the territorial integrity of the boundaries inherited from colonialists through non-interference.³⁵ The OAU Charter reflected the dominating concerns in Africa, namely to protect the newly acquired statehood, condemn the apartheid regimes and to ensure the independence of the still colonised countries. The Charter centred on non-interference in internal affairs and the focus was thus on the protection of the state rather than the individual.³⁶

Diminishing State Sovereignty and circumventing Non-interference Principle

The classical idea of international society is based on the predominant doctrine that states are the only or the principal bearers of rights and duties in international law; that they alone have the right to use force to uphold it; and this lies in the consent of

³⁴ African Union, *Constitutive Act of the African Union* (Lome, Togo: African Union, 2000), Article 4(h)

³⁵ OAU Charter opening statement, Addis Ababa, Ethiopia, 25th day of May, 1963

³⁶ Murray Rachel, *Human Rights in Africa From the OAU to the African Union*, (Cambridge University Press, 2004), pp 7-8

states, expressed in custom or treaty.³⁷ Sovereignty is a master institution of the Westphalian international society. Within it one could include principles of non-intervention, self-determination and non-discrimination. Sovereignty and territoriality together constitute the essence of the Westphalia states.³⁸ But in the modern international relations these Westphalian state principles have been criticized as inhibiting humanitarian intervention, fomenting conflicts and working against the benefits of global technology.

Nieuwkwerk argues that the traditional division of sovereignties by territorial borders is being rejected. Instead, the state, as understood in its Westphalian context is being de-territorialised, among others by the merging economic, information and other globalizations. And at the same time, the state as understood traditionally, is being challenged and weakened by global and regional forms of organization.³⁹ This assertion is supported by Mwangi who observes that the meaning of state boundaries has thus become de-territorialised significantly, and this has happened amongst other reasons because of the general globalization process, including the pervasiveness of information, trade and other flows across the traditional borders. The net effect of these processes has been to challenge, and diminish traditional conceptions of sovereignty, and even of territoriality itself as the organizing domain for the analysis of international relations. It is in this sense that territorialism is seen to be all about dividing space into territory; and space can be divided by other social categories such as time, race gender, and the like.⁴⁰

³⁷ Ibid, p.68

³⁸ Buzan Barry, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2006), pp. 182-183

³⁹ Anthoni van Nieuwkwerk, "Borders, Frontiers and Conflict in Africa: Southern Africa" (Paper Presented at the Regional conference on Borders, Frontiers and Conflict in Africa, Nairobi, 26-28 June 2001)

⁴⁰ Mwangi Makumi, "Towards a Security Architecture in the IGAD Region" in Mwangi Makumi (ed), *African Regional Security In The Age Of Globalisation*, (Nairobi: Heinrich Boll Foundation, 2004), p. 138

Also the state is no longer the sole actor in the international society; it is joined by international organizations, various non-state groups operating across frontiers, and by individuals who are now recognized as having international legal personality.⁴¹ The state does not remain the only subject of international law, opinion appears to have moved decisively against the doctrine of the nineteenth century positivists that international law, in Oppenheim's words, is a 'law between states only and exclusively'.⁴² It is now held that individual human beings are subjects of international law, on the evidence of such instruments as the charters of the Nuremberg and Tokyo War Crimes Tribunals (now related to International criminal Court- ICC), the Universal Declaration of Human Rights of 1948, the Covenant on Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights of 1966, and the European Convention on Human Rights of 1950. The status of the subjects of international law is also accorded non-state actors: the United Nations and other universal or near-universal intergovernmental organizations; regional intergovernmental organizations, international non-governmental organizations such as professional and scientific associations, non-profit making foundations and multinational economic organizations.⁴³

As regards the change in the scope of international law, it is clear that since the Second World War international law regulates economic, social, communications and environment matters; as distinct from political and strategic affairs, with which international law in earlier periods had been primarily concerned. The extension of the states activities in these fields, together with the rising importance in world politics of

⁴¹ Bull, Hedley, *The Anarchical society*: Op Cit, p. 39

⁴² Oppenheim L, *International Law* 1st edition, (London: Longmans, 1905) Vol. I, p. 73

⁴³ Bull, *Ibid*, pp. 145-146

actors other than the state, has led to an increase in the attention paid by international law to economic matters, as reflected in the activities of the United Nations Economic and Social Council (UNCTAD), World Trade Organization (WTO), the World Bank, the International Monetary Fund, the Food and Agriculture Organisation, and other bodies; to social matters, as illustrated by the work of the World Health Organisation and UNESCO; to the regulation of transport and communications, as evidenced by the International Telecommunications Union or the International Civil Aviation Organisation; and more recently to the regulation of international aspects of mans relationship to the human environment.⁴⁴ Thus Falk argues that ‘there is discernible a trend from consent to consensus as the basis of international legal obligations.’⁴⁵

Since the end of the Second World War the changes that have taken place in international law lead to progress away from a law that binds states only towards a law of the world community; from a law concerned only with coexistence among these states towards one concerned with economic, social and environmental co-operation among men in the world community; from a law in which particular, disobedient states, by withholding their consent, can defy the consensus of the world community, to a law in which that consensus has become the source of binding obligation.⁴⁶

Subjects of international law have also changed and with that diminished the principle of sovereign states and its outcome the principle of non-interference. Individuals can now be held responsible for international crimes unlike earlier when only states bore the international legal personality status. The best example is the work of the ICC which deals with transnational crimes committed by individuals and not states. It

⁴⁴ Ibid, p. 146

⁴⁵ Falk A, Richard, *The Status of Law in International Society* (Princeton University Press, 1970) p. 177

⁴⁶ Bull, *Ibid*, p. 151

was the inability of states to agree about the rights and duties of individual human beings and about organizations such as the Papacy and the Empire that led them in the formative years of European international society to conclude that order was best founded on a system of international law of which states alone were subjects, and from which the divisive issues of the rights and duties of individuals and groups other than the state were excluded.⁴⁷

In line with this supposition, Bull declares that the doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organized as a society of sovereign states. For, if the rights of each man can be asserted on the world political stage over and against the claims of his state, and his duties proclaimed irrespective of his position as a servant or a citizen of that state, then the position of the state as a body sovereign over its citizens, and entitled to command their obedience, has been subject to challenge, and the structure of the society of sovereign states has been placed in jeopardy. The way is left open for the subversion of the society of sovereign states on behalf of the alternative organizing principle of a cosmopolitan community, similarly, the proposition that international or so-called supranational bodies are subjects of international law carries with it the seeds of subversion of the society of sovereign states in favor of an organizing principle in which an international or supranational body, or a series of such bodies, has displaced sovereign states as the chief repositories of rights and duties on the world political stage.⁴⁸

For long international law has sought to restrict violence in international society by confirming resort to legitimate violence to sovereign states. In current times, however,

⁴⁷ Bull, Hedley, *Ibid*, p. 152

⁴⁸ *Ibid*, pp. 152-154

the monopoly of legitimate international violence long enjoyed by sovereign states is being challenged on the one hand by non-state political groups employing so-called 'low-level' or 'terrorist' violence on an international scale, and on the other hand by the assumption by international organizations of a right to use violence.⁴⁹ Terror networks like al-Qaeda and Taliban have been able to wage international violence as non-state actors. In this case non-interference becomes a hollow assertion difficult to keep viable in the modern international relations.

New issues like globalization, interdependence and transnational relations have transformed international relations, making international law provisions like non-interference in internal affairs of another state inhibitive if not less effective. The expansion of trade, communication, migrant labour and other new developments have made countries to sacrifice portions of their sovereign independence to create new political and economic unions out of the previously separate units.⁵⁰ These are issues that have gradually called for a departure from the dogmatic principles of sovereign independent states and non-interference.

In the *Agenda for Peace*, former UN Secretary- General Boutros Boutros- Ghali wrote that respect for sovereignty and non-interference in internal affairs is crucial to any common international progress, but the time of absolute and exclusive sovereignty has passed and that its theory was never matched by reality, adding that leaders of states should find a balance between good internal governance and the requirement of an ever more interdependent world.⁵¹

⁴⁹ Ibid, pp. 155-156

⁵⁰ Ibid, p. 38

⁵¹ Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping* (New York: United Nations, 1992), p. 7

The violation of human rights is legitimately an international concern, affirmed by the UN Charter, the Universal Declaration of Human Rights, and the Helsinki Accords. When a norm is given such overwhelming international approval, a government cannot legitimately allege a violation of sovereignty where it has abused or allowed the abuse of human rights, in clear violation of international law.⁵² The principle of non-interference reinforces sovereignty which is now facing challenges from increasing intra-state violent conflicts that have attracted the scrutiny from the international community due to these internal conflicts aggravating human rights violations and humanitarian crisis. Deng notes that when the international community decides to act; as it did when Iraq invaded Kuwait, when Somalia descended into chaos and when former Yugoslavia disintegrated; controversy about issues of legality becomes futile or of limited value as a brake to guard against precipitous change.⁵³

Harper Malcolm also notes that in the Iraq and Somalia cases the UN Security Council appeared to be advancing a doctrine that, if an overwhelming humanitarian crisis had developed, which the government of the affected country could not manage or address seriously, then the international community could not just stand by and allow unimaginable and often prolonged, human suffering to continue.⁵⁴ However, there are those who argue that historically the principle of non-intervention has not been upheld very well since global and regional powers have intervened in the domestic affairs of weaker states when motivated by ideology like to rid the world of the Muslim

⁵² Mark Malan, *The Principle of Non-Interference and the Future of Multinational Intervention in Africa*, Institute for Security Studies, Published in *African Security Review Vol 6 no 3*, 1997

⁵³ Deng Francis M, "Reconciling sovereignty with responsibility: A basis for international humanitarian action", in Harbeson W. John and Rothchild Donald (eds), *Africa in World Politics: Post Cold-War challenges, 2nd Edition*, (Boulder Colorado: Westview Press, 1995), p.297

⁵⁴ Harper Malcolm, "The United Nations and Africa: Redefining the UN's role in Africa for the Twenty -First Century" in Bakut. B and Dutt. S,(eds) *Africa at the Millennium: An Agenda for Mature Development* (New York: Palgrave, 2000),p.222.

fundamentalism, and to enhance democracy: ideology which aimed at sustaining or expanding the power of regimes, rather than protecting the rights of humankind.⁵⁵

Globally there have been deliberate actions to side step the principle of non-interference on the premise of morality and responsibility to protect against grave human rights violations. For example, in the Kosovo war of 1999, the NATO Secretary General, British Prime Minister Tony Blair and U.S President Bill Clinton all argued that intervention was a moral necessity and they viewed military intervention against Yugoslavia and its leader Milosevic's repression of Albanians as a duty because human rights were an international entitlement and governments that violate them forfeit the protection of international law.⁵⁶ Sovereignty, according to liberal theorists like Viotti and Kauppi, is not sacrosanct so the international community has an obligation to use armed force to stop flagrant violations of human rights.⁵⁷ National sovereignty carries with it responsibilities that if not met put a government at risk of forfeiting its legitimacy.⁵⁸ Scheffer says that to argue today that norms of sovereignty, non-use of force and the sanctity of internal affairs are paramount to the collective human rights of people, whose lives and well being are at risk, is to avoid the hard questions of international law and to ignore the march of history.⁵⁹

Many of the conflicts in Africa, the Balkans, the former Soviet Union and elsewhere are characterized as 'new wars'.⁶⁰ Such intra-state conflicts are regularly characterized by extreme brutality towards civilians and usually involve state and non-

⁵⁵ Mark Malan, *The Principle of Non-Interference and the Future of Multinational Intervention in Africa*, Op Cit

⁵⁶ Kegley C, Jr. *World Politics: Trend and Transformation*, 12th edition, (Belmont: Cengage Learn, 2009), p 175

⁵⁷ Viotti and Kauppi (eds) *International Relations Theory* (New York: Macmillan Publishing Company, 1987), p.37

⁵⁸ Deng Francis M, "Reconciling sovereignty with responsibility: A basis for international humanitarian action", in Harbeson W. John and Rothchild Donald (eds), *Op Cit*, p.297

⁵⁹ Scheffer David J, "Towards a Modern Doctrine of Humanitarian Intervention," *University of Toledo Law Review* 23 (Winter 1992), p.259

⁶⁰ See Kaldor, M. *New and Old Wars: Organized Violence in a Global Era*, (Cambridge: Polity Press, 1999)

state actors like warlords and criminal gangs, making them extremely difficult to end. While the assumption is that the national government has the primary responsibility for protecting its citizens, in internal conflicts the country is severely divided and the government itself is likely to be a party to a conflict. In other cases, the state has collapsed and there is no government to assume the necessary responsibilities of sovereignty.⁶¹ The controversy arises when these governments or states are unwilling to invite or permit international involvement, while the level of human suffering dictates otherwise. This is often the case in civil conflicts characterized by racial, ethnic or religious crises of national identity in which the conflicting parties perceive the affected population to be part of the enemy. Therefore international concern and involvement become moral imperatives essentially to fill the vacuum of moral responsibility.⁶²

The right of intervention by decision of the AU, as provided for in the CA, was born of the inglorious record of massacres, gross and massive violations of human rights and large population displacements. Ernst B. Haas argued that the reality of African regional politics demanded that any search for measures to enhance the OAU's now AU competence in mediation was to depart from the focus on constitutional reforms and rather be informed by the principle of versatility.⁶³

Versatility in this context includes the notions of dynamism, flexibility, and inventiveness. As an example of versatility in conflict management by an international organization, the UN peacekeeping operations were not originally envisaged in the UN Charter as a measure to preserve world peace; they are a creation born of necessity when

⁶¹ Francis M. Deng, et al, (eds), *Sovereignty as Responsibility: conflict Management in Africa* (Washington, D.C: The Brookings Institution, 1996), p. 221

⁶² *Ibid*, p.223

⁶³ Ernst B. Haas, L.R. Butterworth and J.S. Nye, *Conflict Management by International Organizations* (Morristown,NJ: General learning Press, 1972) pp.45-46

the enforcement action envisaged in chapter IV of the UN charter could not be implemented.⁶⁴ However, although the OAU failed to initiate constitutional amendment and create a regional Security Council⁶⁵ along the lines of the UN Security Council, the AU though still nascent has adopted versatility through inventiveness such as use of an informal grouping of eminent personalities made of former African officials and former heads of state respected and with experience in mediation, serve as a pool of potential mediators that could be tapped by AU. The diplomacy of good offices has also been a way of diminishing the dogmatic inhibition of non-interference principle. In 2008, after the 2007 disputed elections in Kenya, the AU intervention creativity included the use of President John Kufuor's good offices as chairman, which led to the creation of a team of eminent personalities under the AU to mediate in the conflict.⁶⁶

The AU, just like the UN has also adopted peacekeeping mechanisms widely perceived as diminishing state sovereignty and non-interference principle. In recent times the AU has deployed forces to run African peacekeeping for increasingly humanitarian emergencies, to protect internally displaced persons in camps, facilitate their returns and safeguard humanitarian corridors and aid convoys beyond its more traditional role of monitoring a ceasefire⁶⁷ for instance in Sudan and Somalia. The PSC is empowered to recommend to the AU's general assembly intervention, in respect of war crimes, genocide and crimes against humanity. It is also supposed to approve modalities for

⁶⁴ Javier Perez de Cuellar, "Foreword," in *The Blue Helmets: A review of the United Nations Peacekeeping* (New York: UN Department of Public Information, 1985), v-vi. See pp.1-8

⁶⁵ Berhanykun Andemicael, "The OAU: Primacy in seeking African solutions within the UN Charter," in Yassin El Ayouty and I. William Zartman(eds), *The OAU after Twenty Years* (New York: Praeger, 1984), pp.115-119

⁶⁶ Mwangira. M, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Kenya Institute of Diplomacy and International Studies, 2008) p 60

⁶⁷ William G. O'Neill and Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*. An Occasional Paper, The Brookings Institution-University of Bern, Project on Internal Displacement, November 2005, p. 3

intervention and institute sanctions in the event of unconstitutional change of government. Therefore the PSC is one of the major innovations of the AU which marks a departure from OAU's non-interference in a state's internal affairs.⁶⁸

Practice demonstrates that varying interpretations of specific disputes or conflict situations often produce disagreement over domestic or international nature of these situations.⁶⁹ For example the UN was reluctant to intervene in Rwanda allowing the genocide to escalate while it considered Kosovo, Iraq and Somalia cases international in nature therefore warranting intervention. In other situations great powers have used their veto power to impede intervention in ally territories while in others intervention was motivated by ideological wars rather than human rights as is the case in Afghanistan and Iraq.

In the current international relations sovereignty and subsequent non- interference principles have been weakened by innovations such as the right of humanitarian intervention; peacekeeping and enforcement, interdependence and internationalization of human rights as well as conflicts.

⁶⁸ African Union, Constitutive Act Op Cit, Article, 5(2)

⁶⁹ Bennett A. LeRoy, *International Organisations: Principles and Issues* (4th Edition), (New Jersey: Prentice Hall, Englewood Cliffs, 1988), p.56

Chapter Four

OAU/AU non-interference practices

Introduction

Chapter one is based on the research problem statement entitled the principle of non-interference in international relations: a comparison of the defunct OAU and its successor the AU practices. The principle of non-interference in the internal affairs of a sovereign state is a cardinal principle of both international law and international relations. It was among the principles of the OAU like sovereignty, territorial integrity, peaceful settlement of disputes among others. The OAU successor the AU also provided for non-interference principle although it qualified it with article 4(h) j which allows intervention in respect of grave circumstances namely: war crimes, genocide and crimes against humanity.¹The problem is that the principle of non- interference initially meant to guard newly independent states and to stem interference in internal affairs created by the Cold War proxy wars rivalry; was later exploited by some leaders to violate human rights.

The new intra-state conflicts, extension of national security to human rights and environment, and new developments in the international system such as interdependence, governance, democracy, globalization, and changing status of state sovereignty, have made the AU to interpret non-interference principle liberally than the dogmatic OAU interpretation. The research is motivated by the fact that recently the rising African coups as in Madagascar, Guinea and Niger and endemic internal violent conflicts reveal that the AU should be more versatile and creative so as to overcome being constrained by non-interference to fully intervene beyond mere condemning. The

¹ African Union, Constitutive Act of the African Union (Lome, Togo: African Union, 2000), Article 4(h)

AU needs to review non-interference principle as the world gets global. While the AU has made improvements over the old OAU; questions still emanate; has the AU been able to plug loopholes and weaknesses of the OAU? Is the principle of non-interference still relevant in the changing international relations?

The statement problem states three major issues which explain the change of OAU to AU, namely the immobilization caused by strict interpretation of the non-interference principle, the fast changing international system that prompted a complete Charter shift to the Constitutive Act and the AU's versatility in overcoming OAU's loopholes emanating from non-interference principle.

Therefore the main objective of this study as identified in chapter one was to compare the practices of the OAU and AU within the principle of non-interference. The specific objectives then are to examine the relevance of the non-interference principle in OAU and AU practices and identifying lessons learnt by the AU from OAU practices.

The general theme of the study is that the international system of states has drastically changed and the AU needs to adopt a more liberal interpretation of state sovereign and its corollary non-interference principle away from the rigid application of these principles as was with the defunct OAU. The Union members need to be more proactive so as to achieve their goal of offering African solutions to African problems in the spirit of being a brother's keeper.

Chapter two generally looked at the Charter shift; when the OAU changed in name and substance to AU with a Constitutive Act replacing the Charter. The reasons for the change formed one theme while the analysis of the elements that changed and the impact of the change formed the other themes. To discuss these themes chapter two

traced the history, organizational structure and Charter provisions especially those touching on non-interference, sovereignty and territorial integrity. This chapter examines the structural and constitutional changes that the AU adopted to weaken the inhibitive principle of non-interference in internal affairs of a state which is an outcome of sovereignty legally provided for in both the AU and its predecessor the OAU.

The objective is to argue that the shift from the OAU to AU was prompted by the changing international relations that made strict obedience to non-interference principle a hindrance to preventive diplomacy and intervention in the new intra-state conflicts. Therefore the chapter analysis seeks to explain why the heads of State and government thought it necessary to change the structure and legal frame of the OAU to AU which includes the right, in certain cases, to intervene in a member state or the right of a member state to request such intervention.² Was it one of the lessons learnt from the OAU dismal performance in managing intra-state conflicts? The Protocol on the Peace and Security Council ³was one of the improvements on the OAU by AU to enhance intervention. In summary the major shift involved change of secretariat to AU's Commission with more initiative powers, OAU protection of sovereignty was reduced in the AU provision of intervention and African Peer Review Mechanism (APRM) of NEPAD, plus AU adopted provisions on democracy, human rights and good governance unlike OAU's insistence on respecting territorial integrity and domestic affairs of member states.

Chapter three looks at non-interference principle in the broad sense of international relations and international law. The chapter traces the formation of modern

² Ibid, Article 4(h) (j)

³ Art 4 of the Protocol on Amendments to the Constitutive Act of the AU, adopted by the 1st Extra-Ordinary Session of the Assembly of the AU, Addis Ababa (Ethiopia), 3 February 2003.

state system at the Peace of Westphalia and the subsequent adoption of non-interference principle as a necessary law of state relations. State system grew out of the understanding that this would lead to world order.⁴ It analyses the philosophy behind non-interference which was found to be that states are sovereign and equal entities framed by territories which meant another state or actor could not interfere with another sovereign's domestic affairs, hence the non-interference principle.

The major issues under this chapter include the emergence of sovereign states and their impact on international society order; the philosophy behind non-interference principle and how it is interpreted within the UN Charter, AU Act and the defunct OAU Charter and finally is a discussion of the theme of diminishing state sovereignty through the AU practices.

The principle of non-interference: OAU practices

The principle of non-interference set to reinforce sovereignty can be traced at the inception of the OAU because the Organisation evolved as a compromise solution between those who advocated for immediate political union of African states, and those who preferred a loose association of independent African states.⁵ The side for independence was stronger as none of the states was willing to sacrifice the least shred of its sovereignty, wrote Justice Taslim one of the people involved in the drafting of the OAU Charter.⁶

Boundary disputes in Africa are largely a colonial legacy. The frontiers were artificially delineated, in many cases dividing ethnic groups or bringing together rival

⁴ See Bull, Hedley, *The Anarchical society: A Study of Order in World Politics*, (London: Macmillan Press Ltd, 1977)

⁵ Sam G. Amoo, *Role of the OAU: Past, Present and Future*, in Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993), p.240

⁶ Taslim Elias, "The Charter of the Organization of African Unity", *American Journal of International Law* 59, no.2 (April 1965), 154-155, 243-244.

groups. Also, to make matters worse many frontiers were not definitively delimited. In order to preserve peace and stability in Africa the OAU emphasized the principle of territorial integrity hence non-interference principle.⁷

The preamble of the OAU charter clearly indicates this desire by African leaders to maintain the sanctity of their boundaries by stating; “determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neocolonialism in all its forms.”⁸ Thus from the start the leaders intended to reinforce the territorial integrity of the boundaries inherited from colonialists through non-interference.

It is argued that though the OAU’s norm against external interference in the internal affairs of a state was designed to protect vulnerable states from neo-imperial meddling, it has had the effect of protecting authoritarian regimes.⁹ This was evident in the Uganda case under Idi Amin where the OAU gave a blind eye to the human rights atrocities and mass murders in that country going further to even elect the dictator the organization’s chairman. Therefore, in some quarters, the OAU was regarded as a “club of dictators”, where the leadership manipulated the principle of non-interference and national sovereignty to perpetuate political tyranny and dictatorship in their respective countries, but it would also be fair to argue that the OAU achieved its primary objective

⁷ Naldi, G, *The Organization of African Unity: An Analysis of its Role*, (London: Mansell Publishing Limited, 1989), p.32

⁸ OAU Charter opening statement, Addis Ababa, Ethiopia, 25th day of May, 1963

⁹ Robert H. Jackson, “Negative Sovereignty in sub-Saharan Africa,” *Review of International Studies*, Vol. 12 (October 1986),p.253

of the total liberation of the continent.¹⁰ Sovereign equality and non-interference became the main factors that prevented the OAU from crafting an effective security system.

In the practices of the OAU, the salient feature was that intervention was restricted to disputes between member states, a provision that was in accordance with the principle of noninterference in internal affairs of member states. Closely linked to this is the practice that the OAU always supported the government in power and often endeavoured to maintain the status quo. These positions although understandable, severely limited the peacemaking effectiveness of the OAU since its founding.¹¹

Among the practices that the OAU adopted so as to boldly challenge non-interference include the use of preventive diplomacy forces, observer missions and the borrowed UN practice of peacekeeping. The observer missions, for example as was in Burundi between December 1993 and October 1994, served as useful intermediaries between military authorities and civilian leaders, defusing numerous explosive situations.¹² The OAU also advanced the practice of mediation which involved intervention by the use of *ad hoc* committees from among its membership, as allowed by rule 37 of the assembly's rules of procedure. Since its use in 1963 to intervene in the Algeria- Morocco dispute, the *ad hoc* committee became the primary instrument of conflict management. However, the selection of member-states representative for the *ad hoc* committees intensified the dynamics of regional politics in the mediation process as

¹⁰ Adejumboi Said and Adebayo Olukoshi (Eds), "Introduction : Transition, Continuity and Change" in Adejumboi Said and Adebayo Olukoshi (eds), *The African union and new Strategies for Development in Africa* (Nairobi: CODESRIA & DPMF, 2009), p.7

¹¹ David R. Smock and Hrach Gregorian, "Introduction" in Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993),p.8-9

¹² Berman, E and Sams, K, *Peacekeeping in Africa: capabilities and culpabilities* (Pretoria: UNIDIR and ISS,2000), p.70

some exploited organizational authority to legitimize their own ambitions of regional dominance.¹³

With the ad hoc committees arose the problem of non-institutionalised conflict management because the heterogeneous third parties were involved in a fundamental way in these conflicts.¹⁴ The OAU was rendered a bystander in this kind of personalized conflict management diplomacy as was the case in Zaire (DRC) in 1996-97 where heads of state of the regions concerned had an ad hoc meeting in Nairobi to discuss the conflict and possible responses to it. The problem here was not the heads of state meeting but the mechanics of managing the conflict: the non-institutionalised conflict management mechanics.¹⁵

OAU Practices: conflict management mechanism and mediation diplomacy

OAU had mixed results from its intervention efforts. In fact Amadu Sesay observes that informed opinion and scholarship contend that the OAU's intervention was largely ineffective.¹⁶ After the OAU had failed to intervene meaningfully in the dispute between Algeria and Morocco in 1963, the conflict between Ethiopia and Somalia in 1966, continual civil unrest in the Congo and the Nigerian civil war from 1967 to 1970, countries largely avoided it in favour of seeking assistance from countries and institutions outside the continent.¹⁷ There was an exception though, when the OAU, in 1981-82 deployed an inter-African force of about 3500 troops to Chad in an effort to end the civil war in that country. The operation, however, suffered from financial difficulties, unclear

¹³ Sam G. Amoo, 'Role of the OAU: Past, Present and Future', in Smock R. David, Op Cit, p.247

¹⁴ Mwangiri M, *Conflict in Africa: Theory, Processes and Institutions of Management*, (Nairobi: CCR, 2002), pp.160-161

¹⁵ Mwangiri M, "Foreign Policy and the Diplomacy of Conflict Management in Kenya: A Review and Assessment" *African Review of Foreign policy, Vol. 1, No. 1* (1999) pp. 44 -64.

¹⁶ Amadu Sesay, "The OAU and Continental Order," in Shaw and Oyo, *Africa and the International political System*, 162-225.

¹⁷ Berman, E and Sams, K, *Peacekeeping in Africa: Capabilities and Culpabilities*, Op Cit, p.45

mandate and was terminated prematurely. The OAU force in Chad was also hampered by some OAU members who continued to aid conflicting parties with war supplies. The members were divided on what action the OAU should take in Chad hence the difficulty of achieving consensus continued to plague its conflict resolution efforts.¹⁸

The changing mindset against the non-interference principle by the OAU was the decision in 1990 to send a peacekeeping mission to Rwanda, starting with a military observer in 1991 and followed by a large neutral military observer group from 1991 to 1993. The later achieved its political objectives in that it prompted the UN into contributing to the Rwandan peace process. The UN eventually deployed the Assistance Mission for Rwanda (UNAMIR), a force of about 2700 personnel.¹⁹ Following the murder of Burundi's President, Melchior Ndadaye, in a military coup in 1993, the OAU decided to send a preventive diplomacy force to Burundi despite Burundi military opposition. The OAU observer mission in Burundi was deployed between December 1993 and October 1994 to serve as intermediaries between military authorities and civilian leaders, defusing numerous explosive situations.²⁰

Conversely, OAU's mediatory efforts in the Nigerian civil war, Chad and Western Sahara were bedeviled by member states in pursuit of incompatible goals offering moral and military support to parties in a conflict.²¹ Secessionist Biafra's negotiating position in the Nigerian civil war was prejudiced by the OAU's entry into the negotiation process since the OAU held Nigeria's territorial integrity sacrosanct and was determined to set a clear precedent against secessionist and irredentist movements in

¹⁸ David R. Smock and Hrach Gregorian, "Introduction" in Smock R. David, Op Cit, p.8-9

¹⁹ Anthon van Nieuwkerk, "The role of the AU and NEPAD in Africa's new security regime" in Shannon Field (ed), Peace in Africa: Towards a Collaborative Security Regime (Johannesburg, 2004), p.42

²⁰ Berman, E and Sams, K, Peacekeeping in Africa, Op Cit, p.70

²¹ Sam G. Amoo, Role of the OAU, Op Cit, p.247

Africa.²² But the OAU was hampered by divisions among members, for example, it was unable to stop Tanzania, Zambia, Gabon and Cote d'Ivories recognizing Biafra in the Nigerian civil war. Also Nigeria, like most states, had rejected mediation so as not to grant the rebel group the standing it would attain by being party to mediated negotiations.²³ Thus the OAU was caught in a dilemma of wanting to promote peace while at the same time condemning all secessionist movements and always supporting the government in power.

The OAU was involved in ending the Sudanese civil war in 1972, but was again inhibited by lack of capacity and divisions among African member states. However, the OAU faced greater difficulties in preventing wars between member-states: the Ogaden war between Ethiopia and Somalia in 1977 and 1978; and the war in the Western Sahara between the Spanish Sahara's independence movement, the people's front for the liberation of saquiet el- hamra and Rio de Oro (POLISARIO), fighting for their Saharan Democratic Republic (SADR), and Morocco and Mauritania in 1976-82.²⁴

In the Ogaden case, the dispute was basically ethnic since a large number of Somalis live in the Ogaden region claimed by Ethiopia. Somalia presented its case to the OAU as one of decolonization in which the Somalis of Ogaden had a right to self-determination. Ethiopia on the other hand, maintained that Somalia should accept the principle of non-interference in internal affairs of states and territorial integrity. The OAU practice through commissions adopted a resolution which called for respect of the

²² Berman, E and Sams, K, *Peacekeeping in Africa*, Ibid p.70

²³ David R. Smock and Hrach Gregorian, "Introduction" in Smock R. David, *Op Cit*, p.8-9

²⁴ Assa Okoth, *A History of Africa 1915-1995, Vol.2: African nationalism and the Decolonization Process*.(Nairobi: East African Educational Publishers, 2006), pp.322

non-interference and territorial integrity principles but was silent on self-determination, thereby rejecting the Somalia contention.²⁵

OAU practices: the advent of intra-state conflicts and Human Rights

With the rise in internal violent conflicts and internationalization of human rights, the OAU had to adjust its non-interference practices. After harsh criticism for being too passive to intra-state atrocities, the OAU adopted the African Charter on Human and Peoples' Rights (ACHPR) in 1981. The ACHPR, which came into force in 1986, was a human rights document, containing both the classical political and civil rights and secondly economic, social and cultural rights. The ACHPR included also collective peoples' rights, sometimes called "third generations" human rights. One example is the proclamation of the people's right to "national and international peace and security".²⁶ Despite the fact that the ACHPR had been officially recognised by the OAU and the formation of an eleven-member special Commission that would supervise implementation, it failed in practice. One of the reasons for the failure was that the Commission was located in Gambia while the rest of the OAU organs were located in Addis Ababa. This isolated the Commission both theoretically and practically and some organs in Addis Ababa which one might expect to support the Commission were not even aware of its existence.²⁷

²⁵ Naldi, G, *The Organization of African Unity: An Analysis of its Role*, Op Cit, pp.35-36

²⁶ The African Charter of Human and Peoples' Rights, article 23

²⁷ Mats Öhlén, *The African Union as Promoter of Democracy and Human Rights: a comparison with the European Union Paper* presented at the conference Democracy, Human Rights and Social Justice in a New Global Dispensation – Challenges and Transformation, held in Pretoria 1-3 February 2010

As mentioned, from the very beginning the OAU had a strong focus on the liberation of all African states from the colonial powers. This spilled over to its action for democracy and human rights in specific situations. It hardly engaged in any situation of within-state human rights' atrocities, and democracy was not highest on the agenda.

The internal conflicts were another novel development that exposed the loopholes in the Charter and practices of the OAU. Before the conflict in Rwanda in 1994, the OAU had been involved in only two domestic conflicts; 1964 in Tanganyika which was rather successful and Chad 1979 with not as successful results. The experience was thus rather weak. When the rebel army RPF invaded Rwanda, the OAU could merely call for meetings, hope that the parties would participate, help them to negotiate and finally hope for the parties to implement the agreements. OAU's efforts to stop the conflict and later the genocide were also complicated by the fact that its chairman at the time was the Uganda's President Museveni, who was accused by Rwanda's president of being behind the rebel army²⁸.

Only nine years after Somalia's independence in 1960, there was a coup followed by a 30 years dictatorship full of atrocities to the country's citizens. The OAU did nothing much because of its non-interference policy. The fall of the dictatorship in 1991 was however followed by a brutal civil war. In the absence of OAU, the UN engaged to force the parties to make peace, but the UN-force failed and left the country in 1995.²⁹ The AU is making an effort but is slowed by rising insurgents, the unstable situation in the country and a delay in fulfilling pledges by members such as Nigeria to send troops to

²⁸ Rwanda, the Preventable Genocide, report from the International Panel of Eminent Personalities 1998, chapter 11, available online at: http://www.africa-union.org/Official_documents/reports/Report_rwanda_genocide.pdf

²⁹ Baldauf, Scott (2007) "Will the African Union help Somalia?" news article in The Christian Science Monitor 2007-01-31, online: <http://www.csmonitor.com/2007/0131/p01s02-woaf.html>

Somali to bolster the African Union Mission in Somalia (AMISOM) which is propping up the embattled Transition Federal Government (TFG) of Somalia.

According to Mwagiru, OAU's main argument was that its conflict management focused on inter-state rather than intra-state conflicts based on an inflexible interpretation of the OAU Charter's provision of non-interference in internal affairs of states.³⁰ In late 1990's, almost half of the countries in Africa were involved in some kind of conflict. The OAU was sharply criticised for being too passive, especially when it comes to the genocide in Rwanda in 1994. This in turn led to demands that the OAU should also have a responsibility and competence to enforce peace keeping missions in Africa. But since the OAU charter did not allow involvement in domestic affairs, the whole organisation had to change. In 1991, OAU members decided to reform it to the African Union (AU). The argument was it would no longer be possible to use "national self-determination" to excuse atrocities towards the citizens.

To conclude, the OAU represented Africa's noble but unfulfilled search for peace and security. It had weaknesses and strengths. Concerned external powers could have promoted peace in Africa through collaborative and coordinated security process within the UN system. The OAU could not make peace alone, and external powers on their own have no incentive and desire to intervene.³¹ The principle task of the OAU was to liberate African states from colonialism. Once this was achieved, the African states jealously guarded their sovereignty. The OAU was, after all, little more than governments linked in permanent conclave. It had no power and personality beyond the collective will of

³⁰ Mwagiru.M, 'Who will Bell the Cat? Article 3(2) of the OAU Charter and the Crisis of OAU Conflict Mangement' (Kent Papers in Politics and International Relations, Series 4, No. 7, 1995).

³¹ David R. Smock and Hrach Gregorian, "Introduction" Op Cit, p.8-9

governments, and no capacity to grow or improve apart from the ability of governments to learn.

The principle of non-interference: AU practices

The Constitutive Act of the African Union was signed in 2000 and in 2002 the transfer from OAU to AU was fully completed. The formation of the AU was meant to correct the perceived inadequacies of the OAU and move the regional integration agenda in a new direction after the independence of African states.³² The attention shifted to a second layer priority in the regional agenda, namely, evolving standards of democracy, human rights and rule of law as well as fast-tracking the course of economic development of the continent. Conceptually, whereas anticolonialism and securing of national sovereignty were the ideological background of the OAU, the AU is conceived as a transnational organization heading towards political, economic and social integration.³³ Also from a principle of non-interference of the OAU, the AU emphasizes the principle of nonindifference of a limited nature: in grave circumstances. The AU Act envisaged collective security as opposed to regime security of the OAU, and AU is at least a people driven union instead of a leader- centric OAU.³⁴ Finally, AU emphasizes the coordination of African responses to global developments and the building of African consensus on key issues of trade, commerce and diplomacy. The right of intervention by decision of the AU, was born of the inglorious record of massacres, gross and massive violations of human rights and large population displacements that have made the African continent

³² Adejumoboi Said and Adebayo Olukoshi (Eds), "Introduction : Transition, Continuity and Change" in Adejumoboi Said and Adebayo Olukoshi (Eds), *The African union and new Strategies for Development in Africa* (Nairobi: CODESRIA & DPMF, 2009), p.7

³³ Udamba, N, *The Institutional Structure of the African Union: A Legal analysis*. California Western International Law Journal, 33(1), 2002, pp. 69-135

³⁴ Adejumoboi Said and Adebayo Olukoshi (eds), "Introduction: Transition, Continuity and Change" *Ibid*, p.7

host to the greatest number of refugees and displaced persons in the world, due to factors ranging from conflicts to bad governance, poverty, failed States and others.

However, some like Baimu and Kathryn Sturman argue that African leaders have subsequently backed away from this position making it more difficult to authorize interventions in a member state.³⁵ It is further argued that the Act does not state what criteria the assembly should use for making such a decision to intervene although these two provisions have provided the basis for the creation of the Union's PSC.³⁶

The PSC is empowered to recommend to the AU's general assembly intervention, in respect of war crimes, genocide and crimes against humanity. It is also supposed to approve modalities for intervention and institute sanctions in the event of unconstitutional change of government.³⁷ The AU practices were improved by both the constitutional and structural provisions. Constitutionally it provides for intervention, sanctions in case of non-compliance and an emphasis on human rights. Structurally it has additional organs such as the Pan-Africa parliament to promote democracy, the Court of Justice the Specialised Technical Committees; the Economic, Social and Cultural Council; and the Financial Institutions.³⁸ Therefore the AU was able to adopt practices such as judicial settlement, military intervention, mediation, peacekeeping and use of eminent personalities under NEPAD.

These legal and structural improvements have upped the conflict management diplomacy of Africa in line with the clarion call of African solutions to

³⁵ Evarist Baimu and Kathryn Sturman, "Amendment to the African Union's Right To Intervene: A shift from human security to regime security?" *African Security Review* 12 no. 2 (2003), <http://www.issafrica.org/pubs/ASR/12No2/content.html>

³⁶ Ajulu, Rok. "African security: can regional organizations play a role?" in Shannon Field (ed), *Peace in Africa: Towards a Collaborative Security Regime* (Johannesburg, 2004), p.271

³⁷ African Union, *Constitutive Act Op Cit*, Article, 5(2)

³⁸ *Ibid*, Article 5

African problems. The AU's first military intervention in a member state was the May 2003 deployment of a peacekeeping force of soldiers from South Africa, Ethiopia and Mozambique to Burundi. Also soon after the creation of the AU in 2000, it was thrown into the Darfur conflict in Sudan. The conflict between north- and south Sudan escalated when Arabic nomad-people, Janjaweed militia, invaded Darfur in 2003 and claimed ownership of land and water. This led to cases of human rights atrocities to the civil population.³⁹ Darfur conflict became a test case for African peacekeeping. In its struggle to prevent atrocities, the African Union Mission in Sudan (AMIS) has had many small successes and has proven innovative in its methods. Despite serious handicaps, AMIS has saved lives and prevented even worse catastrophes for many internally displaced persons (IDPs). The second role of the AU was to lead the peace-talks that started in 2005. Humanitarian emergencies, regional and international military forces and police were called upon to protect internally displaced persons in camps, facilitate their returns and safeguard humanitarian corridors and aid convoys. This is the first time the AU deployed forces for these purposes beyond its more traditional role of monitoring a ceasefire.⁴⁰ The weakness of the force and continuing insecurity due to lack of funding did however contribute to its failure to uphold the truce. The UN came in at the prompting of the AU to eventually form the current joint peacekeeping mission; United Nations African Mission in Darfur (UNAMID).

AU practices: The Advent of Intra-State Conflicts and Human Rights

³⁹ International Commission of Inquiry on Darfur, Report to the United Nations Secretary General, 2005 p 54

⁴⁰ William G. O'Neill and Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*. An Occasional Paper, The Brookings Institution-University of Bern, Project on Internal Displacement, November 2005, p. 3

The constitution of AU materialized at a time when the African unity was facing challenges arising from internal conflicts with almost non-existent inter-state violent conflicts. The challenge was then how to get involved in intra-state conflicts with an express intention of advancing preventive diplomacy or obtaining a ceasefire. The internal conflicts if left unchecked were easily getting internationalized and threatening the peace of other countries especially neighbors not involved in the conflict. And as Sir Lauterpacht states, there are matters, which, though formally comprised in domestic jurisdiction of a given State, border upon external political relations, or even encroach directly upon external political relations, threatening the peace and security of the peoples. Such matters cannot be left to be settled by the state itself, notwithstanding the principle of sovereignty.⁴¹

The Constitutive Act of the AU therefore gives human rights and democracy a considerable status. Its preamble states “determined to promote and protect human and peoples’ rights, consolidate democratic institutions and culture and to ensure good governance and the rule of law”⁴²; subsequent articles also mirror this human rights effort.⁴³

When it comes to democracy and human rights, the main progress has occurred with the AU expanding its structure by adopting NEPAD and the African Peer Review Mechanism (APRM) processes which are based on principles of good governance, democracy, human rights, and conflict resolution; fundamental to the creation of an environment conducive to investment and long term economic growth.⁴⁴ The idea is that

⁴¹ Lauterpacht Hersch, *International law and Human Rights*, (London: Stevens, 1950), p. 190

⁴² Constitutive Act of the AU, preamble

⁴³ Ibid, Article 3 h and 4 c.

⁴⁴ Steve Ouma, *The APRM in Kenya: A Pathway to a new State?* (Open Society Initiative for East Africa ,2007)pp.2-4

NEPAD would function as a platform of monitoring programmes for good governance and democracy in Africa. Its sub-organ the APRM is the central body in promoting Africa's democracy. Its objectives are to oversee and enforce democratisation and respect for human rights amongst the states that apply for a review.

Other steps that have been taken are the formation of the PSC in 2004 and the strengthening of the African Commission of Human and Peoples' Rights towards a more court-like organ; the African Court on Human and Peoples' Rights (AfCHPR); a regional court was to be merged with the African Court of Justice into the new African Court of Justice and Human Rights.⁴⁵

All these measures show that there is a will to improve the situation for democracy and human rights from the AU. On the other hand, the work in practice by AU and NEPAD has been heavily criticised for not following the rhetoric. The AU has declared elections in Cameroon, Malawi and Nigeria as free and fair although they were heavily condemned by the international community. The AU has finally been accused of accepting leaders who come to power through undemocratic means and those who violate human rights to hosting AU programmes.⁴⁶ In fact currently the AU has come out strongly against ICC intervention in Sudan by defending Sudanese leader Omar al Bashir against arrest warrants for alleged crimes against humanity in Sudan's Darfur region. The argument is that a sitting head of a sovereign state cannot be indicted.

The AU and OAU intervention practices: A comparison

⁴⁵ Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights <http://www.african-court.org/fileadmin/documents/Court>

⁴⁶ African Confidential (Newspaper) 2006-07-07, website: <http://www.africa-confidential.com/news>

Unlike the OAU where non-interference in the internal affairs of states was a hallowed principle,⁴⁷ the sovereignty of individual states has been qualified within the AU. Although the AU still prioritizes sovereignty and non-interference, it concurrently recognizes democracy, human rights, good governance, people's participation and international cooperation as worthwhile objectives.⁴⁸ The AU may intervene in affairs of member states in order to restore peace and security, or prevent genocide, war crimes and crimes against humanity in line with the new doctrine of humanitarian intervention.⁴⁹

The OAU rarely took tough measures, including economic sanctions, against regimes that abused human rights and created large flows of refugees or massive internal displacement.⁵⁰ However, one of the philosophical bases for cooperation under the new institutional framework of the AU was that all member states had to observe certain fundamental values and standards, including respect for human rights, democratic governance, and the condemnation of unconstitutional changes of governments. A member state failing to observe those standards could be subject to political and economic sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.⁵¹

While the OAU intervention practice was restricted to disputes between member states in accordance with the principle of noninterference in internal affairs, the AU emerged at a time when intra-state conflicts were on the rise and therefore from the onset

⁴⁷ Peter Onu, acting Secretary-General of the OAU, *Africa Report* (New York) 28, no. 5 (September-October 1983):57

⁴⁸ African Union, *Constitutive Act of the African Union* (Lome, Togo: African Union, 2000), Article 4, 5

⁴⁹ Thakur, R, *Intervention, sovereignty and responsibility to protect: experiences from the International Commission on Intervention and State Sovereignty (ICISS, 2002)*, *Security Dialogue*, 33, p.3

⁵⁰ William G. O'Neill and Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*. An Occasional Paper, The Brookings Institution-University of Bern, Project on Internal Displacement, November 2005, p. 11

⁵¹ African Union Constitutive Act Op Cit, Art. 23 (2)

it had to devise mechanisms to deal with internal conflicts. The OAU could not intervene to prevent many of Africa's civil wars, among them, in Angola, Congo-Kinshasa, Liberia, Mozambique, Nigeria, Rwanda, and Sudan in which millions of innocent lives perished, under the guise of the OAU's infamous principle of "non-interference."⁵² There were no provisions and institutionalized enforcement like those in the AU that may have made recourse to the process of intervention compulsory and inevitable in case of noncompliance.

The supreme organ of the OAU, the Assembly of Heads of State and Government had the primary responsibility and ultimate authority to intervene. Instead of using the commission, the OAU adopted the practice of intervening by means of ad hoc committees from among its membership, as the primary instrument of conflict management. However, the selection of member-states' representative for the ad hoc committees intensified the dynamics of regional politics where powers legitimize their own ambitions of regional dominance.⁵³ The AU went further to improve on the use of ad hoc committees by establishing the PSC with a mandate to recommend and implement intervention; it was therefore more systematic than the ad hoc OAU mediation structure.

Another contrast between the OAU and AU practices is the provision on being members; both OAU and the Union have open membership for any African state (AU), any independent sovereign African State (OAU)⁵⁴ but the AU qualifies it in Article 30 where it states that governments which shall come to power through unconstitutional

⁵² Robert Schuman and Olufemi Babarinde, *The EU as a Model for the African Union: the Limits of Imitation* Jean Monnet/Robert Schuman Paper Series Vol. 7 No.2 April 2007

⁵³ *Ibid*, p.247

⁵⁴ Constitutive Act Article 29; OAU Charter Article XXVIII

means shall not be allowed to participate in the activities of the Union.⁵⁵ This article was applied to Mauritania after the 2005 coup but it is a weak statement since it does not specify what “unconstitutional” means. As some scholars have asked “does gaining or retaining power through a massively rigged election constitute an unconstitutional usurpation of power?”⁵⁶ Secondly, as Alan Siaroff points out, this definition does only allude to governments that have come to power and not those who have been in power since the formation of the union.⁵⁷ Internal conflicts arising from elections pose the latest difficulty to the implementation of the intervention clause provided in the AU Constitutive Act. The AU has adopted a non-interference stance towards election disputes and only intervenes a violent crisis occurs.

The OAU’s open membership was meant to encourage more members to join the Organization as African countries gained independence. Even the non-independent Western Sahara was admitted as a member in 1982. This caused Morocco to withdraw its membership of the OAU in 1984 as it has claims on Western Sahara. Although the OAU Charter requires member states “to observe scrupulously the principles” of the organization, there is no provision for sanctions against deviant states. The OAU is even denied the ultimate sanction of throwing out a wayward member.⁵⁸

While the OAU relied heavily on international community and the UN in its intervention and mediatory activities, the AU was formed on the basis of solving African problems in an African way. However, inadequate resources and logistical problems have

⁵⁵ African Union, Constitutive Act Op Cit, Article, 30

⁵⁶ Heyns, Christof, Evarist Baimu and Magnus Killander (2004) “The African Union” *German Yearbook of International Law / Jahrbuch für Internationales Recht*, vol. 47. p 273

⁵⁷ Siaroff, Alan, “Following in Europe’s Footsteps? The African Union and Integration in Africa”, paper presented at the Biannual Congress of the European Union Studies Association, May 2007. P.13 online: <http://www.unc.edu/euce/eusa2007/papers/siaroff>

⁵⁸ Article 32 of the Charter provides only for member states to end their own membership.

again forced the AU to seek foreign support, but unlike the OAU that always intervened with a view of prodding the UN to take over African conflict management efforts, the AU has improved in a sense that it either, like in Somalia (AMISOM) get logistical and financial support from UN and the Western powers like US or goes into joint intervention like in Darfur's UN/AU joint mission; UNAMID force.

From OAU, Intergovernmental cooperation; to AU, Integration organization

In a nutshell the constitutional and structural comparison of the OAU and its successor the AU reveal that first the OAU had a single source of authority, the assembly of heads of state and government, while the AU has multiple sources of authority; assembly of heads of state and government plus judicial (court) and democratic institutions like the Pan-African Parliament (PAP). The OAU was therefore a collaboration of governments of sovereign states while AU grants respect for national authority plus right to intervene in grave circumstances.

Secondly, for the OAU respect for national sovereignty was paramount, but AU crafted a provision to suspend governments coming into power unconstitutionally.⁵⁹ Third, OAU dogmatically interpreted the principle of non-interference in internal affairs, while AU provision for the African Peer review mechanism (APRM) in NEPAD acted to weaken the non-interference principle. Thus OAU did not envisage pooling of sovereignty, whereas the AU embraced the provision of public monitoring of delivery in the Conference on Security, Stability, Development and Cooperation (CSSDCAC).

Fourth, the OAU's prime objective was collective struggle for national liberation from colonialism and defence of national sovereignty. AU's prime objective is to enable Africa meet challenges of the 21st century and strengthening the position of Africa vis-à-

⁵⁹ Constitutive Act AU, Op Cit, Article 30

vis global economy and international community. Fifth, structurally the OAU was separate from the African Economic community (AEC); established at Abuja treaty later merged to form OAU/AEC in 1994, but now, AEC and its regional integration programme are incorporated in the AU. The sixth structural comparison is that the OAU secretariat changed to AU commission. The OAU secretariat under the Secretary General had executive powers with power of initiative being gradually acquired in later years. But AU commission had both executive and own power of initiative.⁶⁰ The OAU secretariat comprised elected Secretary General and assistants, carrying out decisions of the heads of state on a purely intergovernmental approach, whereas the AU commission has elected commissioners with fully recognized political mandate, who make uncompetitive decisions and are custodians of treaties.

Finally, African leaders have reconsidered the norm of non-interference in the 1990's, as evidence of the destabilizing consequences of internal conflicts has mounted. The former Chairman of the AU and President of Tanzania, Jakaya Kikwete, while addressing the 10th Ordinary session (2010) of the Pan African Parliament (PAP) in Johannesburg South Africa, dismissed the principle of non interference in domestic affairs among African countries as being old and no longer acceptable.⁶¹ President Kikwete added that Africa is now undergoing great changes in the rule of law and democracy, greater economic prosperity and deeper economic integration which means that all the continent's countries have a collective responsibility to ensure this trend.⁶²

⁶⁰ Adejumboi Said and Adebayo Olukoshi (Eds), " Op Cit p.8

⁶¹ George Kagame, "Africa: Principle of Non Interference No Longer Acceptable – Kikwete" *The New Times*, AllAfrica Global Media (allAfrica.com).28 October 2008

⁶² Ibid

The former UN secretary-general Boutros Boutros-Ghali also suggested that the OAU/AU should transcend the traditional view of sovereignty, building on the African values of solidarity and the concept that “every African is his brother’s keeper.”⁶³ This meant a departure from letting citizens suffer while regimes are insulated by the principle of non-interference.

Lessons Learnt: The Future Beckons

Sovereign equality and non-interference by member states in the internal affairs of others are possibly the main factors that prevented the OAU from crafting an effective security system. However, while admitting sovereign equality and the principle of non-interference, the Constitutive Act of the AU also recognizes rights to intervene in internal affairs of member states, mainly under ‘grave circumstances’, namely war crimes, genocide and crimes against humanity. This is a lesson learnt after OAU was unable to respond successfully to the emerging trends of violent internal conflicts which though they led to massive war crimes, genocide and crimes against humanity, were classified by the OAU as domestic affairs. At present, intra-state violence, the “Responsibility to Protect” from genocide, war crimes, ethnic cleansing and crimes against humanity⁶⁴ and internationalization of human rights and conflicts demand intervention. The world’s heads of state endorsed the emerging norm of a “Responsibility to Protect” in the “Summit Outcome Document” at the September 2005 UN General Assembly.⁶⁵

The lessons learnt were well summarized by President Museveni of Uganda in his maiden speech to the Ordinary Session of Heads of State and Government of the OAU in

⁶³ OAU, Council of Ministers, Fifty-Sixth Ordinary Session, June 22-27, 1992, Report of the Secretary-General on Conflicts in Africa: Proposals for an OAU Mechanism for Conflict Prevention and Resolution CM/1710 (L.VI)(Addis Ababa: Organization of African Unity, June 1992)

⁶⁴ UN General Assembly, World Summit Outcome, A/RES/60/1 (16 September 2005), paras. 138-39

⁶⁵ Ibid

1986 where he accused OAU of condoning the wholesale massacre of Ugandans by Idi Amin under the guise of not interfering because it was an internal affair of Uganda. Referring to previous regimes in his country, he stated: "Over a period of 20 years three quarters of a million Ugandans perished at the hands of governments that should have protected their lives. I must state that Ugandans felt a deep sense of betrayal that most of Africa kept silent and the reason had supposedly been a desire not to interfere in the internal affairs of a Member State, in accordance with the Charters of the OAU and the UN. We do not accept this reasoning because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life."⁶⁶

The OAU perpetuated the primacy of sovereignty, and rarely took tough measures, including economic sanctions, against regimes that abused human rights and created large flows of refugees or massive internal displacement even in extreme moments like the genocides in Burundi and Rwanda and Idi Amin's brutal regime in Uganda.⁶⁷ The OAU almost total avoidance of intervention in internal conflicts condemned it to numerous charges of impotence. The rotating chairmanship and changing membership of ad hoc committees impaired continuity in the mediation process. The institutional memory of an OAU mediation process was consequently weak, allowing conflicting parties to indulge in time-consuming tactics of retesting the boundaries of permissible behaviour and tactics that were established with previous mediatory teams.⁶⁸

The AU having learnt the lessons from OAU could not deploy troops from neighbouring states as was decided in the recent Somalia intervention mission AMISOM

⁶⁶ President Museveni of Uganda, speech at the 22nd Ordinary Session of the OAU Assembly of Heads of State and Government, Addis Ababa, Ethiopia, July 1986.

⁶⁷ William G. O'Neill and Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*. An Occasional Paper, The Brookings Institution-University of Bern, Project on Internal Displacement, November 2005, p. 11

⁶⁸ *Ibid*, p.248

where bordering countries like Kenya and Ethiopia were disallowed to send troops. Another lesson from OAU failures is the advanced and systematic use of good offices diplomacy. After the 2007 disputed elections in Kenya, the 2008 AU intervention included the use of President John Kufuor's good offices as chairman.⁶⁹ President Kufuor's good offices led to the creation of a team of eminent personalities under the AU to mediate in the conflict. The team was to be chaired by former UN Secretary-General Kofi Annan and other eminent personalities namely Graca Machel, and ex-president Benjamin Mkapa. The AU has created the PSC, adopted NEPAD and the APRM processes which are based on principles of good governance, democracy, human rights, and conflict resolution; fundamental to the creation of an environment conducive to investment and long term economic growth.⁷⁰ The lesson is that most of the internal conflicts emanate from issues of governance, democracy, human rights and structural inequalities; matters that were considered sacrosanct by the OAU since they were declared internal affairs of sovereign states.

Ernst Haas has argued that the reality of African regional politics demanded that any search for measures to enhance the OAU's now AU competence in mediation was to depart from the focus on constitutional reforms and rather be informed by the principle of versatility.⁷¹ Versatility in this context includes the notions of dynamism, flexibility, and inventiveness. An example of versatility in conflict management by an international organization, is the UN peacekeeping operations were not originally envisaged in the UN charter as a measure to preserve world peace; they are purely a creation born of necessity

⁶⁹ Mwangi M., *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Kenya Institute of Diplomacy and International Studies, 2008) p 60

⁷⁰ Steve Ouma, *The APRM in Kenya: A pathway to a new state?* (Open Society Initiative for East Africa ,2007)pp.2-4

⁷¹ Ernst B. Haas, L.R. Butterworth and J.S. Nye, *Conflict Management by International Organizations* (Morristown,NJ: General learning Press, 1972) pp.45-46

when the enforcement action envisaged in chapter IV of the UN charter could not be implemented. Peacekeeping is “in fact in many ways a reversal of the use of military personnel foreseen in the Charter.”⁷² The AU though still nascent has adopted versatility through inventiveness such as use of an informal grouping of eminent personalities which is an improvement on the ad hoc committees’ intervention mechanism of the OAU. This group made of former African leaders respected and with experience in mediation; serves as a pool of potential mediators that could be tapped by AU.⁷³ In this line the OAU and AU shared similarities in approach but differed in performance. Under the OAU, the overall responsibility for the management of the conflict would lie with the ad hoc committee, but the intensive mediation would be the function of the special mediator, who would regularly brief and consult with the ad hoc committee and brief the Assembly annually in camera.⁷⁴

This mode of mediation (special mediator and his team) would constitute a natural development and institutionalization of Africa’s traditional and contemporary methods of conflict management, which emphasize the use of elders and statesmen as mediators instead of adjudication. It also represented a proud application of the traditional African concept of family, village, or clan elder intervening in a “chat”- not to apportion blame, but to prevent bitter recriminations, sooth jarred sensitivities, and seek compromise, giving the disputants benefit of his wise and perceptive statesmanship and the stable environment for negotiation derived largely from the respect accorded to him as an

⁷² Javier Perez de Cuellar, “Foreword,” in *The Blue Helmets: A review of the United Nations Peacekeeping* (New York: UN Department of Public Information, 1985), v-vi. See pp.1-8

⁷³ William G. O’Neill and Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur*. An Occasional Paper, The Brookings Institution-University of Bern, Project on Internal Displacement, November 2005, p. 3

⁷⁴ Sam G. Amoo, *Role of the OAU: Past, Present and Future*, Op Cit,p.251

elder.⁷⁵ But the AU borrowing from the same concept devised the use of special envoys in intervention geared to conflict management.

Ben Kioko argues that the provision on the right of intervention, though well intended, will not be easy to decide upon or implement and it is hoped that the new standards of democracy, accountability and good governance enforced by the AU Constitutive Act's provision for the possible imposition of sanctions will avert the need for costly interventions.⁷⁶ The AU has opted to provide good offices for negotiation or in some cases ignored the condemnation by external observers who invariably declare the electoral processes not free and fair.⁷⁷ So Okoth Assa states that the AU has tried to circumvent or create clauses that weaken the non-interference principle with an intention to plug the loopholes that were inherent in the OAU Charter.⁷⁸

With the end of the Cold War and the marginalization of Africa in the concerns of global powers, the willingness of global powers to intervene resolutely and unilaterally in African conflicts, beyond providing inadequate funds and encouraging regional friends and nongovernmental organizations to intervene, is very doubtful.⁷⁹ The new African mood therefore reflects the emerging consensus in the international community that "the defense of the oppressed in the name of morality should prevail over frontiers and legal documents (The Charter principle of non interference in internal affairs)⁸⁰

⁷⁵ Ibid

⁷⁶ Ben Kioko, 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', *RICR Décembre IRRC* December 2003 Vol. 85 No 852 807

⁷⁷ See Mwagiru M, *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya*, (Nairobi: IDIS Publications, 2008)

⁷⁸ Assa Okoth, *A History of Africa 1915-1995*, op Cit, pp.324-325

⁷⁹ Sam G. Amoo, *Role of the OAU* op cit, p256

⁸⁰ Speech by former UN Secretary- General Javier Perez de Cuellar at the University of Bordeaux on April 24, 1991, UN Press Release SG/SM/4560

In domestic situations where there is a breakdown of governance, massive abuse of human rights or extensive violence to life, multilateral intervention may be necessary to restrain partisan violence, give protection and aid to the threatened and help build new frameworks for governance. Multilateral intervention should not mean a proliferation of peacemakers and lone rangers undercutting one another; as was the complaint of Africa against former US president Jimmy Carter's peacemaking efforts in Liberia. Multilateral intervention should be a pacific intervention through what Zartman calls a cooperation security process.⁸¹

In conclusion, the OAU represented Africa's vital but unfulfilled search for peace and security. The OAU operated by consensus but progress was often handicapped by its very lack of mandatory powers. In general the decisions of the Assembly were only recommendatory in nature. No provisions were made for powers analogous to those available to the UN Security Council.⁸² No organ, like the African Union's PSC, having disciplinary powers existed and there is little the OAU can do to punish disobedient members other than mobilize public opinion.⁸³ The OAU, after all, had no power and personality beyond the collective will of governments.⁸⁴

The successor of the OAU, the AU also shares the same capacity; that it is nothing more than the states that make it. And it is upon the members to show commitment to enable the AU match the challenges of the twenty first century such as internal conflicts, internationalized human rights and interdependence, transnational

⁸¹ Zartman I. William, "Systems of world Order and Regional Conflict Reduction" (Paper presented at 1991 Annual Meeting of the American Political Science Association, Washington, DC, August 29-September 1, 1991)

⁸² UN Charter, Op Cit, Chapter VII

⁸³ Naldi, G, *The Organization of African Unity*, Op Cit, p.38

⁸⁴ See Ernst B. Haas, L.R. Butterworth and J.S. Nye, *Conflict Management*, Op. Cit

relations and globalization. These new issues have transformed international relations, making international law provisions like non-interference in internal affairs of another state inhibitive if not less effective. The expansion of trade, communication, migrant labour and other new developments have made countries to sacrifice portions of their sovereign independence to create new political and economic unions.⁸⁵ Former UN Secretary- General Boutros Boutros- Ghali wrote that respect for sovereignty and non-interference in internal affairs is crucial to any common international progress, but the time of absolute and exclusive sovereignty has passed and that leaders of states should find a balance between good internal governance and the requirement of an ever more interdependent world.⁸⁶ Conflicts in Africa constitute the preeminent regional problem; they are as tragic as they are complex. However, Schneidman speculates that the African actors may play more prominent future roles in mediation in Africa and sees African diplomacy as an essential ingredient for ending African wars in the post-Cold War period.⁸⁷

Finally this study is based on the theoretical tool of *liberalism* which assumes that anarchy and war can be policed by institutional reforms that empower international organizations. To liberals sovereignty hence non-interference is not sacrosanct so force can be used if human rights are violated. The theory puts human rights above national interests and sovereignty. Thus intervention is allowed in the protection of human rights as provided for by the Constitutive Act of the AU.⁸⁸ The theory as an analytical tool focuses on how influences such as international law and organizations, democracy, free

⁸⁵ Ibid.p.38

⁸⁶ Boutros Boutros-Ghali, *An Agenda for peace: Preventive Diplomacy, Peacemaking and Peacekeeping* (New York: United Nations, 1992),p.7

⁸⁷ See Witney Schneidman, "Conflict Resolution in Mozambique," in Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993)

⁸⁸ Constitutive Act of the AU Article 4 (h)

trade, collective security, mass education and multilateral diplomacy can improve life globally. The analytical tool therefore sits on two broad themes of this study: regionalism and relevance of non-interference principle in the practices of the AU and defunct OAU.

This study has been able to fulfill the hypothetical suppositions by proving that; the principle of non-interference is no longer absolutely relevant in regional organization's practices since sovereignty is diminishing; that the AU has been able to devise better mechanism of intervention than its predecessor the OAU, and that the OAU practices were more inhibited by non-interference principle than AU practices. The objectives have also been achieved, namely comparing the OAU and AU practices within the non-interference principle, examining the relevance of the non-interference doctrine and finally ascertaining the practices of AU which show that it has learnt lessons from the OAU challenges. The new phenomenon of international organizations and even regional organizations as actors in the international system has made it necessary to develop principles or norms that guide interactions. Grotius states that treaties or formal covenants would be binding in the sense that states are obligated to follow them even in the absence of central authority to enforce their adherence.⁸⁹

The international community needs to develop an appropriate mechanism to respond to genocide and the human suffering caused by violent internal conflicts. Such advocacy obviously flies in the face of the hallowed principle of non-interference in the internal affairs of sovereign states. However, it will be argued that both the principle of non-interference and the related concept of sovereignty can no longer be considered in absolute terms, nor can they be used by members of organizations as an excuse for inaction when faced by gross crimes against humanity.

⁸⁹ Grotius. H, Law of War And Peace(1625)

Chapter Five

Conclusion

The Past: Reflections

The Organization of African Unity (OAU) existed for almost forty years from 1963-2002, and during this time it was faced with major peacemaking and mediation challenges. The OAU could only intervene in a conflict if it was invited to do so by the parties to a dispute. As a result, the OAU often became a silent observer to the atrocities being committed by its member states. But one observation still stands out: what would have been the African situation at the time of independence if the forefathers would not have thought of an organization to bind them together, create norms of interaction and order in the continental state relations? The OAU, save for its rigidity and lack of member commitments, was a noble idea then and served the members' needs of the moment.

The Berlin Conference partitioned Africa into administrative units framed in territorial borders. With the creation of states followed the demands for self-determination which saw colonialists agree to staggered independence for African states. The OAU as a regional organization was then formed to not only seek African unity but also accelerate the attainment of independence by states still under colonial rule. Since the twentieth century regionalism has increased with the decline and fall of the great European powers that controlled the African territory and the population.¹

But accompanying the OAU's aims were principles which specifically aimed at strengthening the hard earned sovereignty embodied in the new boundaries. These

¹ Francis M. Deng, et al, (eds), *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C: The Brookings Institution, 1996), p.15

principles were sovereign equality, non-interference in the internal affairs of States, respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.²

The OAU Charter provisions reveal a strand that ties the need for sovereignty without interference and guarding the boundaries left by the colonialists. The preamble of the OAU Charter clearly indicates this desire by African leaders to maintain the sanctity of the boundaries through non-interference by stating that they are determined to safeguard and consolidate the hard-won independence, the sovereignty and territorial integrity of their states.³ The African statesmen were much possessive of the inherited boundaries for the fear of encouraging secessionism and/or irredentism by regional hegemonies.

The OAU interpreted these provisions rigidly and soon with the fast changing international relations the Organization found itself inhibited by that which was to safeguard members. OAU's practice of intervening in only inter-state conflicts, made it ineffective when internal conflicts, novel in nature by then, overtook interstate conflicts. The OAU practice of using ad hoc committees of neighbouring countries failed impartiality test and could not weaken the insulating doctrine of non-interference in internal affairs of a state. It therefore had to reform or exit and pave way for an outfit suited for the new millennium. Thus on 9th July 2002, when African leaders gathered in Durban, South Africa, to dissolve the OAU, they launched a new organization the African Union (AU) that was designed to meet the new challenges of poverty, bad governance, intra-state conflicts, human rights violations and economic inequalities

² The OAU Charter, Principles, Article III

³ OAU Charter opening statement, Addis Ababa, Ethiopia, 25th day of May, 1963

facing Africa in the 21st century through its rewritten constitution.⁴ Later after the AU 2010 summit in Sirte, Libya, there was a decision to transform the Africa Union Commission into the Africa Union Authority as a first step towards continental integration.⁵ The AU was born and bred on the lessons learnt from the OAU's success and ineffectiveness too.

The Present

At present the practices of the AU are guided by a flexible interpretation of the principle of non-interference in domestic affairs of other states founded on sovereignty. These principles are gradually being diminished by novel doctrines of universal human rights, interdependence, and globalization. In general, Mwangiri states that the concept of globalization has changed the traditional configurations of the international political economy and has raised issues not just of economics, but also of the latitude that states have in dealing with emerging issues and problems. The international and sub-regional organizations have had to redefine themselves in order to more sharply map out their roles in globalised and globalizing world. In particular, globalization has helped to dissolve borders and has opened up the international system in ways earlier thought not to be possible.⁶ Lt. General Koech agrees that today it is largely conceded that globalization means deterritorialisation of the spacial limits of states.⁷ The erosion of sovereignty, the transnational character of the new security threats and the new wars, the growing pressure on the UN system for peacekeeping and other actions, the pressure for democratization,

⁴ Nevin Tom, "Exit OAU (Organization of African Unity), enter AU (African Union)" *African Business* September 1, 2001.

⁵ Reuters, "Some Key Facts about AU" *Daily Nation*, Monday February 1, 2010. p.16

⁶ Mwangiri, Makumi, "Towards a security Architecture in the IGAD Region", in Mwangiri M (ed), *African Regional security in the Age of globalization*, (Nairobi: Heinrich Boll Foundation, 2008) pp. 133-134

⁷ Koech John, "Emerging challenges of security in IGAD", in Mwangiri M (ed), *African Regional security in the Age of globalization*, (Nairobi: Heinrich Boll Foundation, 2008) p.127

human rights and security sector reform, and the complex effects of globalization all lend themselves to regional solutions.⁸

The decline in state system and its transformation is also evident in the resort to violence on an international scale by groups other than the state. For long international law has sought to restrict violence in international society by confirming resort to legitimate violence to sovereign states. In current times, however, the monopoly of legitimate international violence long enjoyed by sovereign states is being challenged on the one hand by non-state political groups employing so-called 'low-level' or 'terrorist' violence on an international scale, and on the other hand by the assumption by international organizations of a right to use violence.⁹ Terror networks like al-Qaeda and Taliban have been able to wage international war as non-state actors. The July 11, 2010 bombing of Uganda by Somalia based rebel group al-Shabab affirm this observation. Another example is Palestinian guerrillas. Also organizations like NATO have been able to intervene militarily in sovereign states. In this case non-interference becomes an empty assertion difficult to keep viable in the modern international relations.

Since the end of Cold War there have been increasing expectations that regional and sub-regional organizations should take on security functions. Western governments are reluctant to intervene in failed states enduring civil wars since the end of Cold War has dimmed the allure of conflict management diplomacy. US experience in Somalia in the early 1990s reinforced avoidance of peace enforcement operations in distant parts of

⁸ Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993), p.32

⁹ Bull, Hedley, *The Anarchical society: A Study of Order in World Politics*, (London: Macmillan Press Ltd, 1977), p. 155-156

the globe.¹⁰ The continent's problems have to be solved by African means and African community via the AU.

With borders becoming increasingly porous, it is not practically possible to have absolute sovereignty. Absolute state sovereignty which buttresses non-interference faces withering through globalization and transnational companies, internationalization of human rights, environmental issues and internationalization of conflicts. None of these issues can be isolated in one state. Environmental issues like global climate change, depletion of ozone layer and decline in earth's biodiversity are clearly matters of concern to the international community since environment knows no borders. Conflicts also tend to spread across borders hence internationalization of conflicts meaning among other things, introduction of external factors into internal conflicts.¹¹

Is intervention a right or a duty, and for what ends and with what effects? Given the arguments around the invasion of Iraq in 2003, the subject is probably more important now than before. Internal conflicts have become a greater security issue. The gravity of misery that results from internal conflicts places the onus on African leaders to avoid a contentious attempt at charter amendment and demonstrate the necessary resourcefulness to find an acceptable and tangible means of circumventing the principle of non-interference in internal affairs of member states.¹²

Through various versatile mechanisms like, moral responsibility to protect, human rights concerns and the practice of peacekeeping, the AU has taken on these UN innovative practices to engage in both military interventions and peacekeeping missions

¹⁰ Mazrui, A, "The bondage of boundaries", *Economist*, 11-17 September, 1993

¹¹ See, Mwangi M, *Conflict: Theory, Processes and Institutions of Management*, (Nairobi: Watermark, 2002)

¹² Sam G. Amoo, 'Role of the OAU: Past, Present and Future', in Smock R. David, *Making War and Waging Peace: Foreign Intervention in Africa* (Washington, D.C: United States Institute of Peace Press, 1993), p.253.

such as those in Somalia –AMISOM and Darfur Sudan –UNAMID. It has employed intervention mechanism such as use of eminent personalities and the good offices in mediation so as to circumvent non-interference dogma.

The Future

The principle of sovereignty has never been articulated or respected in the clear-cut manner as assumed. Krasner and Froats state that states have a long history of intervention in the ethnic and also religious affairs of others.¹³ The UN Charter affirmed an international commitment to basic fundamental human rights and fundamental freedoms. The former UN Secretary-general Boutros Boutros-Ghali stated that “the time for absolute and exclusive sovereignty has passed.”¹⁴ Cyril Black and Falk also argue that the state system is an obstacle to the attainment of man’s ecological objective of living in harmony with his environment: that the connected issues of population control, food production and distribution, resource management and conservation can be effectively advanced only through a global approach and a sense of human solidarity that are vitiated by division of mankind into states.¹⁵

An approach to the reform of the state system however, is to seek a wider role for regional organizations like AU since they are capable of fulfilling some of the roles of global organizations like peace, security, economic justice and environmental management. Also the regional organizations are not open to some of the objections that can be leveled at global organizations, for example that they may lead to domination of

¹³ Krasner Stephen and Froats Daniel, “The Westphalian Model and Minority-Rights Guarantees in Europe,” in Lake and Rothchild, *Ethnic Fears and Global Engagement*,

¹⁴ Boutros Boutros-Ghali, *An Agenda for Peace*, (New York: United Nations, 1992), p.9

¹⁵ See Cyril B and Falk R, (eds), *The Future of the International Legal Order*, vol. 1(1969) and Falk R, *This Endangered Planet: Prospects and Proposals for Human Survival* (New York: Random House, 1971)

the state system by great powers.¹⁶ Thus AU's role in regional international relations is set to increase. However, the OAU experience revealed that regional organizations may inhibit, rather than encourage, action to address some of the fundamental challenges facing Africa. Regional organizations are often supported by vulnerable leaders who see them as useful for resisting domestic challenges.

The threat to regional security and diplomacy posed by internal conflicts has awakened African leadership and there is a growing concern in Africa that the "concept of African brotherhood" has been greatly undermined by a strict adherence to the universal principle of non- interference in internal affairs.¹⁷ Instability in one Africa country reduces the stability of all other African countries; there is a link between security, stability, development and cooperation in Africa.¹⁸

The scope of African responsibilities for conflict prevention and management has been enormously increased by the Constitutive Act of the AU, and the protocol of the PSC. Therefore, there is a need for the AU to reappraise the OAU strategy of maximum diplomatic and political involvement in conflict resolution and minimum engagement in peace support operations. Also the AU needs to enhance its ability to coordinate and collaborate with other actors, not only international communities but also with its sub-regional organizations like SADC and EAC.¹⁹

As the international community distances itself from interventions in Africa, the AU will eventually find itself in the Hobbesian environment that is lonely, short, nasty and brutish. Like the legendary sphinx, the AU has to solve its own continental riddle of

¹⁶Bull, Hedley, *The Anarchical society*: Op Cit, p. 305-306

¹⁷Sam G. Amoo, *Role of the OAU*, Op Cit, p.244

¹⁸ Gambari, Ibrahim "The Role of Regional and Global Organizations" in Keller. E. J and Rothchild.D.(Eds), *Africa in the New International Order* (Boulder, Col. : Lynne Rienner, 1996) ,p.33

¹⁹ Malan Mark, "New Tools in the Box?: Towards a Standby Force for the AU," in Shannon Field (ed), *Peace in Africa: Towards Collaborative security Regime*, (Johannesburg: Institute for Global Dialogue, 2004), pp.218-219

internal conflicts amid inadequate resources and diminishing international support. This is already emerging in Somalia case where the US and UN are only providing funding and logistics while the AU leads and runs the show through AMISOM. Though Bercovitch states that mediation by super powers or former colonialists is more likely to be successful than mediation by medium or small powers;²⁰ the reverse seems to be taking shape as more and more disputes are seeking and accepting the intervention of either sub-regional organizations like SADC in Zimbabwe political conflicts; or AU intervention as in the Kenya, Sudan, Comoros and Somalia cases.

The proposition to have an African Standby Force may soon materialize. In an interview during the AU Summit in the Ugandan capital, Kampala; the AU Commissioner for Peace and Security Mr. Ramtane Lamamra said Africa's proposed standby conflict- intervention force will become operational before the end of the year 2010. He went further to confirm that five regional brigades of the force are training the personnel. Africa's eastern, southern, central, western and northern regions will each be expected to provide 5,000 soldiers, police officers and civilians. Under the arrangement the AU summit will have the authority to deploy the force to fight terrorism, drug trafficking, piracy and to work in conflict zones, he said. The headquarters will be in Addis Ababa, Ethiopia. Therefore the AU Commission is liaising with the United Nations and other international agencies for financial and military hardware support for the proposed force.²¹

²⁰ Bercovitch Jacob, "The Conditions for Successful Mediation," *Negotiating Journal* (January, 1991), p.26.

²¹ Fred Ojumbo, 'Africa Standby Force to Start by Year-End, AU Says', nmrichardson@bloomberg.net (Antony Sguazzin (ed) sguazzin@bloomberg.net <http://www.businessweek.com/news/2010-07-19/africa-standby-force-to-start-by-year-end-au-says.html>)

A question which is in need of further study is; does diminishing sovereignty have an effect on national security? Further related inquiry is whether African borders contribute to current conflicts. The imperial powers created arbitrary boundaries to serve their short term strategic and economic interests, and not those of Africans²² who are now using these flawed borders for administrative purposes. Border diplomacy is needed since alongside the efforts of some states to integrate in regional units, another tendency is that of existing states to show signs of disintegration.²³ The former Soviet Union and Yugoslavia case and the referendum in Sudan may create another new state.

All in all, institutions like the AU are created by governments and their success or failure, future development or demise; are ultimately in the hands of governments or states that constitute them.²⁴ An effective AU will ultimately require substantial changes in the actions of member states, placing additional burdens on them at the same time lessening their discretionary powers. Membership to AU will entail sharing sovereignty in key areas of lawmaking, intervention, economic measures and regional security.

Building the AU is an exceptionally ambitious project undertaken in extremely adverse circumstances. There are powerful vested interests that stand in the way of the unification project, particularly among state heads. The way forward now is for the AU regional states to begin taking the point of view that non-interference or indifference to a neighbour's internal tribulations will ultimately affect the next state and the entire regional security and welfare. That being the brother's keeper and working for the common good is, after all, the meaning underlying the notion of an African renaissance.

²² Nugent, Paul and Asiwaju A.I, "Introduction: The Paradox of African Boundaries", in Nugent, Paul and Asiwaju A.I (eds) *African Boundaries: Barriers, Conduits and Opportunities*, (London: Pinter, 1996), p.1-14

²³ Bull Hedley, *The Anarchical society*, Op Cit, p. 266

²⁴ Claude, Inis Jr., *Swords into the Plowshares: The Problems and Progress of International Organization* (4th edition), (New York: Random House, 1971), p. 110

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