

regionalism as the context in which human rights problems are examined. Given regional organizations such as the OAU, the article examines the extant structure of the OAU as related to the crucial functions of resolving disputes between African nations, of assuring human rights of African peoples, and for the advancement of Africa's place in the global economic competition between regions and nations.

Section I of the article looks at the concept of "constitutive process" as the *sine qua non* of any viable social system or state. Constitutive process assures that necessary institutions exist to provide for national and transnational events, to sustain communal life and to maintain the social system. Section II discusses whether the establishment of the OAU Charter and the designated divisions are responsive to the perceived needs of African people when the OAU was conceived. This section demonstrates how the OAU in its formation and operation holds potential for providing for constitutive process. Section III examines the purposes, officers, duties and internal conflicts of the designated divisions of the OAU. Scrutiny of the organizational structure shows both the problems and potential of the OAU from the time of its founding. Given the structural alignment, Section IV applies and analyzes highlights of the functioning of the OAU in both its early phase and during its thirty years of existence under the constitutive process standard. Somalia is presented as a case study of the possibilities, potential and problems in deploying the statist-structure of the OAU to the varied circumstances and conditions of Africa and its nations. Section V evaluates the OAU with regard to contemporary expectations for meeting constitutive process requirements. Policy recommendations are presented in Section VI for solving some of Africa's problems related to fundamental needs. In summation.

Recent events on the Continent (the economic crisis of the 1990's as played out in Africa, the sub-Saharan drought and burgeoning famine, the starving of Somalia in 1992) have compelled a re-examination of the viability of transnational organizations (regional and ecumenical) to respond to and overcome these chronic problems. Moreover, as with Malcolm X who tried to establish an organization in the United States modeled in part on the OAU, the OAU retains interest as a model for African-American people. Attention focused on historic and contemporary problems is indispensable in order not to thwart the immense potential of the future. Despite some inglorious historic elements in the glorious African past, the possibilities exist that Africa will now and in times to come continue to contribute vitally to the world.

I. CONSTITUTIVE PROCESS AND AFRICAN UNITY

Constitutive process has been defined as "authoritative power exercised to provide an institutional framework for decision and to allocate indispensable functions", with the emergent decisions as a result of the exercise of this power "specialized to the shaping and sharing of wealth, enlightenment, respect and all other values.¹ Predicated on a "single sys-

1. Myres S. McDougal, Harold D. Lasswell & W. Michael Reisman, *The World Constitutive Process of Authoritative Decision in INTERNATIONAL LAW ESSAYS* 191, 192 (1981) [hereinafter McDougal].

tem of public order"² this "world community" itself is dependent on a complex of broad and intense social (cross-cultural, international, intra-national) interaction with resultant technological advancement and interchange³; constitutive process subsumes more than mere document-writing ("constitutionalism") or embodiment of ideals through particular words given symbolic significance.⁴

In addition to the mistaken identification of document writing—the drafting of a "constitution"—with the constitutive process, constitutionalism is often concerned with negation, with limitations on authority and control, rather than with balancing or integrating inclusive and particular interests with one another in arenas of every size.⁵

Consisting primarily of effective transnational decisions supported by power and validated by authority⁶, the essence of constitutive process as an image may be expressed as an interlocking, intertwining spiral of cross-cutting expectations and demands among nations (or transnational institutions) sustained by sanctions ranging from noncooperation to organized violence.⁷

Hence, according to the schemata for analyzing the significant ramifications of constitutive process outlined by McDougal⁸, the central issues upon which attention must be focused in understanding the meaning and role of the OAU in African law and politics are these: the identities and roles of the nations, leaders and other participants; the perspectives, value demands and expectations pursued by the participants; the situations, conditions and loci of their interaction; the base values (effective means) for the achievement of their objectives; the plans and strategies for the accomplishment of their values; the outcomes of the decisions as they impact upon value allocation; and the long- and short-term effects of aspects of constitutive process (elements of participation of elites and masses, diplomatic strategies, and evidence of emergent prescription.)⁹

For Africa, these considerations are exemplified via culmination in the OAU: Here as elsewhere in the world, primary elites through diplomatic interaction decide for masses what values are in their best interests. Conjointly and inclusively, the national elites of Africa form an international African elite with nearly conclusive impacts on Africa and contributory influence on the world. This unit, coalesced in the OAU, functions to create prescriptive norms which enhance the African present and assure the African future. To the end of better understanding the OAU, and thereby

2. *Id.* at 194.

3. *Id.*

4. *Id.* at 197-98.

5. *Id.* at 198. This integrating and balancing of interests is essential to the constitutive process.

6. Weber defines authority as the ability to force one's will upon others; the domination of others through influence; institutional power. MAX WEBER, *THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 22, 153, 324, 326 (1947).

7. McDougal, *supra* note 1, at 195; see also ROBERT K. MERTON, *SOCIAL STRUCTURE AND SOCIAL THEORY* 434-8 (1968).

8. McDougal, *supra* note 1, at 200.

9. McDougal, *supra* note 1, at 201-04 (participation); 257-62 (diplomatic strategies); 236-64 (ideological interaction); 265-67 (control and coercion); 275-77 (prescription).

global, international and intra-continental African politics and law, the history, development and present status of the OAU are scrutinized.

The peace and stability of independent African nations who could conjointly work for Pan-African economic and technological progress was the *raison d'être* for the creation of the OAU. Although the statesmen responsible for the organization at its inception realized that "[n]o sporadic act nor pious resolutions [could] solve the problems necessary for attaining the goals charted. . .", they nonetheless correctly viewed the Charter-signing as one step, symbolic but significant, in the "undoing of the tangled knot of injustices bequeathed from long and shadowy years of colonialism."¹⁰

While the Charter-signing is not to be seen as a panacea, and while it certainly only begins to address the goals articulated by the African founding fathers, the symbolism of a Pan-African transnational entity devoted to peaceful progress in a cooperative spirit is evidence of the primary values of the leaders and their nations. Premising to work to end colonization in Africa, to rid the continent of apartheid and racism, to work for the removal of disputes and divisiveness, the OAU founders proposed the beginnings of an African unity which would preclude the redevelopment of these degradations upon Africa.

[D]edicated to the promotion of close inter-state cooperation in all fields, the peaceful settlement of disputes between member states, the improvement of the lot of African peoples, and the eradication of the last vestiges of colonialism and racism from the continent. . . , [t]he Organization of African Unity was born."¹¹

II. BACKGROUND AND DEVELOPMENT OF THE OAU (THE EMERGENCE OF THE CHARTER)

Open to all the independent African states as of its date of founding, the OAU¹² was established to advance inter-African cooperation in economic, social, cultural, scientific and technical spheres. The OAU developed as a result of a coalescence of two organizations: the Casablanca Group and the Monrovia Group.¹³ While Elias traces the pre-Charter influences from two sources, Cervenka finds a third influence—the Brazza-

10. ORGANIZATION OF AFRICAN UNITY, THE OAU IN ACTION 2, 3 (1970) [hereinafter *The OAU in Action*].

11. *Id.* at 8.

12. Consistent with Article 52 of the United Nations ("UN") Charter, the OAU was formed to promote regional peace and security. T.O. ELIAS, AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW 24, 125 n.6 (1972).

The OAU was thrust into existence by the creation of the UN, the OAS (Organization of American States) and other international organizations dedicated to the development of regional interests. The influences of Western Europe, because of the increase in internal and external interactions, is paramount. McDougal, *supra* note 1, at 194. See also RESTATEMENT—FOREIGN RELATIONS LAW OF THE UNITED STATES, TENTATIVE DRAFT NO. 73 (March 27, 1981).

13. The five member states of the Casablanca Group were the United Arab Republic, Morocco and the members of the Ghana-Guinea-Mali Union. Elias, *supra* note 12, at 121. However, according to Cervenka, the Casablanca Group, participants at a meeting convened by King Mohammed V of Morocco, included Egypt, Libya, Ghana, Guinea, Mali, Morocco and the Algerian Provisional Government. Other nations (Ethiopia, Liberia, Sudan, Togo and Gambia) were invited but declined to attend. See ZDENEK CERVENKA, THE UNFINISHED QUEST FOR UNITY—AFRICA AND THE OAU 191 n.1 (1977). The full text of the Casablanca Charter may be found at LOUIS B. SOHN, ED., 1 BASIC DOCUMENTS OF AFRICAN REGIONAL ORGANIZATIONS 42 (1971). The Brazzaville Twelve states were not invited. Cervenka, *supra*.

ville Twelve, a bloc similar in its political orientations to the Monrovia Group.¹⁴

The Casablanca Bloc, formed in early 1961, was devoted to "radical policies" including the advancement of economic and social cooperation of their nations, self-defense and an end to colonialism. The main arm of the OAU, the Monrovia Group, began with "moderate" policies at a conference in Liberia¹⁵ in May 1961. At this conference to establish a Pan-African organization, twenty-two of twenty-seven independent states plus several liberation movement leaders with only observer status proposed an Organization of African and Malagasy States¹⁶ with the purpose of promoting through a loose liaison the economic, cultural, scientific and technical development of its members. In direct contrast to the Casablanca Group, and in assurance of the political and territorial integrity especially of smaller states, the Monrovia Group explicitly disavowed any internal combination in Africa as political union supported by a military junta.¹⁷

At an October 1960 meeting of heads of state and government of former French colonies, the Brazzaville Twelve¹⁸ was formed. This meeting,

The Monrovia Group includes all of the states at the Brazzaville Twelve Conference plus Ethiopia, Liberia, Nigeria, Sierra Leone, Somalia, Togo, Tunisia and Libya (also in the Casablanca Group). See text accompanying note 18.

14. While Elias, an insider (Chairman of the Legal and Political Committee of the Lagos Conference and one of the drafters of the revised Charter in Addis Ababa) suggests that the OAU has been influential in the pace of development of various regional organizations including the *Union Africaine et Malgache* ("UAM"), Elias, *supra* note 12 at 28, 25, Cervenka, an outsider (a "non-African" intellectual), Cervenka, *supra* note 13 at iv, vii, viii, indicates the important influence of the UAM in shaping the goals and structure of the OAU. See also Robert K. Merton, *Insiders and Outsiders: A Chapter in the Sociology of Knowledge*, AMERICAN JOURNAL OF SOCIOLOGY, 78 (July 1972), 9-24. Merton distinguishes insider/outsider perspectives where the insider brings intimate, committed, perhaps politicized views and the outsider, detachment and objectivity. *Id.*

Two observations which serve as important premises for Cervenka are noteworthy in this regard: a) that research on Africa, especially by enthusiastic outsiders, may often be dangerous because of the tendency to out-African the African—to become more pro-African than the African indigenous; b) that international economic cooperation with Europe, Africa and others is both indispensable and progressive. Cervenka, *supra* note 13 at vii.

15. Of the three conference sponsoring states, Liberia, Sierra Leone and Nigeria, the state which has been longest independent was the host of this first meeting.

16. *The Organisation africaine et malgache de cooperation economique* ("OAMCE") was established in March 1961. After the creation of the African and Malagasy Union (UAM), September 12, 1961, the OAMCE functioned as the economic and technical secretariat of that body. In March, 1964 the UAM dissolved; and in April 1964 the OAMCE was renamed the *Union africaine et malgache de cooperation economique* ("UAMCE"). At a February 10, 1965 meeting at Naoukchott, the heads of member states agreed to organize the UAMCE as an organization for both political and economic cooperation, in effect reviving the UAM, under the name *Organisation commune africaine et malgache* ("OCAM"). See African and Malagasy Union. Documentation OAMCE ADM, UAMPT, tir-Afrique (Paris: Marcomer, 1963). See also A. Jalloh, *Political Integration in French-speaking Africa* (Berkeley: Institute of International Studies, University of California, 1973). See also A. TEVOEDJRE, PAN-AFRICANISM IN ACTION: AN ACCOUNT OF THE UAM. (1965).

17. Elias, *supra* note 12 at 24-25, 121-122.

18. The Brazzaville Twelve included Senegal, Mauritania, Ivory Coast, Upper Volta, Niger, Dahomey (Benin), Chad, Gabon, the Central African Republic, Congo (Brazzaville), Malagasy Republic and Cameroon. Cervenka, *supra* note 13 at 192, n. 2. See also M.A. Ajomo, "Regional Economic Organizations—the African Experience", 25 International and Comp. L. Qrtly. 85 (1976). See also Berhanykan Andemicael, "The Organization of African Unity and the United Nations" in Berhanykan Andemicael, ed., REGIONALISM AND THE UNITED NATIONS 255-299 (discussing the role of the OAU in bringing UN to include an African perspective in key matters

initiated by Ivory Coast President Houphouët-Boigny, led to the December 1960 meeting at Brazzaville from which the group took its name. The aims of the group were to maintain relations with France *l'ancienne mere patrie*, to oppose any Communists in Africa and to support France in the Franco-Algerian conflict; further, the Brazzaville Group, which later became the UAM, supported the UN policing in the Congo (Zaire). Further divisions in the three groups were reflected by the support by the Casablanca Group of Morocco which threatened the existence and independence of Mauritania, a member of the Monrovia Group. While political unity of Africa was a priority for the Casablanca states, the Monrovia and Brazzaville states wanted development through economic and social cooperation.¹⁹

Nonetheless, the three groups had common objectives among which were decolonization of Africa, elimination of racial discrimination and apartheid, the furtherance of international peace and security, and an emphasis on the economic cooperation between African states. The pervasive desire for some type of regional liaison of all independent African states emerged once the delegates to various African and other international consultations began to interact. Progress toward the goal of some type of African unity emerged as a result of these interfacing.²⁰

Out of three meetings of the Monrovia Group hosted by Nigeria in 1962 emerged the Lagos Charter, a draft charter for the new Organization signed by seventeen of the twenty-two independent participant states. Absent from both the 1961 and 1962 meetings of the Organization was the Casablanca Group, which had been invited to participate. Even with the Casablanca Group absent, the Monrovia-Lagos Group moved somewhat closer to the Casablanca Group in their policies, adopting strong resolutions supporting self-determination and condemning apartheid, colonial wars and colonialism in Africa.

On the eve of the meeting of ministers from which emerged the OAU, Cervenka noted four ideological orientations of African states: a) the desire for a single over-arching charter, acceptable to all states, designed to supersede the several regional ones already extant, was supported by Libya and Sudan; b) a model fashioned on the OAS to include a loose association of states within an all-African organization was supported by President Tubman of Liberia; c) because of the vastness of the African continent, the underdevelopment of intra-continental transportation and communication, and the need for some imminent progress and achievement for African unity, some nations argued that organic African unity was premature and dependent on necessary prior regional and technological development; d) the view that political unity modeled on the constitutions of the U.S.A. and the former U.S.S.R. including an African High Command for military needs, an African civil service, an African Court of Justice and

of peace and security). See also ELLENGE M'BUYINGA, PAN-AFRICANISM OR NEO-COLONIALISM? THE BANKRUPTCY OF THE OAU (1982) (questioning whether the structure of the OAU and non-African post-colonial alignment of African leaders precludes a future leadership role of the organization). See A. Oye Cukwurah, *The Organization of African Unity and African Territorial and Boundary Problems: 1963-1973* 13 INDIAN J. INT'L. L. (1973) at 176-206 [hereinafter Cukwurah].

19. Cervenka, *supra* note 13 at 1, 191-92, nn. 1-3.

20. *Id.* at 2-3.

other Pan-African institutions as a bulwark against colonialism and apartheid as necessary precedent to Pan-African economic development was sparked by Kwame Nkrumah (Ghana) and shared to some degree by some Casablanca Group members.²¹ While the first three views would have been acceptable to the Monrovia and Brazzaville Groups, the last view engendered sufficient opposition to achieve the defeat of that view at the Conference.

According to a renowned scholar on international African politics and law²², at the meetings prior to the emergence of the Charter, there developed

... a basic division between a Pan-Africanist Group and the "Realists." The Pan Africanists thought it would be interesting to have an African government with a bicameral African parliament. The Realists cautioned against such a dramatic political approach fearing that failure on the first attempt toward unity would discourage future attempts. Urging an incremental approach, the Realists then had to decide which steps toward unification should be taken first—those of a political or those of a purely economic nature. The politics-first group felt that political unity should be sought early on in the process because they feared that a strengthening of the nation-state with time might work against unity. The faction stressing economic ties argued that creation of a zone of economic solidarity would lead to a feeling among Africans that unity was a good thing.²³

With the next conference set to occur in Addis Ababa, the Council of Ministers²⁴ of the Organization prepared an agreed-upon text based on the Lagos Charter. Out of these documents emerged the Charter of the Organization of African Unity (OAU). While the new Organization included a provision for a "Defense Commission", a concession to the Casablanca Bloc who desired an African High Command military component, the desire of Ghana's Kwame Nkrumah for a Pan-Africanist political union was rejected.²⁵

III. THE PURPOSES AND STRUCTURES OF THE OAU

A. *The Purposes and Principles*

Consisting of a preamble and forty-three articles, the Charter articulates the principles and the structure of the OAU. The central aims of the Organization as presented in the preamble are: a) self-determination²⁶; b)

21. Cervenka, *supra* note 13 at 2-3.

22. This renowned scholar, source of some of the critical appraisal in this article, has retained a privilege of anonymity to avoid any possible negative imputations or diplomatic embarrassment to the OAU, the scholar's home country or the scholar. Hereinafter, this scholar will be referred to as "AKS". My interview with this scholar occurred at scholar's residence, June 26, 1982.

23. *Id.*

24. The Council of Ministers, with the Conference of the Heads of State and Government, the General Secretariat and the Commission on Mediation, Conciliation and Arbitration were the main component parts of the OAU. See *infra* at C.1. for discussion.

25. The organization decided on the acronym OAU to avoid confusion with the OAS (Organization of American States); this decision required the rejection of the alternative name of Organization of African States. Elias, *supra* note 12 at 123-124.

26. The principle of self-determination may be read to conflict with the principle of territorial integrity in the African context, especially if this latter is understood as accepting the bounda-

devotion to freedom, equality, justice and dignity; c) development of African national resources; d) promotion of understanding and cooperation through supranational unity; e) peace and security; f) independence; g) sovereignty, territorial integrity, anticolonialism; h) and support of the Charter of the United Nations and Universal Declaration of Human Rights. Further, Article II re-affirms the objectives of inalienable independent existence, dispute settlement through mediation or arbitration, non-alignment, condemnation of political assassination and subversive activities.²⁷ In establishing the OAU, the member nations included all independent nations on the African continent, Madagascar²⁸ and the islands surrounding Africa.²⁹

The principles articulated in the Preamble and in Articles II and III of the Charter indicate the very authentic concerns and genuine problems facing member nations and the OAU at the time of its formation: recent political assassinations and coups d'etat, border disputes and fears of territorial encroachment by larger states or by the OAU itself, and continuing putative subversive activities by some member states. Hence, the principles embody not just high-sounding phrases but actual attempts to provide solutions to states' problems. Non-interference in the internal affairs of member states and political non-alignment both were practical policies to avoid the conflict and entanglement which could only retard the peace of the Continent. While a member nation could accept aid from either side in the Cold War, the principle of non-interference could only yield to the superior objective of African liberation through fighting against neo-colonialism.³⁰

Consistent with the principles and purposes recognized in the Charter, AKS has observed that the OAU has made important contributions in the struggle against racism and colonialism. While it did not succeed in every

ries as inherited from the colonial past at the time of independence. If, however, self-determination recognizes only the fight of extant African nations (thus allowing liberation movements to continue in their struggle but not endorsing internecine warfare within independent African nations), the conflict among the principles dissipates.

Much of the struggle for independence has occurred aided by the Committee for Liberation, created in 1963. See Cervenka, *supra* note 13 at 45-63.

For a particularly interesting case of self-determination, see W. Michael Reisman, *The Case of Western Somaliland: An International Legal Perspective* HORN OF AFRICA 13, 15 and especially text at n. 10, 19 *et seq.*, (July-September 1978).

27. Elias at 122; Boutros-Boutros-Ghali, *The Addis Ababa Charter*, 546 INT'L CONCILIATION 53-55 (1964) [hereinafter cited as Boutros-Ghali]. For the text of the Charter, see 58 A.J.I.L. 873 (1964).

28. While the President of Madagascar (Malagasy) had insisted on the explicit inclusion of his country in the earlier name, this reference was not considered necessary by the Addis Ababa Conference; furthermore, the eligibility specification in Art. I, Sec. 2 particularly specified Madagascar.

29. Boutros-Ghali, *supra* note 27 at 54.

30. Elias, *supra* note 12 at 127-28; Boutros-Ghali, *supra* note 27 at 53-55. From the perspective of AKS, the Afro-Asian coalition continues as a direct possibility in international politics. Asian leaders played an important role in the early period of the African independence movement by fostering the non-aligned movement. While the African leaders at the Bandung Conference were predominantly young, the Asian leaders (e.g., Nehru, Sukarno) were not. Most would eventually disappear through age or by putsch. According to AKS, the African leaders are in the vanguard of the non-aligned nations, although the Latin Americans have made significant leadership contributions in some areas (e.g., the Law of the Sea). AKS, *supra* note 22. See also Cervenka, *supra* note 13 at 156 *et seq.* (Ch. IX: The OAU and the Afro-Arab Relations).

effort to eradicate these powerful forces, no African state has dared to publicly oppose OAU resolutions on these subjects. The OAU has also increased the bargaining power of the African states at the UN and in other international organizations. After a decision has been taken on an issue by the OAU heads of state or ministers, the African group at the UN and elsewhere is entitled to represent and defend the interests of all African states. AKS was assured that the OAU would continue its long-term struggle for African liberation. AKS has argued that the nationalists' struggle against the colonialists has been successful and the results positive. Nationalists, unfortunately, have also triumphed over the regionalists. In the battle between the nationalists and the imperialists, there remains some questions as to the final outcome; but as the end of the century approaches, the last remaining bastions of international imperialism in Africa (South Africa and the Portuguese colonies) either have fallen or are in decline.

According to AKS, in the early years of the organization, differences among African states in their views toward Europe were due primarily to the means by which they arrived at independence. Those who negotiated their independence with the colonial power thought they should cooperate, while states such as Algeria reasoned that the colonial power had been forced to accept independence but would never accept the improvement of the economic situation within the country. Naturally, there was a great deal of debate among the newly independent African states on this issue. As evidenced by the association of various African nations, the debate remains unresolved.³¹

B. *Members' Rights and Obligations*

OAU member-nations have "equal rights and equal duties", according to Article V of the Charter.³² However, the duty of budgetary support is tied to member-assessments of the United Nations; this support obligation in turn is based on "capacity to pay" under a formula which computes an assessment based on comparative national income with "comparative income per head of population"; "temporary dislocation of national economies" after WWII; and, ability to procure foreign currency factored in as additional considerations.³³ Unlike the United Nations, the OAU does not have any penalty provision for delinquent members.³⁴ Perhaps this approach suggests an African orientation that participation is to be more highly regarded than currency of support obligations—especially where the latter is beyond the capability of any particular nation.

Membership in the OAU is proffered after a nation notifies the Secretary General of its intention to join and receives an affirmative simple ma-

31. AKS, *supra* note 22.

32. Elias, *supra* note 12, at 19; Boutros-Ghali, *supra* note 27 at 55.

33. Caution is taken within the OAU to avoid undue pressure by increased payment obligations; likewise, there is concern for those wishing to decrease obligations. Elias, *supra* note 12, at 130. See also *Organization of African Unity, Council of Ministers—Declaration and Resolutions adopted at the Thirty-seventh Ordinary Session, Nairobi* (June 15-26, 1981) (CM/Res. 903 (XXXVII at 89) on new proposals for assessments.

34. The UN General Assembly may deny the vote to a member state delinquent (to a large degree) in its assessment payments; it may also waive this voting requirement in some special circumstances. Elias, *supra* note 12 at 131.

jority vote communicated by a present member of the OAU to the Secretary-General.³⁵ Termination of OAU membership occurs when a member-nation gives written notice to the Secretary-General and allows it to remain current for one year; the one year lapse allows time for the adjustment of outstanding obligations between the organization and the member³⁶. No doubt it also allows for pressure to be brought upon the terminating member-state by the OAU or its champions.

A knowledgeable source has observed that while the Addis Ababa and early meetings of the OAU failed to achieve African unity, the OAU succeeded in establishing norms of conduct for new African states; these norms (equality of all states on the continent; non-interference, respect for state sovereignty and territorial integrity; condemnation of subversive activity upon other states) are those shared by the United Nations. Considering the fact that there were no commonly accepted rules of state conduct on the continent in 1960, the establishment of norms at the Addis Ababa meeting in 1963 was a major accomplishment. AKS has noted further that the OAU Charter should be regarded as a "minimum interpretation" of what African leaders hope to establish in the way of unity. The OAU is not a supranational organization; under Article II, its mission is restricted to coordination and harmonization of the policies of member states. More nearly an inter-ministerial conference than an organization with some control over member nations, the OAU is in an advisory and recommendatory position.³⁷

C. *The Organizational Structure of the OAU*

1. *The Assembly of Heads of State and Government*

Of the four principal organs of the OAU, the Assembly of Heads of State and Government (hereinafter "the Assembly") is the supreme one. The purpose of the Assembly is to coordinate and harmonize OAU policy; to this end, the Assembly may review the structure and functioning of the other organs and specialized agencies. Mandated to meet annually, the Assembly may meet in extraordinary session upon a two-thirds majority approval of members. For regular business a quorum of two-thirds of the members is required. Decisions are made by a two-thirds majority vote, with each member state having one vote; however, procedural matters are decided by simple majority, with a simple majority required to determine whether a matter is procedural. Further, Article XI provides that the Assembly determine its own rules of procedure.³⁸

2. *The Council of Ministers*

The Council of Ministers of the OAU is composed of ministers designated by member states, whether or not these ministers had ranks in their governments of Foreign Minister or Ambassador. Designated to meet at

35. *Id.*

36. *Id.* at 131-32; see Article 32 of the OAU Charter.

37. AKS, *supra* note 22. The Addis Ababa Conference occurred in 1963. See Organization of African Unity, *Resolutions adopted by the First Conference of Independent African Heads of State and Government* 10 (1963).

38. Elias, *supra* note 12 at 134-35.

least twice a year to conduct the general business of the OAU and to prepare for the annual meeting of the Assembly of Heads of State and Government, the Council may meet in extraordinary session upon two-thirds majority approval of such a meeting request. The Council functions to implement the decisions of the Assembly and is responsible to the Assembly. The Council also considers and approves regulations for the Specialized Commissions³⁹ and the OAU budget prepared by the Secretary General⁴⁰. A quorum of two-thirds is required for Council meetings, at which each member has one vote with the adoption of resolutions requiring a simple majority of all Council members. The Rules of Procedure devised by and for the Council of Ministers indicates a type of parliamentary order similar to Robert's Rules of Order.⁴¹ That a simple majority vote requirement for resolution approval in the Council is contrasted to the two-thirds vote requirement for decision in the Assembly reflects the role of the Council as an advisory body to the Assembly which alone is empowered to make final decisions "for which a greater degree of agreement is always desirable".⁴² AKS suggests that the two-thirds majority requirement for Assembly resolutions accounts for their "moderate, compromise nature". In any case, the Council has been accorded large power not only in preparing agenda for Assembly meetings but also in making policy recommendations which are typically approved by the Assembly.⁴³

As with the quorum and super-majority decision-making requirements, an "African orientation"⁴⁴ is also specified as reflected in the fundamental and inherent democratic operating procedures of the Council of Ministers. The practice of rotation of officers until all representative ministers have had a chance to serve and the substitution of Vice Chairman and Rapporteur in the absence of the chairman reflect this orientation.⁴⁵ This apparent democratic orientation is to be contrasted with the perception of a knowledgeable source that African leaders are generally autocratic — structuring both their governments and OAU representative delegations as envoy relationships only, reserving to themselves all power and decision-making authority.⁴⁶

3. *The Secretariat*

The General Secretariat, the first head of which was Diallo Telli (Guinea), is responsible, *inter alia*, for the preparation and submission of an annual budget of the OAU to the Assembly, for the calling of extraordinary session meetings, and for the receipt of notification of other OAU members of the intention of any state to accede to the Charter or of a request to amend it. The Administrative Secretary-General who directs

39. Discussion of the Specialized Commissions appears *infra* at nn. 67 & 68 and accompanying text.

40. Duties of the Secretary-General are discussed *infra* at nn.47 and accompanying text.

41. Elias at 136-38.

42. *Id.* at 136.

43. *Id.* at 142.

44. For a discussion of an African orientation, see *infra* at n.118 and following and text thereat.

45. *See id.* at 137.

46. AKS *supra* note 22.

the Secretariat and holds office for a term of four years is aided by four Assistant Secretaries-General.⁴⁷ The concern was on the role of the Administrative Secretary-General was whether the officer was to play a political and diplomatic role or a purely administrative one. Some members regarded the role assumed by the United Nations Secretary-General, Dag Hammarskjöld, as a "dangerous precedent". However, the OAU Charter describes with care and caution the function of the administrative Secretary-General and stresses the "absolute neutrality" of both him and his staff.⁴⁸ Between the administrative and political options, OAU members definitely preferred the former, as indicated by Article XVI of the Charter. This neutrality requirement was mandated for the added reason that member states wanted non-interference in their internal affairs through subvention of the Secretariat by other member states.⁴⁹

In 1977, the General Secretariat had 350 staff members in several categories of assistance to the Administrative Secretary-General, including political and professional officers, technical, general services and locally recruited staff members.⁵⁰ Directly responsible to the Council of Ministers, the Administrative Secretary-General in 1977 controlled a budget of United States \$10 million. His duties include: a) directing the activities of the General Secretariat; b) preparing agenda for the Council and Assembly; c) establishing [or abolishing] such offices and technical apparatus as necessary to the goals of the General Secretariat, subject to the approval of the Council or Assembly in accordance with Charter requirements.⁵¹

The Secretary-General, not made an ex-officio member of the Council, Assembly, Specialized Commissions or the Commission on Conciliation, Mediation and Arbitration⁵², may be excluded from any of these organs. The Administrative Secretary-General was so excluded from the 14th Session of the Council in 1970 in Addis Ababa. At the meeting, the Council recommended that no recruiting or upgrading of the staff of the General Secretariat should occur without approval of the Council. While Diallo Telli⁵³ protested this ruling, the Assembly overruled his objection and established an advisory Recruitment Board within the Secretariat to advise on job applications; the recommendations of the Board have been "invaria-

47. Elias, *supra* note 12 at 141-42; Cervenka, *supra* note 13 at 27. For a detailed account of the uneasy choice of Secretary-General, see Cervenka's description of the political complications and negotiations attendant upon the appointment of Diallo Telli as the head of the OAU. Cervenka at 30 *et seq.* Diallo Telli, more a diplomat than a politician, was the most renowned Secretary-General to date of the OAU, according to AKS, *supra* note 22. Noting that Telli had originally been designated as the Officer-in-Charge of the Secretariat when it was originally formed until a Secretary-General could be appointed, Boutros-Ghali (Secretary-General of the UN and commentator on the OAU) notes both "procedural complications" and "political objections" from the Brazzaville Bloc as attendant upon this choice. See Boutros-Ghali, *supra* note 27.

48. Cervenka, *supra* note 13 at 27; see also the OAU Charter, Article XVII.

49. Boutros-Ghali, *supra* note 27 at 44; Cervenka, *supra* note 13 at 27.

50. Cervenka, *supra* note 13 at 27-28.

51. *Id.* at 28. Actually, the current head of the OAU (then Chairman of the Assembly) has exercised this last function. *Id.*

52. Discussion of the Commission on Conciliation, Mediation and Arbitration appears *infra* at n.62 and accompanying text.

53. On Diallo Telli, see *supra* note 47 and text thereat.

bly accepted", thus avoiding bad feeling with the General Secretariat because of this issue.⁵⁴

The General Secretariat has a number of specialized sub-bureaus for the furtherance of its function. The OAU Bureau in New York coordinates African nations in the UN and attempts to implement OAU resolutions at the UN. In addition, the OAU staff in New York indicated that part of what it perceives as its function is to acquaint "Black Americans" with the nature and goals of the OAU. OAU has begun in the last several years to interface with major Black political organizations, *viz.*, the NAACP, Transafrica and the Black Caucus, which organizations have sent observers to recent OAU sessions.⁵⁵ The OAU Bureau in Geneva is responsible for interfacing with the UN and other international offices in Geneva and for pursuing implementation of OAU regulations and views—especially on decolonization and apartheid—with these organizations. Also, the Executive Secretariat of the OAU Scientific, Technical and Research Commission in Lagos directs technical bureaus at other loci in Africa including those responsible for disease prevention, pest evaluation and control, and soil quality maintenance. The Bureau for the Placement and Education of African Refugees (BPEAR) attempts to resolve the legal, social and economic problems of refugees which preclude their resettlement in their homelands.⁵⁶ The Secretariat also interacts and cooperates closely with the U.N. Economic Commission on Africa, the African Development Bank, the All-African Trade Union, the Pan-African News Agency, and through its Inter-Africa Bureau of Languages, with international linguistic organs.⁵⁷

Another area of vital concern is the pool from which OAU representatives are drawn. OAU officials are on "secondment", which means they are subject to recall by their government at any time. Some states have no representative within the OAU because their nations do not have sufficient trained personnel to release for official international service.⁵⁸ In personnel matters, much of the criticism of the OAU is centered on the General Secretariat. One important area of contention which member states have attempted to address is that Secretariat staff members are encouraged to advance their national interests above those of the OAU.⁵⁹ Perhaps the most important criticism is that of the first Administrative Secretary-General regarding dues payment of member states.⁶⁰ When the report on dues was made public in 1968 for the first time, only half the members had made their contributions in full. In an editorial admonishing delinquent members for failure to live up to their political commitments, *The New Nigerian* warned that "by paying lip service to the organization and refusing to pay dues, member nations are making non-sense of the whole organization."⁶¹

54. *Id.* at 28-29.

55. My interview with staff members occurred at the office of the OAU in New York, 211 East 43rd Street on July 1, 1982. In 1982, the office had limited facilities; now they are in a new building with complete library accommodations.

56. The work of the BPEAR is discussed *infra* at 83.

57. Cervenka, *supra* note 13 at 35.

58. *Id.* at 30.

59. *Id.*

60. *Id.* at 31, *see also* text at n.34.

61. *Id.* at 197, n.123.

4. *The Commission on Conciliation, Mediation and Arbitration*

The Commission on Conciliation, Mediation and Arbitration, one of the four main organs of the OAU (also called the Council for the Peaceful Settlement of Disputes), attempts to settle disputes among African nations by peaceful means. As provided by Article XIX of the Charter, the composition and conditions of service are defined by a special Protocol incorporated upon its drafting and approval by the Assembly as if an inherent part of the original Charter. The centrality of the work of this commission is indicated by the number of territorial and boundary disputes among African nations.⁶² This commission helps to avoid "fratricidal wars" and interstate polemical battles".⁶³

Relative to the Commission's function of resolving disputes, AKS claims for the OAU some of the credit for dispute-resolution—despite the fact that the OAU's institutionalized mechanism has been used only once for such resolution.⁶⁴ Using selected components of the Assembly of Heads of State, certain renowned and mutually trusted leaders (Selassie, Amin, Nkrumah, Bokassa), has often been the practice of the OAU rather than submit their important disputes to an institutionalized mechanism, even one of their own creation. AKS has indicated this as an alternative device for settling disagreements. The contending states feel that they have too much at stake to trust some unknown mechanism. Further, AKS suggests that the recognition by the OAU of the territorial borders as inherited from the colonial era will downplay the tensions and conflicts likely to result if tribal or ethnic groups attempted to reintegrate themselves, superseding colonially-inherited boundaries. If there is some conflict, negotiation and conciliation are recommended for resolution. While mediation is often successfully used, so far arbitration has not been used (for the reason of reluctance of states to risk so much on an unsure outcome). In the middle 1970's, states began to be impatient with the recurrent border problems, often demanding more permanent solutions. Occasionally, hostilities have erupted over these matters.⁶⁵

The OAU Charter is silent on the relative power of resolutions of these various organs (e.g., the Committee for Peaceful Settlement of Disputes and the Committee for Liberation) regarding member states. While the objectives and principles of the OAU are precisely defined and the organs are perfectly described in the OAU Charter, no link is established between the objectives and the organs.⁶⁶

5. *The Specialized Commissions*

The Specialized Commissions exemplify further the fundamental values (means) and expectations of the African leaders in their formation of the OAU. Where these leaders were concerned about special problems, they created institutions designed to address these special needs. The Specialized Commissions as provided for in Article XX of the Charter may be

62. Elias at 143-44; Boutros-Ghali at 44-45. See also Cukwurah, *supra* note 18.

63. *The OAU in Action*, *supra*, at 10.

64. AKS; Cervenka at 64 (text at n.1) and at 201, n.1.

65. *Id.*

66. *Id.*

established as necessary by the Assembly of Heads of State and Government. Five Specialized Commissions were established by the Charter: the Economic and Social Commission; the Educational and Cultural Commission; the Health, Sanitation and Nutrition Commission; the Defense Commission; and the Scientific, Technical and Research Commission.⁶⁷ In the following year, the Organization felt that two more base values were left without agencies to pursue their development hence, two commissions were created in response thereto: the Commission of African Jurists and the Transport and Communication Commission.⁶⁸

Taking the UN specialized agencies as a model, the founding fathers of OAU wished to create their own instruments for promoting inter-Africa cooperation in the economic, social, cultural, educational, scientific technical, health and related fields. . . .

[However, i]n UN practice, specialized [commissions or committees operate within the framework of the UN and are subject to the overall responsibility of that organization whereas the Specialized Agencies are virtually autonomous organizations operating under separate constitutions.⁶⁹

Because there were special UN organs designed to operate in the same spheres with reference to the same subject matter as the OAU Specialized Commissions, and since the UN organizations were accustomed to virtual monopoly in their areas of influence, there developed tensions and clashes of interest between these agencies. Although the insider African viewpoint was proffered by the OAU Commissions, according to Cervenka, the UN insisted on operation on its own terms. For example, when a "system of communication, a payment union, and close coordination of national development plans" was proposed in the best interests of Pan-African development, rather than support of these proposals which came from representatives of the indigenous people, claims of intellectual bailiwick were demarcated.⁷⁰ Similarly, rivalry resulted with the Food & Agricultural Organization and the World Health Organization when the Health, Sanitation and Nutrition Commission proposed the establishment within the OAU Secretariat of a Public Health Division and a Bureau of Documentation and Information on public health matters to coordinate statistics, health legislation and education of medical personnel. The proposals to create an Inter-African News Agency to disseminate impartial news about Africa and to form an African Studies Institute as part of a Pan-African University died aborning because of conflict between the Educational and Cultural Commission in conjunction with the Scientific and Research Commission in opposition to UNESCO.⁷¹ Providing no match for the better-financed United Nations organs, the Specialized Commissions

67. The Scientific, Technical and Research Commission subsumed the nascent Commission for Technical Cooperation in African South of the Sahara (CCTA) which was begun in 1954, headquartered in London with no African participation. Ajomo, *supra* note 18.

68. Cervenka, *supra* note 13 at 36.

69. *Id.* at 36 and 197, n.16.

70. *Id.* at 36. See also Berhanykun Andemicael, *The OAU and the UN* (1976); *Peaceful Settlement of Disputes among African States: Roles of the United Nations and the Organization of African Unity* (1973) (both available at the UNITAR Office, United Nations).

71. Cervenka, *supra* note 13 at 66-67; 198, nn.17-20.

were re-organized in 1966 into three main commissions⁷² which still did not produce the value expectations which the OAU leaders had in creating them. Eventually, the OAU found more success in beginning to achieve the outcomes they desired by holding special-function conferences of African ministers devoted to a particular project or problem (*i.e.*, trade, finance, or disease).⁷³ During the reorganization, the Commission of Jurists again became a non-OAU organ; the OAU established its own Legal Commission which again furthered OAU's value demands of decolonization and the elimination of apartheid in its Declaration on the Activities of Mercenaries in Africa, the Declaration of the Law of the Sea and the Draft Convention on Extradition.⁷⁴ Perhaps the sterling achievement using the special-function conference mode of development is the outgrowth of the African Ministerial Conference on Trade, Development and Monetary Problems in May 1973 at Abidjan: from this meeting there emerged an "African Declaration on Cooperation, Development and Economic Interdependence", incorporating the prorogated economic proposals from ten years earlier which were later endorsed in the Tenth Anniversary Summit Conference of the OAU.⁷⁵

6. *The Defense Commission*

The objectives of the Defense Commission are "to protect the member states of the OAU from aggression (South Africa and Portugal⁷⁶ being regarded as potential aggressors), and to support liberation movements engaged in armed struggle".⁷⁷ The creation of the Defense Commission was in part a recognition of the cogency of the argument that Africa needed a centralized institution (an "African High Command" as Nkrumah⁷⁸ viewed it) to see to its common defense and in part a recognition of the rightness of Nkrumah's agreement that a continental union would be the best form such an institution could take. To allay whatever misgivings which member states might have about the intentions of a Defense Commission as to intervention in a state's internal affairs, supporters of the idea of an African High Command sought to give assurances that only the duly-constituted government could bring in the Command's forces; that even in that situation, the conditions for the use of the armed forces of the Command would be explicit.⁷⁹ Basic questions of whom the supreme commander would be, where the training and training base would be situated, what control each state would retain over its provided troops, whom the arms and ammunition supplier (and therefore political ally) would be were issues unresolved and perhaps insolvable; however, rather than defeat the proposal outright

72. The three commissions are: the Economic and Social Commission, the Defense Commission and the Commission on Education, Science and Culture.

73. Cervenka, *supra* note 13 at 37.

74. *Id.* at 37 and 198, n.22.

75. Cervenka, *supra* note 13 at 37-38.

76. In 1963, South Africa and Portugal (among a few others) were considered colonizer countries by the OAU membership.

77. Cervenka, *supra* note 13 at 38.

78. Kwame Nkrumah was one of the liberation fighters for Ghana, its first President under independence in 1959 and a founder of the OAU.

79. *Id.* at 39.

and alienate Ghana and its supporters, the proposal for an "African High Command" was referred for further study to the Defense Commission.⁸⁰

According to AKS, the weakness of Nkrumah's position lies in the fact that there was very little documentation outlining how the strong African federation he proposed would operate. Apparently, Nkrumah and his supporters projected that trust would be sufficient to assure the ascendancy of their position that Africa must unite (militarily) to survive. Nkrumah had urged AKS to be more "imaginative", but Nkrumah eventually was willing to postpone action on his idea.⁸¹

Concern for concentrated power has been expressed in other contexts. "A knowledgeable source" has voiced uneasiness over the development of a power concentration in Nigeria. Pointing to Nigeria's belief that it can become a great power within Africa because of its population, territory and resources, AKS expressed doubt that such a development of any single nation as "the" great power in Africa was for the benefit of Africa as a whole. While AKS expressed uncertainty as to Nigeria's success in persuading the Carter Administration of its potential dominance, he noted that the Carter Administration had increased Nigerian aid and had pressured the Security Council into extending Nigeria's term on the Council at the expense of Niger, a much weaker state which had been slated for the seat. AKS recalled that in 1962, Ghana, Nigeria and Zaire each had tried to persuade other African states that it was in a privileged position and should, therefore, assume the leadership of Africa. In the late 1970's perhaps only Nigeria could lay any such claim to leadership (with the possible exception of Libya). One observer casts doubt on the continuing economic viability of the Nigerian government given the emergent weakness of petrodollars there.⁸²

7. *The Bureau for the Placement and Education of African Refugees (BPEAR)*

BPEAR operates as an arm of the General Secretariat to insure the successful resettlement of African refugees, assuring that a humanitarian undertaking will be given sufficient monetary support. Supported financially by contributions from Sweden, this special bureau facilitates the return of refugees to their homes, facilitates their resettlement and resumption of a normal life in their country of origin or in another accepting country, and pursues the granting of a general amnesty to political refugees—attempting to allay their fears of persecution and assuring their full reintegration with all rights and privileges in their countries.⁸³

80. *Id.* at 39-40.

81. AKS, *see supra* note 22.

82. Jonathan Spivak, *Oil Boomerang: Nigeria, Hit by Plunge in Petroleum Exports, Faces Painful Changes*, WALL ST. J., Aug. 2, 1982, at 1.

83. Organization of African Unity, *The BPEAR—20 Questions and Answers* 1-6 (1972).

IV. APPLYING THE CONSTITUTIVE PROCESS CONCEPT

A. *The Early Years*

The OAU was formed based on an understanding of the needs of constitutive process for Africa. A look at the early years of operation of the OAU will show how the founders envisioned the fundamental problems confronting unity and survival on the Continent, elemental parts of constitutive process.

As a result of the Summit Conference of Independent States in Addis Ababa in 1963 (the same convention from which emerged the OAU Charter), resolutions were adopted supporting decolonization and disarmament and condemning apartheid and racial discrimination. Notable among the resolutions passed was an insistence that Africa as a region be more equitably represented in the Security Council; that the Economic Commission for Africa and the Security Council and other special agencies of the United Nations accept more equitable representation from African nations.⁸⁴ Because the representatives to the Summit Conference were concerned about the balance of and relations of trade intra-Africa and between African nations and foreign nations, the Conference proposed the following: the reconsideration and restructuring of African international trade; the coordination of development of means of transportation and road, air and maritime systems; the establishment of a common external tariff to protect emergent African industries; the setting up of a raw resources price stabilization fund; the establishment of an African Development Bank and the search for guarantees from consumer countries of a world market outlet for African trade.⁸⁵ According to AKS, the OAU has only passed resolutions about cooperation to resolve intra-Continental economic problems, but has taken little action. However, this critic does elsewhere caution that Africa, at that time, had only been independent for twenty years.⁸⁶

In the area of social and labor matters, the Summit Conference proposed various attacks to raise the standard of living in Africa and to improve the sense of African solidarity, among African youth especially. The proposals included: the conduct of social and labor studies on Africa; the exchange of social and labor legislation; the establishment of an African Youth Organization; an African Scouts Union; and, an annual African Sport Games.⁸⁷ With an eye toward the furtherance of African unity, the Conference proposed educational and cultural cooperation among African states to overcome the linguistic barriers amongst the African people. Ethiopia proposed the establishment of an African Studies Department at the African University. The Conference also proposed the introduction

84. *Resolutions adopted by the First Conference of Independent African Heads of State and Government* 10 (May, 1963) (compiled in ORGANIZATION OF AFRICAN UNITY: RESOLUTIONS AND DECLARATIONS OF ORDINARY AND EXTRADINARY SESSIONS 100 (1963-1969)).

85. *Resolutions* at 11-13. See generally Organization of African Unity, Assembly of Heads of State and Government, *Resolutions and Declarations of Ordinary and Extra-Ordinary Sessions* (includes resolutions from 1963-1969); see also Council of Ministers, *Resolutions of Ordinary and Extraordinary Sessions* (includes resolutions from 1963-1969).

86. AKS, *supra* note 22.

87. *Resolutions* at 15.

and exchange of programs in the major African languages for African broadcasting stations and the establishment of an African News Agency.⁸⁸

As a part of the function of the OAU Commission on Health, Sanitation and Nutrition, the Conference proposed studies on health problems in Africa; the planning of programs to raise the health standards of African people through exchange of information of endemic and epidemic diseases and the means to control them; the exchange of health legislations, mutual assistance in procuring doctors, nurses, technicians and education for medical students; and the furtherance of sanitation and nutrition development in all African States.⁸⁹

In special resolution, the Summit Conference established a Provisional General Secretariat with headquarters in Addis Ababa which would carry out the tasks assigned by the Conference until the ratification of the OAU Charter. Also, the first meeting of the Council of Ministers was appointed at Dakar, Senegal.

The Assembly of Heads of State and Government held its first meeting in July 1964 and appointed President Gamal Abdel Nasser (United Arab Republic) as Chairman of the Session. The Assembly requested that the international commercial countries discontinue their investments and commercial relations with the Pretoria government and decided to deny any right of overflight or use of port or other facility for transport or communication to or from South Africa.⁹⁰ Further, the Assembly requested the release of African nationalists imprisoned in South Africa, appealed for the discontinuation of trade with, and oil supply to, South Africa and expressed an intention to establish an economic boycott and other sanctions aimed at the dismantlement of the policies of apartheid and racial discrimination in South Africa. In calling on the liberation movements in Southern Rhodesia and the Portuguese Territories to intensify their efforts toward independence, the OAU pledged its support to these struggles.

Among the other resolutions of the Summit Conference were declarations against making Africa a nuclear zone, against racial discrimination in the United States, and supporting an Afro-Asian Conference. The Assembly affirmed its support of the territorial integrity and sovereignty vis-a-vis South Africa of the soon-to-be independent nations of Basutoland, Bechuanaland and Swaziland. Further, the Assembly endorsed the movement to achieve a reconciliation of the Popular Liberation Movement of Angola (MPLA) and the Revolutionary Government of Angola in Exile, and urged the peaceful resolution through conciliation of the border dispute between Upper Volta and Ghana. Finally, the Assembly urged the updating of payments to support U.N. peace-keeping operations.⁹¹

A few reflections summarize the placement of OAU actions in the context of global politics. Whether certain nations within the OAU should abstain from special contacts with major outside powers on a quid-pro-quo basis, if it was felt that such outside relationships were impairing its effec-

88. *Id.* at 16.

89. *Id.* at 23-28.

90. MYRES S. MCDUGAL AND W. MICHAEL REISMAN, *THE PUBLIC ORDER OF WORLD COMMUNITY* 1075 (1981).

91. *Id.*

tiveness and African unity in general, persists as an issue of solidarity. AKS asserted that any privileged relationship was acceptable so long as the outside power did not "use" the African state to the detriment of another African state. Thus, during the debate on the Cuban presence in Africa, certain states were told that they could maintain special ties with Cuba, so long as this link did not result in interference in the internal affairs of another African state.⁹² This position comports with the OAU position of non-alignment generally and may be applicable to relationships with super-powers as well as with states like Cuba.

When asked what conditions would prevail before Zimbabwe and South Africa could enter the OAU, AKS has indicated that any independent state which accepts the norms of the OAU Charter could receive membership. This condition historically has excluded Rhodesia, South Africa and the "homelands" (Transkei and Bophuthatswana)⁹³—because these states embodied violations of the Charter relative to colonialism and independence.

In addition, other fundamental issues have complicated the success of the OAU. As if the issues of border disputes, coups d'etat, assassinations and intercontinental relations were not enough problems, ideology has become prominent in the 1970's and 1980's, particularly with the rise of Mozambique, Angola and Guinea-Bissau to statehood. During a meeting in Uganda, Samora Machel of Mozambique openly confronted Senegal's aging leader, Leopold Senghor. According to AKS, Machel declared that he could not be Senghor's "brother" and, indeed, was his enemy since they belonged to different ideological camps. Senghor was shocked by this outburst for this confrontationist attitude is certainly something new in African relations according to AKS. AKS further remarked that the "so-called revolutionary" states in Africa were audacious during the trouble in Zaire in the late 1970's, trying to push the organization in a certain ideological direction. There was also an effort to destabilize certain African countries which had concentrated their resources on economic development rather than the creation of an important military force. AKS has suggested that such states in danger of destabilization may no longer be able to hide their weakness behind a shield of "nonalignment". Most African states, according to AKS, agree that the transformation of the OAU from a moderate to a revolutionary organization would destroy its mandate altogether.⁹⁴ Primarily because the heads of African states in general want to conserve their positions of leadership and dominance, a revolutionary stance for the OAU would threaten incumbency in their positions.

AKS has also indicated that the maintenance of the OAU as we know it continues to be a problem requiring constant vigilance. Because of the surviving and re-emergent tensions present from the early 1960's when

92. AKS, *supra* note 22.

93. *Id.* This exclusion, while correct for Rhodesia, would not have included Zimbabwe. Zimbabwe became independent on April 28, 1980 and joined the OAU on June 18, 1980 (date of admission equated to date on which delegates were admitted to the Council of Ministers). See C.O.C. Amate, *Inside the OAU: Pan-Africanism in Practice*, 1986, Appendix G: Member States at 585. The recent advent of the government of President Mandela in South Africa should clear the way for its admission to the OAU.

94. AKS, *supra* note 22.

there existed the pre-OAU groups represented in the Brazzaville, Casablanca and Monrovia Blocs and other subregional groupings, there is the possibility and tendency toward refractation which could splinter the Organization.⁹⁵ Evidence of this possibility of splitting into groups somewhat along its pre-organizational lines are the press accounts of OAU squabbles over the admission to member-state status of the Polisario-sponsored Western Sahara state.⁹⁶

B. *The OAU in Action*

Constitutive process essentially assures the continuing ability of a group (nation) to maintain and recreate itself. To enable a society to perpetuate itself, decision-makers must assure that basic needs are provided (the economic sphere), that problems in providing food, shelter and security can be redressed (basic governmental institutions) and that social and political rights abuses have mechanisms for their resolution (judicial function). Hence, to understand the operation of constitutive process in Africa, it is necessary to have some insight into how these functions are addressed.

Extant problems of constitutive process for African unity can be illustrated through analysis of three areas of concern: a) possibilities of transnational economic cooperation; b) the domestic jurisdiction doctrine; and c) human rights practice.

1. *African Economic Cooperation*

With the new prominence of the European Economic Community, African regional and continental organizations may observe parallel possibilities for their own institutions within the African context. Europe after thousands of years of intermittent war, strife and internecine conflict has come to a point where such divisions may be put aside in the self-interest of the nations for increased trade, increased markets and thereby increased productivity—leading to (but also resulting from) increased international cooperation. Likewise, after years of planning, struggling and working together for the establishment of mutual cooperation and trust, Africa may be on its way, through such organizations as the OAU, to taking its place in a new world order where trade, diplomacy and negotiation mediate the conflicts and tensions between nations.⁹⁷ Noting the European Economic Community's capture of significant competitive advantage in Europe, Africa became concerned that its interest in the world market could be as-

95. *Id.*

96. Libyan leader Col. Muammar el-Qaddafi stated that he was prepared to form a break-away African movement if the OAU Summit scheduled for August 1982 could not be reconvened. Twenty-two nations had refused to send delegates to Tripoli in protest of the membership of the state sponsored by the Polisario guerrilla movement—a movement fighting Morocco for control of the territory. Thirty-four countries of the 51-nation membership must be present to constitute a quorum; only 26 were in attendance. Efforts by OAU leaders are being made to reconvene in Tripoli with the requisite quorum. *Qaddafi Threatens To Form O.A.U. Rival*, N.Y. TIMES, Aug. 9, 1982, at A5.

For follow-up on the developments in Western Sahara, see also G.J. NADDI, THE ORGANIZATION OF AFRICAN UNITY—AN ANALYSIS OF ITS ROLE, at 45-68 1989 (discussing the status of Western Sahara which presented a nearly intractable problem for the OAU and caused several of its annual meetings of Heads of State to fail).

97. See Ajomo, *supra* note 18, at 61, 87.

sured only through economic unity of action to overcome years of divisions based on cultural, ethnic, political and geographical obstacles.⁹⁸

In attempting to rationalize its economic landscape, what obstacles confronted Africa's leaders? Compared to other areas, Africans have shorter life expectancy, higher infant mortality and lower literacy rates of all developing regions, according to a U.N. Development Program Study.⁹⁹ The United Nations maintains a comparative political and economic measurement in its Annual Development Index: out of 160 countries, 32 of the lowest 40 are in Africa.¹⁰⁰ Dropping from 1.9% to 1.2% of the world's gross national product between 1960 and 1989, Africa is slipping in competitive advantage in the world's economic market.¹⁰¹ Tripling since 1980 to approximately \$174 billion, Africa's external debt continues to mortgage the future of African people.¹⁰² However, in economic development, Africa is arguably ahead of Eastern Europe and the former Soviet Union. In 1992, Africa had more free markets and more regional economic ties than those areas.¹⁰³ However, given the plans for investment in former USSR and eastern Europe by American and European business interests and the current stand-offish orientation toward investment in Africa, that lead may not last long.¹⁰⁴

2. *The Domestic Jurisdiction Doctrine*

The domestic jurisdiction doctrine¹⁰⁵ holds that intervention in the affairs of member states is to be avoided. However, at no point and in no other place is the term "intervention" definitely characterized. Indeed, the question as to the meaning of the term intervention has been scrutinized. Does "intervention" mean: a) interference in the affairs of one state (without its permission, of course) by another state; b) dictatorial interference of one state by another; c) unsolicited military invasion; d) political assassination and subversion in one state by another state; e) inquiry, discussion, recommendation relative to the affairs of one state by another?¹⁰⁶

Within the auspices of the OAU itself, discussion and study focused on a given nation would not constitute intervention. Any of the other categories listed above, however, might constitute sufficient interference to amount to intervention. Unlike the OAS, the OAU Charter has no specific regulations for the management of OAU reaction to human rights violations within member states' domestic jurisdiction.¹⁰⁷ Without provision of such a mechanism for world order, assurance of the preclusion or early

98. *Id.*

99. See *The Plight of Africa*, WALL ST. J., May 25, 1990, p. 1.

100. Lance MORROW, *Africa: The Scramble for Existence*, TIME, September 7, 1992 at 42 (article details Africa's present malaise from famine and drought to war, economic decline and corruption of the political and social elites without placing sufficient emphasis on the underdevelopment of Africa by European powers during the colonial and post-colonial periods. But see WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA*, 1972.

101. Morrow, *supra* note 100.

102. *Id.*

103. *Id.* at 46.

104. *Id.* at 42.

105. *Id.* at 589-90.

106. *Id.* at 591.

107. See I. Brownlie (ed.), *BASIC DOCUMENTS ON HUMAN RIGHTS*, 1981.

resolution of violence and violent conflict between nations is lacking. Constitutive process is negated where international elites fail to reduce the possibility and the unsanctioned use of violence as a mediator in affairs between states.

Recent events on the continent have caused African leaders to re-evaluate the domestic jurisdiction doctrine and the position of the OAU relative to turmoil internal to a state. Where conditions reach crisis proportions within a nation, African leaders near the end of the 1980's began to recognize that there were often ramifications for the whole continent. Further, Africa's adoption of its own human rights charter and the assertions and positions therein taken have prompted the OAU and other African leaders to an acknowledgement that an internal crisis must be considered part of the Continent's agenda. According to OAU Secretary-General Salim A. Salim, a new attitude and resolution regarding internal conflict is beginning to take hold in the OAU. Before 1990, according to Salim, the OAU could not be involved in internal conflict; since 1990, African leaders have begun to assert that whether conflict is intra- or interstate, there must be a collective approach to African affairs.

3. *Human Rights Practice—Somalia as a Microcosm*

The Universal Declaration of Human Rights (UDHR)¹⁰⁸ was the beginning of the recognition that persons as human beings have rights independent of their governments, independent of their citizenship status. Further, as a demarcation of the recognition by the international community that citizens had rights apart from those devolved from their citizenship status, the UDHR served to engender the impetus to create the African Declaration of Human Rights. Where a collection of state leaders recognizes that persons are not only citizens or subjects of states, but also individuals with basic needs and aspirations, those leaders acknowledge that a state's internal affairs which cause famine and genocidal conditions must become the concern of the wider community. In the OAU, African leaders have made this acknowledgement in the African Human Rights Declaration and more recently in the pronouncements of its current Secretary-General Salim regarding especially the situations in Somalia, Sudan and Mozambique.

Notable among the differences between African and Western states are: a) the communitarian organization of African life and culture¹⁰⁹ which means that one African *weltanschauung* focuses on ethnic-cultural not individual rights; that decisions are made by group consensus; that concentrated wealth is commonly [although not always] redistributed. Ascriptive values emphasize the ethnic-cultural center in one's group: assuring a com-

108. From his fellows in various universities in South Africa, Robertson anthologizes an analysis of each of the prominent social and cultural as well as political and civil rights listed in the United Nations Declaration of Human Rights. Comparing the content of international law declaration and consensus with the practice in that area (torture, slavery, discrimination, etc.) in South Africa with the international standards prescribed in the Declaration, Robertson collates the requirements thought necessary by the African National Congress to achieve a democratic state. *Id.*

109. See also James S. Bowen, *Law, Legitimacy and Black Revolution: Toward a Theoretical Understanding of Contemporary Black Student Protest and Its Legacy for Modern America*, 1 YALE J. L. & LIB. pp. 92-95, esp. nn.91-92 and text thereat (Fall 1989).

munalistic orientation (including sharing of resources, clan ownership of land and decision-making by the group.)¹¹⁰ As a result of this view, justice was assured by informal, community-based decisions of the group. This model of justice allocation may not be peculiar to Africa but to many pre-capitalist, agrarian societies.¹¹¹

In any examination of human rights in Africa, some measure of achievement must be employed. Since there are no universal standards of what constitutes human rights, such measures will likely be comparative.¹¹² In making comparisons, it is important to avoid imperialistically imputing Western standards or standards derived only from industrially developed countries onto other countries now developing their economies. It may be inappropriate (and often results in predictably unfavorable characterizations) to compare African states' human rights records with those of developed Western democracies, or with former colonial "mother" countries', or to the International Bill of Rights.¹¹³ Rather, a more appropriate comparison would be based on the state of a country's social organization at similar stages of economic development and nation-building status. It may also be useful to compare present human rights status with that of a country's colonial past or with a country's own socio-political background.¹¹⁴

In the Universal Declaration of Human Rights, civil and political rights were separated from what were labelled economic, social and cultural rights. The Declaration also found certain rights derogable in national crises. In this context, in the 1970's Third World countries persuaded the United Nations to adopt an approach which prioritized national sovereignty over human rights—thereby deflecting a proper thrust of the U. N. Commission on Human Rights from investigating individual human rights abuses.¹¹⁵ However, given the centuries-old abuses of apartheid, colonialism and the slave trade, human rights abuses have historically impacted upon groups as well as individuals.¹¹⁶

To the degree that African culture or Western society is taken as the standard for evaluation, the conventions adopted by the OAU on "peoples" rights distinguishes the African cultural view. Africa, consisting largely of new nations composed of peoples which cut across ethnic and indigenous cultural boundaries, can be expected to undergo some interne-cine strife based on these ethnic and cultural factors. The process of nation-building and national solidification has reflected relatively less inter-ethnic suppression and persecution than during some periods of European and American nation-building. Indeed, ethnic slaughter has occurred in Africa; however, Somalia's experience is arguably different from the Bos-

110. Rhoda Howard, *Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons*, 6 HUM. RTS. Q. 173-74 (1984) [hereinafter Howard]; *id.* at 160-79.

111. *Id.* at 176-77.

112. See Obinna Okere, *The Protection of Human Rights in Africa and the African Charter in Human and Peoples's Rights: A Comparative Analysis with the European and American Systems*, 6 HUM. RTS. Q. 2, 141-159 (1984). See also Claude E. Welch, Jr., *The OAU and Human Rights: Regional Promotion of Human Rights* in YASSIN EL AYOUTY, *THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS*, 71-73 1994.

113. Howard, *supra* note 111, at 161.

114. *Id.* at 161.

115. *Id.* at 162-63.

116. *Id.* at 163-64.

nia-Herzegovina events—ethnic purification/cleansing differs from ethnic albeit in-clan competition.¹¹⁷

In Africa, often particularistic ties based on ethnic kinship and clan, confront (more nearly) universalistic tendencies toward nationhood. African political elites, hard-pressed to secure their often precarious holds on political power, are confronted by extant international standards which exact some attention to human rights realization (especially civil and political) which were often not present two to three centuries ago when now-developed Western powers were evolving.¹¹⁸

Given the developing status of most African states' economies, comparisons with states of similar developmental status or with states during their period of similar development would seem appropriate. In addition, comparisons of the state of human rights recognition/nonrecognition during colonial and other pre-independence periods would also be very telling.¹¹⁹ Under the colonial regimes, Africans had no political rights whatsoever. It is recognized, however, that interethnic conflicts were diminished—replaced by political subjugation from the colonial power.¹²⁰

While there have been many such crises in the last decade in Africa, the recent warring factions of the ruling clan in Somalia have lain that country to ruin and called the attention of Africa and the world to the internal problems of that nation. Since the 1991 ouster of its President, Mohammed Said Barre, Somalia has been in a state of utter siege. Without security and control mechanisms, the nation has been relegated to the power and plunder of scattered private armies that patrol both distribution of foods and other goods and attempt to maintain security measures, especially in the marketplace. Given the weak chain of command structures and the loose fealty of the warring parties, gang rule (rather than patrol by private armies) often characterizes the state of non-governance in Somalia. The disappearance of government is most notable in the absence of security measures and in the attacks, which often appear to be random, on the relief agencies attempting to stem the starvation with humanitarian food supplies.¹²¹

Created largely as a result of international neglect¹²², the crisis of famine, starvation and war in Somalia has taken a mounting toll. Even before the deposing of President Barre in January 1991, the international events set the circumstances for the debacle that became Somalia. As the result of "successive miscalculations" and "missed opportunities", Somalia has been allowed to sink beyond the abyss of devastation. In the 1970's, Somalia served as the arena of superpower dispute. Alternatively armed by the Soviet Union and the United States, Somalia came to possess the guns which have now fallen into the hands of combative warlords and roving

117. *Id.* at 164-65.

118. *Id.* at 164-68.

119. *Id.* at 164-68.

120. *Id.* at 170-72.

121. See Jane Perlez, *Theft and Extortion Halt Flow of U.N. Food to Somalis*, N.Y. TIMES, Dec. 2, 1992, at A1, c.3 (effort to feed starving thousands and provide them medicine put on hold because assault rifles in teenagers' hands are used to capture and exchange food for guns or money to buy guns).

122. Jane Perlez, *No Easy Fix for Somalia*, N.Y. TIMES, Sept. 7, 1992, 7, c.5.

gangs. The failure of international pressure on former President Barre for reform of his regime (known for its repression of internal political dissent and opposition), allowing the warlords to shoot out the dispute among themselves after President Barre was deposed, and a massive sub-Saharan drought (encompassing not just Somalia but also several of its neighbors) spell the immediate causes of the "slide into lawless abyss". The background causes of this imbroglio may be traced to the ancient history of Somali society: a nomadic existence that saw clan movement from camp-site to water well to grazing ground, encouraged an extreme individualism in social structure which reverberated in political culture. The nomadic orientation contrasted with a pastoral existence in some other parts of Somalia; some of the pastoral areas later gave rise to the cities of Somalia. According to Professor Said Samatar, a Somali who is Professor of African Culture, Rutgers University—Newark, it was practically impossible for Somalis of different clans to come together, given the structural independence of the nomadic life closely tied to the camel, which breeds a sturdy independence in individuals. There were no tribal chiefs with unquestionable authority. When England conquered the North (of Somalia) and Italy, the South, a colonial period began which promoted centralization; but the colonials left without completing the centralization process—the old structure of Somali independence was destroyed but nothing new had been established to replace it. The old nomadic restlessness retained a powerful sway. When President Somarky was assassinated, Barre took his place in a coup and was initially allied with the Soviet Union. When the Soviet Union switched its superpower-client relationship from Somalia to Ethiopia after the demise of Haile Selassie by Marxists, the United States (formerly in support of Selassie) saw its chance to cultivate a client relationship with Somalia. When Barre himself was deposed in 1991, the factions of the ruling clan could not decide how to or with whom to replace him. Six hundred thousand refugees were displaced from Somalia alone during this period. Two thirds of the population faced starvation. Five to seven thousand died every day. After Barre collapsed, the United Nations aid was criticized as providing too little, too late. In December 1992 as the United States prepared to lead a humanitarian assault to deliver food, it was feared the United States might be bringing "too much, too late"—that the United States would overrun Somali society.

On Friday, December 4, 1992, President Bush announced that United Nations Secretary General Boutros Boutros-Ghali had accepted the United States offer to send American troops to clear a path for the delivery of food to the starving in Somalia. The mission articulated for the American-led troops, to be joined by others from a dozen other states including France, Kenya, Canada, Belgium, Italy and Turkey, was to create a secure environment in the hardest-to-reach parts of Somalia and once such area was secured, to withdraw United States troops leaving the secured territory under control of United Nations peacekeeping forces.¹²³ In essence, the

123. Jane Perlez, *U.S. Move Might Save Somali Relief* N.Y. TIMES, Nov. 29, 1992, at A14; Paul Lewis, "U.N. Leader Seeks Large New Effort to Assist Somalis—Wants Right to Use Force" (Secretary General Boutros Boutros-Ghali urges use of international force to remove obstacles to food delivery in Somalia; General Colin Powell, Chair of Joint Chiefs of Staff, wants to maintain decisive U.S. control over military operation). Jane Perlez, *Food Piling Up in Somali Port as*

American-led forces were to open a supply route; get food moving; and to assure United Nations control and ability to keep it moving. In order to assure the efficacy of this "Operation Restore Hope", military personnel responsible for infrastructure (re-establishing airstrips, road- and bridge-building, drilling wells) would accompany combat troops.

In consideration of the famine, violence and starvation, African leaders might undertake to establish appropriate protocol for similar situations in the future. Even if unable to send their own troops to the area, a policy statement at an early point might have staved off much of the suffering and loss of life through starvation and internecine slaughter. Because the OAU perhaps wisely rejected an African High Command and the consolidation of military power necessitated by that approach, a single force under African direction is not available for such crises. Individual leaders' interests and statist fears continue to preclude such an approach; however, with the prevalence of guns, private armies and armed camps, some effective military force is necessary for the survival of peoples confronting simultaneously the plagues of drought, war and famine.¹²⁴ One approach, promulgated by Philip Johnston, President of the relief agency CARE In-

Many Starve, N.Y. TIMES, Dec. 12, 1992 at A1; Raymond Bonner, *Buy Up the Somali Guns*, N.Y. TIMES, Dec. 2, 1992, at A23 (purchase of guns and arms is one method to disarm Somalia). This practice was used reportedly with success in the Panama conflict context. However, a part of the concern in Somalia is that money from such purchases might be used to buy bigger guns; such re-arming might be put to even more detrimental use once American troops are withdrawn. See also Jane Perlez, *US Role Is Not To Disarm Somalia, Aide to a Top Somali Insists*, N.Y. TIMES, Dec. 6, 1992, at 14 (assistant to a warlord has indicated that disarming should be done by Somali police, not by American troops, who should be a friendly not an occupation force.) However, the national police force in Somalia has been non-existent since President Barre was deposed. Paul Lewis, *U.N. Council Essentially Agrees to U.S. Command in Somalia*, N.Y. TIMES, Dec. 2, 1992, at A18 (the U.N. Security Council agreed that America could appoint the leader of the military operation to clear path for aid delivery in Somalia. Other nations, including Italy and African countries, would contribute troops to the effort). Elaine Sciolino, *Doubts at the CIA*, N.Y. TIMES, Dec. 2, 1992, at A18 (C.I.A. intelligence reported that because anarchy was so pervasive and the influence of warring factions and their followers so entrenched, that a permanent government would be hard to establish. C.I.A. predictions that a U.N. protectorate or formal trusteeship administered by a power outside Somalia was a probability).

See also Michael R. Gordon, *U.N. Backs Somalia Force as Bush Vows a Swift Exit; Pentagon Sees Longer Stay*, N.Y. TIMES, Dec. 4, 1992, at A1 (White House Spokesman Fritzwater has said that Inauguration Day 1993 is the withdrawal projection date for U.S. troops in Somalia, confirming White House hopes for a swift entrance, short stay and quick exit; the Pentagon predicts a somewhat longer stay. Gen Colin Powell has estimated a 2-3 months stay).

Somalis are reported to expect that American troops will provide not only a plan to deliver food and medicine, disarm the population, and "get political and economic reconstruction going", but that the American mission will facilitate the reopening of schools, job training and road-paving. Absent American leadership in these areas, some of the Somali educated cadre feel the country will revert to chaos. Jane Perlez, *Expectations in Somalia*, N.Y. TIMES, Dec. 4, 1992, at A1. See also *Intervention in Somalia—White House and UN Muddy the Mission*, N.Y. TIMES, Dec. 4, 1992, at A30; Paul Lewis, *First U.N. Goal Is Security, Political Outlook Is Murky*, N.Y. TIMES, Dec. 4, 1992, at A14; *Excerpts from a Resolution on Delivery Somali Aid*, N.Y. TIMES, Dec. 4, 1992, at A14. See also Michael R. Gordon, *U.S. Is Sending Large Force As Warning to Somali Clans*, N.Y. TIMES, Dec. 5, 1992, at A5 (sufficient force to "dominate" countryside, resist and thwart any counter-attack by warring Somali warlords or clans outlined by Gen. Powell).

124. Note that the United Nations has recently called for the establishment of its own permanent emergency army wherein various member nations would designate specific troops under United Nations command and for international deployment purposes. Note also that President Bush has said that no American troops would be available for such purpose. N.Y. TIMES, October, 1992

ternational, is to broker an agreement (with or without the permission of the rapacious warlords) through the main cities (especially the port-capital Mogadishu) to assure that the international food relief can be safely landed and distributed.

Some commentators today observe that the time for nationhood has past—that the peoples of the world live in an international community, a global village. A look at Europe and its difficult and tumultuous route toward unification suggests that if nationhood is withering, its aftermath may not be transnationalism but ethnic rivalry and tension. The hostilities to foreigners in Germany,¹²⁵ the near-rejection of the Maastricht Treaty by Europeans¹²⁶ (first by the Danes and then by France with strong opposition noted in Britain), the break-up of Czechoslovakia, the fratricide and internecine slaughter in Sarajevo and the rest of Yugoslavia, the re-emergence of ethnic war in several sections of the former USSR—all bespeak the re-emergence of ethnic group conflict which nationhood had (at least temporarily) quelled. As Africa moves from its period of national consolidation—overcoming language, clan and custom, i.e., cultural specificity, distinction and divisiveness, nation-building becomes less important. However, the constitutive approach (and the need for it) remains an ongoing process. Nonetheless, nation-building may be a necessary pre-requisite for transnationalism.¹²⁷ Before a transnational consciousness can emerge, before an international value system can be grounded, given a world of nations—perhaps a national consensus is requisite.

Primary among the matters calling for attention were the human rights problems in the eastern Horn of Africa,¹²⁸ especially the starving of Somalia in 1992. The tragedy in Somalia is captured in the deaths of 100,000 people from civil war. Two million people (one third of the popu-

125. Ferdinand Protzman, *Germany Fears Spread of Rightist Unrest*, N.Y. TIMES, Aug. 28, 1992, at A9 (Neo-fascist rioting and confrontations with law enforcement officials raise questions of whether German Naziism may be undergoing a resurgence). See also Craig R. Whitney, *350,000 in Germany Protest Violence Against Migrants*, N.Y. TIMES, Nov. 9, 1992, at A1 (most of German citizens against neo-Nazis who perpetrate violence against foreigners, but violence and xenophobia continue).

See also Roger Cohen, *Cross v. Crescent: The Battle Lines Are Being Redrawn in Bosnia Along Old Religious Scars*, N.Y. TIMES, Sept. 17, 1992, at A14 (religious polarization, extant since Medieval Period, adds to ethnic division basis for "purification" syndrome); Craig R. Whitney, *East Europe's Frustration Finds Target: Immigrants*, N.Y. TIMES, Nov. 13, 1992, at A1, (further documentation of East European and German xenophobia). See also Richard W. Stevenson, *A Unifying Europe Tries to Dot the 'i's*, Nov. 16, 1992, at D1 (problems of unification explored as reality of single market is established). William E. Schmidt, *European Unity: Reaffirming Respect for Diversity*, N.Y. TIMES, October 18, 1992, at 12 (possible shift against "United States of Europe" concept noted as European diversity is emphasized).

Sixteen people have been killed in nearly 1800 incidents in Germany in neo-Nazi attacks so far this year. MacNeil Lehrer News Hour, PBS, 7:00 p.m., November 27, 1992.

126. Alan Riding, *The High Cost of Unity*, N.Y. TIMES, September 1992, A1 (L), c.4 (problems mostly—especially in coordinating the monetary systems of several countries—but some potential in regionalization of Europe). See also William E. Schmidt, *Major Barely Wins Test Vote on European Union*, N.Y. TIMES, September 17, 1992, A5, c.1. See also Alan Riding, *Europeans Delay Plan to Abolish Passport Checks*, November 23, 1992, A1(L), c.6.

127. Transnationalism involves establishing centers of power in economics, defense, culture and other aspects of government beyond national boundaries.

128. The Horn of Africa includes countries in its northeastern section (Ethiopia, Somalia and contiguous areas).

lation) remain at risk. Five hundred Pakistani troops have landed in Mogadishu to assure the distribution of food.

While the factional fighting continues, various non-governmental organizations (The International Red Cross, Save the Children Fund, Ox-Fam, Doctors without Borders) began to provide aid.¹²⁹ International response belatedly began to achieve some results despite the fact that the OAU had called for humanitarian assistance to the Somalia region some months before the international community began to react at all.¹³⁰ However as a part of the "marginalization process" in the post-Cold War context¹³¹, the Horn of Africa was not receiving the kind of attention the region received during the Cold War period. As Boutros-Ghali¹³² mentioned, he had received no real pressure to do anything for Somalia until late in 1992. According to OAU Secretary-General Salim, the OAU was not equipped to act swiftly and effectively in crises in areas like Somalia; "[t]he UN has been too slow; OAU [wa]s not blameless; and the international community [wa]s not without fault," according to Secretary-General Salim. However, in terms of mobilizing sensitivity, the OAU can and did act.¹³³

Food finally came to Somalia. But more than food is needed. The UN has considered providing water, electricity, sewage disposal, measles vaccinations, seeds and tools. However, what is needed is some governmental structure. Government would provide, at least, order, security, safety for inhabitants, and moreover, assure some mechanism for the distribution of food that was piling up dockside at the harbors of Mogadishu.¹³⁴

In addition to the general trauma that has overtaken Somalia, several other countries in Africa may be on the verge of famine, starvation, pes-

129. Jane Perlez, *No Easy Fix for Somalia*, N.Y. TIMES, September 7, 1992, 7, c.5. (International Committee of the Red Cross continues to lead fight against devastation and starvation in Somalia).

130. See Lawrence Morrow, *Africa: The Scramble for Existence*, TIME, September 7, 1992 at 42-43, 44-45.

131. Michael Clough, *The United States and Africa: The Policy of Cynical Disengagement*, CURRENT HISTORY, 91, 565 (May 1992), pp. 193-195 (present American position represents adoption of a "wavering, hypocritical policy" of low spending, low profile, no controversy, avoidance of controversial issues, deemphasizing African affairs as an important part of world politics). See also Michael Clough, *Free at Last? United States Policy toward Africa and the End of the Cold War* (New York: Council on Foreign Relations, 1992).

132. Boutros Boutros-Ghali, renowned scholar on Africa, the Middle East and the OAU ascended to the post of Secretary-General of the United Nations in 1992. He is the first African to hold the post.

133. Interview with Salim A. Salim, Secretary-General OAU, Charleyne Hunter-Gault, McNeil-Lehrer New Hour, PBS, October 5, 1992.

See also Jane Perlez, *U.S. Says Airlifts Fail Somali Needy—Relief Team Warns Fighting Preventing Delivery of Food to Tens of Thousands*, N.Y. TIMES, July 30, 1992, at A9. See also Jane Perlez, *In the Desperation of Somalia, Even the Proud Flee*, N.Y. TIMES, Aug. 23 1992, at 3 (primarily over land routes—but also by sea—one million to one and a half million Somalis flee into neighboring Kenya Ethiopia, Djibouti and Yemen from starvation and war).

134. See Jane Perlez, *Accord Reached, Somalia Airlift Will Start Today*, N.Y. TIMES, Aug. 28, 1992, at A3. See also Jack Kelly, *Somalia 'will soon be gone,' USA TODAY*, Sept. 25, 1992, at 7A. See also Jane Perlez, *Food Piling Up in Somali Port As Many Starve*, N.Y. TIMES, Nov. 2, 1992, at 1. But see Jane Perlez, *A Somali Place That Even the Alms Givers Fear*, N.Y. TIMES, Nov. 9, 1992, at A3 (in villages where no security for food distribution workers is provided, relief agencies withdraw their workers; starvation recommences).

tilence and war. Both Mozambique and parts of the Sudan¹³⁵ may be about to undergo devastation similar to that in Somalia. According to a report by Claude Adams, war, famine and poverty have led to the displacement of 5 million (1/3 of the population) in Mozambique. There have been two rainless years aggravated by a bush civil war. Renamo is reported to kidnap, torture and kill civilians in its war against the government. Fifteen percent of humanitarian aid is reportedly stolen. Thirty percent of children die before the age of five. There are problems of malaria, malnutrition and other pestilence. One hopeful sign, unknown to many Mozambiquan citizens: there has been since October 1990 an accord for a cease-fire among warring factions which should begin to end the civil strife in their country.¹³⁶

Mozambique is experiencing an unprecedented drought coupled with a situation of civil strife. Thousands of countrymen are dying, many are being maimed by land mines. Salim found this situation more than frustrating; he described it as painful and distressing to see Africa in this kind of crisis. African countries must assume their own responsibility to take care of the problems in Africa.

The situation in Namibia illustrates much of the problem with colonialism and apartheid. South Africa occupies a foreign territory with 100,000 South African troops. Widespread abuses (torture, illegal detention and murder) have been reported by Amnesty International. Whites, 8% of the population, occupy 82% of the land; Blacks, 92% of the population, occupy less land which is also unarable. Black Namibians, (99% of them) who earn less than the \$100 month necessary for basic needs, make 24 times less than whites. White infant mortality per 1000 births is 21.6; Blacks', 163. White life expectancy is 68-75 years; Blacks', 42 years. In 1981, health expenditure for Blacks was less than \$1 per capita.¹³⁷

One of the major threats to the survival and thriving of Africa is the AIDS crisis.¹³⁸ A scientist has projected that the current population

135. Famine and starvation, which now plague much of southern Sudan, was also brought on by a civil war and a two-year drought. CNN (Cable News Network) Broadcast, October 31, and Nov. 1, 1991. See also Alan Cowell, *Mozambique Leaders and Rebels Sign Peace Pact*, N.Y. TIMES, Oct. 5, 1992, at A10.

136. See also Cowell at A10.

137. Leila McDowell (co-director for media, Namibia Information Service), Letter to the Editor, N.Y. TIMES, May 12, 1987, at A30.

138. Stanford J. Ungar, *AIDS Cases in Africa: An Everyone Epidemic*, L.A. TIMES, Jan. 15, 1989, at V2. Jim Hoagland, *Africa Faces the AIDS Threat*, WASH. POST, Jan. 17, 1989, at A23 (virus primarily transmitted by heterosexual means rather than through homosexual or intravenous routes as in the West). Colleen Lowe Morna, *Africa on Offensive Against AIDS*, CHRISTIAN SCIENCE MONITOR, Jan. 17, 1989, at 6. Kenneth R. Noble, *AIDS Linked to TB Outbreak in Africa*, N.Y. TIMES, Jan. 29, 1990 at 14; Marilyn Chase, *Struggle Against Epidemic in Africa: Poverty Is Insurmountable Obstacle*, WALL ST. J., June 7, 1989, at B4; Marilyn Chase, *AIDS Chief Hindered by Scant Resources*, WALL ST. J., June 20, 1989, at B9 (WHO, chief sponsor of AIDS Program in Africa, has little with which to fight pandemic). Erick Eckholm, *What Makes the 2 Sexes So Vulnerable to Epidemic*, N.Y. TIMES, Sept. 10, 1990, at 15; *AIDS in Africa: An Atlas of Spreading Tragedy*, N.Y. TIMES, Sept. 10, 1990, at 15; Erick Eckholm with John Tierney, *AIDS in Africa: A Killer Rages On*, N.Y. TIMES, Sept. 16, 1990, at 1, (series of four articles detailing pandemic). John Tierney, *AIDS in Africa: Experts Study Role of Promiscuous Sex in the Epidemic*, N.Y. TIMES, Oct. 10, 1990, at A10 (Circumstances and practices which by their greater presence differentiate Africa from the West: male polygamy, looser conjugal bonds with greater independence for women; higher value on female fertility than female chastity; absence or de-

growth rate for Africa will likely fall to a negative growth rate after the turn of the century due in part to HIV infection and AIDS. Estimates by other experts from the World Health Organization of the United Nations and the Population Council of New York have predicted lower growth rates for Africa but not negative rates.¹³⁹ The World Health Organization currently estimates that there are six million Africans infected with HIV; that 10 million will be infected by 1995. However, World Bank experts do not project a decline in African population from AIDS. Instead they estimate that "sub-Saharan Africa's population will rise from 548 million (1992) to 2.9 billion by 2050."¹⁴⁰

At a conference to inaugurate a new era of relations with Africa for African-Americans through Africa support committees, Leon H. Sullivan, retired Black minister who in 1977 devised a code of conduct for American corporations doing business in South Africa, recently encouraged Black Americans to discover the rich African heritage and join his effort to stimulate support for African economic development in the post-Cold War period of inattention to Africa.¹⁴¹

V. OVERALL POLICY RECOMMENDATIONS

In consideration of the needs identified, made cognizable from a perspective emphasizing the requirements of constitutive process, several projections are in order. For policy-makers in these and similar areas of the world, the following recommendations should be taken into account: First, listen more closely to the Congressional Black Caucus and the on-the-scene relief agencies (International Red Cross, Ox-Fam, etc.) that have been in the vanguard in urging the Bush Administration to take a more aggressive role in resolving the Somalia crisis. Second, pay closer attention to members of the Security Council (especially those from African countries) and to the Secretary-General of the United Nations in his calls for stronger pacification, reconciliation and rebuilding efforts to create a lasting peace in Somalia. Third, involve the OAU and other African countries in resolving the Somali situation. Although the situation is complicated by the fact that the front-line countries have either been in recent conflict over territorial questions with the former President Barre (viz., Kenya to the South and Ethiopia to the North and West in the Ogaden territory) or have their own drought and famine-related consequences about which to plan, their

emphasis of class system with its protection of land inheritance arrangement. Further, AIDS is leading to changes in sexual relation practices: more monogamy, heightened selectivity of partners and use of condoms). Michael A. Hiltzik, *Africa Facing Reality of AIDS War Amid Social Changes in Urban Life*, L.A. TIMES, Nov. 14, 1988, Sec. at 1 (promiscuity reportedly a hallmark of social-sexual behavior of Africa's emerging middle class). See especially Dennis C. Weeks, *The AIDS Pandemic in Africa*, CURRENT HISTORY, (May 1992) 208-213 (focus on the demographic and economic consequences of AIDS on Africa's populations).

139. Jane Perlez, *Briton Sees AIDS Halting African Population Rise*, N.Y. TIMES, June 22, 1992, at A8.

140. Lawrence Morrow, *The Scramble for Africa*, TIME, Sept. 7, 1992, at 42.

141. Kenneth B. Noble, *A Meeting Place for Africans and U. S. Blacks*, N.Y. TIMES, Apr. 18, 1991, at A8. Note also that Jesse Jackson, African-American activist and minister, with Nigerian President Babangida, suggested that reparations to Africa for the slave trade might be one source for investment attempts to achieve resurgence of the African economy. Most commentators view the chances of success for such a proposal as zero. See especially Morrow at 46.

input must be taken into account. They urge a frank and free review in the OAU on the crisis of sub-Saharan Africa in a period of war, drought, famine, hunger and homeless refugees. Fourth, the U.N. Security Council should maintain closer military and thereby political supervision of the whole restoration effort in Somalia. Rather than abdicate its responsibility for world order and world leadership to the world's remaining (military) superpower, the U.N. through the Security Council can assure leadership and control on the Somali crisis; the U.N. can assure supervision of a temporary substitute government and of permanent elections.¹⁴² Fifth, given the United States role, the War Powers Act must be satisfied. If U.S. forces are sent into combative or imminently hostile areas, the Constitution through the War Powers Act requires consultation with Congress. President Bush did as much before committing troops to the Persian Gulf War theatre. In his then-newly achieved lame-duck status, he seemed less concerned with the formal requirements of consultation and participation of the Congress and the American people.¹⁴³ Sixth, as for other conflicts and crises in the world, the situation can be distinguished. In Bosnia, the United States was not as directly involved in arming subsequently warring factions quite as recently or directly as it has been in Somalia. With the Somalia crisis, the U.S. arguably crossed a line¹⁴⁴ in moving to aid Somalia. In one view, there are no American military or strategic interests at stake (i.e., Somalia and/or the Horn of Africa are no longer strategically important to American interests since the Cold War has ended; and/or the likelihood of (former) Soviet troops on the ground in the Persian Gulf states appears extremely remote); therefore, the U.S. should not risk American lives and American dollars in so remote a country. To be sure, some argue that the primarily humanitarian (at least on an ostensible level) interests may result in stronger appreciation and higher regard both for Former President Bush and America by Africa and the world. That argument, heard from the former President, the U.S. military and various Somalis—that only the U.S. has the military wherewithal to efficaciously accomplish the aid delivery—is notable.¹⁴⁵

VI. CONCLUSION—AN EVALUATION OF THE OAU

In May 1963 in Addis Ababa, leaders of Africa came together to form a coalition dedicated to the advancement and improvement of Africa. Not

142. See especially Paul Lewis, *Key U.N. Memberships Agree to U.S. Force in Somalia Mission*, N.Y. TIMES, Dec. 3, 1992, at A1, A14 (concern to assure U.N. Secretary-General a key role in policy decision on Somalia relief mission and the settlement of the Somalia crisis).

143. See *Do It Right in Somalia*, N.Y. TIMES, Sept. 1, 1992, at A24 (Editorial), c.1.

144. See especially Thomas L. Friedman, *Crossing a Line and Redrawing It*, N.Y. TIMES, Dec. 5, 1992, at A1. (“[F]or the first time American troops are entering a country uninvited, not to shore up an anti-Communist regime, protect American wealth or stifle a strategic threat, but simply to feed starving people”. How does the Somali situation differ from, say . . . Bosnia, Kurdistan, Haiti, Cambodia, western Sahara or Liberia? Are we entering an era when American troops could be sent abroad to police the world in other areas by “upholding human rights, averting starvation or promoting democracy”). *Id.*

145. See also Jane Perlez, *Somalia's Anxiety and Fear in the Wait for U.S. Troops*, N.Y. TIMES, Dec. 5, 1992, at 4(1) (Italians distrusted because of colonial involvement and for their support for deposed former President Barre; Egyptians are distrusted because of their long and generous support for Barre.)

limited to only the geo-political sphere, the Organization of African Unity attempts to enhance the development of the cultural, technological and health dimensions of the African peoples as well. While the Charter stands at the symbolic embodiment of African Unity, the work of the Organization exhibits the vision and reflects the sagacity with which it was created. These endeavors include the organization's efforts to decide conjointly political issues affecting Africa; to resolve peacefully border and territorial disputes; to repatriate African refugees and exiles and to construct decennial plans¹⁴⁶ for continental economic progress. Prorogated only by the lack of requisite prior development, the plans for economic development (the Monrovia Plan, the Lagos Plan of 1980) express anew the determination that the necessary economic infrastructure for the development through foreign investment in African industry, commerce, transportation and communication systems and networks, (the Lagos Plan especially) lays the groundwork upon which African progress and unity may be erected.

In this article, the identity and role of nations and their leaders have been scrutinized to discover their impact on the creation and work of the organization. To the degree relevant here, the perspectives and expectations are central since they ultimately determine the strategies in which elites engage. With these parameters, the loci and conditions for action of these nations have combined to yield varying decisions which affect Africa, often fundamentally. Acting out of diverse ideological orientations to achieve multifarious political ends, African leaders acting as African elites have fashioned the contemporary scene of continental politics in which their role is incrementally determinative; that role, although often necessarily innovative, reflects much of the classic tradition of international law and is increasingly recognized as a vital and vibrant contribution to the law and to international diplomacy.

The OAU has been criticized as not investing any of its organs with effective power: all member-states retain autonomy and complete independence. This retained power, central to any effectiveness on the part of an international organization which would be supra-national, includes centrally the decision-making ability on conformity with OAU resolutions. Without the ability to effectuate its determinations, the OAU is indeed powerless. The states, jealous of their newly-won sovereignty and prerogative, perhaps should not be expected so soon to grasp a regionalism wherein they can apprehend little benefit. Nonetheless, the transcendence of a parochial nationalism may be the key to any progress for the Continent. Further, the refusal to delegate effective authority by the Heads of State and Government to the Secretariat, the Council of Ministers or the Commission on Conciliation, Mediation and Arbitration portend the continued subordination of regional African interests to the priority of national interests and subregional groupings. The possible refractionalization of the OAU along pre-organizational lines presages a dashing of the hopes

146. ORGANIZATION OF AFRICAN UNITY, LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA 1980-2000 (1981); ORGANIZATION OF AFRICAN UNITY, MONROVIA PLAN OF ACTION (French version available) (Plan withdrawn from distribution because replaced and preempted by Lagos Plan). See also Organization of African Unity, Council of Ministers—*Declaration and Resolutions adopted at the Thirty-Seventh Ordinary Session*, Nairobi (June 15-26, 1981).

of African peoples—rather than have the OAU as a beacon of unity and purpose as the Charter-founders envisioned, there is the risk of internecine warfare, political intrigue and intracontinental fratricide. If the diplomats can save the people from this menace, they deserve to become the latest heroes of the Continent.