Regional Enforcement of International Obligations

Africa

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1. The role of regional arrangements as vehicles for the enforcement of international obligations holds attractive possibilities. For, if international law is conceived as a body of rules and principles which provides a framework for States to interact, co-operate or compete with each other individually or in concert for individual or group purposes, then States situated in the same geographical region should have a vested and enduring interest in enforcement of international obligations within that region. There would be in such circumstances political and economic interdependence between adjacent and neighbouring States which renders each vulnerable to the risks of escalation of disputes arising out of wear and tear of inter-State relations as well as to concerted pressure from its neighbours on its purposeful conduct. Responsible officials of the region would be familiar with regional conditions and problems, and political contact between them might create a core of trusted intermediaries for the settlement of disputes relating to particular and peculiar questions. Concerted regional action may obviate the possibilities of intervention and its congeries by non-regional powers. Regional "encouragement, assistance, and pressure"[1] may be a distinct incentive for the conduct of relations within a structure of legal obligation. Moreover, the interest of regional States should promote the development of a peculiar corpus of rules and practices

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[1] J. G. Merrils, International Dispute Settlement (London 1984), p.164.

pertaining to the rights and obligations of good neighbourliness and their clarification. Where these regional concerns have been translated into the establishment of an effective Regional Intergovernmental Organization, clothed with political authority, these possibilities should be enhanced. That is the promise; the international reality belies the prognosis. Within any given region there are imbalances of power, historical and ideological antagonisms, scepticism of the relevance of international law, distinct preferences for the discretionary, euphemistically political, element in international relations, antipathetic to obligations in general which militate against regionalism in the enforcement of legal obligation. Even where regional institutions exist, their location, structure and available resources may render nugatory the fine phrases of constituent documents. The actual possibilities and limitation of regionalism in this area of concern can be found only in the examination of the functioning and effectiveness of each region and its relevant institutions.

2. An examination of the structure and functioning of the Organization of African Unity (OAU) elucidates the complexities and realism of the promise of regionalism in this area of concern. The enforcement of international obligations and the settlement of disputes in accordance with international law has not been a central function of the OAU. From its inception it has been considered as "an instrument of liberation, development and progress in Africa"[2].

The preambular paragraphs are eloquent about the "determination to promote understanding among our peoples for brotherhood and solidarity", to establish and maintain "peace and security", for which the Charter of the UN provides "a solid foundation". However Art. III provided *inter alia*, that "Member States ... solemnly affirm and declare their adherence to the principle of Peaceful Settlement of disputes by mediation, conciliation or arbitration".

The pledge is made specific in Art. XIX, where "Member States pledge themselves to settle all disputes among themselves by peaceful means, and to this end decides to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate Protocol ... forming an integral part of the Charter".

At the same time it is noteworthy that the Charter does not mention international law, and a stipulation of a reference to the International Court of Justice for the interpretation of the Charter was deliberately

[2] D. Telli, OAU Review 1969, p.3.

deleted in favour of a decision by a two-thirds majority of the Assembly of Heads of States and Government[3]. The emphasis has been on political institutions established by the Charter, the Assembly of Heads of States and Government and the Council of Ministers. The Assembly is the supreme organ intended to discuss matters of common concern, formulate general policy and decide, with authoritative effect, questions of interpretation of the Charter. Its decisions, taken by a two-thirds majority of the membership, are binding on member States, though no specific sanction is provided for in the event of non-compliance. In practice its decisions have been taken on the basis of unanimity as a result of the reluctance of the Council of Ministers, who presage and prepare resolutions, to include any resolution on which unanimity or consensus cannot be guaranteed. The Council of Ministers, subordinate[4] as it is to the Assembly, discusses all matters of concern to Africa and makes recommendations to the Assembly. Its deliberations provide a forum for the insistence on peaceful settlement usually by direct negotiations between the parties.

3. In pursuance of Art. XIX of the Charter, the OAU, by a subsequent Protocol, and after due consideration created a Commission of Mediation, Conciliation and Arbitration in 1964[5]. There were to be 21 members elected by the Assembly from candidates nominated by States, with the President and two Vice-Presidents being full-time and forming the Bureau (Art. II). The Bureau had the "responsibility of consulting with the parties as regards the appropriate mode of settling" any dispute arising between States (Art. VII). While disputes could be referred to the Commission either by a party or jointly by the parties or a part of the Council of Ministers or the Assembly, if one or more of the parties refused to submit to the jurisdiction of the Commission, then the matter was referred to the Council of Ministers (Art. XIII). Mediation, "confined to reconciling the views and claims of the parties" was to be undertaken by two Commission members appointed by the President with the consent of the parties (Art. XX). Conciliation by a Board of Conciliators appointed by the Presi-

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[3] S. A. Tiewul, Relations between the United Nations and the Organization of African Unity in the Settlement of Secessionist Conflicts, Harvard International Law Journal, Vol. 16 (1975), p. 259. A description of the Commission of Mediation, Conciliation and Arbitration as a "Court" was also deleted, p. 272.

[4] The Assembly decided in 1966 that decisions of the Council of Ministers should be implemented immediately only in the case of a class of resolutions of the Council defined by the Assembly as requiring final approval should implementation be delayed. OAU AHG/ December 5, 1966. The Assembly has not defined the "exceptions" class.

[5] ILM Vol. 3, pp. 1116–1124.

dent and parties involved the clarification of "issues in dispute" and an effort to bring about "an agreement between the parties upon mutually acceptable terms" (Art. XXIV). In the case of arbitration, the States parties were required to enter into a *compromis* which had to include "an undertaking of the parties to arbitration and to accept as legally binding the decision of the Tribunal as well as to specify the law applicable and other conditions" (Art. XXIX). If there was in any particular case no provision on the law applicable, then the Tribunal was to decide "according to treaties concluded between the parties, International Law, Charter of the OAU and of UN and *ex aequo et bono*".

Elias, in 1964 was sanguine about the Commission's work when he wrote:

> "Within the framework of the Organization of African Unity nothing is more central to the problem of unity and solidarity than the maintenance of good relations and neighbourliness among member States ... The peaceful resolution of conflicts both large and small, within the established framework of the Organization, provides the necessary condition for orderly progress, not only for the individual member States, but also for the entire continent of Africa. It is to be hoped that more and more use of the Commission of Mediation, Conciliation and Arbitration will be made by member States as a forum for the amicable settlement of their disputes, thereby reducing the occasions for international conflicts and misunderstanding"[6].

This Commission did not fulfil this promise. Although it had become established by the appointment of members and the Bureau in 1968, by 1970 the permanent Bureau had been discontinued and its assets liquidated. Indeed, there has never been any reference of any dispute to the Commission nor has any use been made of the register of persons qualified to act as conciliators, mediators or arbitrators since 1970[7]. The clue to this extraordinary episode may be found in the following statement by the Commission's first (and only) President:

> "Sovereign States are understandably jealous of their sovereignty and independence. My OAU experience is that they will always show great reluctance in limiting their own political and diplomatic freedom beyond what they regard as

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[6] T. O. Elias, The Commission of Mediation, Conciliation and Arbitration, The British Year Book of International Law, Vol.40 (1964), p.348. See also an optimistic article by Y. D. Degan with a similar title in Revue Egyptienne de Droit International, Vol.20 (1964), p.53.

[7] J. H. Polhemus, The Birth and Irrelevance of the Commission of Mediation, Conciliation and Arbitration of the OAU, Nigerian Journal of International Affairs, Vol.3 (1977), Nos.1/2, pp.1–20.

absolutely necessary to secure their immediate objectives. In one inter-state dispute after another, secret offers of assistance by my Commission could not induce the States involved in the disputes to submit to the jurisdiction of a body they persistently regarded as judicial. The political element in most inter-state disputes, even where such political element is not the predominant one, makes States assume that their vital interests are at stake in every dispute. I did not find helpful the conditions of secrecy under which the Commission promises to operate, nor the assurance which I have often given that mediation and conciliation procedures do not involve the determination of right or wrong, innocence or guilt. The restoration of harmony between two disputing States does not require any such determination"[8].

This disinclination of African States to rely on the traditional modes of the settlement of disputes even when sponsored by their own Organization is significant. There is certainly a textual adherence, as shown by the reference to the Commission in a few treaties in the sixties[9]. But faced with problems which threaten the existence of States, the popularity of governments and severe economic constraints, African States have shown a preference for *ad hoc* non-institutional and political settlement of questions of international obligation. It is almost certainly the case that this situation is partly due to the scepticism on the part of the African States on the relevance of customary international law, a vaunted European and Eurocentric creation[10]. For this reason, the OAU has sought to lay down, for African

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[8] M. A. Odesanya, Reflections on the Pacific Settlement of Inter-State Disputes in Africa, in: T. O. Elias (ed.), Papers of the Third Annual Conference of the Nigerian Society of International Law (1972), p.49.

[9] The Commission is entrusted with the settlement of disputes arising from the interpretation and implementation of the following treaties: (1) OAU Convention of Privileges and Immunities, 1964; (2) OAU Headquarters Agreement, 1966; (3) OAU Convention on the Problems of Refugees in Africa, 1969; (4) Act Regarding Navigation and Economic Cooperation between States of the Niger Basin, 1963; (5) Agreement Establishing the Lake Chad Commission, 1964.

[10] For a jugular definition of Eurocentrism as "settled habits of thought which have led to the acceptance, mostly uncritical, of European (and Western) intellectual and cultural traditions as the invariable if not superior framework of inquiry".

See Baxi, Some Remarks on Eurocentrism and the Law of Nations, in: R. P. Anand (ed.), Asian States and the Development of International Law (1969), p.3. And also B. V. A. Röling, International Law in an Expanded World (1960); U. Umozurike, International Law and Colonialism in Africa, Eastern African Law Review, Vol.3 (1970), No.1, pp.47–82, and G. Abi-Saab, The Newly Independent States and the Rule of International Law, Howard Law Journal 1962, p.8. There is always the temptation to cite as a riposte A. Freeman's, barely concealed, contemptuous contribution to this debate in McDougal's Law and Minimum World Public Order, American Journal of International Law, Vol.58 (1964), p.712.

States, guiding ostensibly binding principles for the resolution of more frequent and, sometimes intractable, conflicts which have arisen. These principles may not be, in essence, markedly different from known principles of "Eurocentric" international law, but in the present context they are seen as an African restatement, African-made and to be enforceable by concerted African effort. Participation by African States in the formulation of rules of international law in various UN fori has heightened the sense of obligation which is indispensable to the growth of law.

4. Early in the post-dependence period there were many conflicts within Africa over two matters, boundary and territorial problems, and allegations of subversive activities. In both these areas the OAU has created, by resolutions and treaties, guiding principles intended to be binding on States.

Boundary and territorial problems: Given the circumstances in which the boundaries of colonial territories were settled in the late 19th century by European powers and the nonchalant carelessness with which ethic sensitivities were handled, the temptation to adopt a revolutionary approach towards recognized frontiers was overwhelming. The All African People's Congress held at Accra, Ghana, in December 1958 saw the predictable passage of a resolution, premised on the belief that African boundaries were "unnatural and not conducive to peace or stability" and calling for abolition or adjustment. In it the conference

> "(a) denounces artificial frontiers drawn by imperialist Powers to divide the peoples of Africa, particularly those which cut ethnic groups and divide people of the same stock"[11].

Asiwaju[12] has identified 103 partitioned cultural areas involving several ethnic groups and this underscores the scale of the problem. Yet boundaries were perceived by African statesmen as measures of finality and stability, and after a few verbal and diplomatic and military skirmishes, an African solution emerged. The exigencies of the moment and the uncertainty of the consequences of any large scale adjustment weighed heavily. "It is in the interest of all Africans now to respect the frontiers drawn on the maps, whether they are good or bad, by the former colonial powers", was the Ethiopian view in 1963[13]. In the result the OAU approved a

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[11] C. Legum, Pan Africanism – A Short Political Guide (1961), p.231.

[12] A. I. Asiwaju (ed.), Partitioned Africans (Lagos 1984), pp.256–258. As La Pradelle noted, the boundary is where "international rights are determined and assured".

[13] Proceedings of the Summit Conference of Independent African States, Addis Abeba, May, 1963, Vol.1 sect.2 CIAS/GEN/INF, p.43. Similar statements were made by other African Heads of States and Government e.g. Nigeria, Mali.

resolution in 1964, considering that the borders of African States, on the day of their independence, constitute "a tangible reality", and

"(b) Solemnly declares that all Member States pledge themselves to respect the borders existing on their achievement of independence"[14].

The decision was seen as an eminently practical solution and was not made consciously as an affirmation of the rule of international law, whatever that may have been then[15], on the points at issue. At the same time this insistence upon continuity had, as its legal effect, the maintenance and State succession to then existing boundary treaties made between the various European metropolitan States and in the case of the French territories, even administrative divisions[16]. The resolution was intended not merely to prevent disputes but also to provide a guiding rule for their settlement should such in any case arise. A preambular paragraph had recognized "the imperious necessity of settling, by peaceful means and within a strictly African framework, all disputes between African States".

Since then the OAU and its member States have largely accepted and applied the terms of the resolution and the recommended means of conflict settlement in most of the boundary and territorial disputes since 1964. The Organization has consistently maintained its prescription in all the disputes it has directly considered between Morocco and Algeria (1964), Somalia and Kenya (1967), Tanzania and Uganda (1972), Somalia and Ethiopia (1964–1981). In respect of the Somalia and Ethiopia dispute and after hostilities between the parties from 1977, the OAU appointed a Good Offices Committee to mediate. The Committee in its report recommended that "member States ... should respect boundaries at the time of independence of each nation as well as OAU resolutions on boundary disputes". In accepting the report the Nairobi Summit (1981) recognized the Ogaden region "as an integral part of Ethiopia", thereby stymying Somalian ambi-

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[14] OAU/AHG Resolution 17 (1). Morocco and Somalia were not parties to this decision; unexceptionally, given their irredentist reputations and ambitions.

[15] R. J. Jennings, recognized that the international law rules were "incomplete" and did not provide "for the situation when a new State comes into existence", Acquisition of Territory in International Law (1963), pp.6–7.

[16] The terms of the resolution were similar to conclusions of jurists e.g. D. P. O'Connell, State Succession in Municipal and International Law, Vol.2 (1967); K. Zemanek, State Succession after Decolonization, Académie de Droit International, Recueil des Cours, Vol.16 (1965 III), p.189; P. K. Menon, International Practice as to Succession of New States to Treaties of their Predecessors, Indian Journal of International Law, Vol.10 (1970), p.459. The issue is now considered as settled by the combined effect of Art.62 of the Vienna Convention on the Law of Treaties and Art.II of the Vienna Convention on State Succession in Respect of Treaties.

tions. However the contributions of the OAU towards the solution of such disputes has not derived solely from the few occasions of authoritative decision but from its moral authority as the African Organization, and as a forum for intimate diplomacy for direct negotiations as well as the inspiration for initiatives by various Heads of States and Government. In several cases Heads of States have on their own initiative conscious of their OAU responsibilities and in an *ad hoc* fashion intervened on the basis of the 1964 Resolution in various disputes in an effort to bring the parties to settle issues arising by direct negotiations[17], as was in the case of disputes between Dahomey and Niger, and Gabon[18] and Equatorial Guinea. These efforts have tended to guide dialogue, once begun, towards success in restoring harmony and political equilibrium, as opposed to demanding positive and judicial, or legalistic, outcomes. They represent diplomatic reinforcement of and identification with the policies and principles of the OAU. In addition, several African States, in a spirit of solidarity, have without *ad hoc* diplomatic intervention by the OAU or other States settled their boundary/territorial problems by direct negotiations[19], sometimes after an occasional frontier skirmish[20]. African practice suggests that the OAU concern for the inviolability of inherited frontiers in fact entails two obligations, namely, the maintenance of inherited arrangements, and the peaceful settlement of disputes arising thereon. The OAU itself and African Heads of States and Government (individually and in concert) have acted only in cases where the second obligation has been in question. Then there is a flurry of *ad hoc* diplomatic activity to contain the situation, a process recently illustrated by the containment of the border war between

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[17] See S. Touval, African Frontiers, International Affairs, Vol.42 (1966), pp.641–654; P. Berko Wild, The O.A.U. and Algerian-Moroccan Border Conflict, International Organization, Vol.20 (1966), pp.16–36; A. Oye Cukwurah, O.A.U. and African Territorial and Boundary Problems 1963–1973, Indian Journal of International Law, Vol.12 (1972), pp.176–206; I. Brownlie, African Boundaries (1979); Z. Cervenka, O.A.U. The Unfinished Quest for Unity (1977).

[18] It is instructive to note that it was only during this dispute that Gabon bothered to request (1972) France to make the treaty signed with Spain relating to the sovereignty of the disputed islands available, West Africa, No.2885, p.1302. The treaty was the Franco-Spanish Treaty of June 27, 1960. Gabon became independent in 1960.

[19] Both before and after the 1964 Resolution e.g. Liberia–Guinea (1958); Liberia–Ivory Coast (1961); Sierra Leone–Guinea (1962); Mali–Mauretania (1964); Niger–Dahomey (1964); Sudan–Ethiopia (1967); Algeria–Tunisia (1967); Ghana–Upper Volta (1972–1974); Mali–Algeria (1983).

[20] E.g. Nigeria–Cameroon (1975; 1981).

Mali and Burkina Faso[21], while they were waiting for a decision of a Chamber of the International Court of Justice on the disputed frontier[22]. These hostilities were triggered by a census initiated by Burkina Faso, and were backed by troops in the disputed territory. They provoked diplomatic intervention by the then Chairman of the OAU, Algeria, Nigeria, Libya and all the West African States[23] and the resulting ceasefire was arranged by A.N.A.D. (L'Accord de Non-Agression d'Assistance en matière de Défense)[24]. The parties were then left to pursue dialogue again pending the judgment[25].

5. Closely related to the African sensitivity to the inviolability of frontiers has been a certain vigilance against the use of territory and resources for subversive activities by one State against another. The Charter, in Art. II (5), contained as a principle "unreserved condemnation, in all its forms, of political assassination, as well as subversive activities on the part of a neighbouring State or any other State". Early in its history the OAU had to consider charges of subversion levelled against Ghana by all its neighbouring West African States. The Council of Ministers obtained an undertaking from Ghana to expel the offending political exiles and this was verified *sur place* by the Secretary-General prior to the 2nd Summit held in

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21 See G. Some, Un exemple de conflit frontalier: Le différend entre la Haute-Volta et le Mali, L'Année Africaine 1978, pp.339–370, for the background and analysis of their first hostilities in December 1974. The earlier affair was calmed by the efforts of various Heads of States and by an OAU Mediation Committee which suggested demarcation by an independent body in 1975. The demarcation did not materialize but meetings of administrative and local authorities on the border continued until 1983. Keesing's Contemporary Archives, Vol.29 (1983), p.32183A.

22 By a Special Agreement of September 16, 1983, Mali and Burkina Faso submitted the frontier dispute to a Chamber of the ICJ under Art.40 of the Court's Statute. They agreed "to accept the judgment of the Chamber as final and binding". This is the first time that a dispute involving African land border has been the subject of contentious proceedings before the Court. Significantly at the time of the Agreement, they also agreed to continue "the bilateral dialogue within the existing *ad hoc* structures". See Keesing's Contemporary Archives, Vol.29 (1983), p.32484.

23 Full account in West Africa issues of January 6 and 27, 1986.

24 The Accord was concluded in June 1977 between Burkina Faso, Ivory Coast, Mali, Mauretania, Niger, Togo; GA Res.3314 (XXIX). The definition of aggression is annexed to the Accord. Intégration Africaine, Revue trimestrielle de la C.E.A.O., No.3, pp.44–47.

25 As recently of July 10, 1986, "Sidwaya", the official Faso daily, asked both Heads of States to settle their border dispute through dialogue instead of the dispute being decided by the International Court of Justice. It pointed out that the "border conflict a typically African issue, requires only mutual understanding through dialogue to come to a final agreement and peace to be eventually restored between the two countries".

Accra in 1965[26]. At that Summit and as a follow-up the OAU sought to clarify the international obligations in this matter by a Declaration on the Problem of Subversion (1965). By its terms member States undertook

(1) not to tolerate any subversion originating in their territories against any member of the OAU;
(2) to refrain from conducting any press or radio campaign against any African State;
(3) not to create dissession within or among member States by fomenting or aggravating racial, religious, linguistic, ethnic and other differences;
(4) to observe strictly the principles of international law with regard to all political refugees who are nationals of any member States of OAU.

As regards obligations in respect of the activities of political refugees the OAU in the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) Art. III provided that every political refugee

(1) "shall also abstain from any subversive activities against any Member State.

(2) Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity ... in particular by the use of arms, through press and radio".

The OAU has considered these clarified principles in relation to several situations arising from the political instability of so many African States and the virtual consecration of military intervention as the norm for governmental change resulting in colonies of political refugees in most African countries. These include problems between Senegal and Guinea (1970–1972), Tanzania and Uganda (1972), Benin-Morocco and Gabon (1977), Tanzania-Uganda (1978–1979) and in Chad. In the dispute between Senegal and Guinea an OAU Mediation Committee strictly applied the principles of the Declaration and effected a reconciliation[27]. The same result was achieved in the first case of the sort between Uganda and Tanzania. However, the OAU did not apply the same principles in the later situation between Tanzania and Uganda which led to the overthrow of Idi Amin after an invasion of Uganda by Tanzanian troops and Ugandan exiles. Tanzania, in glaring contradiction to OAU principles, provided a

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[26] For accounts of this episode see Z. Cervenka, The O.A.U. and its Charter (1969); B. Andemicael, Peaceful Settlement among African States (1972); D. Meyers, Intra-Regional Conflict Management by the O.A.U., International Organization 1974, pp.345–375. The OAU Declaration predated the Declaration on the Inadmissibility of Intervention, GA Res.2131 (XX), December 21, 1964.

[27] African Contemporary Record 1972/1973, Legum (ed.), C112; Meyers, *op.cit.*, p.359.

home for exile groups, locales for strategy meetings or bases for training and arming of rebellious refugees. Stunned by an invasion and farcical annexation of territory by Amin, Nyerere counter-attacked and spurned all OAU attempts to settle the dispute until Amin had been overthrown[28] in 1979. At the immediately succeeding OAU Summit, criticism of Tanzania was muted, except in the case of Sudan[29] and Nigeria and the issue was ultimately shelved. Apparently, while many members felt that Tanzanian action offended the OAU resolution on subversion and interference for political purposes, out of frustration with the antics and brutalities of Amin as Head of a Sovereign State, they were prepared to condone an invasion promoting liberty and putting an end to gross violations of Human Rights[30]. Thus OAU has proceeded on the basis that its Charter involves some rights, some obligations and some tasks for its member States. It has sought to clarify some of the principles on its own on matters on which members have found important and ripe for specificity. As an organization it has shown little interest in the formal and institutional modes for the determination of the obligations of members and dispute settlement[31].

6. A brief consideration of the Arab League as an instrument for the enforcement of international obligations provides a certain perspective. The League was established by a Pact signed on March 22, 1945 between the then independent Arab States[32]. It had as its principal objectives the

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[28] African Research Bulletin (ARB), March, April 1979 for the fullest amount.

[29] President Numeiry had been the then current OAU chairman and had promoted the mediation efforts. It is interesting to note that in his inaugural address in July 1978 he had expressed the view that "if all the O.A.U. members were to observe strictly the law as defined in the Charter of the UN and the O.A.U. this would ensure peace and progress in Africa", ARB July 1978.

[30] N. Burrows, Tanzania Intervention in Uganda: Some Legal Aspects, The World To-day, July 1979; O. Aluko, African Response to External Intervention in Africa since Angola, African Affairs, Vol.80 (1981), pp.159–179; M. Shaw, Dispute Settlement in Africa, Yearbook of World Affairs, Vol.37 (1983), pp.149–167.

[31] At the subregional level, the Communauté Economique de l'Afrique de l'Ouest (1973) created a Cour arbitrale de la Communauté in a Protocol "J" to the Treaty. The Cour has been established but it has had no practice or jurisprudence, CTD/B/609/Add.I (Vol.III). Similarly, the Treaty establishing ECOWAS 1975, by Art.II established "a Tribunal of the Community which shall ensure the observance of law and justice in the interpretation of the provisions of the Treaty". The Tribunal's statute has yet to be considered by the authority of Heads of States for enactment.

[32] For a succint account B. Boutros-Ghali, The Arab League 1945–1970, Revue Egyptienne de Droit International, Vol.25 (1969), pp.67–118; R. W. Macdonald, The League of Arab States (New Jersey 1965).

strengthening of relations between Arab States, the co-ordination of their policies, the preservation of their independence and the protection of their interests. The Pact contained provisions for the peaceful settlement of conflicts by the Council of the League, its supreme body, for as Boutros-Ghali points out:

> "In 1946, the ideology that prevailed in the Arab World was the 'rule of law'. The ruling elites were impregnated with Western constitutionalism and believed that inter-Arab conflicts could be settled by an international judge. One needs only to read the minutes of the preparatory meetings which preceded the drafting of the Pact ... to realise what emphasis certain delegates placed on the principle of compulsory arbitration"[33].

The actual enabling provision was quite restrictive. Art.5 of the Pact provided:

> "It is forbidden to have recourse to force in order to settle conflicts which may arise among Member States of the League. Should a dispute arise between two such States, in no way concerning the independence, the Sovereignty or the territorial integrity of these States, and if the parties to the conflict request the Council of the League to settle the dispute, the Council's decision shall be binding and executory".

That the exception clause is an effective bar to the Council's jurisdiction can be seen from its exclusion from the settlement of Moroccan-Algerian territorial disputes in 1963. The conflict was brought before the Council but Morocco refused to accept the Council's intervention on the grounds that the disputed areas were parts of its territory and thus, by virtue of Art.5, the conflict was therefore, outside the Council's competence. On the other hand, Morocco (and Algeria) accepted mediation from the OAU, whose Charter does not have such a constrictive provision[34]. It is noteworthy that to satisfy delegates who were in favour of compulsory arbitration, Art.19 envisaged the establishment of "an Arab Court of Arbitration" by a specific amendment of the Pact. In spite of several resolutions, studies and proposals this body has not been created[35]. There has been in fact only one

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[33] Boutros-Ghali, *op. cit.*, p.81.

[34] Boutros-Ghali, ibid., p.84; S. J. Al-Kadhem, The Role of the League of Arab States in Settling Inter-Arab Disputes, Revue Egyptienne de Droit International 1976, pp.1–31, 20. Egypt, Libya, Sudan, Morocco, Tunisia, Algeria, Mauretania and Somalia are member States of both the League and the OAU.

[35] Boutros-Ghali (note 32), p.84. However, the Organization of Arab Petroleum Exporting Countries (OAPEC), comprising Saudi Arabia, Libya, Kuwait, Algeria, United Arab Emirates, Iraq, Egypt, Syria and Tunisia has, in a Protocol of May 1978, established a Judicial Board. The Board has judicial functions to consider disputes in the field of petroleum operations and the interpretations and implementation of the obligations arising

arbitration under the aegis of the League between Syria and Lebanon in 1949, relating to a dispute over Syrian military penetration into Lebanese territory to execute a warrant of arrest[36]. In practice in dealing with inter-Arab disputes over the whole course of its history, the League and its members have resorted to various forms of mediation by one or more members and the Secretary-General, leading to direct negotiations between the parties to the disputes. There has also been a practice of recourse to other international organizations such as the OAU and the UN, particularly in cases of charges of subversion or interference. Boutros-Ghali has concluded that most of the disputes have been of political nature and that "Arab States always prefer political solutions to legal solutions in settling their disputes"[37]. Nevertheless, it is possible to detect a certain lack of confidence in the League in the face of the frequency of ideology differences between its members, a certain sense of impotence in the face of the Palestinian Problem and a certain inadequacy of organizational competence. Be that as it may, it must be recognized that the League was established primarily as an organ for the clarification or the enforcement of international obligations, however defined. It was, and has remained, an organ of fractious solidarity of the Umma, the Arab Nation.

Concluding Remarks

In assessing the contribution of the OAU to the enforcement of international obligations, the following remarks can be made.

1. The OAU was, and has remained a vehicle for the mobilization of African political resources for a collective role in the region and on the world stage, and a symbol of regional unity and solidarity. In both roles it

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from the constituent Treaty of 1968. The Board has no jurisprudence and practice and is thus of an unknown quality. See O. Elwan, The Organization of Arab Petroleum Exporting Countries, Egypte Contemporaine, No.398, October 1984.

[36] Even in this case Lebanon objected to any mention of the League in the award. Al-Kadhem (note 34), p.22.

[37] Boutros-Ghali (note 32), p.83, and see also Al-Kadhem, p.26.

has gained in organizational pre-eminence and authority. Its experience has shown that the maintenance of regional solidarity entails a structure of principles, rules and – ultimately – of legal obligations. The principles written into its Charter have had to be supplemented by resolutions, decisions and specific instruments. Accordingly, the actions of member States have been evaluated in particular cases in terms of compliance with, or breach of standards proclaimed.

2. Yet the OAU fundamentally remains a political institution, with a preference for political solutions. Its preference for closed sessions means that the exact nature of its discourse cannot be said to be clearly founded on notions of legal obligation. What is clear is a determination at all times to maintain the coherence of the Organization and the solidarity of its membership, probably at the expense of clear, definitive legal characterization. This is accentuated by the fact that the Charter contains no provisions on enforcement or on sanctions. Its only resources remain the political and moral authority it has accumulated.

3. Analytically, enforcement of legal obligations in the normal case progressively becomes a specialized activity and is entrusted to authoritative bodies of qualified experts engaged in the evaluation of exiguous claims, counter-claims and defences. The OAU, in an early flush of enthusiasm, did establish such an institution, but did not proceed with its development and use. It is difficult to maintain in this case, as Lauterpacht does, that "once the machinery is there, it will be used". The declaratory nature of international determinations is plainly recognized. A decision of an international body, particularly a Court, changes the legal relationship between the parties, for example in a territorial dispute it means that one is entitled, the other is not. For States which have invested political capital in pursuing a claim as of right, this has serious political consequences and is thus avoided. There is clearly the perception that international determination must be carried out.

4. In the absence of specialization, the OAU has proceeded by the use of *ad hoc* means – mediation and good offices committees, mediation and intervention by Heads of States, individually or in concert. The aim of these interventions has been to contain disputes, to prevent or calm the use of force and to encourage settlement by direct mutual agreement between the parties. To a large extent, these efforts have been successful, except in cases involving highly contentious subjects (Western Sahara) or States (Libya).

5. African States have remained free to resort to other institutions such as the UN and the ICJ, or to other modes of settlement such as arbitration

by non-regional bodies. In the case of the UN and since the Congo crisis (1964) the Security Council has followed a "try-OAU-first" principle, appealing to "parties to make the fullest use of the mechanism within the regional organisation for the peaceful settlement of disputes" (Chad-Libya 1983).