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From the OAU to the AU: A Normative Shift with Implications for Peacekeeping and Conflict Management, or Just a Name Change?

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From the OAU to the AU: A Normative Shift with Implications for Peacekeeping and Conflict Management, or Just a Name Change?

ABSTRACT

Many of the nations of Africa have struggled with violence since their independence from colonial powers. The formation of an intercontinental body, the Organization for African Unity, did little to reduce the number or severity of the conflicts. The failure of this organization to maintain peace was due in large part to normative boundaries that prevented its involvement in the internal conflicts of its member nations. The Organization of African Unity was dissolved in favor of a new organization, the African Union, in 2001. The mandate of the African Union is much more proactive than that of its predecessor with regard to intervention in internal conflicts. Additionally, some of structural and practical weaknesses of the Organization of African Unity have been addressed in the African Union. The conflict in the Darfur region of Sudan proved to be the first real test case for the efficacy of the African Union. It is already apparent from the African Union's performance in Darfur that some of the normative weaknesses of the Organization of African Unity have been overcome. Yet, the African Union must do more, both in Darfur and elsewhere, to show that it is not hampered by the weaknesses of its predecessor.

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Africa. The name conjures up images of a faraway place of unfamiliar landscapes and alien cultures for most. The absence of direct experience readily allows popular images to fill the void. Africa becomes guns, warmongering, and endless death and destruction, all presented in bite-sized pieces on the front page of newspapers. The shock of the reported brutality, coupled with sentiments of its inevitability on a continent destined for endless strife, leads most to conclude that Africa is a lost cause. The complexity of the African situation, and the lengths to which some have gone to avoid and address deadly conflict within it, is lost as well. The first hurdle to understanding the true nature of conflict in Africa is the deceptive portrait that has been painted of it in much of the rest of the world.

To be sure, many independent African nations have been beset by conflict since their inception in the latter part of the twentieth century. Early in their history, however, these countries banded together to form the Organization of African Unity (OAU), an intercontinental organization designed to promote peace and prosperity on the African continent. Given the recent history of colonial domination, African countries were extremely reluctant to cede any form of control over their internal affairs. As a result, internal conflict, which would prove to be the most prevalent and deadly form in Africa in the coming decades, was entirely outside of the jurisdiction of the OAU. The result was that deadly conflict could rage unhindered for decades on the continent, giving Africa its reputation for ceaseless conflict.

The OAU was disbanded in favor of a new intercontinental organization, the African Union (AU), in the first years of the twenty-first century. Recognizing the urgent need to prevent and address internal conflict within African nations, the AU was given legal authority to intervene in certain forms of deadly internal conflict.

The new mandate given to the AU represented a normative sea change in African conflict prevention, management, and resolution. Whether the promise of the new mandate would bring practical change in addressing deadly conflict in Africa remained to be seen. A test case for the AU was necessary. In 2003, the internal conflict in the Darfur region of Sudan became that test case.

Part I of this paper discusses the OAU. Specifically, Part I.A. addresses the formation of the organization and the underlying principles that were adopted at its inception. Part. I.B. provides a history of its interventions in African conflicts. Part. I.C. gives a description of effective conflict maintenance, and examines the conflict maintenance capabilities of the OAU. Part I.D. details the normative, structural, and practical aspects of the OAU that limited its effectiveness in conflict maintenance.

Part II discusses the newly-formed AU. Part II.A. gives an account of how the AU came into existence, along with detailing its underlying principles. Part II.B. analyzes the differences between the Constitutive Act of the AU and the Charter of the OAU, and compares and contrasts the normative and structural aspects of each. Part II.C. examines whether the AU has the institutional capability to be more effective at addressing conflict than was the OAU. Part II.D. takes a look at the performance of the AU thus far in the context of the conflict in the Darfur region of Sudan.

Finally, Part III takes a step back to get a bird's-eye view of the practical application of the Union's expanded powers, both in the context of Darfur and elsewhere. This Part details the successes and failures of the AU to date, and provides commentary on the direction this organization must ultimately take to be successful.

I. THE ORGANIZATION FOR AFRICAN UNITY

A. *Background*

In 1963, and political turmoil was rampant on the African continent.¹ The struggle for independence from colonial rule was well underway,² and the desire and demand for African independence and self-determination began to manifest itself politically.³ The ideal of

1. THE OAU AFTER TWENTY YEARS 4-5 (Yassin El-Ayouty & I. William Zartman eds., 1984) [hereinafter TWENTY YEARS].

2. *Id.*

3. GINO J. NALDI, THE ORGANIZATION OF AFRICAN UNITY: AN ANALYSIS OF ITS ROLE 3-4 (1st ed. 1989) [hereinafter NALDI, AN ANALYSIS]; P. Mweti Munya, *The Organization of African Unity and its Role in Regional Conflict Resolution and Dispute Settlement: A Critical Evaluation*, 19 B.C. THIRD WORLD L.J. 537, 540-43 (1999).

Pan-African unity gave rise to different political groupings of free African states, two of which predominated.⁴ The Casablanca Group was the more revolutionary of the two, advocating for the formation of a "United States of Africa" under the power of a centralized command.⁵ The Monrovia Group, on the other hand, stressed the importance of the independence, integrity, and sovereignty of each African state, and advocated a loose association of those states.⁶

The two groups came to together to agree on the formation of the OAU.⁷ The OAU Charter was signed in Addis Ababa, Ethiopia, on May 25, 1963, at the closing of the Conference of the Heads of State and Government.⁸ The OAU Charter "captured the radical-unionist Pan-African spirit" of the Casablanca Group, while emphasizing the independence and sovereignty of each individual state that was advocated by the Monrovia Group.⁹ The goals of the OAU were to promote decolonization and independent self-government in African states; to guarantee respect for territorial boundaries of the states; and to promote social, political, and economic development on the African continent.¹⁰

Article 2 of the OAU charter provides for purposes that reflect some of the goals and aspirations of the Casablanca Group in terms of African unity, along with some of those of the Monrovia group as well:

Article 2

1. The Organization shall have the following purposes:
 - (a) To promote the unity and solidarity of the African States;
 - (b) To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
 - (c) To defend their sovereignty, their territorial integrity and independence;
 - (d) To eradicate all forms of colonialism from Africa; and
 - (e) To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.
2. To these ends, the Member States shall coordinate and harmonize their general policies, especially in the following fields:

4. NALDI: AN ANALYSIS, *supra* note 3, at 4.

5. *Id.*

6. *Id.*; AFRICA: SELECTED DOCUMENTS ON CONSTITUTIVE, CONFLICT AND SECURITY, HUMANITARIAN, AND JUDICIAL ISSUES 51 (Jeremy I. Levitt ed., 2003) [hereinafter SELECTED DOCUMENTS].

7. NALDI, AN ANALYSIS, *supra* note 3, at 4.

8. *Id.* at 3; SELECTED DOCUMENTS, *supra* note 6, at 51.

9. *Id.*

10. SELECTED DOCUMENTS, *supra* note 6, at 51.

12. See Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, reprinted in SELECTED DOCUMENTS, *supra* note 6, at 53 [hereinafter OAU Charter].

- (a) Political and diplomatic cooperation;
- (b) Economic cooperation, including transport and communications;
- (c) Educational and cultural cooperation;
- (d) Health, sanitation and nutritional cooperation;
- (e) Scientific and technical cooperation; and
- (f) Cooperation for defense and security.¹²

Further, the principles announced in Article 3 of the OAU Charter indicate a codification of the principles of sovereign and territorial integrity of the individual African states that were parties to the Charter:

Article 3

The Member States, in pursuit of the purposes stated in Article [2] solemnly affirm and declare their adherence to the following principles:

1. The sovereign equality of all Member States.
2. Non-interference in the internal affairs of States.
3. Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.
4. Peaceful settlement of disputes by negotiation, mediation, conciliation, or arbitration.
5. Unreserved condemnation, in all its forms, of political assassination as well as subversive activities on the part of neighboring States or any other States.
6. Absolute dedication to the total emancipation of the African territories which are still dependent.
7. Affirmation of a policy of non-alignment with regard to all blocs.¹⁴

State sovereignty, territorial inviolability, and non-interference of Member States with the internal affairs of another Member State were bedrock principles of the OAU from the time of its inception.¹⁵ Thus, while certain Pan-African principles of the Casablanca Group are embodied in the Charter, the Monrovia Group's moderate approach, which emphasized the independence of the states, appeared to have been more thoroughly adopted.¹⁶ The importance of the new independence of African states to the drafters of the OAU Charter is evident in the Preamble,¹⁷ as well as in Articles 2 and 3.¹⁸

14. *See id.* at 54–55.

15. *Id.*; NALDI, AN ANALYSIS, *supra* note 3, at 5.

16. AMADU SESAY ET AL., THE OAU AFTER TWENTY YEARS 3 (1984); SELECTED DOCUMENTS, *supra* note 6, at 51.

17. The Preamble to the OAU Charter states:

We, the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia, [*c*]onvinced that it is the inalienable right of all people to control their own destiny . . . [*d*]etermined to safeguard and consolidate the

Perhaps African nations were reluctant to cede such hard-won power to a new organization, despite the fact that they were members of it.

The respect for the sovereignty of states and the principle of non-interference embodied in the OAU Charter mirrors similar provisions of the U.N. Charter.¹⁹ In fact, the U.N. Charter had a significant impact on the thinking of the African leaders who drafted the OAU Charter.²⁰ The OAU Charter mimicked the U.N. Charter insofar as it encouraged international cooperation and solidarity between African states and promoted self-determination and self-rule.²¹ The OAU Charter also explicitly endorsed the principles of the U.N. Charter and the Universal Declaration of Human Rights.²²

The U.N. Charter and the OAU Charter differed, however, in at least one important way: the U.N. Charter explicitly stated that international peace and security were top priorities, whereas the OAU Charter did not.²³ Even though peace and security were necessary to accomplish the goals of the OAU (and were mentioned in Article 2 of the Charter), it was clear from its inception that neither was a priority for the organization.²⁴ More importantly, while both the U.N. and OAU Charters explicitly call for the organizations to avoid involving themselves in the internal affairs of their members, only the OAU would ultimately adopt a rigid adherence to this doctrine.²⁵

The inviolability of territorial boundaries was considered an extremely important principle of the OAU Charter.²⁶ So important was this principle that the Charter went further than its U.N. counterpart, by tacitly prohibiting *any* action that might undermine territorial integrity (not just action that constituted a threat or use of force, as did the U.N. Charter).²⁷ The respect for territorial integrity of Member States led them to accept after independence the principle

hard-won independence as well as the sovereignty and territorial integrity of our states, and to fight against neo-colonialism in all its forms.

OAU Charter, *supra* note 11 (emphasis in original).

18. See *supra* notes 11–12.

19. James O.C. Jonah, *The OAU: Peacekeeping and Conflict Resolution*, in *THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS* 3, 9 (Yassin El-Ayouty ed., 1994).

20. SESAY ET AL., *supra* note 14, at 3.

21. Berhanykun Andemicael, *OAU-UN Relations in a Changing World*, in *THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS*, *supra* note 17, at 119, 120.

22. OAU Charter, *supra* note 11, art. 2(e).

23. Andemicael, *supra* note 19, at 120.

24. *Id.*

25. Munya, *supra* note 3, at 584.

26. OAU Charter, *supra* note 11, art. 3(3); NALDI, *AN ANALYSIS*, *supra* note 3, at 9.

27. NALDI, *AN ANALYSIS*, *supra* note 3, at 8.

of *uti possidetis* with regard to state boundaries.²⁸ *Uti possidetis* provides that frontiers that were determined by colonial powers prior to independence were not to be altered, and would form the permanent boundaries of the independent African states.²⁹

While *uti possidetis* was implicitly recognized in Article 3, Paragraph 3 of the OAU Charter,³⁰ the OAU clarified the issue by explicitly recognizing the principle in 1964.³¹ The principle was adopted to curb interstate conflicts resulting from border disputes.³² Its inclusion in the OAU Charter was also the practical result of the fact that at the time, many states had ongoing internal conflicts in which they did not want the OAU to interfere.³³ The thinking behind the use of this principle was that maintaining established colonial borders would avoid conflicts between states that would inevitably erupt in the process of drawing new borders.³⁴

B. OAU Intervention in Africa

Despite the goal of eliminating interstate conflicts due to border disputes, the first test of the OAU's ability to resolve a crisis between members arose out of such a dispute.³⁵ In 1963, hostilities erupted between Morocco and Algeria as a result of a disputed frontier.³⁶ Algeria requested the intervention of the OAU, which convened its Council of Ministers.³⁷ The Council's recommendations led to a cessation of hostilities, withdrawal of troops, and eventually to a bilateral agreement between the two parties.³⁸ The OAU's first attempt at resolving a major crisis between its members met with success.³⁹

The Nigerian civil war that took place between 1967 and 1970 tested the OAU's ability to strictly adhere to its policy of non-interference with the internal affairs of its members.⁴⁰ While stressing that it had no intention to interfere, the OAU nonetheless condemned secession within any Member State at its Fourth

28. *Id.* at 9.

29. *Id.*

30. *See supra* note 12.

31. NALDI, AN ANALYSIS, *supra* note 3, at 9.

32. Stephen J. Stedman, *Conflict and Conciliation in Sub-Saharan Africa*, in THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT 235, 240 (Michael E. Brown ed., 1996).

33. Jonah, *supra* note 17, at 9.

34. *See Stedman, supra* note 30, at 240.

35. NALDI, AN ANALYSIS, *supra* note 3, at 34.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 35.

40. *Id.* at 37.

Assembly Meeting in Kinshasa in September 1967.⁴¹ The OAU also created a committee which affirmed the OAU's support of the Nigerian government during a visit to Nigeria.⁴² It further called upon all Member States to avoid any action that would have a negative effect on the peace, unity, and territorial integrity of Nigeria,⁴³ seeming to indicate that support of the breakaway group was against the principles of the OAU.

The OAU's involvement in the Nigerian civil war, while political in nature only, seemed to demonstrate a wavering from the strict principle of non-interference in internal state affairs that its Charter advocated.⁴⁴ When the federal government of Nigeria finally prevailed in the conflict, the government and the former rebels acknowledged the role of the OAU in reconciling post-conflict differences by encouraging the parties to implement a general amnesty and a national reconciliation.⁴⁵

The conflict in Chad during the early 1980s resulted in the OAU's first attempt at peacekeeping.⁴⁶ Rival factions in Chad had been warring for a considerable period of time, and Libyan military intervention in the conflict finally prompted the OAU to get involved.⁴⁷ An OAU peacekeeping force was endorsed by the OAU at a Summit Conference in Nairobi in 1981.⁴⁸ Two preconditions to the deployment of the force were set: (1) the force must be invited by the Chadian government, in accordance with U.N. principles, and (2) the Libyan troops had to be withdrawn.⁴⁹ The first precondition, that of the consent and cooperation of the government of the state in which the organization seeks to deploy a peacekeeping force, is a clear recognition of the OAU principle of respect of state sovereignty.⁵⁰ This principle has characterized OAU peacekeeping operations throughout its history.⁵¹

The OAU's attempt at peacekeeping in Chad has been described as an "abject failure."⁵² The role that the OAU envisioned itself serving was that of a neutral force to provide peace for free elections

41. *Id.*

42. *Id.*

43. *Id.*

44. Munya, *supra* note 3, at 574.

45. NALDI, AN ANALYSIS, *supra* note 3, at 38.

46. *Id.* at 78.

47. *Id.* at 73-77.

48. *Id.* at 77.

49. *Id.* at 27.

50. Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa—Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT'L L. 39, 57 (2001).

51. *Id.*

52. NALDI, AN ANALYSIS, *supra* note 3, at 28.

to occur.⁵³ The warring parties' failure to negotiate, however, ultimately led to additional conflict, which resulted in the withdrawal of the OAU forces in mid-1982 without having accomplished their objective.⁵⁴ The failure of this mission was blamed on multiple causes, including a mandate that was unclear to the Chadian government (who thought the OAU would assist in fighting against the rebels) and a lack of logistical and financial resources.⁵⁵ Of the six countries that pledged to form peacekeeping units, only three—Nigeria, Senegal, and Zaire—actually did so.⁵⁶ The initial estimated cost of a peacekeeping mission of 5,000 men was \$192 million, which was ten times the annual budget of the OAU at the time.⁵⁷ Eventually, 3,000 men were sent, mostly from Nigeria.⁵⁸ The OAU's failed peacekeeping mission in Chad left the future status of OAU peacekeeping forces in serious doubt.⁵⁹

The conflict in Rwanda in the early 1990s highlighted both the depth of the internal problems faced by some African countries and the inefficacy of international organizations to manage these problems. While the OAU and the U.N. enjoyed some limited successes in the form of political pressure and temporary peace treaties,⁶⁰ the stark fact remains that over the course of a few months in 1994, roughly 800,000 Rwandans were victims of genocide.⁶¹

Rwanda was to be a test case for a new, more interventionist role to be played by the OAU in African conflicts.⁶² In 1990, following an incursion into Rwandan territory by a rebel group, OAU peacekeepers, in the form of military observers, were dispatched to Rwanda.⁶³ The OAU had a difficult time initially putting together its peacekeeping force, and it did not realize its target number of peacekeepers by the mission's end.⁶⁴

The first OAU peacekeeping mission to Rwanda fielded forty military observers, while the second mission, which followed on its heels, had 132 observers.⁶⁵ Despite the modest manpower of these missions, the OAU's efforts in Rwanda are generally considered a

53. *Id.*

54. *Id.*

55. *Id.*

56. ERIC G. BERMAN & KATIE E. SAMS, PEACEKEEPING IN AFRICA: CAPABILITIES AND CULPABILITIES 53 (United Nations 2000).

57. *Id.*

58. *Id.*

59. *Id.* at 29.

60. *Id.* at 60–61; GINO J. NALDI, THE ORGANIZATION OF AFRICAN UNITY 7 (2nd ed. 1999) [hereinafter NALDI, THE ORGANIZATION OF AFRICAN UNITY].

61. Stedman, *supra* note 30, at 235.

62. BERMAN & SAMS, *supra* note 54, at 58.

63. *Id.* at 59.

64. *Id.*

65. *Id.* at 59–60.

success. The willingness of the OAU to take action, coupled with its ability to exert constant political pressure, finally caused the U.N. to send a peacekeeping mission of its own to Rwanda.⁶⁶ The U.N.'s peacekeeping mission—known as the U.N. Assistance Mission for Rwanda (UNAMIR)—ultimately comprised 2,608 individuals, and when the mandate for the OAU's force expired, it was integrated into UNAMIR.⁶⁷ Eventually, as the bloodshed continued, the U.N. Security Council concluded that the situation in Rwanda constituted a threat to international peace and security. The Security Council authorized UNAMIR to use force to protect civilians, in accordance with Article 42 of the U.N. Charter.⁶⁸ Tragically, the interventions by the U.N. and the OAU were largely ineffective, and did not prevent the widespread slaughter of Rwandans.⁶⁹

Subsequent observer missions undertaken in Burundi and the Comoros sought to capitalize on the "success" of the OAU's Rwandan force.⁷⁰ The hope was that the U.N. would eventually intervene to establish peacekeeping missions of its own following action by the OAU, just as it had done in Rwanda.⁷¹ Despite the fact that the U.N. failed to intervene, and the modest size of the forces (thirty-three in Burundi, twenty in the Comoros), the missions were successful in at least some ways.⁷² In Burundi, the intervention of the OAU was thought to have prevented some instances of conflict between warring factions, whereas in the Comoros, the forces successfully served in the role of mediator and succeeded in providing humanitarian assistance.⁷³

C. Was the OAU Effective at African Conflict Maintenance?

Conflict maintenance, or the process of dealing with conflicts, can be divided into three interdependent processes: (1) conflict

66. *Id.* at 60–61.

67. *Id.*

68. NALDI, *THE ORGANIZATION OF AFRICAN UNITY*, *supra* note 58, at 7; U.N. Charter art. 42.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

69. See NALDI, *THE ORGANIZATION OF AFRICAN UNITY*, *supra* note 58, at 7.

70. BERMAN & SAMS, *supra* note 54, at 68.

71. *Id.*

72. *Id.* at 70–71.

73. *Id.*

prevention, (2) conflict management, and (3) conflict resolution.⁷⁴ Conflict prevention aims at stopping conflicts before they begin and addressing the issues that could give rise to future conflict.⁷⁵ Conflict management attempts to stop conflict once it has already begun.⁷⁶ Conflict resolution deals with residual effects of conflict once it has actively ceased, and seeks to address both the elimination of residual strife that may cause future conflict, and to rebuild political and other essential structures for the proper functioning of the state.⁷⁷

Conflict prevention relies primarily on viable early warning and risk assessment capabilities of responsible institutional actors.⁷⁸ This warning and risk assessment is primarily accomplished through quality field intelligence and the early reporting of conflicts or potential conflicts to the appropriate authorities.⁷⁹ Once the institutional actor has properly assessed the risk of conflict, preventative diplomacy and possible deployment of peacekeepers can take place in the hope of averting conflict.⁸⁰

The OAU was the most successful of African organizations in the area of conflict prevention.⁸¹ Some examples include the OAU's successfully mediated peace treaty following disputed elections in Congo (Brazzaville), and the Arusha Accord of 1993, which halted (albeit temporarily) the violence in Rwanda.⁸² While somewhat successful in the area of preventative diplomacy, the OAU's efforts at conflict prevention have been seriously hampered by its lack of operational intelligence.⁸³ Without such intelligence, the OAU could not effectively predict and assess situations that may give rise to conflict.⁸⁴ Furthermore, the OAU lacked full preventative deployment capabilities, whereby peacekeepers could be placed in areas of risk prior to the outbreak of hostilities.⁸⁵

Conflict management attempts to establish order by using preventative diplomacy, sanctions, peacekeeping, peace enforcement, and humanitarian intervention where necessary.⁸⁶ The OAU's

74. Levitt, *supra* note 48, at 55.

75. *Id.* at 56.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 54.

81. *Id.* at 55.

82. *Id.*

83. The OAU's 1981 peacekeeping mission in Chad is an example of failure of proper reporting. Both the Secretary-General and the Assembly of Heads of State (who made the decisions regarding the mission) had a difficult time getting good information about what was happening in Chad. *Id.* at 56.

84. *Id.* at 56.

85. *Id.*

86. *Id.* at 56-57.

capability to effectively manage conflict was effectively thwarted by a number of its institutional characteristics. The principle of non-interference in its Charter required the OAU to obtain permission of a Member State prior to interfering in any internal conflict.⁸⁷ Peace enforcement involves the use of military force to compel warring parties to reach peace settlements and is differentiated from peacekeeping in that permission of the parties or the state is not a prerequisite.⁸⁸ Thus, peace enforcement and humanitarian missions without permission were essentially banned by the OAU Charter. Even peacekeeping missions (in which consent is given) may have been impermissible; it is suggested that the only reason the OAU could interfere in Chad is because other nations (notably, Libya) were involved in the conflict already.⁸⁹ The lack of enforcement mechanisms within the OAU Charter meant that sanctions would have been wholly ineffective. Thus, OAU conflict management was essentially limited to preventative diplomacy.⁹⁰

Conflict resolution is aimed at securing a sustainable peace following the cessation of hostilities.⁹¹ The OAU's strength in diplomacy resulted in some successes in conflict resolution, most notably in Sierra Leone, where it affected a U.N. arms embargo on an illegal military junta that was running the country.⁹² Often, however, institutional limitations, both normative and structural, prevented the OAU from acting effectively in resolving many conflicts.⁹³ Furthermore, the OAU lacked the capability to ensure, through peacekeepers, that the peace was kept following the signing of a treaty.⁹⁴

In response to some of the shortcomings of the OAU's conflict maintenance capabilities, the OAU formally adopted the Mechanism for Conflict Prevention, Management, and Resolution (the Mechanism) at the OAU Summit in Cairo in June 1993.⁹⁵ The Mechanism gave power to the OAU to deploy civilian and military missions for purposes of monitoring and observation to areas in which conflict was occurring.⁹⁶ The Mechanism thus indicated that the OAU was authorized to undertake a new, more interventionist

87. *Id.* at 57.

88. Stedman, *supra* note 30, at 250.

89. Jonah, *supra* note 17, at 9.

90. Levitt, *supra* note 48, at 58.

91. *Id.* at 47.

92. *Id.* at 59.

93. *Id.*

94. *Id.* at 76-77.

95. BERMAN & SAMS, *supra* note 54, at 61.

96. Declaration of the Assembly of Heads of State and Government on the Establishment with in the OAU a Mechanism for Conflict Prevention, Management, and Resolution ¶ 15, *reprinted in* SELECTED DOCUMENTS, *supra* note 6, at 223.

approach.⁹⁷ It was clear from the outset, however, that the primary purpose of the Mechanism was to prevent conflict rather than to manage or resolve it.⁹⁸ In fact, according to the Director of Cabinet for the OAU Secretary-General, Said Djinnit, "a clear consensus against the involvement of the OAU in peacekeeping" was reached at the Dakar Summit in July 1992.⁹⁹ Given the institutional limitations of the OAU, including the self-interest of African heads of state, this restriction on the power of the OAU was not surprising.

D. Normative, Structural, and Practical Limitations of the OAU

The normative structure of the OAU led to success in resolving certain species of conflicts and failure when dealing with other forms. The OAU was able to avoid many potential conflicts arising from border disputes through its early implicit inclusion, and later explicit adoption, of the principle of *uti possidetis*.¹⁰⁰ In some cases in which such conflicts arose anyway, such as the Algeria-Morocco border conflict, the OAU was able to lay the ground work for a political solution.¹⁰¹ The explicit inclusion of territorial integrity of states as a defining principle of the OAU Charter indicates a strong belief in this principle. Dedication to this principle, coupled with the legal backing of the Charter, likely fostered an environment conducive to resolution of border disputes, and led to OAU successes in this area.¹⁰²

The OAU was also successful in promoting other principles and goals announced in its Charter. Two of its more notable accomplishments include its fight for decolonization and the declaration of the continent of Africa as a nuclear-free zone.¹⁰³ Article 3, Paragraph 6 of the OAU Charter states that the Member States must adhere to an "absolute dedication to the total emancipation of Africa."¹⁰⁴ To this end, the OAU created the Liberation Committee in 1963, which sought to end colonial occupation through various means, including assistance to liberation movements and diplomatic pressure, to achieve liberation goals at the United Nations.¹⁰⁵ The OAU also adopted the Pelindaba Treaty in 1995, which calls on all African nations to establish Africa as a

97. See BERMAN & SAMS, *supra* note 54, at 61.

98. *Id.* at 61–62.

99. *Id.*

100. See NALDI, AN ANALYSIS, *supra* note 3, at 8.

101. *Id.* at 35.

102. Munya, *supra* note 3, at 579.

103. *Id.* at 579–80; SESAY ET AL., *supra* note 14, at 14–20, 92.

104. OAU Charter, *supra* note 11, art. 3(6).

105. SESAY ET AL., *supra* note 14, at 11–12; TWENTY YEARS, *supra* note 1, at 7.

nuclear-free zone.¹⁰⁶ The adoption of this treaty is in line with the goals of peace and security of the African continent, as stated in the Preamble of the OAU Charter (where it states that “conditions for peace and security must be established and maintained”),¹⁰⁷ and Article 2 of the Charter (where it calls for “cooperation for defense and security”).¹⁰⁸

While the principles announced in the OAU Charter have led to some tangible results on the continent, it is undeniable that these principles also restrained the actions of the OAU, especially in the sphere of conflict management and resolution.¹⁰⁹ The principle of sovereign equality that formed the foundation of the Charter has tied the hands of the OAU in many devastating conflicts.¹¹⁰ It has been noted that this principle greatly, if not entirely, impaired the OAU’s ability to manage or resolve the internal conflicts of Member States.¹¹¹ Given that colonial borders were drawn without regard to tribal or ethnic divisions,¹¹² and these borders were held inviolable by the OAU Charter, it is ironic that the very document that sought to prevent conflict over borders actually insured that conflict within borders would take place.¹¹³ What made this problem all the more intractable is that the Charter probably succeeded in minimizing the type of conflict over which the OAU had legal control (interstate conflict), at the expense of creating additional conflict over which it had no legal control (intrastate conflict).¹¹⁴

While U.N. Charter provisions provide for respect for territorial integrity, state sovereignty, and non-interference,¹¹⁵ the post-Cold War period has seen the U.N. interpret these principles liberally.¹¹⁶ The result has been that in certain circumstances, the U.N. has approved interference, including with force, in the internal affairs of Member States.¹¹⁷ Most notably, the U.N. approved a peacekeeping mission in Somalia in 1992, and the deployment of an international force in Haiti to restore the ousted government of Jean-Bertrand Aristide.¹¹⁸ In undertaking such missions, the U.N. has implicitly

106. African Nuclear Weapon-Free Zone Treaty (Pelindaba Treaty), *reprinted in* SELECTED DOCUMENTS, *supra* note 6, at 203.

107. OAU Charter, *supra* note 11, pmb.

108. *Id.* art. 2(f).

109. *See* Munya, *supra* note 3, at 584–86.

110. *Id.*

111. *Id.*; Jonah, *supra* note 17, at 9.

112. NALDI, AN ANALYSIS, *supra* note 3, at 9.

113. Stedman, *supra* note 30, at 240.

114. *See* Munya, *supra* note 3, at 578.

115. U.N. Charter art. 2, para. 1, 4.

116. Munya, *supra* note 3, at 584.

117. *Id.* at 585.

118. *Id.*

recognized that the present reality calls for a flexible interpretation of the principles of sovereignty.¹¹⁹ Such an approach will allow the U.N. to deal with the threats to "international peace and security" (as Chapter VII of the Charter authorizes it to do)¹²⁰ that are internal in origin, but may have broader, transnational effects.

The OAU adhered to a strict and rigid interpretation of the doctrine of sovereignty and territorial integrity that prevented it from engaging in many devastating conflicts in Africa.¹²¹ This inflexible approach was no doubt attributable to the extreme deference to sovereignty that African leaders incorporated into the OAU Charter, and the reluctance to stray from it. As former U.N. staffer Yassin El-Ayouty noted in his assessment of the OAU in 1993, "The world has completely changed, since 1989 [and the end of the Cold War]; the OAU has not, since 1963."¹²² El-Ayouty further noted that to remain relevant and effective, the OAU would have to recognize humanitarian intervention to protect human rights as an emerging rule of customary international law.¹²³

The fact that such intervention would directly conflict with the OAU's absolute deference to the principle of sovereign integrity and non-interference meant that a very difficult conceptual shift was necessary for the OAU to remain a viable institution that was in tune with the changing needs of Africa.¹²⁴ The lack of provisions in the OAU Charter analogous to Chapter VII of the U.N. Charter also placed the constitutional justification for such a conceptual shift on shaky ground.¹²⁵

The effectiveness of the OAU as an organization was also hindered by limitations in its structure and distribution of powers.¹²⁶ It has been noted that the power was distributed very unevenly, and that almost all of its power rests with one group: the Assembly of Heads of State.¹²⁷ It is not surprising, then, that a prominent African statesman, former Tanzanian President Julius Nyerere, noted that "the OAU exists only for the protection of African Heads of State."¹²⁸

119. See *id.* (discussing the U.N.'s evolving interpretation of the principle of sovereignty and exercise of its Chapter VII powers to intervene forcefully where necessary to "maintain or restore international peace and security").

120. See U.N. Charter art. 39–51.

121. Munya, *supra* note 3, at 584; Corinne A. A. Packer & Donald Rukare, *The New African Union and its Constitutive Act*, 96 AM. J. INT'L. L. 365, 367 (2002).

122. Yassin El-Ayouty, *An OAU for the Future: An Assessment*, in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS, *supra* note 17, at 179, 179.

123. *Id.* at 186.

124. *Id.* at 186–88.

125. See NALDI, THE ORGANIZATION OF AFRICAN UNITY, *supra* note 58, at 37.

126. Munya, *supra* note 3, at 586–89.

127. *Id.* at 586–87.

128. El-Ayouty, *supra* note 120, at 179.

Getting African heads of state to look beyond their own personal and national interests proved to be difficult, further frustrating the progress of OAU meetings.¹²⁹

The OAU Secretary-General had neither the power to resolve conflicts diplomatically on his own directive, nor the power to initiate any review of a situation he believed constituted a threat to peace and security in Africa.¹³⁰ The failure to distribute powers more evenly, particularly with regard to the function of the Secretary-General, was a source of great structural ineffectiveness in the OAU.¹³¹

Another serious structural hindrance to the OAU's effectiveness was its complete lack of an enforcement mechanism for compelling Member States to respect its decisions.¹³² The OAU had no "mandatory powers," and many of its decisions were essentially recommendations.¹³³ The OAU had no ability to force consensus or demand the obedience of its Member States, other than mobilization of public opinion against the recalcitrant state.¹³⁴ The OAU Charter also did not provide for the creation of a body to enforce decisions with regard to peace and security.¹³⁵ The OAU lost a lot of its legitimacy in the eyes of Member States as a result of its inability to enforce its decisions.¹³⁶

The OAU's decision-making process was also flawed.¹³⁷ The requirement of two-thirds of the members of the Assembly of Heads of State for a quorum, coupled with a two-thirds majority voting system, meant that delay in dealing with important issues was inevitable.¹³⁸ Furthermore, even when decisions were made, the OAU was thought to rely too heavily on diplomacy.¹³⁹ The result was often a temporarily alleviated conflict that later resurfaced due to the failure of the OAU to address the root causes of the conflict.¹⁴⁰

While not the result of Charter-based limitations, lack of financial resources also had a severe impact on the functioning of the OAU.¹⁴¹ For example, the cost of the OAU's peacekeeping mission in Chad was well beyond its entire annual budget.¹⁴² The lack of funds

129. Packer & Rukare, *supra* note 119, at 369.

130. Munya, *supra* note 3, at 588.

131. *Id.*; Packer & Rukare, *supra* note 119, at 369.

132. See NALDI, AN ANALYSIS, *supra* note 3, at 38; Munya, *supra* note 3, at 588.

133. NALDI, THE ORGANIZATION OF AFRICAN UNITY, *supra* note 58, at 37.

134. NALDI, AN ANALYSIS, *supra* note 3, at 38.

135. Munya, *supra* note 3, at 589.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 590.

142. NALDI, AN ANALYSIS, *supra* note 3, at 28.

for the Chadian intervention led to a complete lack of a uniform command structure (resulting from the fact that each donor country managed and paid their own troops), which greatly inhibited the effectiveness of the mission.¹⁴³ International interest in Africa also waned since the end of the Cold War, and the limited aid given to Africa afterwards exacerbated the financial woes of the OAU.¹⁴⁴ The OAU's lack of an enforcement mechanism also meant that Member States could completely avoid their financial obligations to the OAU without repercussions.¹⁴⁵

II. THE AFRICAN UNION

A. *The Formation of a New African Intercontinental Organization*

The Constitutive Act of the AU was adopted on July 11, 2000, in Lome, Togo by the Assembly of Heads of Government of the OAU.¹⁴⁶ The Constitutive Act came into effect on May 26, 2001, upon ratification by Nigeria.¹⁴⁷ At this point, the OAU ceased to exist as a legal entity, and the AU emerged in its place.¹⁴⁸ The AU became operationally effective on July 10, 2002, and the Constitutive Act has currently been ratified by all fifty-three African nations.¹⁴⁹

African leaders viewed the formation of the AU as a reformation of the OAU, rather than the creation of an entirely new entity.¹⁵⁰ The AU was designed to address some of the shortcomings of the OAU, including its inability to deal effectively with deadly conflict.¹⁵¹ The OAU was founded to spur decolonization and development, as well as to combat apartheid¹⁵² and it had accomplished much toward these goals, particularly decolonization and apartheid.¹⁵³ With many of the initial goals of the OAU accomplished, African leaders sought to create an entity that would be more effective in dealing with the current problems faced by the people of Africa.¹⁵⁴

143. Jonah, *supra* note 17, at 8.

144. See Munya, *supra* note 3, at 538; see also Stedman, *supra* note 30, at 237.

145. Packer & Rukare, *supra* note 119, at 369.

146. The Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (July 11, 2000), reprinted in SELECTED DOCUMENTS, *supra* note 6, at 37 [hereinafter AU Constitutive Act].

147. SELECTED DOCUMENTS, *supra* note 6, at 35.

148. *Id.* at 36; Packer & Rukare, *supra* note 119, at 365.

149. SELECTED DOCUMENTS, *supra* note 6, at 36; AU Constitutive Act, *supra* note 144.

150. Packer & Rukare, *supra* note 119, at 365.

151. SELECTED DOCUMENTS, *supra* note 6, at 35.

152. *Id.*

153. *Id.*

154. *Id.*; Packer & Rukare, *supra* note 119, at 366.

The Constitutive Act of the AU provides in Article 3 the objectives of the new Union:

Article 3

Objectives

The objectives of the Union shall be to:

- (a) achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (b) defend the sovereignty, territorial integrity, and independence of its Member States;
- (c) accelerate the political and socio-economic integration of the continent;
- (d) promote and defend African common positions on issues of interest to the continent and its peoples;
- (e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (f) promote peace, security, and stability on the continent;
- (g) promote democratic principles and institutions, popular participation and good governance;
- (h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- (j) promote sustainable development at the economic, social, and cultural levels as well as the integration of African economies;
- (k) promote co-operation in all fields of human activity to raise the living standards of African peoples;
- (l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- (m) advance the development of the continent by promoting research in all fields, in particular science and technology;
- (n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.¹⁵⁵

The principles of the AU were announced in Article 4 of the Constitutive Act:

Principles

The Union shall function in accordance with the following principles:

- (a) sovereign equality and interdependence among Member States of the Union;
- (b) respect of borders existing on achievement of independence;

155. AU Constitutive Act, *supra* note 144, art. 3.

- (c) participation of the African peoples in the activities of the Union;
- (d) establishment of a common defense policy for the African Continent;
- (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to use force among Member States of the Union;
- (g) non-interference by any Member State in the internal affairs of another;
- (h) the right of the Union to intervene if a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
- (i) peaceful co-existence of Member States and their right to live in peace and security;
- (j) the right of Member States to request intervention from the Union in order to restore peace and security;
- (k) promotion of self-reliance within the framework of the Union;
- (l) promotion of gender equality;
- (m) respect for democratic principles, human rights, the rule of law and good governance;
- (n) promotion of social justice to ensure balanced economic development;
- (o) respect for sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- (p) condemnation and rejection of unconstitutional changes of government.¹⁵⁶

B. *Differences between the AU Charter and the OAU Charter*

The Preamble to the Constitutive Act explicitly recognizes the problems Africa faces in terms of armed conflict and the effect that these conflicts have on human rights.¹⁵⁷ The objectives of the AU, as

156. *Id.* art. 4.

157. *See id.* The Preamble to the Constitutive Act of the African Union states:

Conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda Determined to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law; Further determined to *take all necessary measures* to strengthen our common institutions and provide them with the necessary powers and resources to enable them to discharge their respective mandates effectively

stated in Article 3 of the Constitutive Act, include to “promote peace, security, and stability on the continent”¹⁵⁸ and to “promote and protect human and peoples’ rights.”¹⁵⁹ The objectives also include to “defend the sovereignty, territorial integrity, and independence of Member States,”¹⁶⁰ which essentially reproduces Article 2(1)(c) of the OAU Charter.¹⁶¹ Article 3(a) of the Constitutive Act calls for the achievement of “greater unity and solidarity” between nations and people in Africa, indicating that the OAU had not been effective enough at “promot[ing] the unity and solidarity of African States,” as called for in Article 2(1)(a) of the OAU Charter.¹⁶²

The announced principles of the AU embodied in Article 4 of the Constitutive Act reflect a major shift in thinking from the OAU Charter. Whereas the OAU Charter adheres to the principle of the “sovereign equality of all Member States,”¹⁶³ the Constitutive Act rephrases the principle as respect for the “sovereign equality *and interdependence* among Member States of the Union.”¹⁶⁴ While the OAU Charter speaks of “respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence,”¹⁶⁵ the Constitutive Act speaks only of “respect for borders existing on achievement of independence.”¹⁶⁶

The most drastic differences between the Constitutive Act and the OAU Charter are with regard to intervention. The OAU Charter adopts a rigid policy of “non-interference in the internal affairs of States.”¹⁶⁷ While the Constitutive Act provides for “non-interference of *any Member State* in the internal affairs of another,”¹⁶⁸ it allows for “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity.”¹⁶⁹ The importance of this provision cannot be overstated; whereas the OAU was essentially wholly restricted from intervening in internal affairs as a result of its charter, the AU has explicitly been granted authority

Id. (emphasis added).

158. *Id.* art. 3(f).

159. *Id.* art. 3(h). The full text of 3(h) reads “to promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments.”

160. *Id.* art. 3(b).

161. OAU Charter, *supra* note 11, art. 2(1)(c).

162. AU Constitutive Act, *supra* note 144, art. 3(a); OAU Charter, *supra* note 11, art. 2(1)(a).

163. OAU Charter, *supra* note 11, art. 3(1).

164. AU Constitutive Act, *supra* note 148, art. 4(a) (emphasis added).

165. OAU Charter, *supra* note 11, art. 3(3).

166. AU Constitutive Act, *supra* note 144, art. 4(b).

167. OAU Charter, *supra* note 11, art. 3(2).

168. AU Constitutive Act, *supra* note 144, art. 4(g) (emphasis added).

169. *Id.* art. 4(h).

to intervene in internal affairs of its members under certain circumstances.

The OAU's policy of noninterference was further eroded by the Constitutive Act's refusal to recognize illegal governments that take power in African countries.¹⁷⁰ The OAU had no similar provision, and as a result, the seizing of power by such governments often went unchecked.¹⁷¹ The interventionist tone of the Constitutive Act goes even further to provide for the existence of "the right of Member States to request intervention from the Union in order to restore peace and security."¹⁷² It also advocates "the establishment of a common defense policy for the African Continent."¹⁷³

The normative differences between the AU and the OAU are significant, as is obvious in a comparison between the OAU Charter and the Constitutive Act. These normative differences are reflective of African leaders' understanding that a new organization, with new powers and principles, was necessary to deal with current problems faced by Africans.¹⁷⁴ A comparison between the OAU Charter and the Constitutive Act of the AU reveal two major differences that are important in addressing conflict: (1) the Constitutive Act has made a significant move away from the notion of each Member State as a separate, inviolable entity and (2) has provided the normative structure for a much more interventionist policy on the part of the AU. Thus, the normative barriers to intervention that were written into the OAU Charter have been largely removed by the much more permissive language of the Constitutive Act.

While the normative structure of the AU is largely different than its predecessor, the power structure of the AU is similar in some ways to that of the OAU.¹⁷⁵ The Assembly of the Union is the supreme organ of the AU, and is composed of the fifty-three heads of African states, just as was the Assembly of Heads of State and Government of the OAU.¹⁷⁶ Voting on substantive matters is done "by consensus or . . ." on a two-thirds majority basis, while procedural matters only require the vote of a simple majority.¹⁷⁷ Two-thirds of the membership of the Assembly of the Union must be present to form a quorum at any meeting of the Assembly.¹⁷⁸ Excluding the provision that votes on substantive matters are first done by consensus, all of

170. *Id.* art. 4(p).

171. Packer & Rukare, *supra* note 119, at 374.

172. AU Constitutive Act, *supra* note 144, art. 4(j).

173. *Id.* art. 4(d).

174. See Packer & Rukare, *supra* note 119, at 369–70.

175. See *id.* at 374–77.

176. *Id.* at 374; AU Constitutive Act, *supra* note 144, art. 6.

177. AU Constitutive Act, *supra* note 144, art. 7(1).

178. *Id.* art. 7(2).

these provisions are identical to those applicable to the Assembly of Heads of State and Government of the OAU.¹⁷⁹

Article 10 of the Constitutive Act establishes the Executive Council, which is comprised of the Ministers of Foreign Affairs of Member States, or other Ministers or authorities designated by the Member State.¹⁸⁰ The Executive Council may have responsibilities delegated to it by the Assembly, and is essentially the same as the OAU's Council of Ministers both in terms of composition and responsibilities.¹⁸¹

Article 20 of the Constitutive Act provides for the creation of the Commission of the AU, which is the Secretariat of the Union.¹⁸² The duties, powers, and responsibilities of the Commission are largely unaddressed in the Constitutive Act, which simply provides that the functions of the Commission will be determined by the Assembly.¹⁸³ An important question arose: would the Commission have more power than the OAU Secretary-General did? The lack of constitutionally-delineated limitations on the Commission's power indicates that this is a possibility, and some commentators have speculated that the broader powers of the AU necessitate a more powerful and active Secretariat.¹⁸⁴ If the Commission were to be given greater powers, it could take a more active role in diplomacy and in initiating procedures for conflict maintenance. Such powers would alleviate some of the ineffectiveness experienced by the OAU as a result of its uneven power distribution.

The Peace and Security Council (PSC) was established by protocol on July 10, 2002, pursuant to Article 5(2) of the Constitutive Act.¹⁸⁵ It is comprised of fifteen members, ten of which serve for two years, and five of which serve for three years.¹⁸⁶ The PSC works in conjunction with the Chairperson of the Commission of the AU.¹⁸⁷ It is charged with authorizing deployment and deciding the mandate of "peace support missions," recommending armed intervention to the Assembly in "grave circumstances," initiating sanctions on governments that take power unconstitutionally, and other related

179. OAU Charter, *supra* note 11, art. 10.

180. AU Constitutive Act, *supra* note 144, art. 7(1).

181. See OAU Charter, *supra* note 11, arts. 12–15; Packer & Rukare, *supra* note 119, at 375.

182. AU Constitutive Act, *supra* note 144, art. 20(1).

183. *Id.* art. 20(3).

184. Packer & Rukare, *supra* note 119, at 375.

185. Protocol Relating to the Establishment of the Peace and Security Council of the African Union arts. 2(1), 5(2), available at <http://www.africa-union.org/home/Welcome.htm> (follow "Organs" hyperlink; then follow "Peace and Security Council" hyperlink) (last visited Jan. 10, 2006) [hereinafter Protocol].

186. *Id.* art. 5(1).

187. *Id.* art. 7(1).

peace and security functions.¹⁸⁸ The PSC is, in many ways, analogous to the U.N. Security Council; however, the ability to use force to intervene in an internal conflict without a Member State's permission is vested with the Assembly instead of the PSC.¹⁸⁹

The Chairperson of the Commission, as part of the PSC, has the authority to bring matters believed to pose a threat to peace or security to the attention of the PSC.¹⁹⁰ The Chairperson can also use his or her diplomatic capabilities, either at his or her own initiative or the direction of the PSC, to prevent and resolve conflicts and promote peace-building.¹⁹¹ The role of the Chairperson as part of the PSC indicates a broader role for the Commission in the AU, and a more even distribution of powers than that which existed in the OAU.

The Protocol that established the PSC attempted to lay the ground work for more effective conflict maintenance. Preventative diplomacy forms the foundation of AU conflict prevention, with both the Chairperson of the Commission (Article 10 of the Protocol) and the Panel of the Wise (Article 11; comprised of prominent African figures) charged with using their "good offices" to avoid conflict through diplomacy.¹⁹² More importantly, the Protocol establishes an early warning system (Article 12) that was lacking in the OAU, with a central command and regional observation and monitoring units.¹⁹³ These units are charged with monitoring a variety of "political, economic, social, military, and humanitarian" factors at the local level.¹⁹⁴ The information the units gather will be passed along to the Chairperson of the Commission, who report to the PSC on matters of importance.¹⁹⁵

C. Will the AU Be More Effective at African Conflict Maintenance than the OAU?

Conflict management by the AU is likely to be more effective given the broader mandate of the AU to involve itself in internal affairs of its Member States. The ability to deploy peacekeepers, peace enforcers, and humanitarian intervention without Member State permission gives the AU the institutional capability to act to restore or maintain peace in a wide variety of circumstances. Furthermore, the AU's ability to impose serious sanctions (discussed

188. *See id.* art. 7(1)(a)-(r).

189. *Id.* art. 7(1)(e).

190. *Id.* art. 10(2)(a).

191. *Id.* art. 10(2)(c).

192. *Id.* arts. 10-11.

193. *Id.* art. 12.

194. *Id.* art. 12(4).

195. *Id.* art. 12(5).

below) on Member States that disregard its decisions (presumably including demands for respecting a ceasefire) gives it additional power in this area.

The AU will likely capitalize on its diplomatic expertise (as did the OAU) to assist it in conflict resolution. The Protocol establishing the PSC charges it with the tasks of ensuring the establishment of conditions for post-conflict reconstruction, disarmament and rehabilitation of combatants, and "resettlement and reintegration of combatants."¹⁹⁶ The PSC would likely accomplish these tasks by deploying peacekeepers to assist the people and the government of a war-torn region. Its success in conflict resolution will be dependent on the willingness and logistical capability of the PSC to deploy and maintain peace-building forces in these areas.

The AU is structured to be much more effective in all areas of conflict maintenance than was the OAU. Not only has it expanded upon the OAU's diplomatic strengths (by, for example, giving the Commission diplomatic responsibilities), but it has, at least in theory, addressed many of the major shortcomings of the OAU. These shortcomings included lack of quality operational intelligence and an early warning system, lack of peace enforcement capabilities in internal conflicts, and lack of coordination of post-conflict rebuilding. While the institutional structure of the AU is an improvement, it must implement these enhanced conflict maintenance capabilities in order to prove itself to be truly superior to the OAU in resolving conflict.

Perhaps one of the most important structural changes in the AU is the creation of an enforcement mechanism to compel Member States to comply with decisions of the Union and obligations resulting from membership in it. Article 23 of the Constitutive Act provides for the imposition of sanctions for default in payment of contributions to the budget of the AU, as well as the possibility of sanctions for failure to comply with the AU's decisions and policies.¹⁹⁷ Possible sanctions for default of payment of dues include loss of "the right to speak at meetings, to vote, [or] to present candidates" to the AU.¹⁹⁸ Failure to comply with decisions and policies can bring harsher penalties, including "denial of transport[ation] and communication links with other Member States," as well as other political or economic measures as authorized by the Assembly.¹⁹⁹

The enforcement mechanism embodied in the Constitutive Act gives the AU the bite that was wholly lacking in the OAU, whose

196. *Id.* art. 14(3).

197. AU Constitutive Act, *supra* note 144, art. 20.

198. *Id.* art. 10(1).

199. *Id.* art. 10(2).

decisions were often treated as mere recommendations due to lack of enforcement capabilities.²⁰⁰ The enforcement mechanism, if utilized fairly and effectively when Member States either ignore decisions of the Union or fail to pay their dues, should give the AU legitimacy in an area where the OAU had none.

There are a few notable omissions from the Constitutive Act of the AU. A standing military force was not created, although the AU is authorized by the Constitutive Act "to establish a 'common defense policy'" for Africa.²⁰¹ The failure to do so may be due to an understanding of the economic limitations of the organization and the political difficulties that would be encountered in staffing its command.²⁰² It should be noted, however, that Member States were called upon to form standby contingents for use in peacekeeping missions in the Protocol Relating to the Establishment of the Peace and Security Council of the AU.²⁰³

The Constitutive Act also failed to specify how the AU would be funded.²⁰⁴ This failure is particularly notable given the fact that a lack of financial resources was one of the major impediments to the success of the OAU.²⁰⁵ The Constitutive Act does provide for sanctions for the failure of Member States to pay dues,²⁰⁶ so presumably once a method of collecting dues is established, it will be enforced. The ability of the AU to decide upon an acceptable contributions scheme, and its subsequent effectiveness at enforcing this obligation, remains to be seen, and will likely play a major role in the success or failure of the Union to accomplish its objectives.

D. *The AU and Peacekeeping: Darfur as a Litmus Test*

The AU's first peacekeeping mission was undertaken in Burundi in April 2003.²⁰⁷ A force of 3,000 peacekeepers from many African nations was sent with the understanding that it was a temporary measure until the U.N. deployed a peacekeeping mission to the region.²⁰⁸ The mandate of the force was to "monitor and verify the

200. See *supra* note 104; NALDI, *THE ORGANIZATION OF AFRICAN UNITY*, *supra* note 58, at 37.

201. Packer & Rukare, *supra* note 119, at 376.

202. *Id.*

203. Protocol, *supra* note 183, art. 13.

204. Packer and Rukare, *supra* note 119, at 377.

205. *Id.*

206. See AU Constitutive Act, *supra* note 144, art. 23.

207. Festus Agoagye, *The African Mission in Burundi: Lessons Learned from the First African Union Peacekeeping Operation*, CONFLICT TRENDS 2/2004, at 9, 9-10, available at <http://www.accord.org.za/ct/2004-2.htm>; Nicole Itano, *Burundi Peace in African Hands*, THE CHRISTIAN SCIENCE MONITOR, Oct. 23, 2003, at 6.

208. Agoagye, *supra* note 205, at 13; Itano, *supra* note 205.

implementation of" a ceasefire agreement signed between the Burundian government and rebel forces.²⁰⁹ To this end, it was "charged with protecting government installations . . . facilitating demobilization of the rebels," and establishing the ground work for elections.²¹⁰

The mission in Burundi experienced mixed success.²¹¹ While the ceasefire agreements were not fully implemented, the AU peacekeepers stabilized 95% of the country and created adequate conditions for the deployment of U.N. peacekeepers.²¹² The peacekeepers also successfully "facilitate[d] . . . delivery of humanitarian assistance[, and] provide[d] protection [for] returning leaders."²¹³ One of the major hindrances to the mission, however, was reminiscent of those of its predecessor institution: a lack of funding and a consequent breakdown of logistics.²¹⁴ Nevertheless, the AU's mission was moderately successful, although the real test of the AU's capabilities was yet to come.

Darfur is a region in western Sudan that is approximately the size of France.²¹⁵ It is home to an estimated six million people.²¹⁶ In February 2003, rebel groups from Darfur, whose population consists mainly of non-Arab black Africans, took up arms against the Arab-dominated Sudanese government, claiming that the government neglected and discriminated against them.²¹⁷ In response, the Sudanese government enlisted the aid of Arab militias, known as the Janjaweed, to kill and terrorize large segments of the population of Darfur.²¹⁸ Civilians in Darfur have reported that the Sudanese military and the Janjaweed have engaged in joint missions attacking villages in the area.²¹⁹ The Sudanese government claims it does not

209. Agoagye, *supra* note 205, at 9–10.

210. Itano, *supra* note 205.

211. See Agoagye, *supra* note 205, at 14.

212. *Id.* The ONUB is the U.N. operations in Burundi. *Id.* at 10.

213. *Id.* at 14.

214. *Id.*

215. Simon Robinson, *Nowhere to Hide*, TIME, July 5, 2004, at 32; David Blair, *Rwandan Troops Spearhead Peace Force for Darfur*, THE DAILY TELEGRAPH (London), Aug. 16, 2004, at 11.

216. See International Crisis Group, Conflict Prevention and Resolution, <http://www.icg.org/home/index.cfm?id=3060&l=1> (follow "maps and geographical information" hyperlink) (last visited Nov. 18, 2005).

217. Robinson, *supra* note 213.

218. *Id.*; Opheera McDoom, *African Union Sends 300-Strong Protection Force into Darfur*, THE INDEPENDENT (London), July 6, 2004, at 24; Colum Lynch, *Darfur Increasingly Unstable, U.N. Envoy Warns*, THE WASHINGTON POST, Nov. 5, 2004, at A21.

219. It was reported that the military helicopters circled over one village moments before it was attacked by the Janjaweed. Meera Selva, *Darfur Attacks Put Deadline to Disarm Militias in Jeopardy*, THE INDEPENDENT (London), Aug. 30, 2004, at 23.

control the militias, but strong evidence exists that indicates otherwise.²²⁰

By late August of 2004, it was estimated that the Janjaweed had caused 30,000 deaths, and was responsible for the forced displacement of 1.2 million people.²²¹ In October 2004, the AU reported that the number of refugees had increased to 1.5 million,²²² and by January 2005, the number had again increased to 2.3 million.²²³ The U.N. concluded that between March and November of 2004, 70,000 had been killed or died of hunger in Darfur.²²⁴ By October 2005, it was estimated that 180,000 people had been killed or died in Darfur as a direct or indirect result of the hostilities.²²⁵

On May 25, 2004, the PSC of the AU authorized the Chairperson of the Commission to deploy an AU observer mission in Darfur.²²⁶ The mandate of the mission was to observe and monitor the progress of the N'Djamena Humanitarian Cease-Fire Agreement signed by the government of Sudan and the Darfurian rebels on April 8, 2004, and to ensure compliance.²²⁷ The government and the rebels agreed to the formation of a Ceasefire Commission chaired by the AU to monitor the progress of the ceasefire and the deployment of AU observers in Darfur, a few days later.²²⁸

220. *Id.*; Corine Hegland, *Sudan Still Simmers*, NATIONAL JOURNAL, Jan. 8, 2005, at 50.

221. Laurie Goering, *Sudan Rejects African Peacekeepers for Darfur*, CHICAGO TRIBUNE, Aug. 24, 2004, at 3.

222. African Union Peace & Sec. Council, *Report of the Chairperson of the Commission on the Situation in Darfur, the Sudan*, ¶ 50, PSC/PR/2 (XVII) (Oct. 20, 2004), available at <http://www.africa-union.org/home/Welcome.htm> (follow "News & Events" hyperlink; then follow "Communiqués" hyperlink) (last visited Nov. 18, 2005).

223. African Union Peace & Sec. Council, *Report of the Chairperson of the Commission on the Situation in the Darfur Region of Sudan*, ¶ 50, PCS/AHG/4 (XXIII) (Jan. 10–11, 2004), available at http://www.africa-union.org/psc/23rd/Darfur%20_Eng.pdf (last visited Nov. 18, 2005) [hereinafter *Report on the Situation in the Darfur Region of Sudan*].

224. Robyn Dixon, *U.N. Suspends Operations in Sudan—World Food Program's Decision to Pull Out of the Darfur Region Due to Renewed Violence Leaves 300,000 Without Help*, LOS ANGELES TIMES, Nov. 26, 2004, at A3.

225. Robert Wielaard, *Two Peacekeepers Killed in Ambush in Darfur*, THE WASH. POST, Oct. 9, 2005, at A26.

226. African Union Peace & Sec. Council, *Communiqué of the Solemn Launching of the Tenth Meeting of the Peace and Security Council*, § A(6), PSC/AHG/Comm. (X), (May 25, 2004), available at <http://www.africa-union.org/home/Welcom.htm> (follow "News & Events" hyperlink; then follow "Communiqués" hyperlink) (last visited Nov. 18, 2005).

227. *Id.* § A(2), (6).

228. Agreement with the Sudanese Parties on the Modalities for the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur, May 28, 2004, available at <http://www.africa-union.org/DARFUR/Agreements/agreement%20with%20the%20Sudanese%20parties.pdf> (last visited Nov. 18, 2005).

At its seventeenth meeting on October 20, 2004, the PSC authorized an “enhancement” of the so-called African Mission in Sudan (AMIS).²²⁹ In addition to increasing the total size of the force to 3,320 individuals, the mandate of AMIS was expanded to include not only monitoring, “confidence-building,” and securing delivery of humanitarian relief, but significantly, to “protect civilians whom it encounters under imminent threat in the immediate vicinity.”²³⁰ The AU force in Darfur is thus authorized to use force under certain circumstances to protect civilians.

The parties to the Darfur conflict signed various protocols in November 2004 that emphasized an agreement to protect civilians from harm, to allow free movement of humanitarian aid, and to cooperate with AMIS’ efforts to monitor the ceasefire.²³¹ The government of Sudan also explicitly agreed to “neutralize and disarm the Janjaweed,” and to allow AMIS to monitor the disarmament.²³²

UN resolutions calling for the government of Sudan to disarm the Janjaweed and stabilize the Darfur region were subsequently ignored,²³³ and U.N. Secretary-General Kofi Annan reported in early December that the government had made no progress in disarming the Janjaweed.²³⁴

The U.N. stated, in a report dated January 25, 2005, that it has concluded that while the acts committed in Darfur do not reflect a policy of genocide, the Sudanese government and the Janjaweed “are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.”²³⁵

229. African Union Peace & Sec. Council, *Communiqué of the Seventeenth Meeting of the Peace and Security Council*, ¶¶ 2, 3, 5, 11–13, PSC/PR/Comm. (XVII) (Oct. 20, 2004), available at <http://www.africa-union.org/home/Welcom.htm> (follow “News & Events” hyperlink; then follow “Communiqués” hyperlink) (last visited Nov. 18, 2005) [hereinafter *Communiqué of the Seventeenth Meeting*].

230. *Id.* ¶¶ 4, 6–7.

231. See Protocol Between the Government of Sudan (GoS), The Sudan Liberation Movement/Army (SLM/A), and the Justice and Equality Movement (JEM) on the Improvement of the Humanitarian Situation in Darfur §§ 1–2, Nov. 9, 2004, available at <http://www.africa-union.org/DARFUR/Agreements/MAP0013.pdf> (last visited Nov. 18, 2005); Protocol Between the Government of Sudan (GoS), The Sudan Liberation Movement/Army (SLM/A), and the Justice and Equality Movement (JEM) on the Enhancement of the Security Situation in Darfur in Accordance with the N’Djamena Agreement § 1, Nov. 9, 2004, available at <http://www.africa-union.org/DARFUR/Agreements/MAP0012.PDF> (last visited Nov. 18, 2005) [hereinafter Protocol on the Enhancement of the Security Situation in Darfur].

232. Protocol on the Enhancement of the Security Situation in Darfur, *supra* note 229, at 3.

233. Hegland, *supra* note 218.

234. *U.S. Slams Inaction in Darfur as Chaos Looms*, THE AUSTRALIAN, Dec. 9, 2004, at 9.

235. Int’l Comm’n of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 3, (Jan. 25, 2005)

The U.N. went on to state that “[t]hese acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity.”²³⁶

In late January 2005, the Assembly of the AU expressed its determination to “take all appropriate measures against those responsible for further obstructing the peace efforts in Darfur.”²³⁷ It also authorized the PSC to “take all necessary measures to promote an early negotiated solution.”²³⁸ Following the report of an AU Assessment Team sent to Darfur to monitor the progress of AMIS, the PSC authorized an increase in total strength of AMIS to 6,171 military personnel and 1,560 civilian police (6,200 peacekeepers were reported to be in Darfur by October 2005).²³⁹ The communiqué, which authorized this force enhancement, noted that while the parties’ compliance with the Ceasefire Agreement was insufficient, the government of Sudan had withdrawn some troops and bombers from positions in Darfur, a move that was viewed favorably.²⁴⁰

The AU moved forward on the diplomatic front by appointing Salim A. Salim, “[f]ormer Secretary-General of the OAU, as the AU Special Envoy for the Inter-Sudanese Political Talks on Darfur” in May 2005.²⁴¹ The PSC subsequently acknowledged the critical role of diplomacy in ultimately resolving the political and socio-economic issues that initially sparked the conflict in Darfur.²⁴² By July 2005, the government of Sudan and the two major rebel factions, the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), came to an agreement regarding basic principles

available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/02_02_05drafur_report.pdf (last visited Nov. 18, 2005).

236. *Id.*

237. Assembly of the African Union, *Decision on the Situation in the Darfur Region of the Sudan*, ¶ 2, Assembly/AU/Dec. 68 (IV) (Jan. 30–31, 2005), available at <http://www.africa-union.org/summit/jan2005/home.htm> (follow “4th Ordinary Session of the Assembly” hyperlink) (last visited Nov. 18, 2005).

238. *Id.* ¶ 7.

239. African Union Peace & Sec. Council, *Communiqué of the 28th Meeting of the Peace and Security Council*, § 9, PSC/PR/Comm. (XXVIII) (Apr. 28, 2005), available at http://www.africa-union.org/News_Events/Communiqués/PSC%2028e%20Reunion%20%2028avr05%20eng.doc (last visited Nov. 18, 2005) [hereinafter *Communiqué of the PSC*]; Weilaard, *supra* note 223.

240. Communiqué of the PSC, *supra* note 237, at ¶¶ 3, 5.

241. Press Release, African Union, Dr. Salim Ahmed Salim, Appointed as AU Special Envoy for Darfur, No. 026/2005 (May 26, 2005), available at http://www.africa-union.org/News_Events/Press_Releases/26%202005%20Press%20Release%20-%20Salim.pdf (last visited Nov. 18, 2005).

242. See African Union Peace & Sec. Council, *Communiqué on the Situation in the Darfur Region of the Sudan*, ¶¶ 6–8, PSC/Min/Comm. (XXXIV)–(iii) (July 3, 2005), available at <http://www.africa-union.org/DARFUR/PSC%20Communique%2034e%20%20on%20Darfur%20Sirte%2003july05.pdf> (last visited Nov. 18, 2005) [hereinafter *Darfur Region Communiqué*].

that would underlie the peace talks.²⁴³ The most notable of these principles include the recognition of the equality, civil rights, and the right to self-determination of all Sudanese without regard to ethnicity or religion (including an agreement that a non-discrimination policy would be written into the national constitution of Sudan), an agreement that the people of Darfur would be represented in the Sudanese government, and the participation of the citizens of Darfur in any final peace agreement.²⁴⁴ On October 3, 2005, the warring parties finally began talks on the substantive issues relating to peace in Darfur, with a focus on power sharing, wealth distribution, and security arrangements.²⁴⁵

III. WILL THE PROMISE OF THE AU BEAR FRUIT?

It is already apparent that some of the institutional limitations of the OAU have been overcome in the AU, particularly with regard to normative boundaries. Had the Darfur conflict erupted ten years earlier, it is likely that the OAU could not have gotten involved, since the nature of the Darfur conflict is purely internal. The fact that the AU did involve itself quickly in the conflict (at least once a ceasefire agreement had been signed) indicates that its members envision the institution taking a more proactive role in internal conflict management and resolution in Africa. There is an understanding among African leaders that Darfur is a test case for the efficacy of the newly-minted AU, and that its performance in this conflict will reflect on its commitment to address issues of peace and security as stated in the Constitutive Act.²⁴⁶

The fact that the Sudanese government and the rebels in Darfur have made various agreements at the behest of the AU, and agreed to submit to AU authority in monitoring the ceasefire, indicates that these parties recognize that the AU wields at least some power over them. Certainly, the fact that the Sudanese government agreed to the deployment of armed soldiers that are not controlled by it within its sovereign territory is strong evidence of the recognition of the AU's

243. Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur, July 5, 2005, *available at* <http://www.africa-union.org/DARFUR/DOP%205-7-05%20new.pdf> (last visited Nov. 18, 2005).

244. *Id.* Agreement ¶¶ 2–3, 5, 14.

245. Press Release, African Union, The Discussions on the Substantive Issues Commence Today with a Plenary Session Followed by the Meeting of the First Commission on Power Sharing, No. 12 (Oct. 3, 2005), *available at* http://www.africa-union.org/News_Events/Press_Releases/Sudan%2012%20abuja%20PR%2012-%203-%2010-%2005-final.pdf (last visited Nov. 18, 2005).

246. *Report on the Situation in the Darfur Region of Sudan*, *supra* note 221, ¶ 43.

legitimate role in regional peace and security. Additionally, it is evidence of the erosion of the OAU principle of absolute sovereignty in favor of a more collective security arrangement in Africa under the AU.

The AU also seems to be making progress, albeit slowly, on bringing the major players in Darfur to the table to create a lasting peace agreement. It has made good use of the strength in diplomacy of its predecessor by appointing the former OAU Secretary-General to coordinate the peace talks. Whether the talks will be fruitful remains to be seen and will ultimately depend on the parties, but the willingness of the parties to sit down together to talk is itself a diplomatic success for the AU.

The inclusion in AMIS' mandate of protection of civilians reflects a shift in thinking in terms of involvement in internal conflict. The statement of the PSC indicates that AMIS will take on more than a passive observer role, and may begin to engage in an active peacekeeping function.²⁴⁷ So far, however, the AU's involvement in Darfur seems to straddle the line between observation and peacekeeping. To be sure, the increase in the number of AU troops on the ground in Darfur has been positively correlated with a significant overall decrease in the number of civilian deaths.²⁴⁸ Humanitarian aid workers on the grounds in Darfur have noted that AU troops have been somewhat effective at providing security for displaced civilians where those troops are located (for example, at refugee camps).²⁴⁹ The number of AU troops currently on the ground in Darfur, however, is insufficient to cover the entire region.²⁵⁰ More importantly, the AU mandate allows only for the armed defense of civilians if those civilians are attacked while in the immediate vicinity of AU troops.²⁵¹ The mandate does not allow the troops to proactively seek engagement to protect or defend civilians in Darfur.²⁵² In fact, one humanitarian aid worker noted that AU troops did not even send a reaction force after their own troops were attacked and forced into

247. See *Communiqué of the Seventeenth Meeting*, *supra* note 227, ¶ 2.

248. See Editorial, *Genocide, One Year On*, THE WASHINGTON POST, Sept. 14, 2005, at A30; *Darfur Region Communiqué*, *supra* note 240, ¶ 1 (stating that the PSC "[w]elcomes the relative calm currently prevailing in Darfur and encourages the Sudanese parties concerned to do their utmost to maintain and consolidate this calm . . .").

249. *NewsHour with Jim Lehrer: The African Union in Darfur, Two Experts from the Humanitarian Group Refugees International Talk About the Ongoing War in the Darfur Region of Sudan and the Africa Union's Efforts to Bring Stability to the Region* (PBS Television Broadcast Oct. 5, 2005) (transcript available at http://www.pbs.org/newshour/bb/africa/july-dec05/darfur_10-5.html (last visited Nov. 18, 2005)).

250. *Id.*

251. *Id.*; see *Communiqué of the Seventeenth Meeting*, *supra* note 227, ¶ 6.

252. *Id.*

retreat by the Janjaweed, because they did not believe their mandate allowed it.²⁵³ Many parties, including some AU troops in Darfur, are clamoring for an expanded mandate that would allow AMIS to take on a true peacekeeping role.²⁵⁴

The Sudanese government has also not made good on its promise to disarm the Janjaweed, as was recently declared by the AU.²⁵⁵ Militia attacks on villages continue, and it is believed that these attacks are still being actively assisted by the Sudanese government.²⁵⁶ Agreements made in the past by the Sudanese to restrain these militias and to cease hostilities are not being honored, and this frustrates the success of the mission of AMIS. The SLM/A and JEM rebel movements are also proving to be difficult partners in peace. The SLM/A is being blamed by the AU for the first killing of AU troops in Darfur, when two Nigerian soldiers that were part of AMIS were shot dead in early October 2005.²⁵⁷ The JEM also took eighteen people hostage, including AU military observers and civilian police, the following day.²⁵⁸

The willingness of the AU to utilize its enforcement mechanisms to compel Member States to respect its decisions remains to be seen with regard to the situation in Sudan. Certainly, the institutional capability to punish Member States who fail to abide by AU decisions or fail to live up to their obligations to the AU is an improvement over the complete lack of such a capability in the OAU. Economic sanctions imposed by the AU on a recalcitrant state would be likely to gain some level of compliance, even if diplomatic sanctions failed. In the end, however, an institutional capability is only useful if it is used.

In late 2004, Sudan ignored a deadline set by AU mediators to cease hostilities.²⁵⁹ Prior to the violation, the AU had threatened to “refer [both] Sudan and the rebels to the U.N. Security Council if [they] failed to meet the deadline.”²⁶⁰ This threat is misguided; for the sake of institutional credibility, the AU must undertake to sanction their Members *directly* for violations of an AU decisions.

253. *Id.*

254. *Id.*

255. *African Union Accuses Sudan in Darfur*, N.Y. TIMES, Oct. 2, 2005, at 14; see *supra* notes 229–30.

256. *African Union Accuses Sudan in Darfur*, *supra* note 253, at 14.

257. Reuters AlertNet, *Darfur Gunmen Kidnap 18 African Union Workers*, Oct. 9, 2005, <http://www.alertnet.org/thenews/newsdesk/MCD952777.htm> (last visited Nov. 18, 2005).

258. *Id.*

259. *Truce Deadline Missed in Sudan—Darfur Remains Under Attack Despite a Pledge by Government Forces to Halt Military Operations*, LOS ANGELES TIMES, Dec. 20, 2004, at A8.

260. *Id.*

Only in this way will Member States come to understand that there will be direct repercussions for failure to abide by AU decisions.

The AU demonstrated its willingness to impose sanctions upon Member States when it suspended Togo from all AU activities on February 25, 2005, for allowing for an unconstitutional transfer of power to a new president in early February (he was installed as president by the military).²⁶¹ Notably, the President of Togo stepped down from power on the same day, citing the best interests of his country.²⁶² Thus, it appears that the AU is willing to use some of its enforcement powers, and that these powers may have a tangible effect.

The lack of funding that so hampered the effectiveness of the OAU has not had a major practical impact on AMIS to date. While there is a budget shortfall for the mission, and Member States and other nations are being asked to contribute more to the AU, the AU has been very effective at getting donations from rich western countries.²⁶³ Whether or not such donations continue for the entire course of AMIS' deployment may have a significant impact on the mission. It is clear that in the long run, the effectiveness of the AU will be closely tied to its ability to develop a reasonable method of determining the required amounts of member state contributions and to enforce their collection. Perhaps tying contribution levels to a percentage of the GDP of Member States would be a workable formula.

The power structure of the AU does appear to be more balanced than that of the OAU. While the Assembly, comprised in the OAU and the AU of all of the heads of African states, is still the "supreme organ," the creation of a PSC authorized to deal with many issues of peace and security is a step forward from the OAU. The fact that the Commission plays an active role in the functioning of the PSC is also encouraging, and indicates that the Commission has more power than did the OAU Secretary-General. The cooperation and collaboration between the Assembly and the PSC is evident in the level of agreement and relatively quick decision-making undertaken with regard to the situation in Darfur.

261. John Zodzi, *Togo's Gnassingbe Says to Step Down as President*, Feb. 25, 2005, available at http://www.boston.com/news/world/africa/articles/2005/02/25/au_slaps_sanctions_on_togos_embattled_leader?mode=PF (last visited Nov. 18, 2005).

262. *Togo's Interim Leader Steps Down*, BBC News, Feb. 25, 2005, available at <http://news.bbc.co.uk/2/hi/africa/4299731.stm> (last visited Nov. 18, 2005).

263. See *Darfur Region Communiqué*, *supra* note 240, ¶¶ 3–4; Press Release, African Union, *The African Union Raises 291,585,000.00 USD from the Pledging Conference for the African Union Mission in the Sudan (AMIS)*, No. 027/2005 (May 30, 2005), available at <http://www.africa-union.org/home/New%20Additions.htm> (last visited Nov. 18, 2005).

IV. CONCLUSION

The AU faces an important moment in its history. The successes and failures of the OAU were recognized by the founders of the AU, and many institutional changes were made to overcome the OAU's limitations. The AU, as envisioned, is a new institution with the capabilities to deal with twenty-first century African problems. Now is the time to put theory to practice and to put muscle behind idea. Only in the execution can the AU become a truly effective organization. No longer can the U.N. or the world's major powers be counted on to give necessary assistance to African countries in need. The developed world may ignore African conflicts because it can, but as the AU Ambassador to Burundi said during the AU's first peacekeeping mission ever, "We are Africa, so we cannot let it go on like that We know that the situation is very difficult, volatile. But we have to try."²⁶⁴

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264. Itano, *supra* note 205.

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