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Juxtaposing the Charter of the Organization of African Unity (OAU) with that of the Constitutive Act of the African Union (CAAU): A Comparative Analysis

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Abstract

This paper takes a critical look at the comparative analysis of the Charter of the Organization of African Unity (OAU) and the Constitutive Act of the African Union (CAAU). In doing so, the paper compares the organs and institutions of both the OAU and the AU. It also examines the achievements and failures of the two bodies and in doing this, the article argues that if OAU had performed as expected, there will be no need for the AU. In addition, the paper goes further to list some provisions in the Constitutive Act of the African Union that were not included in the Charter of the Organization of African Unity. Also, in assessing the AU, this paper proffers answer to the question, whether there has been any significant change since AU came on board, or if it was just a name change. Finally, the paper concludes by making recommendations and suggestions for better performance of the African Union.

Introduction

The end of the Second World War necessitated the creation of the bulk of independent States in Africa. Most of the colonial powers, including Britain and France, were weakened and devastated by the war and relinquished the bulk of their possessions in the continent. In addition to that, colonialism became internationally regarded as inappropriate in the post Second World War era (Francis, 2005) [6]. African politics have a long history of conflict, from the fight against colonialism to the quest for continental unification, and there is no indication that this conflict will end any time soon (Jiboku, 2015) [8]. As a result of effort made at addressing these struggles in the past, saw to the establishment of a continental body called the Organization of African Unity (OAU) in the City of Addis Ababa, Ethiopia, on 25th May, 1963. The body saddled with the responsibilities of fighting colonialism and racial discrimination (apartheid) in Southern Africa, was also to bring about political development of the continent. However, after a number of years, and plagued by institutional flaws/frailties, the OAU before it eventually fell apart was seen by many people to have failed to give Africa the required political platform to forge the path toward unity required for continental growth and development (Hodge, 2002) [7]. Scholars have offered a variety of explanations for why the former continental structure failed (Ajala, 1998) [2]. Others who agree with Ajala's view contend that the failure of the continental body resulted in vices such as wars and poverty that became predominant and widespread across the continent.

This finding results from the OAU's inability to adequately represent the interests of the continent's working class. As wars and poverty spread across the continent, it did not stand for peace, unity, or people-centered development. As a result, the OAU was perceived as an old boys' club where the so-called leaders gathered each year to show off their illicit wealth and compete for control of the African continental political body (Maurizo, 2002) [9]. Without regard to the situation or in accordance with the so-called "principle of State sovereignty," their primary concern appeared to be safeguarding one another. This slowed rather than accelerated efforts to develop Africa (Abutudu, 2005) [3].

On May 25, 1963, the OAU was officially established, representing the institutionalization of pan-African principles (Olonisakin, 1996) [16]. The objective of pan-Africanism is to bring together individuals of African descent all across the world. African thinkers and leaders started urging greater unity among Africans in the late 19th century as a response to European colonialism and persecution. This is when the movement first gained traction. Henry Sylvester-Williams, a Trinidadian lawyer and journalist, created the African Association in London in 1897, making it one of the first Pan-African groups. Other significant individuals include W.E.B. Du Bois, Kwame Nkrumah of Ghana, Jomo Kenyatta of Kenya, Nnamdi Azikiwe of Nigeria, Marcus Garvey, a Jamaican activist and others. The structure and duties of the organization were the subject of

contentious discussions. Leaders like Kwame Nkrumah of Ghana, Julius Nyerere of Tanzania, and Abdul Nasser of Egypt advocated for even greater political union under the radical group (the Casablanca) viewpoint. On this, Nyerere stated that because the boundaries separating African States were created arbitrarily by Europeans in the 1885 "scramble for Africa," they were "nonsensical" (Murithi, 2008) [13].

The more conservatives (Monrovia group), which included African leaders like William Tubman of Liberia, Felix Houphovet Boigny of Ivory Coast, and Leopold Sedar Senghor of Senegal, were unwilling to take such a step and preferred to retain the 'illusion' of national independence (Francis, 2005) [6]. As a result of these differences, the OAU was in effect powerless in its attempts to positively influence national policies, monitor the internal behaviour.

Success and Failure of OAU
As stated before, the OAU was founded on May 25, 1963, in the Ethiopian city of Addis Ababa, when 31 government leaders from throughout Africa signed the OAU Charter. When the South African apartheid regime ended in 1994, 21 additional States and South Africa joined the regional organization, raising the total to 53. In 2011, South Sudan gained its freedom and joined, making the membership total 54 (Ajala, 1998) [2]. The OAU campaigned for and won independence for South Africa's apartheid system as well as for Zimbabwe, Namibia, and Angola.

As realistic as the OAU's entire system appears as a regional organization, it was nevertheless plagued by numerous obvious and basic issues that required its overhaul at the time it was overhauled. These included, among other things, the widely despised non-interference principle the continental body embraced at formation, poor organization caused by insufficient funding, and ideological differences among leaders as evidenced by the stark divide between English-speaking and French-speaking countries (Williams, 2013) [24]. It was evident as early as 1979 that the OAU's representation of regional organization as a whole required revision. In order for the African voice to be heard in the grand scheme of things, a committee was established to examine the OAU Charter and streamline it in order to prepare it for the challenges of a changing world order. There may have been a need to reposition the continental organization as a result of the shift the European Union brought to the political environment in Europe, which was so alluring to the adoration of African leaders (Sore, 2010) [20].

As a result, the Charter Review Committee was able to propose an amendment to the OAU Charter's flaws by suggesting that the Charter be expanded by summit decisions done on the spot, like the Cairo Declaration, which created a mechanism for conflict prevention, resolution, and management (OAU, 1993) [18]. Additionally, it was advised that quick action be made to improve the organization in order to build the foundation for a more capable and effective regional body. Also discussed was the necessity of integrating the political OAU operations with the economic and developmental concerns outlined in the Abuja Treaty. African Economic Community was founded in 1994 as a result of the Abuja Treaty (OAU, 1994) [19]. The Sirte Summit, which took place in September 1999, was another effort to fortify the OAU in preparation for the difficulties of contemporary global realities. Col. Ghadaffi, the former leader of Libya, called for the Sirte Summit, which was the fourth extraordinary summit, with the aim of amending the OAU Charter.

The summit's theme, "Strengthening OAU capacity to enable it to meet the challenges of the new millennium," aimed to improve the effectiveness and efficiency of the OAU as a regional organization. African leaders reaffirmed their resolve to establishing regional institutions, including an African Parliament, Court of Justice, and Central Bank, as quickly as possible. The AU now consists of these institutions. The following affirmations were emphasized at the Sirte Summit in Libya: The need to effectively confront changing social, political, and economic realities in Africa and the rest of the world satisfies the desires of the people for greater unity in accordance with OAU objectives (Ajala, 1998) [2]. In addition to addressing the needs of the populace, the ensuing treaty also ends conflict across the African continent. Meeting global issues and utilizing the continent's natural and human resources to raise living standards for the population in the interest of sustainable development were other priorities (Hodge, 2002) [7].

As the summit came to a close, it was determined to take some important actions, including the following, to revitalize the OAU, which had been dormant for some time. To increase the continental body's capacity to address current political difficulties on the continent, the African Union was first established in accordance with OAU objectives. As a result, additional actions were taken, such as the creation of the African Economic Community to quicken the execution of the Abuja Treaty, which opened the door for the construction of the Pan-African Parliament, the African Investment Bank, the African Monetary Fund, and the African Central Bank. Additionally, it was decided to have an African Ministerial Conference on Security, Stability, Development, and Cooperation. If the OAU lived up to its reputation or expectations, why were all these actions necessary? Olufemi pointed out that the OAU's failure forced the creation of the AU in 2002. All these served as the cornerstone for the eventual establishment of the African Union. African voices needed to be heard due to the necessity to create a more assertive continental entity within the OAU in response to external political pressure (Olufemi, 2007) [17].

Reasons for the Transformation to African Union (AU)
A variety of historical, socioeconomic, and global circumstances, as well as other causes, inspired and had an impact on the founding of the African Union. First of all, anger was expressed at the slow rate of socioeconomic integration on the continent of Africa. Secondly, African leaders believed that the many issues the continent was facing required a new approach; this new approach should include forging alliances between governments and all facets of civil society, particularly women, youth, and Non-Governmental Organizations (NGO), as well as strengthening the common institutions and giving them the necessary authority and resources to enable them to effectively carry out their respective mandates (OAU, 2000). In addition, the leaders agreed that it was crucial to find cooperative ways and means of effectively addressing the continent's many serious issues, such as endemic poverty, HIV/AIDS, and armed conflicts, as well as addressing the difficulties brought on by a world that is increasingly becoming global and integrated. The leaders generally agreed that it was important to advance and strengthen

African unification, as well as to strengthen and reenergize the continental organization to give it the ability to play a more active role and keep up with political, economic, and social developments both within and outside the continent. Likewise, it aimed to hasten the implementation of the Treaty Establishing the African Economic Community and end the scourge of conflicts on the continent.

While many academics would have us believe that the transformation was necessary as a result of the OAU's seeming inability to provide Africa a political voice in international matters, many scholars remain silent regarding the internal political struggle for dominance among African leaders (Mtimkuku, 2005) [11]. Politics was at the core of the metamorphosis, as evidenced by the events that drove the continental body's change in name and mission. The explanation for the transformation, politics, which is seen as a high-wire act, comes from both historical and practical necessity perspectives. The historical aspect of it has to do with some African leaders' desire to head a United States of Africa, such as the late Kwame Nkrumah of Ghana and Muammar Gadhafi of Libya. The essence of the transformation was thus dwarfed by the subtle quest by these leaders to form a continental government with them as sole leaders (Francis, 2005) [6].

A quick glance at history shows how the Pan-African movement, which the late Nkrumah gave a voice to, renewed vigour before Africa gained independence, played a role in the politics of the revolution. Prior to the creation of the OAU, African leaders were in agreement that a continental organization was necessary, but they disagreed over how to go about doing it and how much of an integrative effect it would have. The Casablanca and Monrovian groups, both of which held diametrically opposed ideas, were created as a result of the divisions among African leaders in the rank and file, as was previously discussed. The Monrovia group (the conservatives) sided with a gradualist approach to continental integration, whereas the Casablanca group (the radicals) supported unrestricted continental political unification. On the altar of compromise, the impasse was broken, and the OAU, a former regional organization, was born (Adejo, 2001) [1]. A United States of Africa was made possible thanks in large part to Nkrumah's efforts. He wanted to be the first president, but he did it blatantly, in order to establish his political desire to lead a united continental political organization. The flawed Charter that gave rise to the OAU suggested that this would not work out. It suffices to say that the politics that surrounded the creation of the OAU were eliminated by its appearance, but among African leaders there is still a long-standing struggle for political relevancy. The AU was established in 2002 as a result of this. According to Hodge (2002) [7], there is still a strong political struggle for control of the continent.

According to all we have seen thus far, OAU was a concept whose time for change was long past. This was made clear by African leaders' desire for its reform. There are several contrasts between the old regional body and the current one when one carefully examines the structure of the AU as a regional organization. If nothing else, the AU's scope and objectives are much greater than those of the OAU.

Basic Provisions in the Constitutive Act of THE AU Not Found in the Charter of the OAU

There is a new approach to safety in Africa that is frequently referred to as "African Solutions for African Problems" because the international community is unable to provide effective peacekeeping missions in Africa due to the continent's lack of geopolitical interest and lack of a serious security threat (Vlaisavljevic, 2016) [21]. The fundamental tenet of this strategy is that African nations should assume the lion's share of responsibility for the crises in Africa and play a decisive role in resolving them (Williams, 2008) [23].

In its set up, the Constitutive Act of the African Union (CAAU) amounted to an institutionalization of the ideals of Pan-Africanism (Murithi, 2007) [12]. As it stands, it represents a radical departure from the political, legal and institutional set up of the former Organization of African Unity (OAU). In sharp contrast to the OAU, which had only four organs: The Assembly of Heads of State and Government; the Council of Ministers; the General Secretariat; and the Commission of Mediation, Conciliation and Arbitration and three (3) specialized institutions: Economic and Social Commission; Educational, Scientific, Cultural and Health Commission; and Defence Commission (OAU Charter, 1963) [4], whereas, the African Union possesses no less than seventeen (17) institutions. They include the Assembly of the Union; the Executive Council; the Pan-African Parliament; the Court of Justice; the Commission; the Permanent Representatives Committee; the Specialized Technical Committees - (a) the Committee on Rural Economy and Agricultural Matters; (b) the Committee on Monetary and Financial Affairs; (c) the Committee on Trade, Customs and Immigration Matters; (d) the Committee on Industry, Science and Technology, Energy, Natural Resources and Environment; (e) the Committee on Transport, Communications and Tourism; (f) the Committee on Health, Labour and Social Affairs; and (g) the Committee on Education, Culture and Human Resources); the Economic, Social and Cultural Council; the Financial institutions-(a) the African Central Bank, (b) the African Monetary Fund and (c) the African Investment Bank (CAAU, 2000) [5].

Having elaborated on the historical processes as well as the political and legal discourses underlying the new African Union framework, the powers and responsibilities of the institutions that were established through the Constitutive Act as amended by several Protocols are equally explained in its Act. A close examination of the main components of the AU's evolving mechanism for peace and security demonstrates that the current system is grounded upon a robust security system comprised of the organs indicated above and the continent's sub-regional organizations. The AU's institutional framework also constructs relationships with the United Nations (UN) and the wider international community.

The degree to which the current system differs from earlier practice under the OAU regime is what is obvious. This paper elaborates on the changing ties with the UN and other international organizations while highlighting the expanded involvement of African regional and sub-regional organizations. According to Tieku (2019), the AU has been

described as a tripartite organization that includes states, international bureaucracy, and outsiders. Finally, it evaluates the potential for a codified division of labour in the longer-term relationship between the UN and the nascent AU.

Prospects and Challenges of the African Union (AU)
The OAU was restructured to create the AU for the aforementioned reasons, which is pleasing, but one is still concerned about the survival of this new continental political body. It naturally follows that the question of whether the AU can withstand the storm of giving Africa a continental political body similar to what the European Union did for continental Europe. While time and events in the upcoming years would provide the answer, it is crucial that we take into account critical factors that could help the AU flourish or fail. One such conceptual challenge is the new continental body's structure or framework when compared to what was found in the transformed continental body. The AU was intended to be a regional organization that aims to accomplish economic integration and social development of Africa, in contrast to the OAU, which was blatantly State-centric in nature. It has been correctly viewed as a requirement rather than a choice. It has been viewed as a crucial tool for the people of this continent to experience faster collective growth and prosperity (Obasanjo, 2001) [15]. The founders of the AU for Africa can be claimed to have been inspired by this. To them, the AU framework must be supported in order to advance the sacred job of developing Africa and bringing about her political unity. The African Union, which was modeled after the European Union, was intended by its forefathers to be distinct from the former OAU and capable of capturing the essence of the African experience. That clarified the intention behind the inclusion of all viewpoints on African soil. As an illustration, the Constitutive Act of the African Union (CAAU) included African NGOs, Civil Societies, Labour Unions, and Business Organizations in the process of cooperation and execution of the Abuja Treaty, which continues to be the AU's founding document today. Both the Sirte Declaration and the Ouagadougou Declaration made mention of this. When compared to what was achieved under OAU, this innovation is still unique. Once more, the AU addressed gender issues by including provisions for women in the Constitutive Act. Many see this as evoking the European Union model, which gave women pride of place in the continent's political union. Amazing modifications made to the AU, as evidenced in the Constitutive Act Establishing the African Union (CAAU), were accepted to dwarf the OAU's terrible record, which many people believed to be excessively limited and, as a result, unprepared to develop Africa. To this end, it is anticipated that the AU would provide Africa the opportunity to prepare for the numerous difficulties posed by globalization in a world that is changing quickly. Adejo noted that the AU's founding act calls for the creation of an executive body of a supranational nature that can advance integration and sustainable development more successfully than the OAU could (Adejo, 2001) [1]. A charge like the one mentioned above makes it clear that Africa must make a concerted effort to solve her developmental challenges, something the OAU never did. Though it is doubtful whether AU ambitious agenda differs from the template the OAU operated with, it is noteworthy that the desire to extricate Africa from squalor, prompted the founding fathers of the AU, to evolve a more pragmatic

agenda for the continental body. These include promoting and protecting human and peoples' rights, consolidating democratic institutions and culture as well as ensuring good governance and the rule of law at all levels across the continent. To achieve the latter, African Peer Review mechanism as an internal inter- governmental checks, was launched. By this token, African Union can be said to have broken new grounds when mirrored against what OAU Charter provided for. Further, what can be seen as sweeping changes were introduced in the main objectives of the AU as can be seen from the avowal of the union to engage international community on how to eradicate preventable diseases and promote health care. Article 4 of the AU embodied all that there is in the AU. It contained some basic elements that bothered on the issues of sovereign equality and interdependence, respect for existing borders, peaceful resolution of conflicts, prohibition of use of force, non-interference, peaceful co-existence, rejection of political assassination and acts of subversion. Moreover, the Act broke new grounds in what many considered as weak point of OAU in inter-African relations. The Union in her Constitutive Act, Article 4, agreed to operate in accordance with the following principles: Participation of the African peoples in the activities of the Union; establishment of a common defence policy for the African continent; 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; the right of Member States to request intervention from the Union in order to restore peace and security; promotion of self-reliance within the framework of the Union; promotion of gender equality; respect for democratic principles, human rights, the rule of law and good governance; promotion of social justice to ensure balanced economic development; condemnation and rejection of unconstitutional changes of government.

To come to terms with the new vision of the Union, existent organs were expanded with novel or distinctive changes that reflected the fundamental objectives of the Union.
According to late Kwame Nkrumah:

> "Salvation for Africa lies in unity...for in unity lies strength and I say that African states must unite or sell themselves out to imperialist and colonialist exploiters for a mess of pottage or disintegrate individually" (Nkrumah, 1963) [14].

Challenges Before the African Union (AU)
Unconstitutional changes of government have triggered a number of rapidly escalating conflicts between 2022 and 2023, with Burkina Faso (January, 2022), Chad (April, 2021), Guinea (September, 2021), Mali (August, 2020), Niger (July, 2023), Sudan (October, 2021) and Gabon (August, 2023) amongst the more prominent examples. This has put the AU's implementation of the AU Charter on Democracy, Elections and Governance to a test. The Arab Spring already showed how these tensions could rapidly come to the fore, such as the case of Egypt showed. A number of attempts by African Heads of State to run for unconstitutional third bid (or more) are putting additional pressure on the AU and Regional Economic Communities. For instance, the Democratic Republic of Congo, Rwanda, the Republic of Congo and Burundi all following the example of Uganda where President Museveni who in his

fourth term was seeking a fifth term in office. Oftentimes, these bids go against the constitutional provisions. Going against AU Member States which are challenging the constitutional provisions and thus acting according to the AU's adopted principles of the AU Constitutive Act and other agreed charters, such as the AU Charter on Democracy, Elections and Governance, would help shed the impression that the AU holds a protective hand over to AU Heads of State and Government. In Rwanda for example, there is now offing that the current President Paul Kagame will rule till 2034 after a referendum must have been conducted (McVeigh, 2015) [10]. According to observers, the low ratification rate of the AU Charter on Democracy, Elections and Governance hinders or limits the ability of AU to respond effectively to crisis situations.

Whilst the AU Constitutive Act is signed by all 54 AU Member States, the AU Charter on Democracy, Elections and Governance has been signed by 46 but ratified by only 23 States. Though the quest by African leaders is to birth a regional political platform that can give the continent a political voice in global affairs, this is however not coming without a price. No doubt, the AU is facing a lot of difficultiess. Some of these are already manifesting such as paucity of funds for the Union's activities, why others such as cut-throat rivalry for political leadership of the continental organization, would become more obvious as time progresses. On the basis of these perceptible dangers on the path of the AU to a full blown political union for the continent, one postulates that the AU may go the way of the OAU if the bobby traps that drowned the OAU, are not avoided.

This can however be avoided if conscious effort is made by African leaders in synergy with informed civil public on continental basis. Of the numerous challenges bedeviling the AU, the under-listed would suffice for the sake of time and space. Some of the challenges include: Unwillingness of African leaders to honour the spirit and letter of the vital Articles of the Union such as the one that stipulates suspension for any member state that comes to power through unconstitutional means (Article 30 CAAU, 2000) [5]. Additionally, despite a recent successful handover to an opposition party, peacebuilding efforts have not yet been completed in Liberia, Sierra Leone, the Ivory Coast, Guinea, Algeria, Angola, Rwanda, and Burundi. Military coups occurred in Madagascar in 2009, Mali and Guinea-Bissau in 2012, and the Democratic Republic of the Congo (DRC) in some areas. Conflicts also persisted in the Central African Republic (CAR), and are currently occurring in the Sudan, Niger, and Gabon.

Integration efforts in Africa will be hampered by language barriers, which are represented by the Francophone and Anglophone divide and by the problem of xenophobia in Southern Africa. Although the AU's goals sound admirable, it is to be expected that African leaders, who have a sit-tight attitude when it comes to political power, will mock the provisions, making them the albatross that will hasten the Union's demise.

Hodge was accurate when he expressed his concerns that the AU would end up being as passive as the former OAU, which he referred to as an "old boys' club for corrupt African leaders" (Hodge, 2002) [7]. The AU's fundamental inability to create provisions that will hold seated governments accountable continues to be a booby trap in its path. The compromised peer review mechanism, which has

so far failed to produce the desired results, came the closest to this. Checks like this will motivate member states to foster the favorable conditions necessary for integrating minority interests and marginalized groups' points of view. A separate, inclusive continental entity would be necessary to further and maintain the current trajectory of political development in Africa.

Another difficulty the AU will encounter is the problem of domestic instability in Africa. With such persistent unrest as the continent is experiencing right now, no continent can experience genuine progress. Conflicting regional accords are a warning indication that the newborn Union is doomed to failure. The Union would also suffer from a lack of basic infrastructure that is necessary to realize its lofty goals. The goal of creating an AU that can fulfill the same functions that the EU does for Europe will be stifled by the decline of infrastructure on a continental scale, including the absence of excellent/good roads, dependable telecommunication facilities, and other basic needs. The AU would only be a pipe dream for establishing lasting continental political unification until these obstacles are overcome. Scholars also believe that the AU's condemnation of the military coup that led to President Mugabe of Zimbabwe's ouster was insufficient. Before changing its leaders, Africa doesn't need military intervention. It is humbly offered that the military's decision to hand over power to the civilian government following the coup was motivated by Zimbabwe's crumbling economy.

Conclusion
The African continent has experienced harsh times in the past, particularly during the colonial era when it dominated international politics. In an effort to depart from the trend, the OAU was founded; but, due to the above discussed practical considerations, it was later changed to the AU. One cannot overstate the importance of Africa developing a proactive framework to respond to global political trends in the age of globalization. Therefore, it is obvious that the desire for regional integration in Africa was a driving force behind the creation of the AU. Despite sharing a name and a similar focus as the EU, the former has a different historical trajectory than the latter. It is therefore expected that the AU would focus on main issues peculiar to the African continent and not just cosmetic imitation of the EU. Attention must be placed on the need to evolve a pragmatic framework beyond mere name, with which Africa can engage the political world. If Africa must get it right with the vehicle AU expects to provide, sacrifices need to be made. To this end, intrigues that tended to serve personal interest in the past especially in the days of the OAU, must give way and come under the platform that can bring about sustainable development for Africa. When this happens, AU would then be able to give Africa a voice in the present global political scene that needs collaborative efforts for regional and continental development. Additionally, Africa and Africans, through their leaders, must rise to the challenge by erasing boundaries that separate Africa along religious and cultural lines and recognizing Africa as the continent of all people. African leaders' individual leadership interests must be subjugated under the greater continental interest. It is dangerous for the continent to reject the Yaoundé Declaration of 1996, which described Africa as "indeed the most backward in terms of development from whatever angle it is viewed, and the most vulnerable in terms of

security and stability." Adejo's statement that "the success of the AU would require mature African statesmanship that strikes a balance between the desires of member states to pursue their individual interests, and the political will to forgo certain aspects of national sovereignty and independence for the common good of the continent," was equally a confirmation of this. The creation of the African Union as a continental organization is positive. Africa must develop the political will to make sure that the spirit of charter is alive for it to be successful. For any real influence to be made, all of the given organs must be functioning. Only then can it be argued that Africa has acquired the necessary background to successfully compete in the current world political order, where the continent is vulnerable to Western industrialized and powerful countries' exploitation and manipulation. Anything else would just be a copy of the EU.

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