

**AN ANALYSIS OF THE RELEVANCE OF THE PRINCIPLE  
OF SOVEREIGNTY IN 21ST CENTURY AFRICA. THE CASE  
OF SUDAN.**

**By**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS OF THE MASTER OF SCIENCE DEGREE IN  
INTERNATIONAL RELATIONS**

**DEPARTMENT OF POLITICAL AND ADMINISTRATIVE STUDIES  
FACULTY OF SOCIAL STUDIES  
UNIVERSITY OF ZIMBABWE**

**APRIL 2012**

## **Dedication**

To my mother, you have always been a pillar of strength in my life. My sisters and brothers you are cherished the most. To my late father, this is for you; I will always “fear God, do good and be kind to all.”

## **Acknowledgements**

I would like to take this opportunity to thank my supervisor, Miss E. Nyemba who has assisted and guided me with her useful critique and comments. As much as it was not a smooth road throughout the duration of this dissertation, my supervisor motivated me to strive for better results. I acknowledge all my lecturers in the Political and Administrative Department, in particular Dr Manyeruke, Dr Kurebwa and Professor Patel. To my girlfriend Taonga, who has always encouraged me to be timeous in submitting my dissertation chapters, I thank you.

To the man who i am greatly indebted to, Honourable Minister S. Kasukuwere; I greet you on bended knees. May you not tire in providing me with such wisdom and encouragement as you have always done.

God bless you all.

## **Abstract**

The whole study is premised on the assumption that the sovereignty of Sudan has been eroded due to the failure by the government to protect the Christian Africans in the South from persecution by the Muslim Arabs in the North. The concept of sovereignty has changed meaning overtime and states in turn were required by the international system to shift their application of sovereignty in line with the new meaning of sovereignty. The study explores the abuse of sovereignty by African states, notably Sudan which has attracted attention from the international community to intervene because of the massive loss of human life. Most of Africa has been riddled by tribal conflict, civil wars, coups, counter coups, dictatorship, terrorism, ethnicity, religious differences, border disputes, human rights abuse, use of child soldiers and bad governance. The problem has emanated from the failure of governments to treat sovereignty as a responsibility not as a weapon to suppress the people within a society. Thus, the main problem in Sudan has been that of religious difference, the country failed to unite the two religions of Christianity and Muslim together. Instead, the Christians have suffered at the hands of the Muslims who have benefitted by the support of the Arab dominated government. However, the United Nations intervened in the crisis through the Responsibility to Protect Principle as acts of genocide became imminent in Sudan. In a nutshell, Sudan lost its sovereignty as the international community suspended its sovereignty. The sovereignty of Sudan had become irrelevant as the nation failed to uphold the virtues of the concept.

## **Acronyms**

<b>AMIS</b>	<b>African Mission in Sudan</b>
<b>ANC</b>	<b>African National Congress</b>
<b>AU</b>	<b>African Union</b>
<b>CFC</b>	<b>Ceasefire Commission</b>
<b>ECOSOC</b>	<b>Economic and Social Commission</b>
<b>GA</b>	<b>General Assembly</b>
<b>HRE</b>	<b>Holy Roman Empire</b>
<b>ICC</b>	<b>International Criminal Court</b>
<b>ICISS</b>	<b>International Commission on Intervention and State Sovereignty</b>
<b>ICJ</b>	<b>International Court of Justice</b>
<b>R2P</b>	<b>Responsibility to Protect</b>
<b>UDI</b>	<b>Unilateral Declaration of Independence</b>
<b>UN</b>	<b>United Nations</b>
<b>UNAMID</b>	<b>United Nations Mission in Darfur</b>
<b>UNSC</b>	<b>United Nations Security Council</b>
<b>UNSG</b>	<b>United Nations Secretary General</b>
<b>USA</b>	<b>United States of America</b>
<b>USSR</b>	<b>Union of Soviet Socialist Republic</b>
<b>SAPES</b>	<b>Southern African Political Economic Series</b>
<b>SC</b>	<b>Security Council</b>
<b>SOMA</b>	<b>Status of Mission Agreement</b>
<b>TC</b>	<b>Trusteeship Council</b>
<b>WPT</b>	<b>Westphalian Peace Treaty</b>

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“The result was that I, who had at first been full of eagerness for a public career, as I gazed upon the whirlpool of public life and saw the incessant movement of shifting currents, at last felt dizzy.....and finally saw clearly in regard to all states now existing that without exception their system of government is bad. Their constitutions are almost beyond redemption except through some miraculous plan accompanied by good luck. Hence I was forced to say in praise of the correct philosophy that it affords a vantage point from which we can discern in all cases what is just for communities and for individuals and that accordingly the human race will not see better days until either the stock of those who rightly and genuinely follow philosophy acquire political authority, or else the class who have political control be led by some dispensation of providence to become real philosophers.”

**PLATO 387 BC: The Republic**

## CHAPTER 1: INTRODUCTION

The chapter introduces the genesis of the problem in Sudan. The purpose of this chapter assesses the damaging impact caused by the religious differences between the Southern and the Northern Sudan. In turn, this has produced an unprecedented crisis ranging from varied development in the social, economic and political spheres between the North and the South. The people in the South are predominantly black and are Christians, whilst those in the North are Arab Muslims. This chapter provides a snapshot of the areas that the whole study is going to investigate including the erosion of sovereignty in Sudan.

### 1.1 BACKGROUND TO THE PROBLEM

"The republic of Sudan derives its name from the expression "Bilad es-Sudan" meaning the land of the blacks which the medieval Arab adventurers used to describe as the Negro belt stretching across Asia from the Red Sea to the Atlantic Ocean."<sup>1</sup> Its inhabitants who were predominantly of black race and origin were the first people to be confronted by the Arab intruders in their trek from the north towards the interior of the African continent. The flow of the Arabs into Sudan started immediately after the conquest of Egypt in 640 AD, having great impact on the indigenous people. "In the 16<sup>th</sup> century, political authority passed from the hands of the native chieftains to Muslim sultans in Northern Sudan."<sup>2</sup> By 1899 the British with the assistance of the Egyptians conquered Sudan and placed it under colonial rule. The natives, especially from the South of Sudan were subjected to Christianity by the British as opposed to a Northern policy which was to be restricted to the Arabs. When Sudan gained independence in 1953, a process of perpetual ethnic and cultural change took place enhanced by the presence of Arabs. Accordingly, it was clear to the government that the impact of Arab culture could not be prevented. The main problem started when the Arabs started forcing the black Christians to accept Islamic laws. "The Islamic laws such as the Sharia laws were never abolished and up to the 21<sup>st</sup> century, they are still in the statute books. These are being enforced on people who are not Muslim, even the Muslims themselves have never been asked if they want to be ruled by the kind of Islamic laws in Sudan."<sup>3</sup>

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<sup>1</sup>Ruay D.D (1994:11) The Politics of Two Sudans: The South and the North 1821-1969. Motala Grafiska Stockholm.

<sup>2</sup>Ibrahim A.U.M (1985:06) The Dilemma of the British Rule in the Nuba Mountains. University of Khartoum. Khartoum.

<sup>3</sup>Mahmoud F.B (1986:64) Calamity in Sudan: Civilian versus Military Rule. Institute of African Alternatives.

“The tension between the majority Muslim-Arabs in the north and the minority Christian-Africans has produced unprecedented results affecting all developmental sectors in the country, for instance, the military belongs to a sect, professionals belong to a sect, merchants belong to a sect, politicians belong to a sect and they are all part of the ruling family”<sup>4</sup>. The 1983 Sharia laws were forced on the southerners and the failure to uphold them resulted in charges of heresy. “There has been a monopoly of power by the ruling elite which describes itself as Arab and which discriminates against the other non-Arabic people of Sudan such that in 1968 when the Islamic constitution was discussed, the then President of Sudan said that the president must be male and Muslim.”<sup>5</sup> Furthermore, the South has never been politically incorporated because of their religion but at best a marginal client of the state as in the 1970s and of course at worst reverts to violent resistance. “This has led to major civil wars in Sudan since 1983 which claimed over 1.3million lives as the African Christians from the South have always been mobilizing against the government.”<sup>6</sup> This raised international alarm as Sudan failed to deal with the crisis culminating into political chaos. The weakness of the state itself to deal with the crisis and the capacity to transcend the immediate and direct interest of the various segments of capital have been severely curtailed, for Sudan always had a relatively weak state that led to the international community questioning its ability to deal with internal problems and capacity to uphold its sovereignty.

## **1.2 STATEMENT OF THE PROBLEM**

“Sudan’s sovereignty has been eroded due to the state’s failure to control the persecution of the Christian Africans in the South by the Muslim Arabs in the North. A civil war has been raging since 1983 and it has claimed the lives of over 1.3 million people. The specific causes of death vary; victims either have been targeted, fallen in indiscriminate fire or have been stripped of their assets and displaced such that they have died of starvation and diseases.”<sup>7</sup> The main victims have been the non-Muslim Africans in the south. “The government which is predominantly Arabic has used torture and executions particularly against residents of garrison towns in order to quash civic opposition to government policies, to the mandatory

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London.

<sup>4</sup>Mahmoud F.B ( 1986:70) Calamity in Sudan: Civilian versus Military Rule: Institute of African Alternatives.

<sup>5</sup>Ibid(1986:62)

<sup>6</sup>Rone J & Prendergast J (1994:01) Civilian Devastation: Abuses by all parties in the War in Southern Sudan. Human Rights Watch. New York.

<sup>7</sup>Ibid (1994:01)

use of Arabic in what had been English language schools and forcible conversion to Islam. Due to the government's failure to convert Southern Christians into Muslim, the state became cruel through; indiscriminate aerial bombardment of Southern population centres, scorched earth tactics against villages, military patrols on the exit routes to enforce the ban of movement of Southerners, abducting women and children, severe restrictions on relief efforts by International and United Nations agencies, and pillage by tribal militias armed by person and political parties aligned with the government to carry on its counter insurgency war on tribes deemed supportive of the South.”<sup>8</sup>

### **1.3 RESEARCH OBJECTIVES**

The purpose of this research is founded on the following core objectives:

- a) To investigate the causes of the crisis in Sudan.
- b) To ascertain the relevance of the concept of absolute sovereignty in Sudan vis a vis the emerging relative sovereignty in Africa.
- c) To explore the impact of absolute sovereignty on the peoples of Sudan.
- d) To evaluate whether the crisis and secession of Southern Sudan from Northern Sudan has adverse effects on the continent of Africa.
- e) To determine if the application of the Responsibility to Protect Doctrine on Sudan was justified.
- f) To make recommendations that may assist in ending the conflict in Sudan.

### **1.4 RESEARCH QUESTIONS**

- a) What has been the main cause of the crisis in Sudan?
- b) Is the concept of absolute sovereignty in the 21<sup>st</sup> century relevant to Sudan?
- c) How has the concept of absolute sovereignty evolved in Sudan?

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<sup>8</sup>Rone J & Prendergast J (1994:02) Civilian Devastation: Abuses by all parties in the War in Southern Sudan. Human Rights Watch. New York.

- d) Are the problems in Sudan unique to the African continent?
- e) What constitute the right to legal intervention by the international world?
- f) What recommendations can be given to assist in ending the crisis in Sudan?

## **1.5 JUSTIFICATION**

The purpose of the study is to assess the damaging impact that diverse religion can cause, which has led to the loss of sovereignty in Sudan and chaos amongst the 25 million inhabitants in virtually the largest country in Africa. This will help the policy makers to come up with recommendations so as to curb the problems in Sudan and provide a remedy to nations that may undergo similar dysfunctional periods. The study will also bring to light that sovereignty is just, but a concept that has lost its practicability in the African context. As much as African states refer to sovereignty a lot in the 21<sup>st</sup> century, they seem to have failed to uphold the principle due to internal problems and external interference by already established powerful states in Europe, Asia and the Americas.

The study will also assist in the academic field for the cosmopolitan meaning of sovereignty, its impact and use in the African context. The policy makers can therefore draw the lines on the damaging effect of sovereignty if not practically applied in tandem to its theoretical meaning. The continent of Africa will thereby benefit by institutionalizing relevant cases to the successful application of sovereignty. A remedy will be obtained so as to end the loss in the capacity to govern by many African states as witnessed in Sudan. International organisations such as the United Nations (UN) and African Union (AU) that are involved in peacekeeping missions and enforcement mechanisms in Sudan will benefit from the study by analysing its outcome. It will be interesting to note the effectiveness of the research in helping the government of Sudan in coming up with proper policies that improve the status of the people.

## **1.6 HYPOTHESIS**

The assumed hypothesis for this study is that the concept of sovereignty in absolute terms is no longer relevant in the 21<sup>st</sup> century Africa as evidenced in Sudan.

## 1.7

### LITERATURE REVIEW

“Sovereignty is defined as a political entity’s externally recognized right to exercise final authority over its affairs. The traditional form of sovereignty was absolute, deeply rooted in the Hobbesian state of nature. The sovereign had complete and untrammelled legislative authority over his subjects. The main aspects of this traditional sovereignty were for border inviolability, territorial integrity and supremacy of the state.”<sup>9</sup> War was rife and was used as a legitimate instrument for state power. “From the formation of a state, simultaneously would flow the attributes of sovereignty on the part of the government and a corresponding submission on the part of the citizenry, together permitting rules to be promulgated.”<sup>10</sup>

From the latter half of the 20<sup>th</sup> century onwards, wind of sovereignty reached colonized African states and leaders like Nkwameh Nkrumah, Leopold Sedar Senghor, Julius Nyerere and Sekou Toure championed for African independence. Most of Africa was colonized by European states who during the ancient Westphalia times had clamoured for their sovereignty. By the late 20<sup>th</sup> century, all African countries became independent and boasted of their sovereignty protected by the family of nations in the United Nations charter article 2(4) which prohibits attack on the territorial integrity and political independence of any state. “By the time of the drafting of the United Nations Charter, the first principle to be embedded was an axiom that; the organization is based on the principle of the sovereign equality of all its members. In entering the family of nations, a state comes as an equal to equals. It demands certain consideration to be paid to its dignity, the retention of its independence, of its territorial and personal supremacy.”<sup>11</sup> For Sudan, “The state has been powerful in Khartoum, weak in Darfur and non existent in Bahr el Gazal, hence its sovereignty has been questioned as these problems have continued to exacerbate even in the 21<sup>st</sup> century period.”<sup>12</sup>

“Democratic institutions especially those consisting of a system of balance and checks have purposely obscured the problem of sovereignty and glossed over the need for a definite location of the sovereign power. The pro-democrats in their endeavour to make democracy a

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<sup>9</sup>Biersteker T.J & Weber C (1996:02) State Sovereignty as Social Construct. University Press. Cambridge.

<sup>10</sup>Terrell T.P & McNamee B.L (1993:462) Transovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice. Fordham International Law Journal vol 17, issue 3, article 1. Berkely Electronic Press

<sup>11</sup>Streeten P (1999:603) Globalisation: Threat or Opportunity. John Wiley & Sons. Paul Collins

<sup>12</sup>Mahmoud F.B (1986:53) Calamity in Sudan: Civilian versus Military Rule. Institute of African Alternatives. London.

government of laws and not of men, forget that in any state, democratic or otherwise, there must be a man or a group of men ultimately responsible for the exercise of political authority. Sovereignty encompassed the state's supreme authority and monopoly over the legitimate use of force within its territory, capability to regulate movements across its borders, make its foreign choices freely and be recognized by other governments as an independent entity entitled to freedom from external intervention.”<sup>13</sup>

The meaning of sovereignty however changed after the two devastating World Wars when the United Nations invoked chapter VII in its charter that mandated the Security Council to maintain peace and security. “Article 2(7) restricts intervention, but does not rule it out”. Respect for the state's sovereignty is crucial, but the time for absolute sovereignty in the 21<sup>st</sup> century has since passed as the concept is never matched with reality. “The United Nations Secretary General Koffi Annan in 1999 had this to say:

If states bent on criminal behaviour knowing that frontiers are not the absolute defence, if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign impunity.....any such evolution in our understanding of state sovereignty and individual sovereignty will in some quarter be met with distrust, scepticism and hostility; but it is an evolution that we should welcome.”<sup>14</sup>

“In order to address the worst humanitarian situation in the world, the international community needs to revisit the international legal concept of sovereignty and only then can the modern era heal the conflicts they started.”<sup>15</sup> The Responsibility to Protect Principle was endorsed in 2005 by the United Nations which resulted in the deployment of peacekeepers in Darfur after the outbreak of the civil war in 2003. “When the nation state was founded, the city states and the feudalism that preceded it had become too small for the scale of operations required by the industrial revolution. The political institution therefore, was adapted to the new industrial technology, to the roads, railways and canals. The nation state was then a progressive institution, but now the nation state, with its insistence on full sovereignty has

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<sup>13</sup>Morgenthau H (1985:305) Politics Among Nations. Mcgraw Hill. California.

<sup>14</sup>Keith K.J (2004:788) Sovereignty at the Beginning of the 21<sup>st</sup> Century: Fundamental or Outmoded? Cambridge Law Journal. 63(3)

<sup>15</sup>Bhatti S.T (2007:03) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

become at least in certain respects an obstacle to further progress.”<sup>16</sup> Each nation acts in its own perceived national self interest and the result is that every country is worse off.

## 1.8 THEORETICAL AND CONCEPTUAL FRAMEWORK

Theoretically, realism shall be used to explain how countries have used sovereignty to strengthen their power and escape the troubles that bedevil the internal affairs of a state. “The essence of politics is power, once in power, the sovereign would want to preserve the status quo and remain in power.”<sup>17</sup> This has been true as the Sudanese president has clung to power since the 1989 coup. With elections having been boycotted several times by the opposition and the 1999 state of emergency that dismissed the speaker two days before parliament was scheduled to vote on a bill reducing presidential powers; realists would argue that the desire for power ceaseth only at death. Globalization as a concept, will explain the challenges to sovereignty in the 21<sup>st</sup> century. The world has been increasingly intertwined and Africa has been no exception. The crisis of the post Cold war order led to the emergency of a new global political structure. This structure made obsolete the classical Westphalian concept of a system of sovereign states to conceptualize world politics. The concept of sovereignty becomes looser and the old legal definition of an ultimate and fully autonomous power of a nation state is no longer meaningful. Normative theorists argue that sovereignty is a responsibility, a responsibility to protect the citizens of a country from anarchy with the clear participation of individuals in the welfare of their state. These cosmopolitan theorists advocate for limited sovereignty. A country can only remain sovereign if it respects the citizens within a society, obedience can only be rendered if the state protects the people. Thus at the beginning of the 21<sup>st</sup> century, globalization has affected the absolute sovereignty of states as violations of human rights on the grounds of sovereignty is no longer tolerated. In December 2010, Tunisia witnessed uprisings that depicted how internal problems of one country can easily affect other neighbouring states such as Egypt and Libya. The dependency theory shall be used to explain African countries’ inability to delink and become self sufficient. These countries have remained poor by clinging to their colonial masters, therefore not sovereign in their own right.

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<sup>16</sup>Streeten P (1999:613) Globalisation: Threat or Opportunity. John Wiley and Sons. Paul Collins.

<sup>17</sup>Morgenthau H (1985:165) Politics Among Nations. Mcgraw Hill.

## **1.9**

### **METHODOLOGY**

This study shall triangulate the qualitative method of interviews and documentary reviews. In-depth interviews will be conducted using an in-depth interview guide with structured questions intended to get relevant answers to the area under study. Government officials from North and South Sudan will be targeted. Targeted respondents through key informant interviews will be from the Ministry of Foreign Affairs, the Sudanese embassy, and Sudanese officials in government. The research methodology to be applied will both be exploratory and evaluative tracing the survival of the concept of sovereignty as applied in the 21<sup>st</sup> century in the African context. Documentary reviews will be utilised in the study. (Libraries such as SAPES trust, United Nations Development Programme and the University of Zimbabwe). The electronic media will also be significant in data gathering and this includes the internet. Qualitatively, information will also be obtained from journals, documentary reviews, books, magazines and exclusive publications.

## **1.10**

### **LIMITATIONS**

The major limitation of the study has to do with academic inquiry which needs archival material. The researcher will need to travel to Addis Ababa, Ethiopia and former Sudan to access archival data from the African Union headquarters. This limitation will be addressed by documentary interviews that will be carried out supported by key informant interviews from relevant embassies and institutions.

## **1.11**

### **DELIMITATIONS**

Although the study will make reference to other African states, it will focus on the ability of former Sudan to preserve its sovereignty given the problems that have emanated and continue to emerge.

## **1.12**

### **CONCLUSION**

The chapter was an outline of the crisis in Sudan. It heralded the history of Sudan from the time it became a state through years of upheaval and to the 21<sup>st</sup> century problems associated with the North African State. The country has lost its sovereignty as anarchy became the order of the day in the beginning of the 21<sup>st</sup> century. The religious difference between the North and the South Sudan seemed to have caused the upheavals in Sudan. This led to the

international community intervening in the crisis so as to return Sudan to the rule of law. Thus the next chapter will evaluate the evolving concept of state sovereignty from the 1648 Westphalian Treaty to the development of sovereignty in Sudan and the transformation of the concept to meeting up the challenges of the 21<sup>st</sup> century period. Chapter three will give a historical overview of the Sudanese conflict prior to colonialism, during the colonial era and after independence, whereas chapter four examines the relevance of sovereignty in Sudan. The final chapter gives a conclusion to the study, recommendations as well as implications for further research.

## **CHAPTER 2: THEORETICAL FRAMEWORK AND LITERATURE REVIEW**

### **2.1 INTRODUCTION**

This chapter offers an account of the evolving concept of state sovereignty from the Westphalian Treaty to the modern era of the former half of the 20<sup>th</sup> century which led to the formation of the United Nations. The shift from the old to the new cosmopolitan sovereignty appeared to have taken several stages which will be clearly outlined in this chapter including; The 1789 Declaration of the Rights of Men and of Citizens in France, The Vienna Convention of 1815, The end of the First World War leading to the formation of the League of Nations of 1919 and consequently, The United Nations was formed after the devastating effects of the Second World War which brought about the new concept of state sovereignty. The final analysis of this chapter will shed more light on the effects of absolute sovereignty on African states and the circumstances surrounding the failure by many African states, notably Sudan to adapt to the new concept of sovereignty. The effects of globalisation on statehood have left many sovereign states with no choice than to adopt the norm of the new global order. With states becoming more and more borderless, this chapter elaborates how the old concept of sovereignty has lost its influence on the international arena.

### **2.2 THE 1648 WESTPHALIAN TREATY**

“The symbolic character of the Westphalian Peace Treaty (WPT) is undeniable and can be estimated by innumerable and multi disciplinary references to a “Westphalian” model of international relations. The political, juridical, geographical, religious and philosophical outcomes of the WPT induced many states to speak of a Westphalian paradigm in describing a standard model of nation states which became an absolute reference as from the 17<sup>th</sup> century.”<sup>18</sup> The WPT represents the majestic portal which leads from the old to the new world. “The WPT came into being after the devastating 30 years war (1618-1648) which represented a titanic conflict between the rival dynasties of Bourbon (France) and Hapsburg (Lords of Spain and the Holy Roman Empire) for the domain of continental Europe.”<sup>19</sup> Few

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<sup>18</sup>Marcilio T.F.F (2007:956) Westphalia: A Paradigm? Dialogue Between Law, Art and Philosophy of Science. German Law Journal. Vol 08 no. 10.

<sup>19</sup>Ibid(2007:958)

military conflicts in history have caused such devastation to the civilian population. “It is estimated that at least half of the German and Bohemia people lost their lives due to starvation, diseases and brutal attacks from soldiers bent on pillage. Armies from both sides looted, tortured, killed and set fire to everything transforming entire regions into great deserts. Before the 30 Years War, European political order was an amalgam of the traditions of Roman Empire and the Catholic Church. The world was heaven’s mirror.”<sup>20</sup> Only God reigned in heaven and so one emperor would be the lord in the secular world and just one Pope to rule the Universal Church. “This was reflected by the Athenians when they invaded the Melians during the Peloponnesian war of the fifth century B.C. that:”<sup>21</sup>

.....of the gods we believe, and of men we know, that by a necessary law of their nature they rule wherever they can and it is not as if we were the first to make this law or to act upon it when made. We found it existing before us and will leave it to exist forever after us; all we do is to make use of it, knowing that you and everybody else having the same power as we have, would do the same as we do. This as far as the gods are concerned we have no fear and no reason to fear that we shall be at a disadvantage.....

However, the 30 Years War and the WPT seemed to have heralded a new era from the politics of domination to the respect of the other in international relations.

“At the roots of the war, was a religious conflict deriving from the intolerance between Catholics and Protestants. It was a problem within the state as well as among states.”<sup>22</sup> “The Protestants reforms; breaking the Catholic religious monopoly in medieval Europe, provided the base from where later flourished the 30 Years War and the WPT. The 30 Years War meant the completion of one stage in the process of world history and WPT inaugurated an era where this history became effectively a unitary one involving the whole continent of Europe and the overseas dependencies of maritime powers.”<sup>23</sup> The WPT did not intend to redefine international relations, “it was not a metaphorical switch that toggled on and gave Europe a new structure overnight; nor did the treaties that comprise it ever profess to have

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<sup>20</sup>Marcilio T.F.F (2007:958) Westphalia: A Paradigm? Dialogue Between Law, Art and Philosophy of Science. German Law Journal. Vol 08 no. 10.

<sup>21</sup>Richard Crawley (1951:334-336) Thucydides: Complete Writings: The Peloponnesian War. New York Modern Library. See also Karen A. Mingst & Jack L Snyder (2001:13) Essential Readings in World Politics. W.W Norton & CO. Inc. N. York

<sup>22</sup>Marcilio T.F.F (2007:959)

<sup>23</sup>Polisensky J (1971:257). The 30 Years War. University of California Press. Berkeley.

any purpose other than ending the war.”<sup>24</sup> “The WPT comprised of two main separate treaties as the Catholic and Protestant nations refused to meet with each other. The Catholic parties met in 1648 in Munster, a traditionally Catholic city whereas the Protestants met 50 kilometres north in the Protestant city of Osnabruck.”<sup>25</sup> “The signing was concluded on October 24 1648 as considerable territorial conquests were granted to the French, German territories were conceded to Sweden, independence was granted to Switzerland and Holland from Holy Roman Empire (HRE), Catholicism and Protestantism were declared confessions with identical rights, the HRE was reduced as each German Prince Elector was given the same rights of sovereignty, barriers to commerce were abolished and a long period of relative balance of power started in Europe.”<sup>26</sup> With the celebration of the WPT, each Prince Elector had the power to declare war, sign peace treaties, establish alliances and govern their respective states as they fancied. The HRE maintained a mere facade of unity until it was dissolved by Napoleon Bonaparte in 1806 when Emperor Francis 11 renounced the imperial crown.

### **2.3 THE DEVELOPMENT OF THE WESTPHALIAN TREATY**

“Around 300 representatives signed the two treaties. Even though most members of all political forces in Europe were present, the Pope Innocence X protested firmly against the treaty stating that the WPT was null, invalid, injurious, condemnable, inane and destitute of any significance. From the peace came the consolidation of religious freedom and formal affirmation of state sovereignty. This WPT created a set of norms mutually established to define the holders of authority in the European international scene, the rules that were necessary to become universal and the prerogatives of a whole new world order.”<sup>27</sup> “The three dimensions of the modern state that was born (secularisation, centralisation and nationalisation) comprised a united trinity since it is ultimately the sovereign; a strong and centralised nation state that creates international confessional peace and religious tolerance”<sup>28</sup> which Sudan has failed to uphold. The preservation of religious freedom was the first step

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<sup>24</sup>Kelly G (2008:03) The Origins of Westphalian Sovereignty. Oregon University Press.

<sup>25</sup>Polisensky J (1971:19) The 30 Years War. University of California Press. Berkeley.

<sup>26</sup>Marcilio T.F.F (2007:964) Westphalia: A Paradigm? Dialogue Between Law, Art and Philosophy of Science. German Law Journal. Vol 08 no. 10.

<sup>27</sup>Marcilio T.F.F (2007:966) Westphalia: A Paradigm? Dialogue Between Law, Art and Philosophy of Science. German Law Journal. Vol 08 no. 10.

<sup>28</sup>Ibid (2007:967)

towards the protection of fundamental rights. The compact of the WPT represented the passing of some power from the Emperor with his claims of holy predominance to many kings and lords who then treasured their own local predominance. As time passed, this developed into options of the absolute rights of the sovereign. “From the WPT, sovereignty encompassed a state as one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory, capable of regulating movements across its borders, making foreign policy choices freely and recognition by other governments as an independent entity entitled to freedom from external intervention.”<sup>29</sup> However what is significant in the 21<sup>st</sup> century is that each of these components of internal authority, border control, policy autonomy and non-intervention is being challenged in unprecedented ways.

## 2.4

### THE PURPOSE OF SOVEREIGNTY

“The concept of sovereignty freed the king from superior, equal and inferior political domains. This marked the beginning of a new political thought about centralising governments, exclusive internal sovereignty, stern borders and formal interstate diplomacy. Within the WPT a clearest point in the historical transition of the international scenery to the normative territorial sovereignty and the prevalence of laicism can be found as fundamental to a truly multipolar system of states. In this perspective; 1648, 1789, 1933 and 1945 constitute fundamental dates in the transformation of the state since Westphalia.”<sup>30</sup> In the 21<sup>st</sup> century, the international scene is no longer exclusively state bound, sovereignty has become more and more shared; there is a certain flow to commercial borders and a war in the magnitude of that from 1618 to 1648 seems more and more remote. On the other hand the state is still an indispensable actor in the modulation and execution of law and in the understanding of international relations. “The United Nations efforts towards state building in Kosovo, Afghanistan, Iraq and Sudan are great examples of the role now played by Westphalian statehood.”<sup>31</sup> In a nutshell, the WPT legitimated the right of sovereigns to govern their people free of outside interference. Sovereignty formed the cornerstone of the edifice of international relations that the year 1648 raised up. “Sovereignty was the crucial element in the WPT and the international agreements were intended to end a great war as

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<sup>29</sup>John H. Jackson (2003:786) Sovereignty- Modern: A New Approach to an Outdated Concept. The American Journal of International Law. Vol 97:782.

<sup>30</sup>Marcilio T.F.F (2007:971)

<sup>31</sup>Marcilio T.F.F (2007:974)

well as promote a coming peace. The treaties of Westphalia enthroned and sanctified sovereigns, gave them power domestically and independence externally.”<sup>32</sup>

## **2.5 SOVEREIGNTY CHALLENGED: ITS APPLICABILITY AND RELEVANCE.**

“In Africa the nature of the state is fundamentally changing and this has consequences, firstly, for Africa’s integration into and interaction with the international system and, secondly, for the way in which International Relations as an academic exercise can analyse these processes. In the current processes of deterritorialisation of parts of the African continent, sovereignty and territory are unbundled. Africa’s place in the international system will no longer be discussed in terms of an assumed general quality of stateness of all African states, but with a view to highlight the different regimes of territorialisation which are emerging on the continent, which exist side by side and which interact with the various components of the international system in very different ways. However, the Westphalian system of sovereign nation states still is very strong in most, but precisely not in all parts of the world.”<sup>33</sup> The expectations of the 21<sup>st</sup> century international system have eroded sovereignty. State authority has changed over time and a new scope of ideas such as universal human rights are being hurt with the idea of sovereignty. Therefore, sovereignty has been challenged to combat these challenges. “One of the prominent notions of pre-sovereignty that will systematically resolve the conflict in Sudan is the international legal sovereignty (mutual recognition between territories). The preconceived notion of sovereignty is described as a system of authority and legitimacy, but it does not represent control. An international legal sovereign state is a state recognized by other states, but possesses a limited domestic sovereignty in its authority and exercise of power over the affairs of its territory. International legal sovereignty is the approach to best resolve the situation in Darfur.”<sup>34</sup>

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<sup>32</sup>Stephane B(2004:01) The Westphalian Model in Defining International Law: Challenging the Myth. Australian Journal of Legal History. Macquarie Law.

<sup>33</sup>Engel U& Olsen G.R (2010:7-11) Authority, Sovereignty and Africa’s Changing Regimes of Territorialisation. Leipzig University. Germany

<sup>34</sup>Bhatti S.T (2007:18) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

## 2.6

### INTERNATIONAL LEGAL SOVEREIGNTY

“International legal sovereignty is concerned with establishing the status of the political entity of the state in the international community. Among other states, states are equal in their relationships. If states recognize the juridical autonomies of other states, then through the international recognition, states incorporate the identity of being a state. Over time, additional rules have added to the description of sovereignty such as the capability to defend the defined territory, provide an established government and have a population. There have been important cases where governments within settled borders (such as the Southern Rhodesian government after its Unilateral Declaration of Independence in 1965) have remained unrecognized by the international community while, at the same time, national liberation movements have been granted new levels of recognition or respect (for example, the ANC in the late 1980s during the closing stages of apartheid in South Africa). Boundaries between states are of decreasing legal and moral significance. States are no longer regarded as discrete political worlds. Any assumption that sovereignty is an indivisible, illimitable, exclusive, and perpetual form of public power entrenched within an individual state, is now defunct.”<sup>35</sup>

## 2.7 The 1933 MONTEVIDEO CONVENTION ON THE RIGHTS AND DUTIES OF STATES.

“Though the WPT was a gigantic step forward in international relations, it was not perfect. It led, among other things to the cementing of absolute sovereignty.”<sup>36</sup> To refine the conditions of the WPT was “The 1789 Declaration of the Rights of Men in France limiting the powers of the monarch whilst promoting the rights of the citizens, The Vienna Convention of 1815 ending Napoleon Bonaparte’s dominance of Europe, The 1919 League of Nations forming a united family that would try to promote peace after the devastating first World War, The 1933 Montevideo Convention prescribing the rights and duties of states as international legal personas, The 1961 Vienna Convention on Diplomatic Relations and the broader 1945 United Nations Charter forming the family of nations after the second World War.”<sup>37</sup> “The Montevideo Convention was signed at the 7<sup>th</sup> International Conference of American States on

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<sup>35</sup>Bhatti S.T (2007:19) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

<sup>36</sup>Helga Zepp La Rouché (1999:03) The Peace of Westphalia: A Precedent for Peace in the Balkans. Schiller Institute.

<sup>37</sup>Marcilio (2007:971)

26 December 1933 in Montevideo Uruguay and entered into force the year that followed.”<sup>38</sup> It discussed the definitions and rights of statehood. “A state was defined as a person of international law that possesses a permanent population, a defined territory, a government and the capacity to enter into relations with other states.”<sup>39</sup> “This was also a crucial factor of the Westphalian Sovereignty.”<sup>40</sup> “Article 2, viewed the state as a sole person in the eyes of international law. This meant that the state would be treated as an individual and would be fully responsible for its actions. At this point, sovereignty of the state had to carry with it some responsibilities so as to create a peaceful universe. Article 3, remains critical to the independence of a state, as article 4, points out to the general equality of states while non intervention by external forces is mentioned in article 8. The Convention also submits in article 10, the settling of disputes by peaceful means.”<sup>41</sup> Although states such as United States of America, Peru and Brazil ratified the Convention with reservations, as they still wanted to cling to the old form of sovereignty, it was a crucial stage which brought about rules and regulations that would guide states within and outside their territories.

It can be deduced that the Montevideo Convention refined sovereignty in its articles and made it possible for states to limit their attempts at seeking glory by oppressing other states. Although the Montevideo Convention was crucial, the fact that nations retained their independence [article 3] and non intervention by other states [article 8] meant that the process of limiting absolute sovereignty was far from over. During the 1933 Montevideo Convention period, sovereignty remained relevant and from its provisions African states have found comfort in referring to them when it would serve their purpose. Sudan has caused a lot of harm to its citizens and claims absolute and independent authority referring to provisions that have been overtaken by events and time.

## **2.8 The 1945 UNITED NATIONS CHARTER.**

“In the aftermath of a devastating world war, the United Nations (UN) was founded in 1945 to help stabilise international relations and give peace a more secure foundation. Since then, it has been both witness and catalyst to an extraordinary transition in global relations. From the

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<sup>38</sup>Council on Foreign Affairs (2011) Essential Readings: The Montevideo Convention. N York

<sup>39</sup> Ibid

<sup>40</sup>John H. Jackson (2003:786) Sovereignty- Modern: A New Approach to an Outdate Concept. The American Journal of International Law. Vol 97:782

<sup>41</sup>Council on Foreign Affairs (2011) Essential Readings: The Montevideo Convention. N York

ruins of the Second World War, through years clouded by the rivalry of two major power blocs, the threat of nuclear war and seemingly endless regional conflicts, the UN has evolved into an organisation in which the collective search for stability founded on peace and development has become an overriding concern. As the cold war faded, hopes were high for an era in which warfare as an instrument of policy would be rejected. Instead, virtually every continent has seen long submerged differences flare up in bitter conflicts.”<sup>42</sup> The demands on the UN have increased sharply and the organisation has responded by multiplying its peacekeeping operations as well as its peacekeeping efforts, humanitarian presence and preventive diplomacy. In the 21<sup>st</sup> century peace and security are no longer viewed only in terms of absence of military conflict. “The common interests of humankind are also seen to be affected by social and economic realities such as poverty, hunger, environmental degradation and human rights violations, problems that are often at the very heart of national and international tensions.”<sup>43</sup> These problems have been a more characteristic feature in African states and Sudan has been entangled in human rights violations for its citizens that led to the United Nations classifying them as genocide.

The name United Nations was devised by United States of America (USA) President Franklin D. Roosevelt and was first used in the “Declaration by the United Nations” of 1 January 1942 during the Second World War when representatives of 26 nations pledged their governments to continue fighting together against the Axis Powers.<sup>44</sup> The UN Charter was drawn up by representatives of 50 countries and was signed on 26 June 1945. The UN then officially came into existence on 24 October 1945 when the charter was ratified by China, United Kingdom, France, Soviet Union, USA and by a majority of other signatories.<sup>45</sup> The UN Charter is the constituting instrument of the organisation setting out the rights and obligations of member states and establishing the UN organs and procedures. “The Charter opens with a preamble expressing the ideals of all the people whose governments joined together to form the UN; thus:

we the peoples of the UN, determined to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

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<sup>42</sup>Basic Facts about the UN (1995:25) Department of Public Information. New York

<sup>43</sup>Basic Facts about the UN (1995:25) Department of Public Information. New York

<sup>44</sup>Basic Facts about the UN (1995:03) Department of Public Information. N York.

<sup>45</sup>Basic Facts about the UN (1995:03) Department of Public Information. N York.

and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in large freedom.”<sup>46</sup>

Among the goals set out in the preamble is the maintenance of peace and security, the outlawing of the use of armed force, encouragement to save in common interest and the advancement of economic and social benefits to all peoples. All these regulations provided the means of transforming the old concept of sovereignty which regarded states as independent actors in the international arena to acting in consideration of other states’ interests.

The UN has six structures within itself, namely the General Assembly (GA), Security Council (SC), Economic and Social Council (ECOSOC), Trusteeship Council (TC), International Court of Justice (ICJ) and the Secretariat. “The General Assembly’s functions include considering and recommending on peace and security. “Membership of the UN is open to all peace-loving nations which accept the obligations of the Charter and in the judgement of the organisation are willing and able to carry out these obligations. Thus, an element of sovereignty of state is enshrined only in so far as the state concerned upholds the legal international meaning of sovereignty. The SC has primary responsibility under the Charter for the maintenance of international peace and security. It has 15 members, five permanent: China, France, Russia, United Kingdom and USA and 10 elected by the GA for two year terms. Each SC member has one vote; decisions on procedural matters are made by an affirmative vote of at least nine of the 15 members. Decisions on substantive matters require nine votes, including the concurring votes of all five permanent members. This is the rule of great power unanimity often referred to as the veto power. If a permanent member does not agree with a decision, it can cast a negative vote or abstain.”<sup>47</sup>

“Within the UN is the ICJ whose establishment at The Hague, Netherlands was to act as the principal judicial organ of the UN. The ICJ is open to the parties to its statute which automatically includes all members of the UN. The jurisdiction of the court covers all questions which states refer to it, and all matters provided for in the UN Charter or in treaties or conventions in force. In accordance with article 38 of its statute, the ICJ in deciding disputes submitted to it, applies international conventions recognised by contesting parties,

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<sup>46</sup>Basic Facts about the UN (1995:03) Department of Public Information. N York.

<sup>47</sup>Basic Facts about the UN (1995:03) Department of Public Information. N York.

international custom as evidence of a general practice accepted as law, general principles of law recognised by nations and judicial decisions and the teachings of the most highly qualified publicists of various nations as a subsidiary means for determining the rules of law.”<sup>48</sup> States therefore cannot act as they please as they can also be tried at a competent international court.

In this way the UN has been a major contributor to the achievement of peace in the international relations milieu and the observation of the sovereignty and independence of nation states. “Absolute sovereignty of the Westphalian period has now been challenged and states have the obligation to take sovereignty as a responsibility, for its citizens and its actions on the international arena.”<sup>49</sup> The 21<sup>st</sup> century meaning of sovereignty has severely limited the powers of states to do their own bidding without having to examine carefully the trends of the international arena. The United Nations Security Council in 2005 invoked the Responsibility to Protect Doctrine which led to intervention in Sudan after the outbreak of the civil war in 2003.

## **2.9 The RESPONSIBILITY TO PROTECT PRINCIPLE**

### **2.9.1 Origins and Development**

“At the turn of the 21<sup>st</sup> century a global movement was underway to alter the normative architecture of the state system. The building systematic tension between the preservation of state sovereignty and the protection of populations from gross violations of human rights gained momentum in the wake of the Rwandan genocide and came to the fore in Kosovo in the late 1990s. In the months immediately following North Atlantic Treaty Organisation (NATO)’s controversial intervention, the then United Nations Secretary General, Kofi Annan challenged the international community to reconcile the two foundational aspects of legitimate statehood; sovereignty and the protection of fundamental human rights. The International Commission on Intervention and State Sovereignty (ICISS) responded to the challenge by producing a report aimed at illustrating that the relationship between sovereignty and humanitarian intervention was complimentary, rather than contradictory. Building on the previous work of Francis Deng on internally displaced persons, the ICISS developed the concept of ‘sovereignty as responsibility’ and argued that the state has a

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<sup>48</sup>Basic Facts about the UN (1995:16) Department of Public Information. N York.

<sup>49</sup>Bhatti (2007:09) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works Arcadia University.

primary responsibility to protect its populations, and where it is unable or unwilling to do so, the responsibility to protect would be borne by the international community.”<sup>50</sup>

“After much intensive deliberations and refinement of the ICISS formulation of the Responsibility to Protect (R2P) principle and on its repackaging by the High Level Panel and Kofi Annan former UNSG, the majority of the world’s states unanimously accepted the principle at the World Summit in 2005. The current UNSG Ban Ki- moon has identified the consensus on the R2P to rest on three pillars that form the foundations of the obligations accepted by the heads of states at the World Summit:

The responsibility of the state to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement; The commitment of the international community to assist states in meeting these obligations; and The responsibility of United Nations Member States to respond in a timely and decisive manner, using Chapters VI (Pacific Settlement of Disputes), VII (Action with Respect to Threats to the Peace) and VIII (Regional Arrangements) of the UN Charter as appropriate, when a state is manifestly failing to provide such protection.”<sup>51</sup>

“The United Nations Security Council has unanimously reaffirmed the principles agreed upon at the World Summit in Resolutions 1674 (2006) and 1894 (2009) on Protection of Civilians in Armed Conflict and in Resolution 1706 (2006) on the Reports of the Secretary-General on Sudan. The UN Secretary General, has vowed to translate R2P from ‘words to deeds’, undertaking an extensive investigation into operationalising R2P with the assistance of his newly appointed Special Adviser on the R2P, Edward Luck.”<sup>52</sup>

## 2.10 SOVEREIGNTY AS A RESPONSIBILITY.

“The understanding of the R2P is drawn from a notion of popular sovereignty where sovereignty is delegated to the people. State sovereignty implies responsibility. This

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<sup>50</sup>Drummond C (2010:02) Non Interference and the Responsibility to Protect. *Canvassing the Relationship between Sovereignty and Humanity in South East Asia*.

<sup>51</sup>Drummond C (2010:02) Non Interference and the Responsibility to Protect. *Canvassing the Relationship between Sovereignty and Humanity in South East Asia*.

<sup>52</sup>Drummond C (2010:03) Non Interference and the Responsibility to Protect. *Canvassing the Relationship between Sovereignty and Humanity in South East Asia*.

responsibility is the protection of all people in the state. If sovereignty lies with the people and if international norm promotes the conservation of peace, then peace must be maintained internally. If the population becomes victim to state failure, insurgency, war, conflict, death, genocide, the overarching principle of modern sovereignty of non intervention alerts the international R2P. These obligations to protect are incorporated in the notions of sovereignty that sovereignty has repercussions and the maintenance of peace is important for the international world. Article 24 of the UN Charter provides the responsibility of the Security Council to maintain international peace and security. Society has legal human rights conventions, laws and practices of states to maintain human rights. The three elements of responsibility is the responsibility to prevent the causes of internal conflict, the responsibility to react to situations with proper coercive measures like sanctions, international prosecution or military intervention and the responsibility to rebuild the country during post conflict era providing full assistance in recovery, reconstruction and reconciliation.”<sup>53</sup>

“The priority in the R2P is that all matters of prevention must be exhausted before intervention is reached. The R2P builds around the theory of just cause that is rooted around military intervention. In order to warrant military intervention, genocide must occur or a massive loss of live and large scale ethnic cleansing such as that witnessed in Sudan. If a peacekeeping force intervenes to prevent the conflict from continuing, military intervention in the R2P needs to occur to address the loss of life. The primary purpose of this intervention will be to stop human suffering and will be used as a last resort to its minimum capacity. Military intervention can only be used if it has the capacity to stop the suffering.”<sup>54</sup>

## **2.11 GLOBALISATION VERSUS ABSOLUTE SOVEREIGNTY**

“The crisis of the post war order led to the emergence of a new global political structure, which made obsolete the classical Westphalian concept of a system of sovereign states to conceptualise world politics.”<sup>55</sup> “Globalisation has been defined as the multiplicity of linkages and interconnections between the states and societies which make up the modern world system. It is a process whereby what happens in one part of the world can have

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<sup>53</sup>Bhatti S.T (2007:25) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

<sup>54</sup>Ibid(2007:26)

<sup>55</sup>Evans D Holmes, Mandaza P (1999) The Cost of Non- Integration: SAPES Trust, Harare

significant consequences for individuals and communities in quite distant parts of the world.”<sup>56</sup> “The era of a nation state is over and national level governance is ineffective in the face of globalised economic and social processes.”<sup>57</sup> Thus in the 21<sup>st</sup> century, globalisation has challenged the existence of the state, it has widened the scope of international security which now includes environmental issues such as global warming, ozone depletion and acid rain. “Nation states can no longer control their non physical security requirements such as protection of information and technological assets. The agents of threat can be the state itself, but in the contemporary era, it has been non state actors including inter alia; individuals, ethnic militias, cults, organised crime and terrorism.”<sup>58</sup>

“From another dimension, it seems as if sovereignty of nation states have been altered not undermined, globalists have not only overstated the degree of state powerlessness, they have also over generalised it.”<sup>59</sup> “Globalisation is a positive factor and the current crisis of the nation state is not irreversible. The rise of centrifugal forces of ethnicity, fundamentalism, and racism call for reversing the polarisation caused by the crisis of global capitalism, by creating alternative vision of globalisation based on socialism.”<sup>60</sup> Globalisation has spread since the beginning of the 21<sup>st</sup> century like an octopus in all fields and in the final analysis globalisation basically marks the phase of conflict between global space of economic management and national space of socio-political management. In the 21<sup>st</sup> century, Sudan has failed to rise to the expectation of a changing environment were absolute sovereignty will not go unchecked. The result has been an enormous pressure from the international community for Sudan to radically change its approach to sovereignty and follow the new concept of state sovereignty. States can no longer independently engage into acts that are harmful to the well being of their citizens. Any such act, will be met with corresponding retaliation by the international community. The problems of one state can spill into another creating a web of discontent; therefore the United Nations has been set aside to be the police force of all states within the United Nations family.

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<sup>56</sup> McGrew Anthony (1992:23) Conceptualising Global Politics. Globalisation and the Nation State. Cambridge.

<sup>57</sup> In Hirst and Thompson (1996:175) Globalisation in Question. Cambridge: Polity Press.(Harsman & Marshall 1994)

<sup>58</sup> Strange S (1997:366) The Limits of Politics. Government and Opposition 30 (3).

<sup>59</sup> Weiss L (1997:16) Globalisation and the Myth of the Powerless State. New Left Review 225: 3-27

<sup>60</sup> Amin S (1997:15) Capitalism in the Age of Globalisation: Management of Contemporary Society; London: Zed Books.

“The hold of the classic regime of sovereignty has been dislodged within the boundaries of nation-states by successive waves of democratization. While these were primarily aimed at reshaping the national polity, they had spill over effects for the interstate system. Although it was not until after the Second World War that a new model of international regulation fully crystallized, the regime of liberal international sovereignty has origins which can be traced back further. Its beginning is marked by attempts to extend the processes of delimiting public power to the international sphere and by attempts thereafter to transform the meaning of legitimate political authority from effective control to the maintenance of basic standards or values that no political agent, whether a representative of a government or state, should, in principle, be able to abrogate. Effective power is challenged by the principles of self-determination, democracy, and human rights as the proper basis of sovereignty.”<sup>61</sup>

## 2.12 CONCLUSION

In a nutshell, the chapter attempted to give insight to the old concept of sovereignty that precipitated from the Westphalian Treaty of 1648. States had untrammelled legislative authority and could not be checked by any other force except itself. The power to govern belonged to the state and no individual had the right to question the affairs of the state. The absolute rule given to states meant that no intervention was permissible by any other state in the domestic affairs of the other. However with the advent of time, the Montevideo Convention of 1933 and the United Nations Charter of 1945 through the Responsibility to Protect (R2P) relaxed the excessive powers of the state and considered issues that had become pertinent to the 20<sup>th</sup> century period, such as human rights and democracy. The chapter proves that nations aspire to a basic globalised world but within some limits. A kind of fair globalisation that rejects opportunist gluttony. A dream of a world able to preserve the diversified peculiarities and identities of its inhabitants; a unified - diversified world at the same time. Seen from one perspective, globalisation looks like a system of wealth and prosperity, from another it appears as a system of exclusion and marginalisation. A globalised world may still coexist with the state effectively by virtue of being supported by multiple networks of social interaction within the state and the international arena. The chapter that follows examines the historical overview of the Sudanese conflict before and during the colonial era and after independence.

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<sup>61</sup>Held D (2003:164) The Changing Structure of International Law. Sovereignty Transformed. Polity Press. Cambridge.

## **CHAPTER 3: HISTORICAL OVERVIEW OF THE SUDANESE CONFLICT**

### **3.1 INTRODUCTION**

This chapter outlines the problems that were associated with Sudan from the initial stage of state formation. The initial stage started when the Arabs came into Sudan bringing about an advanced culture irresistible to the natives. Thus the Arabs found a safe haven through the use of their superior culture, desired by the natives. The colonial era brought about Christianity, Commerce and Civilisation. This alarmed the Arabs as their influence on the native people was replaced by the British and Egyptians' Condominium Rule. The chapter stresses the problems that manifested in Sudan during colonial bondage and those that came about as a result of getting self governance. With the religious differences between the North and the South, unity proved impossible as the Muslims tried to dominate the Christians by imposing their beliefs on the Christians who preferred to be left alone. This heralded an era which was flooded with coups and civil wars that eventually led to the loss of Sudanese sovereignty in the 21<sup>st</sup> century upon interference by the African Union and the UNSC under the R2P Doctrine of 2005.

### **3.2 HISTORICAL OVERVIEW OF SUDAN**

“The political history of Sudan began with the establishment of two polities: the kingdom of Funj in 1504 with its capital at Sinnar and the Sultanate of Darfur in 1650 with its capital at El Fasher.”<sup>62</sup> “Institutionally, both polities shared many features with other kingdoms such as neighbouring Chad. The Sudanese state was organised around the institution of kingship, ritually elevated to great sacred prominence, the king was in practice constrained in the exercise of absolute power. He was required to practice a ritual seclusion upon his accession; his feet never touched the ground and he was never seen eating. However in real life, the king was never left alone, he always gave audiences via intermediaries, when he coughed or

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<sup>62</sup>Mamdani M (2010:132)Saviors and Survivors: Darfur, Politics and the War on Terror. Council for the Development of Social Science Research in Africa. Dakar.

sneezed, all present sneezed or coughed.”<sup>63</sup> Such was the characteristic feature of native African communities before the intervention of Arabs in the African cultural societies.

“Sudan has had a longer and continuous history of uninterrupted internal development than the other two great civilisations in the region, Egypt and Iraq. It was not occupied by a foreign power until 1821, when Ottoman and British forces based in Egypt invaded Sudan.”<sup>64</sup> The British official mind of the 19<sup>th</sup> century, regarded the African world as made up of races, primarily Negro natives and non-Negro settlers in Sudan. “This mind-set is clearly evident in Winston Churchill’s late 19<sup>th</sup> century journalistic report on the country; thus:

The Sudanese are of many tribes, but two main races can be distinguished: the aboriginal natives and the Arab settlers. The indigenous inhabitants of the country were Negroes as black as coal. Strong, virile and simple minded savages, they live as we may imagine prehistoric men- hunting, fighting, marrying and dying, with no ideas beyond the gratification of their physical desires and no fears save those engendered by ghost, witchcraft, the worship of ancestors and other forms of superstition common among peoples of low development. The smallness of their intelligence excused the degradation of their habits..... Thus the situation in the Sudan for several centuries may be summed up as follows: the dominant race of Arab invaders was unceasingly spreading its blood, religion, customs and language among the black aboriginal population and at the same time it harried and enslaved them.”<sup>65</sup>

This division of the Sudanese people was to play an influential role to the problems that emanated in the 20<sup>th</sup> and 21<sup>st</sup> centuries.

“There were three reasons that propelled Arabs to move southward from Egypt: the lure of pasturage in Sudan, an unfavourable political environment in Egypt from 868 to 1517, a period which despotic Turks, Berbers and Mamluks held the reigns of government and lastly an open passage into Sudan after Mamluks overran Nubia in 1276.”<sup>66</sup> Due to the penetration

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<sup>63</sup> Mamdani M (2010:132) Saviors and Survivors: Darfur, Politics and the War on Terror. Council for the Development of Social Science Research in Africa. Dakar

<sup>64</sup> Mamdani M (2010:132) Saviors and Survivors: Darfur, Politics and the War on Terror. Council for the Development of Social Science Research in Africa. Dakar

<sup>65</sup> Winston Churchill (1899:7-8) The River War: An Account of the Re-conquest of the Sudan. Carroll & Graf Publishers. New York

<sup>66</sup> MacMichael in Mamdani M (2010:97) Saviors and Survivors: Darfur, Politics and the War on Terror; Council for the Development of Social Science Research in Africa, Dakar, Senegal

of large numbers of Arab tribesmen over a long period of time, a culturally Arabized stock was created in Sudan. “Consequently, the inhabitants of Sudan became assimilated into the Arab tribal system far more superior than their own culture. The conventional history of Sudan is written as the history of migration, the movement of Arabs (wise men) and the spread of extraordinary ideas and practices (Arabization). The societies they encountered were receptive to these new ideas and practices at particular points in time. The “wise men” was invariably an outsider, said to have married into a leading insider family. As one who is supposed to have initiated the process of Arabization, his role is akin to that of a miracle worker, for he is identified as the founder of the state. This is why it is not strange to find an alternative account to the miraculous role of the “wise men” in histories that treat state formation as the political consequence of a larger social and economic history.”<sup>67</sup>

“In the 1650s, commerce and civilisation brought about the new middle class of largely the native inhabitants. They claimed Arab identity, practiced patrilineal descent, employed coin currencies and bound itself in its dealings by the standards of Islamic law. It elicited alms, purchased slaves, monopolised exchange relationships and imposed perpetual indebtedness upon its free subjects, it imposed its own legal and ideological concepts upon the government, demanded exemption from all obligations to the state and took up a variety of duties hitherto exercised by the state, such as the administration of justice and the collection of taxes.”<sup>68</sup>

### **3.3 THE FUNJ SULTANATE AND THE SULTANATE OF DARFUR IN SUDAN**

“The process of Arabization in the Funj was not analogous to that in the Darfur. Whereas it is true that both Sultanates were highly Arabized as states in 1718 to 1762, there was a world of difference in the historical formation and political location of Arab tribes in Funj and Darfur. In Funj, Arab was an identity of power, in the Darfur however it was the natives that developed as the identity of power and Arab, became a marginal and insurgent identity. The Southern Funj is the hilly area between the Blue and the White Nile. After the fall of the Funj Sultanate, the peoples of the Southern Funj negotiated multiple transitions to a post Funj

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<sup>67</sup>Posnansky (1971:51) in “Pre-Nineteenth Century Contacts between the Sudan and East Africa, and the Nile Valley in Early Times”. University of Khartoum, Sudan.

<sup>68</sup>Spaulding J (2007:203) The Heroic Age in Sinnar: Red Sea Press; Trenton, N.J.

future by claiming different lines of descent, some claiming their ancestral identity and others choosing to be Arabs.”<sup>69</sup>

### **3.4 WHO IS AN ARAB?**

“The conflict in Sudan is one between Arabs from the Middle East who migrated to the Africa and the African natives. The government is predominantly Arab and choose their Arab allies over black Africans.”<sup>70</sup> “The standard understanding of Arab in Sudan was derived from the process known as Arabization, by which was meant acculturation through migration and contact. This viewpoint argues that Arab identity is neither ethnic nor racial but cultural. The slow Arab penetration in Sudan reached a climax in the 15<sup>th</sup> century when the Arab tribes overran most of the country. By the 16<sup>th</sup> century, a culturally Arabized group emerged as a result of at least two centuries of close contact between the Arabs and the inhabitants of the Sudan. Therefore Arab identity was more a mark of assertion than of imposition. The history of Arab groups is a multiple history in which migration has at best played a marginal role. At the broadest level, the people of Sudan including the Arabs distinguished between the riverine and the western Arabs. Riverine Arabs were settled with territorial, village based organisations; the Arabs of Darfur were nomadic and their identity was based more on group affiliation than on territory. Many riverine Arabs tended to look upon the nomadic tribes of Darfur as uncivilised country bumpkins rather than as members of a common community.”<sup>71</sup>

### **3.5 COLONIAL RULE IN SOUTHERN SUDAN**

“The ferocious contest for control of the White Nile that ensued between Great Britain, France and Belgium during the European scramble for Africa after 1884 inevitably brought the swampland of Southern Sudan into focus. When Great Britain conquered Egypt in 1882, she began to inherit Egyptian interests in Sudan. The French’s interests were to establish an African empire stretching from Dakar in the west to the French Somaliland in the east while those of the British were to establish a south-north route from Cairo to the Cape of Good

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<sup>69</sup>Mamdani M (2010:112) Saviors and Survivors: Darfur, Politics and the War on Terror; Council for the Development of Social Science Research in Africa, Dakar, Senegal

<sup>70</sup>Brian Steidle (2004:25) as Quoted in the Save Darfur Coalition’s video: Darfur, a 21<sup>st</sup> Century Genocide.

<sup>71</sup>Mamdani M (2010:116)

Hope.”<sup>72</sup> The third contender for colonies was King Leopold 11 of Belgium who purported to carry out a plan of carving an empire stretching from the Atlantic Ocean and embracing the Nile Basin up to the Mediterranean Sea. “The extent of submission to Condominium rule between the North and the South was different; it brought about real progress in Northern Sudan. Whereas, the North readily recognised and accepted the Condominium government and actually offered to co-operate, the South failed to recognise it and put up a protracted resistance against it. The South regarded the British as enemies who had come to destroy them just like their predecessors did.”<sup>73</sup>

“From 1900 to 1949, there was a deliberate administrative policy which separated the North from the South. This was done to block the spread of Arabic to black Africans. The first thing that the colonial government did, was to cut off the South from the North through the promulgation in October 1922 of the Passports and Permits Ordinance which empowered the Governor-General to declare any part of Sudan as “Closed District.” Accordingly, Southern Sudan as a whole became an absolutely closed region which meant that no foreigners from other parts of the Sudan were allowed to enter it. The administrators in the South were no longer required to attend the meetings of the Governors held annually in Khartoum. Instead, they held their own annual meetings in the South while keeping in touch with their counterparts in Kenya and Uganda.”<sup>74</sup> Arabic language, names and dresses were strictly forbidden and the traders were instructed to make clothing in the European fashion. This marked a direct shift from the imposition of Arabic on the native inhabitants to the genuine influence of Christianity, Commerce and Civilisation through British rule. The British also wanted to exert their influence on the native people over and above that of the Arabs.

“The Ordinance of 1922 was however revised in 1945, in essence; a clear indication was spelt out to develop the South just as much as the North. The Sudan Administration Conference of 1946 passed a resolution for the fusion of the North and the South. The resolution stressed that the future of Sudan depended on welding together the people of the whole country and that necessary steps should be taken to abolish the Permit to Trade Order of 1928, to unify the

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<sup>72</sup>Ruay D.D.A (1994:30) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

<sup>73</sup>Ruay D.D.A (1994:34) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden. The word Condominium refers to the agreement between Great Britain and Egypt called the “Agreement for the Administration of the Sudan” which was signed in Cairo on January 19 1899. It was the architect of modern Sudan with its present international boundaries.

<sup>74</sup>Ruay D.D.A (1994:39) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden. The policy was aimed at eradicating everything Arabic in the South.

educational system between the North and the South and to adopt the teaching of Arabic in all Southern schools. With the new policy, the South saw for the first time genuine and vigorous efforts for its development. “Various economic plans were made which later crystallised in the establishment of the Equatorial Projects Board in 1946. A new salary scale was introduced for those Southerners employed in the Government Service. Unfortunately, the government’s new policy for rapid development of the South came too late; events were already beginning to overtake the government efforts.”<sup>75</sup>

### **3.6 TOWARDS SELF GOVERNANCE**

“The process of independence started with the formation of a Legislative Assembly in 1948, with thirteen appointed members from the South, seventy six from the North and six British Administrators. This was the first time for both Northerners and Southerners to sit together and legislate for their country. In the Legislative Assembly Proceedings of 1949, the Minister of Education announced that Arabic was to be taught as the main subject in schools and that it was government policy to ensure that such a step is taken. This marked the beginning of problems between the North and the South who were perturbed by the policy. Sudan acquired full self government in February 1953. Great Britain on one hand maintained that Sudan’s sovereignty should be determined by the Sudanese themselves without any undue influence from external sources. Egypt, on the other hand asserted its claim that Sudan was an Egyptian province and as such its sovereignty should be vested in the Egyptian crown. The reasons were that Sudan was inevitably bound to Egypt by the Nile, Egypt had been the source of rulers and cultural inspiration for the Northern Sudan as well as regarding Sudan as a source of cheap servile labour, the loss of which would create economic inconvenience and anxiety. However, in 1953, Sudan started running its own affairs, but this increased the rift between the South and the North as the former was deprived from taking their rightful place in the government of their country. It did a great damage and disservice to the progress and welfare of the Sudan, as well as frustrated and pained them to see Northerners filling the bulk of the

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<sup>75</sup>Ruay D.D.A (1994:50) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

positions in the South. In the eyes of the Southerners, self government was simply a change of masters.”<sup>76</sup>

The results of this Sudanisation sent shock waves throughout the South. Discontent spread and fears of Northern domination were openly held and echoed by townsmen and villagers alike, whether educated or illiterate, old or young. Feelings of bitterness ran high and idle thinkers began to play with the idea of the imminence of another era of slavery at the hands of Arabs. Conditions in the South became so appalling as to threaten the security of the state. Every Southerner was ready for a direct physical and political confrontation with the North. The Southerners were rated as slaves, a situation bearing closely on racial segregation as the Arabs created for themselves a super class composed exclusively of Northerners.

“The history of Sudanese politics after independence, is a history of tension within the same political parties, the same ethnic groups and lastly between the North and the South. In 1958, the Prime Minister, Abdallah Khalil resigned in favour of the military, after mounting pressure from the Southerners. The General of the Army dissolved all political parties, suspended the newspapers, prohibited assemblies and demonstrations. The Transitional Constitution was also suspended and replaced with decrees styled as Constitutional Orders which made Sudan a democratic republic with its sovereignty vested in the people.”<sup>77</sup>

“Another abortive coup took place in November 1959 led by young officers who disapproved of their exclusion from the government, but the revolt was suppressed, its leaders condemned to death and executed. The government’s intention was to impose upon the South, the policy of national integration by Arabisation and Islamicisation. It was expected that the military junta would do so even if it meant the application of brutal force. The Arabs believed that the existing religious differences between the North and the South were the root causes of the problem.”<sup>78</sup>

### 3.7

### TENSION ESCALATES

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<sup>76</sup>Ruay D.D.A (1994:58) The Politics of Two Sudans: The South and the North 1821-1969. Motala Grafiska, Sweden.

<sup>77</sup>Ruay D.D.A (1994:94) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

<sup>78</sup>Ruay D.D.A (1994:97) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

“The first step that was taken by the military junta was to harass the missionaries who taught Christian values, restrict their activities and finally expel them from the South. In 1964, under incredibly humiliating conditions, the missionaries were expelled from Sudan accused of implanting the Christian faith in the South, of making English the language of communication, of striving to make Southerners develop attitudes and sentiments based on fear, hate and distrust of Northerners, and of magnifying the differences between the South and North with a view of creating a separate political character for the South. The persecution of the church was intended to cripple the hand of the missionaries to allow Islam to dominate the South. The government took large sums of money from the treasury to built six Islamic intermediate institutions. In the South, a district Commissioner would call chiefs, address them by a Muslim name, congratulates them for being a live part of the government whose religion is Islam and raise their salaries as a token of the step taken in embracing Islam.”<sup>79</sup>

“In 1972, the military junta sealed off the South from the outside world, by drawing an iron curtain over the South, the junta hoped by all means to stop the echoes of the reign of terror from being heard abroad. Southern politicians, intellectuals and students were therefore arrested and placed under custody without hesitation. Under these circumstances, the Southern politicians realised that they had lost their political forum and that their lives were in danger. They fled the country into Zaire, Uganda and the Central African Republic so as to organise political movement in exile. Incidents of shocking mass massacres, arson and humiliation were widespread in the South. What fully happened during the 17 years ending in 1972 was to say the most obvious, an open war by a fully instituted government commanding a huge regular army with deep rooted traditions against an irregular force, loosely organised, ill trained, poorly equipped and using guerrilla tactics.”<sup>80</sup> The methods applied by the Arabs in killing and torturing Southerners were utterly inhumane. “The commonest method of killing consisted in maiming the victim and making him suffer the pain at length before he was finally finished off. Cases such as the cutting off of the victim’s limbs and the plucking out of the victim’s eyeballs were not uncommon.”<sup>81</sup> The pride of the Southerners in being black and Christian was scornfully smashed by the Arabs.

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<sup>79</sup>Ruay D.D.A (1994:102) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

<sup>80</sup>Ruay D.D.A (1994:137) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

<sup>81</sup>Ruay D.D.A (1994:138) The Politics of two Sudans: The South and the North 1821-1969. Motala Grafiska; Sweden

“Among the abuses committed by the government in the South included; scorched earth tactics against villagers, indiscriminate aerial bombardment of Southerners, use of torture, disappearance and executions, restriction of movement, lack of due process, abducting of women and children as well as severe restrictions on relief efforts by international and United Nations agencies. The Southerners also reacted by attacks on Arabs, forcible recruitment and siege of garrison towns.”<sup>82</sup> The president, General Omar Al Bashir showed no signs of remorse to the sufferings of the people of the South. Instead, he pretended to portray his country as if everything is fine and rather shift the blame to the meddling of the West in the internal affairs of Africa. “At the beginning of 1993, 1.5 million Southerners were in need of relief assistance. Racist attitudes and religious bigotry by 1995 exerted a real influence on the behaviour of individuals in the war zone.”<sup>83</sup>

### **3.8 CONDEMNATION OF THE SUDANESE GOVERNMENT**

In the 21<sup>st</sup> century, the international community have repeatedly expressed its condemnation of the gross human rights abuse by the Sudanese government. No significant signs of change were seen from the Sudanese government until the interference of the United Nations in 2005 under the Responsibility to Protect Doctrine. The actions of the Arabs upon Christians were considered as genocide as the government wiped out rebels and civilians in the South. The long battle for an Arabised Sudan caught the international eye and the sovereignty of Sudan was challenged. The country failed to deal with its own problems, it could not keep its sovereignty intact and since Sudanese independence, unrest never ceased. With this in mind, the UNSC intervened to maintain order in a country that was dominated by religious rivalry among other issues for a very long time.

The concept of sovereignty was alien to newly independent African states. A lot had to be studied before states gained full status of governance. In the 21<sup>st</sup> century Africa, with the diversity of African culture, tribal differences, religious differences, political intolerance, civil wars and military coups, sovereignty still remains a myth. “The religious differences

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<sup>82</sup>(1994:02) Civilian Devastation: Abuses by all Parties in the War in Southern Sudan. Human Rights Watch, USA.

<sup>83</sup>(1994:02) Civilian Devastation: Abuses by all Parties in the War in Southern Sudan. Human Rights Watch, USA.

between the North and the South led to uneven distribution of power in favour of Arab-Muslim.”<sup>84</sup> “This also led to the development of over 400 years of centralized political bodies whose elites enriched themselves by exploiting the human and material resources of the periphery, that is, non-Muslim precipitating the problems in Sudan. Discriminatory policies resulted in uneven development in the country. People in the North can use computers, graduate from universities, have access to medicine and some modern life while in the South, people are hungry with no future. This led to a civil war between the North dominated by Arabs and the South dominated by blacks. The government which is dominated by Muslim Arabs rules from Khartoum the capital city, and has been largely blamed for using the Janjaweed militia to target civilians from the South where Darfur’s two rebel movements are based. Government encouraged, supported and armed members of the Arab tribe to attack their neighbours. Increased violence left hundreds of thousands of people in desperate need of food, shelter and protection against attacks.”<sup>85</sup>

“The elites in Sudan use illiterate poor people to defend their interests promising to take care of their needs. The ruling National Congress Party has failed to stop atrocities in Darfur. This led the International Criminal Court (ICC) to indict Sudanese President General Omar al Bashir on charges of genocide. The government had also been accused of harbouring terrorists, as undemocratic, imposing unnecessary state of emergencies, economic and political marginalization leading to underdevelopment and having a series of boycotted elections. The situation mirrors the dynamic of other conflicts pitting a periphery that views itself as the victim of discrimination against a centre in Khartoum that is seen as holding all the economic and political cards.”<sup>86</sup> The African Union has refused to hand over the Sudanese President to the ICC, though they intervened in the crisis in 2003.

The government of Sudan has claimed non - interference in its internal affairs. The international community challenged Sudan to put its house in order or lose its sovereignty. “States have three obligations, thus sovereignty as a responsibility, sovereignty as limitedness and sovereignty as complete. Thus states must be responsible of their limited and complete sovereign rights.”<sup>87</sup> Because of all these problems in Sudan, the country has failed to enjoy

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<sup>84</sup>Manger L.O (1994:55) From the Mountains to the Plains: The Integration of the Lafofu Nuba into the Sudanese Society. Motala Grafiska. Sweden

<sup>85</sup>Tomar R (2004:13-15) The Crisis in Sudan: Issues and Prospects. Foreign Affairs Defence and Trade Security.

<sup>86</sup>Freeman L.K (2009:14) British Imperialists Launch War on Sudan’s Sovereignty. EIR Feature.

<sup>87</sup>Bhatti S.T (2007:09) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

full sovereignty since the concept comes with responsibility which Sudan failed to execute. “A country which had estimated population of over 25 million and was geographically the largest country in Africa with over 50 ethnic groups has been over flooded by foreign peacekeepers Disposed are the 7000 African Union Mission in Sudan forces (AMIS) and United Nations Advance Mission in Sudan (UNAMIS).”<sup>88</sup> In the 21<sup>st</sup> century Africa, sovereignty has been limited especially when nations act against the will and consent of the masses. “Africa still hangs in the old form of sovereignty which now competes with; globalization, virtually instantaneous interdependence of a growing number of aspects of economic and cultural life, information, communication and technology, transovereignty, terrorism, reconfiguring of world trade into one gigantic trading bloc, privatization, respect for human rights and global environmental problems.”<sup>89</sup>

“Interference by external states in Sudan have been made possible by the R2P Doctrine whose principles has unanimously been reaffirmed by the United Nations Security Council resolution 1706 (2006) on reports of the Secretary General on Sudan”<sup>90</sup> However, although problems in Sudan were internal, external countries have registered interest in exploiting the country’s rich resources in gold, oil and uranium. “China controls the oil fields south of Sudan; France has its presence in Chad and therefore does not want the problems in Sudan to spill over to neighbouring Chad as it may affect the flow of oil in Chad. Where a state is presumed to have failed, the governmental function of that state maybe taken over by external agencies. They may organize settlement of foreign investment disputes, repayments of debts, provision of security for diamond mines or oil pipelines, delivery of food and medical supplies, conduct of plebiscites and trial for alleged human rights abusers. Outsiders maybe positioned as trainers or advisers to judges, police force or government ministers.”<sup>91</sup> The 21<sup>st</sup> century for Africa, has seen the concept of sovereignty tested and tried in many different directions. Actually the nation state demise was predicted 200 years ago with Immanuel Kant’s Perpetual Peace, to Karl Marx’s withering away of the state premised upon the establishment of Communist Societies.

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<sup>88</sup>Rone J & Prendergast J (1994:01) Civilian Devastation: Abuses by all Parties in the War In Southern Sudan. Human Rights Watch/ Africa. New York

<sup>89</sup>Baker R (2004:20) Challenges to Traditional Concept of Sovereignty. London University Press. United Kingdom

<sup>90</sup>Drummond C (2010:02) Non interference and the Responsibility to Protect: Canvassing the Relationship between Sovereignty and Humanity in South East Asia.

<sup>91</sup>Streeten P (1999:613) Globalisation: Threat or Opportunity. John Wiley and Sons. Paul Collins

### 3.9

#### AFRICAN UNION AND THE CONSTITUTIVE ACT

“The Constitutive Act, which Sudan is a signatory, states that the organization is organized under common unity and cooperation. It is an endowed rule that the AU builds a partnership not only with its member governments, but the AU, being a regional organization, has an obligation to the civil society that includes women, youth and members of the private sector. The organization understands that conflicts erupt, but it must promote peace and security and it is determined to protect and promote human and people’s rights, democratic institutions and ensure good governance. Sudan was in violation in all these fundamental principles, so the African Union responded and gathered regional peacekeeping support to intervene and help deter the conflict from escalating. International cooperation is what the AU strives for. The AU deployed a peacekeeping force (AMIS) in 2004 because they had the R2P the human sanctity of human life. In the Constitutive Act, the AU declared that Sudan sovereignty was limited and complete, that its decisions affected the community and that a state failing to control the peace of the nation is not sovereign.”<sup>92</sup>

### 3.10

#### The AFRICAN UNION MISSION IN SUDAN (AMIS)

“Following the Assembly of Heads of States and Governments of the African Union (AU Summit) the AU authorized the deployment of AMIS. In order to get an assessment of the situation on the ground in Darfur, the Chairperson of the AU Commission arranged for an AU Assessment Mission. The Assessment Mission visited Darfur in May 2004 and negotiated a Status of Mission Agreement (SOMA) with the Sudanese government. It was also tasked with identifying appropriate camp sites for the Ceasefire Commission (CFC) and AMIS. The initial AMIS mandate was indeed limited, as it authorized AMIS troops only to monitor the ceasefire. AMIS was strengthened with a protection force of 300 soldiers, composed of one Nigerian infantry company and another one from Rwanda. In 2005 the troops were increased to over 6000.”<sup>93</sup> “The protection force was largely composed of troops from the following countries, Nigeria with a total of 3 infantry battalions, Rwanda with 3 infantry battalions, South Africa with 1 infantry battalion and 1 engineer company, Senegal

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<sup>92</sup>Bhatti S.T (2007:58) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

<sup>93</sup>Arvid Ekengard (2008:17) AMIS: Experiences and Lessons Learned. Swedish Defence Research Agency: Defence Analysis. FOI. Stockholm

with 1 infantry battalion, Kenya with 1 Military Police Detachment and Gambia with 1 Field Headquarters Company.”<sup>94</sup>

“To be able to work closely with the Sudanese police, the AMIS Civil Police adapted its organization to the administrative boundaries of Darfur. As violence increased in camps, the Civil Police eventually established permanent police posts in the most sensitive camps. As for tactical air mobility, AMIS relied heavily on contracted civilian helicopters. In mid 2005, AMIS had access to eighteen Mi-8 medium transport helicopters, paid for by Canada and the Netherlands. These were all unarmed, had no tactical communications gear, and could only fly during daytime. These deficiencies severely limited the helicopters’ usefulness as force enablers in a military operation.”<sup>95</sup> “On June 8, 2005, North Atlantic Treaty Organisation (NATO) decided to launch an operation to airlift AU troops into Sudan. This became NATO’s first operation on African soil. The operation lasted until AMIS was transformed into United Nations Mission in Darfur (UNAMID) in December 2007.”<sup>96</sup> In sum, AMIS contribution to the peace process in Darfur has been limited. Despite its deployment, fighting between government sponsored militia and the rebels continued and intensified, and during the later part of AMIS’ existence the conflict took on another dimension as some of the rebel groups started fighting each other. The history of AMIS ended on December 31, 2007, when the UNAMID Joint Special Representative of the UN and the AU was formed to assist in the crisis in Sudan.

### 3.11 CONCLUSION

The history of Sudan is a history that brings to life the typical rulership of an African country. The chapter elaborated on the ancient system of leadership in Sudan that was changed when the Arabs came into the country migrating from Egypt. The superior civilisation of the Arabs led the black native people to adopt the Arabic culture. However, when colonialism flourished in Sudan, Christianity was introduced by the British and the Black Southerners gladly appreciated the teachings of the missionaries. This led to tension between the Muslim North and the Christian South as the Muslims tried to enforce their religion to the Southern people. Upon independence in 1956, the tension continued and the North abused government

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<sup>94</sup> Ibid (2008:21)

<sup>95</sup> Appiah M.S (2006:04) The African Mission in Sudan: Darfur Dilemmas. African Security Review. Vol 15. No.1.

<sup>96</sup> Piiparinen T (2007:371) The Lessons of Darfur for the Future of Humanitarian Intervention. Global Governance.vol 13.

machinery so as to quell opposition in the South. Muslim was regarded as the only religion and those who were from the Christian faith were labelled as infidels. This attracted international attention leading to the AU under AMIS and the UNSC to intervene under the R2P principle so as to stabilise the crisis which had turned into genocide. The government of Sudan has used government machinery and authority to abuse the Southerners who are alienated in the affairs of the state. In an endeavour to solve the crisis, the international community reminded Sudan that sovereignty has a responsibility, a responsibility to protecting the citizens within a state. The chapter that follows examines the relevance of sovereignty in Sudan and at some point makes reference to the African continent as a whole. The challenges faced by many African states in solving domestic disputes and the inherent nature in the system of governance that has been overtaken by time.

## CHAPTER 4: THE RELEVANCE OF SOVEREIGNTY IN SUDAN

### 4.1 INTRODUCTION

This chapter focuses on the relevance of sovereignty in the 21<sup>st</sup> century. It explores the development of sovereignty from the Westphalian era of 1648 to the modern meaning of sovereignty. An evaluation is made on the impact of absolute sovereignty to the peoples of Sudan. Specific questions are answered, such as: Has sovereignty lost its usefulness in the 21<sup>st</sup> century? When is intervention permissible in a country suffering from civil strife? Can the problem in Sudan be fixed? The final analysis of this chapter deals with the inability of Sudan to shift from absolute sovereignty to the new demanding concept of international legal sovereignty.

### 4.2 THE TRANSFORMATION OF SOVEREIGNTY

“The Westphalia concept of sovereignty developed from a theory to justify the king as a master in his new modern kingdom, but by 1763 and 1775 the notion of final and absolute authority in the political community became challenged by constitutionalism. Constitutionalism aims at constraining the ruler by modifying the traditional concept of sovereignty. Between the 18<sup>th</sup> and 19<sup>th</sup> Centuries, the concept of sovereignty became separated into two – internal and external. Internal sovereignty with its modifications along the lines of what traditional notion of sovereignty stood for. Externally, sovereignty became defined as the supreme legal authority of the nation to give and enforce the law within a certain territory and in consequence, independent from the authority of any other nation and equality with it under the law. This external meaning of sovereignty became the core principle of international society.”<sup>97</sup> The exchange of recognition of sovereignty had become a basic rule of coexistence within the state system.

“Sovereignty entails that, above and beyond the sovereign state, is no final and absolute authority, states must be regarded as independent in all matters of internal politics and should

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<sup>97</sup>Olasupo F.A (2009:321) Africa and the Challenges of Unipolar World: Sovereignty, Civil Society and Women’s Rights as Case Studies. Obafemi University. Nigeria

in principle be free to determine their own fate.”<sup>98</sup> This was rightly followed when Europe scrambled for the partition of Africa in the latter half of the 19<sup>th</sup> century. However the meaning of sovereignty is now broader in the 21<sup>st</sup> century, but well after colonisation, Africa is still deeply rooted in the old meaning of sovereignty. Issues such as the environment including: (global warming, ozone depletion, pollution, climatic shift and acid rain), self determination, democracy and human rights are challenging absolute sovereignty from all angles.

“Absolute sovereignty has been recast by changing processes and structures of regional and global order. States are now locked into diverse, overlapping, political and legal domains that can be thought of as an emerging multilayered political system. National sovereignty and autonomy are now embedded within the broader frameworks of governance and law which has led to the classic regime of state sovereignty to undergo significant alteration. The most substantial points can be put briefly. Sovereignty can no longer be understood in terms of the categories of untrammelled effective power. Rather, a legitimate state must increasingly be understood through the language of democracy and human rights. Legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards. The latter set a limit on the range of acceptable diversity among the political constitutions of states.”<sup>99</sup> The 20<sup>th</sup> and 21<sup>st</sup> century has witnessed more success in democracy and human rights issues compared to the absolute rule of the state over its citizens.

The following has been recorded successes in the human rights initiatives since 1945 starting with the UN Charter, UN Commission on Human Rights June 1946, Universal Declaration of Human Rights, Convention on the Elimination of Racial Discrimination, Convention on the Suppression of Apartheid, Convention on the Rights of the Child and the Permanent International Criminal Court. Annexure 1 outlines most of the initiatives that have been internationally agreed since 1945.

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<sup>98</sup>Held D (2003:162) The Changing Structure of International Law: Sovereignty Transformed?

<sup>99</sup>Held D (2003:172) The Changing Structure of International Law: Sovereignty Transformed?

### 4.3

### HOW SOVEREIGNTY IS PERCEIVED IN AFRICA.

Overtime, the notion of sovereignty in Africa has undergone changes, sometimes, violent ones. The African continent is an incorporation of pre-colonial disparate empires, kingdoms, caliphate and autonomous communities. “What is important to note here is that the old brand of Westphalian sovereignty that placed internal absolute ruler ship on one person in modern kingdom was adopted by the colonial authorities of that period because it suited the political environment then. More importantly, was the fact that the colonial authorities were determined to transit pre-colonial system of government to modern type and superior power was needed to force reluctant traditional African leaders to see the need for this transition. Over and above these reasons were the emergences of the first and second World Wars and finally, the Cold War. African service men were needed to assist in these wars and only African dictators could make wish realizable. The African dictators were also needed during the cold war era to carry out the wishes of the rival ideological camps. But what they referred to as “World Wars” including the Cold War, were complete misnomers for European wars which they made the African dictators believe it was a global one.”<sup>100</sup>

The failure of African states to move from the old meaning of sovereignty to the new cosmopolitan sovereignty has led to civil strife rife in many African countries. They still perceive sovereignty as the ultimate and absolute will of the ruler to govern the ruled. When de-colonization began in Africa, this old concept of sovereignty changed and was replaced by a new one that led to the power of the state to make laws and enforce them with any coercive power at its command. Although democratization was encouraged by the colonial masters at the twilight of colonialism, it flourished briefly after independence. Some democratically elected Presidents began to put on the garment of dictatorship: muzzling the press and brutalizing the citizens particularly the critical civil societies. When it became imperative for such civilian dictators to be changed by the leaders of the bi-polar world (USA and USSR) coup de’ tat rather than democratic model became the means for regime change.<sup>101</sup>

“The military was therefore often instigated by either USSR or US to bring about their desired change of government against the civilian dictators or military rulers (as by former

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<sup>100</sup>Olasupo F.A (2009:322) Africa and the Challenges of Unipolar World: Sovereignty, Civil Society and Women’s Rights as Case Studies. Obafemi University. Nigeria

<sup>101</sup>Ibid (2009:322)

Libyan President Muammar Gaddafi since 1969; former Egypt's Hosni Mubarak since 1978); and others like Kamuzu Banda who ruled Malawi with an iron fist for 30 years, Idi Amin Dada of Uganda; Emperor Bokassa of Central African Republic; Mengistus of Ethiopia; Somalia, Eyadema of Togo and Jerry Rawlings of Ghana. As dictatorship was becoming abominable to African leaders they resorted to recycling themselves. In Benin, Mathew Kerekou seized power in 1972 as a young military officer, lost it in 1991 and regained it as civilian head of state in 1996. Denis Sassou Nguesso of Congo Republic also seized power in 1979 as a young military officer. He lost it in 1992 and regained it back as civilian President in 1997. In Sierra Leone, Ahmed Tejan Kabbah was elected president of his country in 1996. He lost it in 1997 but regained it back in 1998. In, Nigeria, retired General Olusegun Obasanjo came to power through military coup in 1975, voluntarily handed it over in 1979 but came to collect it back in 1999 from those he handed it over to in 1979. Not satisfied with two terms as civilian president of the country, he wanted to elongate his term by tinkering with the constitution. His deputy, Vice President Atiku Abubakar, supported by civil society groups mobilized the entire country against him. Similar effort to stage comeback by retired General Buhari, also a former Nigerian head of state between 1983 and 1985, failed. General Babangida, another former Nigerian head of state 1985 - 1993 is warming up to come back to power but the civil society groups are not giving him breathing space at all.”<sup>102</sup>

#### **4.4 RELEVANCE OF SOVEREIGNTY IN SUDAN**

A notable trait in former military head of states coming in as civilian president is that, even though they come back to power through dubious electoral processes, they find it difficult to adjust to democratic ruler ship. Their habit of command and obey used to in the military era and during the Westphalian times still trails. Thus Omar Al Bashir of Sudan is finding it difficult to lead the diversified people of Sudan democratically. Therefore, “In Sudan there has always been conflict between the post traditional and Westphalian sovereignty, forcing pro- Westphalian sovereignty Sudan to re-examine the relevance of post traditional states in modern state. Sudan's sovereignty was therefore eroded away as the country had failed to become responsible for its citizens. The fact that the government was part and parcel of the problem left the international community with no choice than to intervene so as to restore

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<sup>102</sup>ibid (2009:322)

order. The AU Constitutive Act clearly refused to recognise the sovereignty of Sudan and ordered intervention in 2004.<sup>103</sup>

#### **4.5 HOW HAS SUDAN LOST ITS SOVEREIGNTY?**

“The government is the main force responsible for the catastrophe in Darfur. It targeted civilians from the same ethnic groups as Darfur's rebel movements. As part of this campaign of ethnic cleansing, the government has encouraged, supported and armed members of Arab tribes to attack their neighbours. The increasing violence has left hundreds of thousands of people in desperate need of food, shelter and protection against ongoing attacks. The African Union (AU) has cited both the growing complexity of the operation and the need for a stable source of funding as the main reasons for handing over its 7000-strong mission. Yet the AU forces continue to suffer from capacity constraints, insufficient technical support and constant obstruction from the Sudanese government. The government has promoted anti-UN propaganda, comparing the introduction of UN troops in Darfur to the US invasion of Iraq. What the government officials neglect to say is that 6000 UN troops are in the Sudan, deployed as part of the 2005 peace agreement for the South. Thus Sudan already hosts foreign troops in its territory. It was the government that invited them. The government has clearly attempted to manipulate public opinion with inflammatory misinformation about a non-existent invasion of the country.”<sup>104</sup>

“The political virus comprises the domination of the combined methods of capitalism with the religious beliefs to create a state of illiteracy. Khartoum officially denies many of the atrocities committed by the Sudanese military and its paramilitary agents in Darfur, and downgrades the collateral damage of the crisis. Khartoum has consistently asserted that respecting Sudanese sovereignty is paramount, and has insisted variably that there isn't a problem, and if there is a problem, it is not in control of or responsible for the atrocities committed in fighting the Darfur rebels. Khartoum government officials who acknowledge the crisis assert that this is an African matter to be dealt with by Africans. They have steadfastly refused to permit non-African troops or logisticians to participate in the international peacekeeping force, and have appealed to the Muslim world to stave off what

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<sup>103</sup>Deng S.P.R (2011) National Youth Union of Sudan. Juba. South Sudan

<sup>104</sup>Fathi M. El Fadl (1993) in People's Weekly World. New York.

they perceive as Western imperialist intentions in the region. Khartoum today remains a stronghold of radical Islam ideology.”<sup>105</sup>

“President Omar al Bashir has enjoyed one of the longest tenures in Africa, coming to power in a coup in 1989, and prevailing in several subsequent elections criticized by outsiders for their legitimacy. Power lies with him and an elite group of security officers whom many characterize as war criminals.”<sup>106</sup> Following the secession of South Sudan from the North in 2011, tensions persist, largely over disputed boundaries and distribution of income from oil-rich areas along their border. Many believe that resumption of hostilities between Khartoum and the South Sudanese is imminent in Abyei region, where president Omar al-Bashir has been accused of arming Misseriya tribal militias as his proxy army. While suppressing rebel forces in the West (Darfur) and engaging in brinksmanship with the South Sudanese, Khartoum also faces imminent rebellions in similarly marginalized areas in the East and far North.

“Accordingly, Sudan has been classified as an Islamic Arabic country since gaining independence in 1956, yet in actual fact, it is an African country. This did not only lead to the Southerners in losing their identity, but also the pride in who they were, thus black Africans. The Arabs in the North took advantage of the status quo and imposed their Muslim religion on the Christian South. They treated the Christians as pagans who did not know Allah. The Southerners were deprived of their culture, marginalised in the economy as the superior government machinery used by the North provided no chance for the Southerners. The Holy Koran used by the Muslims describes them as rulers and therefore could not be ruled or be at the same level with Christians. This provided a chance for the Southerners to secede so as to pave way for peaceful coexistence.”<sup>107</sup>

#### **4.6 THE INTERNATIONAL CRIMINAL COURT (ICC)**

“The ICC was officially established on 11 March 2003 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and the crimes of aggression. The court however, can only prosecute crimes committed only on or after 1 July 2002, the

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<sup>105</sup>People’s Weekly World (1993)

<sup>106</sup>Ibid

<sup>107</sup>Deng S.P.R (2011) National Youth Union of Sudan. Juba. South Sudan

date the Rome Statute entered into force.”<sup>108</sup> “The ICC has issued out a warrant of arrest to the Sudanese President Omar Al Bashir over crimes of genocide. Thus in the 21<sup>st</sup> century era, absolute sovereignty has been checked by international courts to investigate crimes committed against humanity. Although the AU has agreed to intervention in Sudan, it has disregarded the indictment of the Sudanese President. In 2009 The AU cited that the indictment was unfortunate as it interfered with the peace process underway in Sudan. It resolved not to cooperate with the ICC regarding the indictment of Omar Al Bashir.”<sup>109</sup>

#### **4.7 LEGALITY ON INTERVENTION**

“Non intervention is conditional against the political independence and territorial integrity of a state, not to the international humanitarian violations of peace. It is founded in international law that states cannot simply walk on the grass of another state and plant a tree without permission of that state or it cannot take over the political authority of the state when it pleases, but if a state like Sudan violated the conservation of peace, then according to the Montevideo Convention on the Rights and Duties of States, member states have a right to intervene and preserve the peace”<sup>110</sup>. “Once peace becomes a conflict, then the right of non intervention is sacrificed for the promotion of peace.”<sup>111</sup> Furthermore, once the violations of norms are at hand, then the principle of non-intervention is sacrificed.

#### **4.7 CONCLUSION**

The chapter analysed the relevance of sovereignty in African countries, paying particular attention to Sudan. It can be deduced that the Westphalian concept of sovereignty has since lost its relevance in the international arena. International legal sovereignty has become fashionable in the 21<sup>st</sup> century as states have co operated to deal with issues that are harmful to their wellbeing. In no time the issue of border inviolability has been replaced by the desire of nations interacting and assisting each other to curb pressing 21<sup>st</sup> century problems such as global warming, ozone depletion, human rights violations, terrorism, drug trafficking, climate change and dictatorship. Sudan, like many other African states has failed to transform from

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<sup>108</sup>New African: March (2012:09) ICC Vs Africa, The Scale of Injustice.

<sup>109</sup>Ibid

<sup>110</sup>Bhatti S.T (2007:23) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia University.

<sup>111</sup>Ibid (2007:22)

the old meaning of sovereignty to the new cosmopolitan sovereignty, thus the view of the state as the possessor of all authoritative domestic issues within its territory has led to civil strife. The international system invoked the Responsibility to Protect Doctrine in 2005, so as to intervene in countries that fail to adjust to the demands of its citizenry. In the 21<sup>st</sup> century globalised world, events in one part of the world have had an indirect effect on the other part of the world. Absolute sovereignty therefore can no longer solve the demands of the 21<sup>st</sup> century period, thus the ICC has issued a warrant of arrest to the Sudanese President to investigate him on crimes against humanity. The final chapter to this study outlines the conclusion reached after the study and the recommendation proposed to solve the crisis in Sudan.

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS.**

### **5.1 CONCLUDING REMARKS**

The study has analysed the relevance of sovereignty in 21<sup>st</sup> century Africa with a clear case study on Sudan. The outcome of the study, points to the greater need of Africa to adjust from the Westphalian mode of sovereignty to modern sovereignty. The old concept of sovereignty can no longer suit the demands of 21<sup>st</sup> century rules, thus nations have become more and more intertwined together through the massive growth of global markets, economies, environment, tourism, terrorism and drug trafficking. There has been created a need for nations to co-operate so as to solve 21<sup>st</sup> century problems with 21<sup>st</sup> century rules. The destabilisation of one part of the world upsets the equilibrium in another part of the world therefore, creating world wide anarchy. North Sudan has lost its sovereignty due to the failure of solving its own internal crisis. In this widespread crisis, instead, the government has become an accomplice by aiding the North with weaponry to fight the South all in the name of religion. The resultant effects have seen massive alienation of the South from all forms of development. This led the international community to intervene so as to protect the butchering of innocent civilians in the Sudan. The nation, though making significance inroads to peace, still is vulnerable to further crisis as no real initiative to end the crisis once and for all has been made. Hopefully the findings and recommendations of this study will assist policy makers in implementing some of the recommendations suggested. The perennial questions of politics have also been answered in this study, thus; who governs? To whom is political authority responsible? How are rulers chosen? How are rulers replaced? How is the power of rulers limited? How are laws made? And how can bad laws be changed?

### **5.2 RECOMMENDATIONS ON THE WAY FORWARD.**

The Darfur crisis is the result of religious intolerance between the South and the North. This has caused political and economic marginalisation of broad sectors of Sudan, and cannot be

remedied except by a dialogue, leading to a peaceful and just political solution based on commitment to eradicating the roots of the conflict. In solving the conflict in Sudan:

- There is need for the Sudanese government to start respecting the Universal Human Rights. Thus all actions of the government must be for the greater good of the citizens. This can be achieved by entrusting the UN with the responsibility to disseminate vital information on the benefits of nations cooperating together for the achievement of world wide peace.
- Sovereignty can be respected only if there is peace within a country. Once the state threatens the citizen's peace, the principle of sovereignty ceases to exist. Thus the intervention by the international community in Sudan is justified and can assure positive results in ending the conflict.
- There is need for democratic transformation on both national and regional levels, respecting human rights as stated in international covenants, and the supremacy of the rule of law, guaranteed by a permanent constitution providing civil rights and liberties, separation of powers with an independent judiciary, equality and non-discrimination based on race, religion, gender or culture, and non-exploitation of religion in politics
- Need for the realisation of the self determination of the Southern Sudanese people. The international community should encourage a complete understanding of the Southern Sudanese people's rights to exercise their religion and culture as well as the ability to govern themselves.
- Africa in general and Sudan in particular, need to adjust from the old concept of sovereignty which views the state as the absolute and final authority of governance to the new concept of sovereignty taking sovereignty as a responsibility to protecting the citizens within a country. This can be achieved by embracing globalisation and regional blocks as the extension of statehood.
- Just distribution of wealth between the centre and regions to achieve balanced and sustainable development.
- There is need to spread the principle of reconciliation and coexistence among tribes in Sudan with the aim of preserving everlasting peace.
- While secession may not be a remedy to all the problems between the North and the South, it gives responsibility and self esteem to the people of the South so as to govern themselves.

**IMPLICATIONS FOR FURTHER RESEARCH.**

The study has exposed the need to investigate further in the affairs of statehood. The study has been limited to the erosion of sovereignty in Sudan, but left out issues that deal with the institutions of governance. It is absolutely imperative to look at the survival of absolute sovereignty in times of opposing concepts such as globalisation, human rights and democracy. The state has still flourished and continues to survive when faced with such challenges.

Further research needs to be conducted to investigate the ability of the Southern Sudanese state to govern itself. The self determination of the peoples of South Sudan has been realised in 2011 and therefore, there is need to study the new state's ability to control its own affairs.

Another dimension to be studied should be an analysis of the effectiveness of secession in Sudan. Has secession been the right way of solving the crisis in Sudan? Further research should therefore be made in line with the questions set out above.

## **ANNEXURE 1**

### **Table 1: A SELECTED LIST OF HUMAN RIGHTS INITIATIVES AND AGREEMENTS.**

#### **Date**

Jun 1945 Charter of the United Nations  
Jun 1946 UN Commission on Human Rights  
Dec 1948 Genocide Convention/Universal Declaration of Human Rights  
Nov 1950 European Convention on Human Rights  
Jul 1951 Convention Relating to the Status of Refugees  
Dec 1952 Convention on the Political Rights of Women  
Sep 1954 Convention on the Status of Stateless Persons  
Sep 1956 Convention Abolishing Slavery  
Jun 1957 ILO's Convention on the Abolition of Forced Labour  
Nov 1962 Convention on Consent to Marriage  
Dec 1965 Convention on the Elimination of Racial Discrimination  
Dec 1966 International Covenants on Economic, Social, and Cultural Rights/Civil and Political Rights; Optional Protocol  
Nov 1973 Convention on the Suppression of Apartheid  
Jun 1977 Two additional protocols to the Geneva Conventions  
Dec 1979 Convention on the Elimination of all Forms of Discrimination against Women  
Dec 1984 Convention against Torture  
Nov 1989 Convention on the Rights of the Child  
May 1993 International Criminal Tribunal for the Former Yugoslavia  
Nov 1994 International Criminal Tribunal for Rwanda  
Jul 1998 UN conference agrees treaty for a permanent International Criminal Court

**Source: UN and The Economist 1998**

## **BIBLIOGRAPHY**

### **BOOKS**

- Amin S. (1997) Capitalism in the Age of Globalisation: Management of Contemporary Society. Zed books. London
- Arvid A. (2008) AMIS: Experiences and Lessons Learned. Swedish Defence Research Agency. Defence Analysis. Stockholm.
- Baker R. (2004) Challenges to Traditional Concept of Sovereignty. London University Press. London.
- Biersteker T.J& Weber C (1996) State Sovereignty as Social Construct. Cambridge University Press. London.
- Brownlie I. (1990) Principles of Public International Law. Oxford. Oxford University Press. London.
- Crawley R. (1951) Thucydides: Complete Writings: The Peloponessian War. N York Modern Library. N York.
- Engel U& Olsen G.R (2010) Authority, Sovereignty and Africa's Changing Regimes of Territorialisation. Leipzig University. Leipzig.
- Holmes E.D& Mandaza P (1999) The Cost of Non Integration. SAPES Trust. Harare.
- Ibrahim A.U.M (1985) The Dilemma of the British Rule in the Nuba Mountains. University of Khartoum. Khartoum.
- Kelly G (2008) The Origins of Westphalian Sovereignty. Oregon University Press. Chicago.
- Mahmoud F.B (1986) Calamity in Sudan: Civilian versus Military Rule. Institute of African Alternatives. London.
- Manger L.O (1994) From the Mountains to the Plains: The Integration of the Lafofu Nuba into the Sudanese Society. Motala Grafiska. Stockholm.
- Mamdani M (2010) Saviors and Survivors: Darfur, Politics and the War on Terror. Council for the Development of Social Science Research in Africa. Dakar.
- Morgenthau H (1985) Politics Among Nations. Mcgraw Hill. California.
- Olasupo F.A (2009) Africa and the Challenges of Unipolar World: Sovereignty, Civil Society and Women's Rights as Case Studies. Obafemi University. Lagos.
- Polisensky J (1971) The 30 years War. University of California Press Berkely. California.
- Rouche H.Z.L (1999) The Peace of Westphalia: A Precedent for Peace in the Balkans. Schiller Institute.

Ruay D.D (1994) The Politics of Two Sudans: The South and the North 1821-1969. Motala Grafiska. Stockholm.

Spalding J (2007) The Heroic Age in Sinnar: Red Sea Press. Trenton N.J.

Streeten P (1999) Globalisation: Threat or Opportunity. John Wiley & Sons. Paul Collins.

### **JOURNALS**

Appiah M.S (2006) The African Mission in Sudan: Darfur Dilemmas. African Security Review. Vol 15. No. 1.

Beaulac S. (2004) The Westphalian Model in Defining International Law. Challenging the Myth. Australian Journal of Legal history. Macquarie Law.

Drummond C. (2010) Non Interference and the Responsibility to Protect. Canvassing the Relationship between Sovereignty and Humanity in South East Asia.

Held D (2003) The Changing Structure of International Law: Sovereignty Transformed.

Jackson J.H (2003) Sovereignty- Modern: A New Approach to an Outdated Concept. The American Journal of International Law (vol 97).

Keith K.J (2004) Sovereignty at the Beginning of the 21<sup>st</sup> Century. Fundamental or Outmoded? Cambridge Law Journal (63.3).

Marchilio T.F.F (2007) Westphalia: A Paradigm? Dialogue between Law, Art and Philosophy of Science. German Law Journal. Vol 08 no.10.

Piiparinen T (2007) The Lessons of Darfur for the Future of Humanitarian Intervention. Global Governance. Vol 13.

Strange S (1997) "The Limits of Politics." Government & Opposition 30(3).

Terrell T.P & McNamee B.L (1993) "Transovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice." Fordham International Law Journal, vol 17, issue 3, article 1. Berkeley Electronic Press.

### **ARTICLES**

Basic Facts about the UN (1995) Department of Public Information. N York.

Deng S.P.R (2011) National Youth Union of Southern Sudan Email: ssnationalyouth@gmail.com Tel: 00249 955 500 683.

Freeman L.K (2009) British Imperialists Launch War on Sudan's Sovereignty. EIR Feature.

Council of Foreign Relations (2011) Montevideo Convention: Essential Readings. N.Y.

New African Magazine: ICC Vs Africa, The Scales of Injustice. March 2012.

Rone J& Prendergast J (1994) Civilian Devastation: Abuses by all parties in the War in Southern Sudan. Human Rights Watch/Africa.

Steidle B (2004) as quoted in the Save Darfur Coalition Video: Darfur, a 21<sup>st</sup> Century Genocide.

Tomar R (2004) The Crisis in Sudan: Issues and Prospects. Foreign Affairs Defence and Trade Security.

### **INTERNET SITES**

- Bhatti S.T (2007) How has the Conflict in Darfur Impacted Notions of Sovereignty. Selected Works. Arcadia Univesity.  
[http://works.bepress.com/safeer\\_bhatti/](http://works.bepress.com/safeer_bhatti/). Accessed on 02/10/11 14:15
- People's Weekly World (1993) <http://www.pww.org>>.] issue 671.