THE CONCEPT OF SOVEREIGNTY IN INTERNATIONAL LAW: ISSUES CHALLENGES AND LESSONS FOR NIGERIA

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BEING A THESIS SUBMITTED TO THE POST- GRADUATE SCHOOL, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LL. M.)

DECLARATION

I hereby declare that this thesis entitled “The Concept of Sovereignty in International Law, Issues, Challenges and Lessons for Nigeria, has been written by me as an entire record of my research work. It has not been presented in any previous application for a higher degree by anybody. All quotations and references are indicated with specific acknowledgements.

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ADASU AONDOWASE FRANCIS DATE

CERTIFICATION

This Thesis entitled **THE CONCEPT OF SOVEREIGNTY IN INTERNATIONAL LAW, ISSUES, CHALLENGES AND LESSONS FOR NIGERIA** By Adasu Aondowase Francis meets the regulations governing the award of the degree of Master of Laws of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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For those who deserve specific mention but have not been included in this column qualify for an apology for indeed this is not deliberate.

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This Master of Laws Thesis is dedicated to:

1. Late Major O.O Mbah, the man who made my dreams to get into the University a reality and also stood by me firmly until his painful exit in 1992.
2. My Deceased Father, Mr. Bigila Akaaan Adasu who toiled hard to give me a silver spoon education until his death in 1987.
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8. All those who are unable to pursue their academics as a result of financial constraints or poor parental background.

ABSTRACT

New trends and innovations in modern communications and commerce have dealt a great blow on the political boundaries of states otherwise referred to as Sovereignty. Sovereign equality presupposes that each state enjoys the rights inherent in full sovereignty. This seems to be the basic principle of international law equally recognized by the United Nations. Sovereignty is the central pillar of the contemporary international system. No wonder, within the United Nations (UN) itself, sovereignty is not regarded as an obstacle to the maintenance of peace or the protection of human dignity.

The lowest common denominator envisaged by this opening paragraph is that sovereignty is the basic principle of relations between states thus promoting non intervention, sovereign equality, inviolability of frontiers and the possibility of peaceful change. There is no doubt that, while respect has been accorded independent states particularly in the area of non intervention in their domestic affairs, new issues have continued to emerge in international law and that is the area of human rights protection. Thus human rights has made a significant impact on international law.

More recently, allegations of the possession of weapons of mass destruction, protection of democracy amongst others have variously been listed as grounds upon which the sovereignty of a state was tempered with. These new issues have no closed category and have variously threatened emerging states of its survival as this concept no longer possesses the limitations which it earlier had. More also civil unrest's and factional fighting as in the case of Liberia, Sierra – Leone etc equally affected their sovereign status at the height of those crisis which necessitated the intervention of Economic Community of West African States Monitoring Group (ECOMOG) at that time led by Nigeria to stop the senseless killings in those countries.

There exist several Literatures on international law dealing with this subject matter. Attempt however have been made to deal with this subject matter as well as to highlight the Nigerian experiment and the growing danger on the limitations accorded this concept.

In view of the foregoing, an attempt has been made by this research work to highlight these problems and make recommendations by categorizing the thesis into seven chapters.

Chapter one forms the introductory part of the thesis. It consists of the statement of the problem, scope of the research, aims and objectives,

literature review, research methodology, organizational layout and finally justification as to the benefits of this research to the public.

Chapter two basically touches on the concept of statehood. It begins with the definition of state as viewed from international law perspectives on the subject matter. It proceeds to evaluate the philosophies of the state and went further to identify the attributes of statehood premised on population, territory, government as well as capacity to enter into relations with other states. The chapter finally examines the doctrine of recognition of states as practiced by different entities.

Chapter three, though closely connected with chapter two however moves further to examine the meaning and development of the concept of sovereignty. Other issues associated with sovereignty such as independence has equally been considered. This chapter further highlights the limits of independence by exposing such issues like science and technology, economics, politics, poverty as well as the role of International Monetary Fund (IMF), World Bank, Paris and London clubs of creditors in touching the independence of states.

Chapter four, which is basically theoretical and represents the views of lawyers and academicians both from the West and their African counter parts examines the role of sovereignty in the contemporal world order. The chapter touches basically the doctrine and role of sovereignty, international instruments recognizing sovereignty, arguments in defence and against the usefulness of sovereignty. This theoretical component further highlights the problems in this field of research as viewed from different perspectives.

Chapter five is based on the factors rendering the concept of sovereignty nugatory. Such diminishing issues which have continued to be

a check on the doctrine of sovereignty have been considered. Issues such as self-determination, intervention, human rights, International Humanitarian Law as well as states incapable of guaranteeing security, law and order have been highlighted. The treaty obligation of states as well as the numerous exceptions to the doctrine of non-intervention have equally been expoused.

Chapter six brings us to the examination of state sovereignty, with special emphasis on Nigeria. Here, the 1st, 2nd, 3rd and 4th Republics were scrutinized. Further examined in this chapter are the military regimes of 1965 – 1979, the Nigerian civil War and the military regimes of 1983 – 1999. Other issues such as military coups and democracy in Nigeria as well as ECOMOGs intervention in Liberia and Sierra – Leone have been considered. These issues touch on several aspects of sovereignty as it affects Nigeria and other West African countries traumatized by civil unrests.

Chapter seven concludes the thesis work by summarizing the major issues discussed in the previous chapters as well as raising observations and making recommendations on the subject matter.

TABLE OF CASES

TABLE OF STATUTES

TABLE OF CONTENTS

CHAPTER TWO: THE CONCEPT OF STATEHOOD

CHAPTER THREE: MEANING AND THE DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Sovereignty is the central pillar of the contemporary international system. All regional groupings mention in their constituent instruments, "Sovereignty" and "Independence" as fundamental principle and their observance and respect is the real basis of their organization[1]. Sovereignty thus presupposes the independence of states to conduct their affairs without the interference in, influence or coercion of any other state. In bilateral and multilateral relations between states, sovereignty occupies a very important place. Thus it is rare not to find insistence upon it in important treaties and declarations of international organizations[2].

The United Nations (UN) Charter lists sovereign equality as the first principle upon which the organization is based. Its Article 2(7) protects states from the intervention of the organization in their domestic jurisdiction. The United Nations Resolution 2625 (xxv) (The Declaration on Friendly Relations Resolution) gave, in fact, an important place to the principle of sovereign equality. It stipulates that, "All states enjoy sovereign equality, they have equal rights and duties and are equal members of the international community, notwithstanding differences of economic, social, political, or other nature".

It is thus apparent that sovereign equality presupposes that each state enjoys the rights inherent in full sovereignty[3]. The declaration contained in the paragraph above makes it clear that the principles embodied in it constitutes the basic principles of international law and as such would be the guidelines which all states and not only members of the organization should conduct their mutual relations. Within the UN, there is no diminishing importance of sovereignty. It is the central feature of the organization[4].

There is no doubt that, while respect has been accorded independent states, particularly, in the area of non-intervention in their domestic affairs, new issues have continued to emerge in international law and that is in the area of human rights protection. Thus human rights have made a significant impact on international law. It has particularly affected the sovereignty of states and the assumption that international law is solely a state based system[5]. There is now a general agreement that human rights are a matter of legitimate international concern and they are appropriately a part of the international legal system.

It is in this vein that claims of title to territory cannot be made without some consideration of the rights of the inhabitants of that territory[6]. This has meant that state sovereignty has been limited as the treatment of an individual by a state is a matter of international concern and not a matter purely for national jurisdiction. Other issues too have continued to affect this doctrine of sovereignty aside from claims of human rights violations[7]. These issues include claims as to possession of

weapons of mass destruction, as in the case of United States and Iraq; self defense, intervention to protect the lives and properties of nationals and intervention to enforce provisions of a treaty[8].

Sovereignty thus refers to the right of each state to conduct its affairs without interference by any other state. This is always evidenced in the conduct of each sovereign viewed from the perspective of economics, politics, culture, religion etc. Whether or not countries of the world really enjoy this absolute sovereign status will be seen in detail as contained in Chapter three .

1.2 STATEMENT OF THE PROBLEM

The principle of sovereignty is confronted by so many problems. The question therefore is whether or not we really have sovereignty in international law. Do all countries of the world enjoy some respect, do whatever they want to do economically, socially, culturally and religiously? Can a country decide to do something while other countries watch her without interfering? For example, what concerns USA with the nuclear programme of Iran and North Korea? Why must Nigeria seek to liberate the people of Liberia in 1998? Why is United States of America (USA) interfering with all the countries of the world? Has the USA forgotten that all countries of the world have sovereign status?

But again if the concept of sovereignty is viewed that way, must all the countries of the world sit down and watch the killings in Rwanda, Congo, Darfur etc? Why must a third party country intervene in a war

between two neighbouring countries. The problem of sovereignty becomes more complicated and non-existent when we talk of human rights violation, humanitarian law etc.

The modern concept of sovereignty has assumed a new dimension. A clear-cut statement seeking to define sovereignty within the borders of a given state may be insufficient. The doctrine of intervention within the limits authorized by the United Nations has equally not solved the problem. International law within this sphere has become rather problematic. New issues have continued to emerge with different interpretations and effect on international law and sovereignty. The plight of the Kurds, the case of Bangladesh, the genocidal ethnic cleansing in Bosnia Herzegovina, and the famine wrought by clan wars in Somalia[9]. Others are the fratricidal wars in Liberia, Sierra Leone, Congo, Rwanda, and the terrorist attacks on the United States. Other issues like the claim to possession of weapons of mass destruction against Iraq and the consequent war to disarm her no doubt raises serious questions of international law. In all these cases intervention becomes necessary and this no doubt affects the concept of sovereignty of the state concerned. The United States led war to disarm Iraq was not authorized by the United Nations and so was the Nigerian led Economic Community of West Africa States Monitoring Groups (ECOMOG) intervention in Liberia. Whether or not humanitarian factors may be the offshoot for consideration by these cases of interventions is yet another issue.

1.3 SCOPE OF THE RESEARCH

Sovereignty is a term used in international law. It refers to the equality of a nation when compared with others. Therefore, the scope of this work is the whole world, as a geographical entity. In other words, sovereignty will be discussed in relation to the whole world. For example, Nigeria is equal to the United States of America in its international relations with other countries. The application of the principle is not limited to one region or sub-region. It is of universal application geographically or territorially. Therefore the scope of this work is the whole world. However, the principle of sovereignty would be examined as it relates to Nigeria, and more importantly to determine and show Nigeria's experience in this field.

The extent of this study is to highlight the concept of sovereignty in international law, issues and challenges on a global level and thereafter examine the lessons on a global level with particular reference to Nigeria. The concept of intervention will be closely studied with its allowable exceptions under the United Nations and the so-called claims to other exceptions as interpreted by other entities, or states. The narrower view with respect to the lessons from this global concept of sovereignty and intervention will be to examine the Nigerian experience and her intervention in Liberia. The central focal point here will be to analyze the various principles of international law and UN statutes.

1.4 AIMS AND OBJECTIVES

Sovereignty is a feature of modern politics. The concept of state sovereignty is well entrenched in legal and political discourse. State sovereignty denotes the competence, independence, and the legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusion from other sovereign states. These matters include the choice of political, economic, social and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of states in such matters are not unlimited, it depends on the developments in international law.

At the same time, territorial boundaries have come under stress and have diminished in significance as a result of contemporary international relations. Not only have technology and communications made borders permeable, but the political dimensions of internal disorder and suffering have often resulted in greater international disorder. Consequently perspectives on the range and role of state sovereignty have, particularly over the past decade, evolved quickly and substantially.

It is the aim therefore that this study will present the current global trend of the concept of sovereignty in international law with its attendant limitations as it directly touches on the freedom of states to act unhindered as suggested by the concept itself. More also, other issues like civil unrests within independent states, human right abuses and the

concept of intervention will equally be addressed. These issues have continued to have direct effect on the concept of sovereignty. Further objectives of this study is to proffer likely solutions to address issues which relate to the concept of sovereignty to preserve the independence of states in international law.

1.5 LITERATURE REVIEW

An attempt to overhaul an exact list of materials used in this research will make this thesis an endless one. However efforts shall be made to present some of the writers whose textbooks were consulted in the course of this research.

Schemer, B[10] dealt extensively with this subject matter. His limitations however lies in his book being limited to the concept of sovereignty with reference to the United Nations practice, thus ignoring modern developments in this concept most particularly, intervention not authorized by the United Nations.

Chucks O.F[11] limited the subject of this study on the doctrine of intervention and its application to emerging African States. The writer failed to adopt a broader approach in his book to cover a wider spectrum of the modern practice and its direct application to Nigeria.

Mc Lauren. Y[12] is categorical on the use of veto power to block certain decisions, which may be opposed by any one of the permanent members. The use of this veto power in issues relating to the intervention of sovereign nations is equally highlighted in his book. His limitation as far

as this thesis is concerned is the non-consideration of the sovereign status of these nations and the impact on the polity of such state.

Teson F.R[13] merely limited his research to issues touching upon humanitarian matters as an element authorizing intervention by a state in the affairs of another. Thus emphasis on sovereignty of the state in whose boundaries the intervention is made is not considered. Further, other matters, which may equally induce intervention in the modern age is ignored. This will form the subject matter, which this thesis intends to deal with.

Schachter, D[14]cited several instances when one state may be justified in law to lunch attack on another state ignoring the sovereign status of that state. Here too no reference was made to the West African experiment on this concept, hence, its limitation to the Nigerian experiment.

Shaw, D[15] also wrote on this subject. The limitation of his work is its direct reference to Africa as opposed to the wider concept of sovereignty and its broader worldwide application including Iraq and other notable interventions by the United Nations.

Other notable writers too have made materials in this area quite healthy. For instance, Kapinga W.L wrote on the United Nations System and Collective Uses of Force under the New World Order[16]. His book laid more emphasis on a collective intervention by the United Nations. The limitation of his work ignored the modern trend whereby only the United States can interfere in the affairs of another state without UN authorization.

Sesay, M.A[17] delved much on the crisis in the tiny West African State of Liberia and ECOMOGs intervention. The role played by Nigeria was equally considered. The limitation of this work is his inability to approach the issues within a broader spectrum to cover other cases of intervention within other states on a global level.

Lazhari, B[18] is more categorical on the issues of sovereignty and the doctrine of intervention on a global level. The limitation of his work has equally ignored the modern concept of sovereignty as understood today. One superpower can thus define what constitutes intervention with the effect on the doctrine of sovereignty. This further limits the influence of the United Nations as can be seen in the case of United States and Iraq.

Other personalities[19] have equally dealt extensively on this subject matter. An attempt to analyze all the contents of their work and list of authors would make this thesis quite voluminous. However, a conscious attempt has been made to provide a list of all the authors in the bibliography. In most of the texts the issue of sovereignty is not considered with the existing development in this area. This thesis thus seeks to cover this concept as understood globally and its challenges to the Nigerian State.

1.6 RESEARCH METHODOLOGY

In this work, it is intended that we shall adopt both doctrinal and empirical methods of research. Firstly, we shall make use of relevant documents to examine, discuss and analyze the principles of sovereignty. These

documents include textbooks written by erudite scholars as mentioned in the literature review and others though not mentioned. Other sources include UN documents resolutions, write-ups, protocols, treaties etc.

Secondly, the writer will endeavor to interview persons who have experience in this area. For example, we intend to visit Liberia, Sierra-Leone, Sudan, Congo etc to gather information and where necessary interview persons on this issue of sovereignty as it affects those states mentioned above. It is hoped that information obtained from empirical research would supplement the doctrinal to make it near perfect or comprehensive

1.7 ORGANIZATION LAYOUT

An attempt has been made to highlight the contents of this thesis by categorizing it into seven distinct chapters. Chapter one forms the introductory part of the thesis. It consists of the statement of the problem, scope of the research, aims and objectives, literature review, research methodology, organizational layout and finally justification as to the benefits of this research to the public.

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with other states. The chapter finally examines the doctrine of recognition of states as practiced by different entities.

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Chapter five is based on the factors rendering the concept of sovereignty nugatory. Such diminishing issues which have continued to be a check on the doctrine of sovereignty have been considered. Issues such as self-determination, intervention, human rights, International Humanitarian Law as well as states incapable of guaranteeing security, law and order have been highlighted. The treaty obligation of states as well as

the numerous exceptions to the doctrine of non-intervention has equally been exposed.

Chapter six brings us to the examination of state sovereignty, with special emphasis on Nigeria. Here, the 1st, 2nd, 3rd and 4th Republics were scrutinized. Further examined in this chapter are the military regimes of 1965 – 1979, the Nigerian civil war and the military regimes of 1983 – 1999. Other issues such as military coups and democracy in Nigeria as well as ECOMOGs intervention in Liberia and Sierra – Leone have been considered. These issues touch on several aspects of sovereignty as it affects Nigeria and other West African countries traumatized by civil unrests.

Chapter seven concludes the study by summarizing the major issues discussed in the previous chapters as well as raising observations and making recommendations on the subject matter.

1.8 JUSTIFICATION

State sovereignty has, for the past several hundred years, been a defining principle of interstate relations and a foundation of world order. The concept lies at the heart of both customary international law and the UN Charter. It remains both an essential component of the maintenance of international peace and security. It further affords the defence to weaker states against the strong. At the same time, the concept has never been as inviolable, either in law or in practice as a formal legal definition

might imply. It is in our opinion to state that the time of absolute sovereignty has passed, as its theory has never been matched by reality.

It may well be stated that, sovereignty is a key constitutional safeguard of international order. Despite the pluralization of international relations accelerated by the rate of economic globalization, democratization and privatization worldwide the state remains the fundamental guarantor of human rights locally. The state therefore acts as the building block for collectively ensuring international order.

It is therefore in this light that a research becomes necessary to highlight these global attitudinal changes on the concept of sovereignty. This thesis will be of immense benefit to legal practitioners, academicians, law students, and politicians alike. Practitioners of international studies will equally find this work quite interesting as it exposes both the theoretical and the practical issues bothering on the concept of sovereignty.

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CHAPTER TWO

THE CONCEPT OF STATEHOOD

2.1 INTRODUCTION

The evolution of a human being from the time of conception in his mothers womb up to the time of his birth, legally speaking, it is said he has not yet attained man. This is because he has not fully grown. On the legal aspect, he is not "sui jurist". Therefore from the time he was born up to the time he attained the age of majority, he is less than a person or man. He becomes a person when he attains the age of majority. Here all things are equal with him. He is thus fit and proper. He knows the legal consequences of his actions. He can judge right from wrong. He can be attributed with wrong doings or accredited with good deeds. He can sue and be sued. He can be conferred with privileges, obligations, immunities etc. This is the time he is said to have reached personhood. This metamorphosis is similar with the concept of statehood. A state possesses the capacity to make treaties and agreements and the enjoyment of privileges and immunities. The possession of some and not necessarily all these attributes makes a state a subject of international law possessing legal personality in which it can sue and be sued for[1].

2.2 DEFINITION OF STATE IN INTERNATIONAL LAW

A state can be defined as an organized political community controlled by one government. Thus, an organized political community forming part of a country can be referred to as a state[2]. This definition can however be distinguished from government in the sense that government refers to a group of people who are responsible for controlling a country or a state. In international law and international relations, a state is a political entity possessing sovereignty, i.e. not being subject to any higher political authority[3]. Looked at from the point of view of an individual nation, the state is a centralized organization of the whole country. A state can also be defined as an organization of people that has a monopoly on legitimate violence in a particular geographic area[4]. Also in this tradition, the state differs from "government". The latter refers to a group of people who make decisions for the state. Many institutions that have been called "states" do not live up to this definition. For example, a country such as Iraq (in June – July 2004) would not be seen as truly having a state since the ability to use violence was shared between the United States of America (USA) occupiers and various militias and terrorist groups, while order and security was not maintained. The official Iraqi government had very limited military or police power of its own. This situation has been called that of a failed state. The official Iraqi government also lacked sovereignty because of the USA domination.

One of the most basic characteristics of the state is regulation of property rights, investment, trade, and the commodity markets, typically using its currency. Although many states increasingly cede these powers to trade bloc entities e.g. North American Free Trade Agreement, European Union, Economic Community of West African States (ECOWAS) etc. This is often controversial and further opens the question of whether these blocs are in fact simply larger states. However, states are often influenced in this way, they are nonetheless much stronger in relation to international organizations.

2.2.1 PHILOSOHIES OF THE STATE

Different political philosophers have distinct opinions concerning the state as a domestic organization monopolizing force. In the modern era, these philosophies emerged with the rise of capitalism, which coincided with the re-emergence of the state as a separate and centralized sector of society. In broadly defined liberal thinking, the state should express the public interest, the interests of the whole society and to reconcile that with those of individuals. This job seems best performed by a democratically controlled state. But the experiments of democratic regimes in Africa with its sit tight and corrupt leaders seem quite incapable of achieving this goal.

Social liberals argue that the state has a greater positive role to play, given the problems of market failure and gross inequalities in the distribution of income and wealth inside a capitalist system. In general,

liberals now no longer see the state as currently living up to the philosophical ideal, and therefore argue for change in one direction or the other. The view of social liberals regarding the state are also broadly shared by the social democrats.

In the Marxist school of thought, the main role of the state in practice is to use force to defend the existing system of class domination and exploitation. Under capitalism the use of force is centralized in a specialized organization which protects the means of production. In modern Marxian Theory, such class domination can coincide with other forms of domination such as ethnic hierarchies.

Further, in Marxists Theory, classes and other forms of exploitation should be abolished by establishing a socialist system, which must involve a democratic state. This state will then slowly "wither away" as the people take more and more power in their own hands and representative democracy slowly transforms into direct democracy. Once the process is complete, the communist social order has been achieved and the state no longer exists as an entity separate from the people[5].

In some conservative thinking, the existing structure of tradition and hierarchies of class and ethnic dominance etc are seen as benefiting society overall. Thus, in a way, these conservatives accept some idea from both the Marxist and the Liberal schools of thought, but view them in different light. The state forces people to accept class and other kinds of domination, but this is seen as being good for them[6].

In Anarchist thinking, the state is nothing but an unnecessary exploitative segment of society. Totally rejecting Hobbesian ideas, anarchists argue that if the state and its restrictions on individual freedom were also abolished, people could figure out how to work together peacefully, while individual creativity would be unleashed. Also rejecting the Marxist perspective, the Anarchists hope that the withering away of the state can and will precede or coincide with the abolition of non-state forms of domination. All these forms of philosophical thinking about the state, whether ideal or not forms a greater knowledge of what is practical on the ground as it affects most African countries today and especially Nigeria where class domination and exploitation has become an agenda of governance by the ruling class[7].

2.3 CHARACTERISTICS OF A STATE

The sovereign state is one, which is not subordinate in its capacity for international action to any other legal entity. To this definition the qualification should be added that the state of today, and more certainly of the future, is tending to become subordinate to a new type of legal entity, the international organization. The state is no mere haphazard aggregation of individuals. It is an organized community, and this implies a population occupying a defined territory which it asserts to be exclusive to it. The state further puts up government agencies competent to deal with foreign states in the way accepted as normal by the international community. In the past, textbook writers placed great emphasis upon the degree of

civilization necessary for statehood, but these debates today are rather a matter of historical expedience.

The legal criteria for statehood are not obvious. A document that is often quoted on the matter is the Montevideo Convention on the Rights and Duties of States[8], whose Article 1 States:

> *The state as a person of international law should posses the following qualifications: (a) population; (b) a defined territory ; (c) government; (d) capacity to enter into relations with other states.(e) independence (f) diplomatic recognition.*

However, the extent of population and territory seems to be of less significance in United Nations practice than degree of autonomy and stability of government. These characteristics stated above are not necessarily cumulative. The possession of merely one of them by an entity (eg. a state) is sufficient in international law. When viewing these characteristics in connection with existing international human rights law, it becomes evident that the basis of their exclusiveness to state cannot be upheld. International human rights law define natural persons as subjects of international law, giving them rights and duties enabling them to pursue claims before international tribunals or to be brought before such tribunal themselves.

The Montevideo Convention is commonly accepted as reflecting in general terms, the requirement of statehood in customary international

law. Some argue that these requirements have been supplemented by others of a more political or moral character i.e independence, which has been achieved in accordance with the principle of self-determination, and not in the pursuance of racist policies. In history, the example of the practices of the former apartheid regime in South Africa, combined with the subsequent reaction of the UN Security Council strongly support this argument.

In the former Southern Rhodesian case of MADNIMBAMUTO v. LARDNER-BURKE,[9] the Judicial Committee of the Privy Council denied its self-declared independence and the Security Council imposed economic sanctions following a declaration of independence in 1965 by Southern Rhodesia and called upon all states not to recognize this illegal racist minority regime. No state recognized Southern Rhodesia as a state, although it could have claimed to have achieved the technical requirement set for statehood in the Montevideo Convention. This example serves as a clear indication of the fact that independence must be achieved in accordance with the principle of self-determination, which requirement as such is taken to be an additional requirement of statehood[10].

Similarly, the UN General Assembly in 1976 strongly condemned the declaration, of independence of Transkei as part of the apartheid policies of South Africa and declared it invalid. It at the same time called upon all governments to deny any form of recognition of the so called independent Transkie. Subsequently, no state recognized Transkie as a state except for former apartheid South Africa. The interpretation of state

practice on this point meant that Transkei, as an entity created directly pursuant to a fundamentally illegal policy of apartheid, is for that reason, and irrespective of its degree of formal or actual independence, not a state[11].

The former situation of Somalia (pre-2000) with its, lack of a central government for years, as well as the situation of the former Yugoslavia, with its de facto territorial division, prior to the Dayton Agreement might offer more recent examples as to the issue of additional requirement of statehood and the responses thereto of the international community through the UN[12].

Another issue to be considered here is the Palestinian question. In August 2000 after the Camp David Peace Summit, Palestinian leaders re-emphasized their purported right to declare statehood unilaterally. In the event of such a declaration, states will need to consider whether the Palestinian entity is, in fact, eligible for recognition as a sovereign state. The question would therefore be whether the Palestinian states have satisfied the criteria set for statehood or whether other legal or policy considerations would apply. It is however clear that if an entity claiming to be a state has emerged as a result of illegality, it is not eligible for recognition. In fact, under international law, states are under a specific legal duty not to grant recognition to such an entity. In spite of the threats to unilaterally declare statehood by the Palestinian Authority, the struggle to attain statehood has continued unabated. On 4 June, 2009, President Barrack Obama of the United States of America in a speech in Cairo

appealed to Israel and the Palestinian Authority to relinquish violence and move ahead on the road map to peace. He noted that Palestinian recognition of the state of Israel with a corresponding Israeli affirmation of the right of the Palestinian people to establish a stable statehood will no doubt end the mistrust and circle of violence between the two sides. In response to President Obama's speech, Israeli Prime Minister, Benjamin Netanyahu endorsed a Palestinian state beside Israel for the first time on 14 June 2009. The Israeli Prime Minister seem to have reversed himself under USA pressure but attaching conditions such as having no army which the Palestinians swiftly rejected. Netanyahu's speech closed the door to permanent status negotiations. The White House said, Obama welcomed the speech as an important step forward. With these positive signs, the issue of unilateral declaration of statehood with its legal constraints will no longer be necessary. The requirement of statehood stated under the Montevideo Convention shall now be closely examined.

2.3.1 POPULATION

With regard to population and territory, it is important to know that there is no lower limit in terms of size[13]. Neither is there a necessity for state boundaries to be clearly defined or undisputed[14]. If this had not been the position then Nigeria, Cameroon, Niger and Benin Republic may have technically failed this test owing to the International Court of Justice (ICJ) judgments affecting these sovereign nations on boundary demarcation[15].

2.3.2 TERRITORY

Territory serves as one of the technical requirements of statehood. Territory though as a requirement need not be accurately delimited. It is enough that the territory has sufficient cohesion, even though the boundaries have not yet been definitely settled. Israel, which is undoubtedly a state, although its boundaries have neither been definitely settled, may serve as a practical example to this end[16].

2.3.3 GOVERNMENT

Government refers to a body or group of people that controls a country. Thus a group of people or body that exacts its control or rule in a particular country is referred to as a government. This is another technical requirement of statehood. It entails the existence of a form of political organization as well as the capacity of public authorities to assert themselves throughout the territory of the state. Would Somalia until a few years ago have met this technical requirement of statehood? State practice on this point suggests that the requirement of a stable political organization in control of the territory of the state does not apply in situation of armed conflicts after a state has established itself[17]. The present day Sudan, Congo, Cote d Ivore etc applying this technical requirement may not meet this criterion. Thus it is obvious that this requirement may not be total after all.

2.3.4 CAPACITY TO ENTER INTO RELATIONS WITH OTHER STATES

The required capacity to enter into relations with other states is a direct reference to the independence of states. Independence in this sense must be understood as meaning the existence of a separate state that is not subject to the authority of any other state or group of states. This situation can also be described as external sovereignty, which means that a state has no other authority over it than that of international law. From what has been said above, the declaration of independence of Transkie, the important conclusion must be drawn that recognition as a state by other states is another major additional requirement for statehood[18].

2.3.5 INDEPENDENCE

Independence as a legal term signifies that a sovereign state enjoys as much freedom of legal action internally and externally as the law allows[19]. This freedom is not different in legal quality in the case of the smallest state from what it is in the case of the great powers. Perhaps it was an appreciation of this which led the dissenting judges of the permanent court in the:

AUSTRO – GERMAN CUSTOMS CASE[20] to assert that:

> *A state would not be independent in the legal sense if it was placed in a condition of dependence on another power, if it ceased itself to exercise within its own*

territory the summa potestas or sovereignty,
i.e if it lost the right to exercise its own
judgement in coming to the decision
which the government of its territory entails.

As it was stated here, the definition of independence must admit both the legal and economic and all other aspects of decision-making.

2.3.6 THE DOCTRINE OF RECOGNITION OF STATES

Closely akin to this technical requirement for statehood arises a vital issue which deals with the doctrine of recognition of states. The recognition of a new state, or a new government of an existing state, is a unilateral act, which the recognizing government can grant, or withhold[21]. It is true that some legal writers have argued forcibly that when a new government, which comes with power through revolution by any means, enjoys, with a reasonable prospect of permanency, the habitual obedience of the bulk of the population, other states are under a legal duty to recognize it[22].

However, while states may regard it as desirable to follow certain legal principles in according or withholding recognition, the practice of states, shows that the act of recognition is still regarded as essentially a political decision, which each state decides in accordance with its own free appreciation of the situation.

Recognition of states or of governments may occur expressly or by implication. There is no precise catalogue of acts that imply recognition.

Entry into diplomatic relations clearly implies it, as normally does the making of a bilateral treaty, arranging for commercial or other relations or support for a states admission to the UN. For instance the United Kingdom (UK)[s] support for the UN admission of Korea meant that UK has recognized Korea as a state. The crucial question is that of intention. Participation in an international conference with a state or government will not indicate recognition if it is made clear that it is not intended to have this effect. Thus in 1994 when the Foreign Ministers of France, UK, USA and the United Soviet Socialist Republic (USSR) proposed the Geneva Conference to discuss Korea and Indonesia and invited the Government of the Peoples Republic of China, the two Korea and other interested states, they added:

> *It is understood that neither the invitation to, nor the holding of, the above mentioned conference shall be deemed to imply diplomatic recognition in any case where it has yet already been accorded*[23].

The legal significance of recognition is controversial. According to one view it has a constitutive effect i.e. a state does not exist unless and until other states recognize it.[24]

The other view is that the granting of recognition to a new state is not a constitutive but a declaratory act; i.e.; it does not bring into legal existence a state, which did not exist before. A state may exist without being recognized, if it does exist in fact, then, whether or not it has been

formally recognized by other states, it has a right to be treated by them as a state[25]. Article 12 of the Charter of the Organization of American States (OAS) provides that:

> *The political existence of the state is independent of recognition by other states. Even before being recognized, the state has the right to defend its integrity and independence[26].*

The declaration theory is adopted by most modern writers. It is also supported by arbitral practices. In particular, the TINOCO ARBITRATION CASE[27] suggests that recognition is simply evidence that international law requirements are met. State practice confirms this in the sense that states do not refrain from bringing claims under international law against unrecognized states or government. E.g., in 1957, the UK claimed compensation from the unrecognized Taiwan government for damages done to British vessels by its forces[28]. In 1954, the USA claimed under international law against unrecognized government of the Chinese Peoples Republic for the killing of USA nationals when a commercial aircraft was shot down by Chinese military aircraft[29].

Nigeria's experience in this field is obvious, on May 30, 1967, Biafra declared its independence of Nigeria, of which it had constituted the Eastern Region. Its war of independence was unsuccessful and Biafra surrendered to the Nigerian Federal Government on January12, 1970. It is now once again fully part of Nigeria. During Biafra's war of independence,

five states viz, Tanzania, Gabon, Ivory Coast, Zambia, and Haiti recognized it as an independent state during the rebellion, although no state entered into formal diplomatic relations with Biafra[30]. From the forgoing, there is no doubt that uniform procedure on the criteria for statehood is not obvious. What have been stated here reflect the general practice on the subject matter.

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CHAPTER THREE
MEANING AND THE DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

3.1 INTRODUCTION

Sovereignty is a feature of modern politics. Its development springs from several civilizations. In this chapter attempt will be made to consider the meaning of sovereignty as well as its development from the medieval times to the present day. Also to be considered here is the concept of independence and the factors militating against it.

3.2 THE MEANING OF SOVEREIGNTY

Some scholars have doubted whether a stable, essential definition of sovereignty exists. But there is in fact a definition that captures what sovereignty came to mean in early modern Europe and of which most subsequent definitions are a variant. This is the quality that early modern states possessed, but which popes, emperors, kings, bishops, and most nobles and vassals during the middle ages lacked[1]

State sovereignty denotes the competence, independence and legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusion from other sovereign states. These matters include the choice of political, economic, social and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of

states in these matters is not unlimited; it depends on developments in international law (including agreements made voluntarily and international relations). The holder of sovereignty is superior to all authorities under its purview. Supremacy too is evidence to modernity. During the middle ages, manifold authorities held some sort of legal warrant for their authority, whether feudal, canonical, or otherwise, but very rarely did such warrant confer supremacy[2].

Another ingredient of sovereignty is territoriality, also a feature of political authority in modernity. Territoriality is a principle by which members of a community are to be defined. It specifies that their membership derive from their residence within borders. It is a powerful principle, for it defines membership in a way that may not correspond with identity[3]. The border of a sovereign state may not at all circumscribe a "people" or a "nation", and may in fact encompass several of these identities, as national self-determination and irredentist movements made evident[3]. It is rather by simple virtue of their location within geographic borders that people belong to a state and fall under the authority of its ruler. It is within a geographic territory that modern sovereigns are supremely authoritative[4].

Territoriality is now deeply taken for granted. It is a feature of authority all across the globe. Even supra-national and international institutions like the European Union and the United Nations (UN) are composed of states whose membership is in turn defined territorially. This universality of form is distinctive of modernity and underlies sovereign

connection with modernity[5]. Though territoriality has existed in different eras and locales, other principles of membership like kingship, religion, tribe and feudal ties have also held great prestige. Most vividly contrasting with territoriality is a wondering tribe, whose authority structure is completely disassociated with a particular piece of land. Territoriality specifies by what quality citizens are subject to authority their geographic location within a set of boundaries.

The general definition of sovereignty lies within the supreme authority within a territory. Historical manifestations of sovereignty are almost always specific. Instances of this which philosophers and the politically motivated have spoken most often, making their claims for the sovereignty of this person or that body of law. Understanding sovereignty, then, involves understanding claims to it, or at least some of the most important of these claims[6].

Over the past half millennium, these claims have taken extra ordinarily diverse forms, nations asserting independence from mother states, communists seeking freedom from colonialists, theocracies who reject the authority of secular states, and sundry others. It is indeed a mark of the resilience and flexibility of the sovereign state that it has accommodated such diverse sorts of authority. Though a catalog of these authorities is not possible here, three dimensions along which that may be understood will help to categorize them: the holder of sovereignty, the absolute or non-absolute nature of sovereignty, and the relationship between the internal dimension of sovereignty[7].

Diverse authorities have held sovereignty, kings, dictators, peoples ruling through constitution and the like. The character of the holder of supreme authority within a territory is probably the most important dimension of sovereignty. In early modern times, French theorist, Jean Bodin[8] thought that sovereignty must reside in a single individual. Both him and English philosopher Thomas Hobbes conceived the sovereign as being above the law. Later thinkers differed, coming to envision new loci for sovereignty, but remaining committed to the principle.

Sovereignty can also be absolute or non-absolute. How is it possible that sovereignty might be non-absolute if it is also supreme? After all, scholars like Alan James[9] argue that sovereignty can only be either present or absent, and cannot exist partially. But here, absoluteness refers not to the extent or character of sovereignty, which must always be supreme, but rather to the scope of matters over which a holder of authority is sovereign. Bodin[10] and Hobbes[11] envisioned sovereignty as absolute extending to all matters within the territory, unconditionally. It is possible for an authority to be sovereign over some matters within a territory, but not all. Today, many European Union (EU) member states exhibit non-absoluteness. They are sovereign in governing defense, but not in governing their currencies, trade policies, and many social welfare policies, which they administer in cooperation with EU authorities as set forth in EU law. Absolute sovereignty is quintessential modern sovereignty. But in recent decades, it has begun to be circumscribed by institutions like the EU, the UN practices of sanctioning intervention, and the International

Criminal Court. The present limited status of a sovereign as demonstrated in the existence of these institutions can be seen in the cases of CAMEROOM VS NIGERIA[12] and most recently NIGER VS BENIN REPUPLIC[13] delivered on October 22 2002 and July 2005 respectively. Both cases involves a suit to the International Court of Justice[ICJ] of which judgement directly touches on the territorial extent and hence the sovereign status of these countries.

Another pair of adjectives that define sovereignty is "internal" and "external". In this case, the words do not describe exclusive sorts of sovereignty, but different aspects of sovereignty that are co existent and omni present. Sovereign authority is exercised within borders, but also, by definition, with respect to outsiders, who may not interfere with the sovereign's governance. The state has been the chief holder of extesrnal sovereignty. The concept of sovereignty in international law most often connotes external sovereignty. Alan James[14] similarly conceives of external sovereignty as constitutional independence, meaning a states freedom from outside influence upon its basic prerogatives.

Significantly, external sovereignty depends on recognition by outsiders. To states, this recognition is what a non- trespassing law is to private property. A set of mutual understanding that gives property, or the state, immunity from outside interference. It is also external sovereignty that establishes the basic condition of international relation[15]. An assemblage of states, both internally and externally sovereign, makes up an international system, where sovereign entities ally, trade, makes war and

makes peace. But as will be seen in the proceeding chapters, sovereignty is no longer the absolute be –all and end- all as conceived by earlier scholars.

3.3 DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

The evolution of the concept of sovereignty dates back to centuries. According to Medievalist Ernest Kantorowicz[16], he describes it as a profound transformation in the concept of political authority, which has spanned over the course of the middle ages. The change began when the concept of the body of Christ evolved into a notion of two bodies as one. The "corpus naturale", the consecrated host on the alter and the other, the "corpus mysticum", the social body of the church with its attendant administrative structure. This later notion of a collective social organization having an enduring mystical essence would come to be transferred to political entities, the body politic[17]. Kantorowicz then describes the emergence, in the late middle ages of the concept of the kings two bodies, vivified in Shakespeare's Richard II and applicable to the early modern body politic. Whereas the kings natural, mortal body would pass away with his death, he was also thought to have an enduring, supernatural one that could not be destroyed, even by assassination. For it represented the mystical dignity and justice of the body politic. The modern polity that emerged dominant in early modern Europe manifested the qualities of the collectivity that Kantorowicz described as a single, unified one, confined within territorial borders, possessing a single set of

interests, ruled by an authority that was bundled into a single entity and held supremely in advancing the interest of the polity[18].

In early modern times, kings would hold this authority, later practitioners of it would include the people ruling through a constitution, nation, the communist party, dictators, juntas and theocracies. The modern polity is known as the state, and the fundamental characteristics of authority within it, sovereignty[19]. State sovereignty has, for the past several hundred years, been a defining principle of interstate relations and a foundation of world order. The concept lies at the heart of both customary international law and the United Nations (UN) Charter[20] and remains both an essential component of the maintenance of international peace and security. This principle further defends the weak states against the strong. At the same time, the concept has never been as inviolable, either in law or in practice as a formal legal definition might imply. A further insight into chapter five of this thesis will reveal recent developments on this concept which makes it difficult to say the least whether the concept still exist or it is rather been amplified in theory lacking in practice.

3.4 INDEPENDENCE

Independence is fully autonomous self-government of a nation or state by its residents and population, generally exercising sovereignty. The term independence is used in contrast to subjugation, which refers to a region as a "territory"- subject to the political and military control of an

external government. The word is sometimes used in a weaker sense to contrast with hegemony, the indirect control of one nation by another, more powerful nation.

Independence can be the initial status of an emerging nation, but is often an emancipation from some dominating power. It can be argued that independence is a negative definition: the state of not being controlled by another power through colonialism or imperialism. Independence may be obtained by decolonization, or by separation or dismemberment[21].

Although the last three can often coincide with it, they are not to be confined with revolution, which typically refers to the violent overthrow of a ruling authority. This sometimes only aims to redistribute power- with or without an element of emancipation, such as in democratization- within a state, which as such may remain unaltered. The Russian October Revolution[22], for example, was not intended to seek national independence; the United States Revolutionary War, however was[23].

The Permanent Court of International Justice said in the EASTERN CARELIA CASE[24] that independence is a fundamental principle of international law, and it drew from this the preposition that no state can, without its consent be compelled to submit its disputes with other states either to mediation or to arbitration or to any other kind of pacific settlement.

Independence means that a state may conduct its internal and, international affairs unrestricted legally except through the operation of international law. In the LOTUS CASE[25] and the NORTH ATLANTIC

FISHERIES CASE[26,] It was stated that there is a legal presumption against restriction upon independence. Independence as a legal term signifies that a sovereign state enjoys as much freedom of legal action internally and externally as the law allows, and this freedom is no different in legal quality in the case of the smallest states from what it is in the case of the great powers. Formulated in this way, the concept of independence is highly relative. Changing attitudes towards the ideology of the state or of the international community, and the tendency towards- tightening the regime of international law, affect necessarily the question of evaluation of independence.

However, there is danger in these sentiments, which all too easily can generate legal veils to hide the unpalatable pacts of alien conquest, as it existed in the colonial times. Perhaps it was an appreciation of this, which led the dissenting judges of the Permanent Court in the AUSTRO-GERMAN CUSTOMS CASE[27] to assert that:

> *A state would not be independent in the legal sense if it was placed in a condition of dependence on another power, if it ceased itself to exercise within its own territory the summa potestas or sovereignty, i.e. If it lost the right to exercise its own judgement in coming to the decision which the government of its territory entails*

As it happened, their proposition was more widely stated than was necessary for the case. The issue before the court was whether or not an Austo- German protocol setting up a customs regime was in violation of the terms of Article 88 of the Treaty of St. Germain relating to the independence of Austria. The majority, in their advisory opinion saw no threat in this to the security of Austria, even though the predicted result might be some measure of economic subservience. Thus every state has the right to its own independence in the sense that it is free to provide for its own well-being and to develop materially and spiritually without being subjected to the domination of other states[28].

3.5 MILITATING FACTORS AGAINST INDEPENDENCE

The permanent Court of International Justice in the AUSTRO-GERMAN CUSTOMS CASE[29] admitted that the legal cannot be abstracted from the political and economic concomitants. The court defined independence as meaning:

> *The continued existence of Austria*
> *within her present frontiers as a separate*
> *state with sole right of decision in all*
> *matters, economic, political, financial,*
> *or other with the result that*
> *independence is violated as soon*
> *as there is any violation thereof,*
> *either in the economic, political, or any*

other field, these different aspects of independence being in practice one and indivisible.

The court here recognized the fact that there exists factors which hinders independence in reality. These militating factors shall be considered in full.

3.5.1 SCIENCE AND TECHNOLOGY

A developing nation like Nigeria with little or no technological inventions and machines will continue to depend on the West in the provision of essential services. This dependence directly touches on the concept of independence. This is because, most of these technologically advanced nations normally introduce clauses in their agreement with Nigeria or any other developing country before rendering essential services. A case in point is the Nigerian National Petroleum Corporation (NNPC)'s consistent non performance at optimal level due to non availability of expatriates to service the refineries. In another vain, replacement of already ailing parts of these plants have on several occasions been defeated on the ground that local sourcing has virtually become impossible[30].

Continued dependence on the West in terms of acquiring most of our daily needs including drugs and other military hardware have made our independence least exact in terms of the legal recognition accorded this concept. Most of these services and goods are often received into the country with strings attached as well as unfavourable balance of trade.

3.5.2 ECONOMICS

The dearth of communism and socialism have been substituted with free trade, liberation, deregulation, privatization, and globalization. African leaders and governments have followed these slogans as their cardinal ideologies to economic development and political resurgence. When the West extended the carrot of loan capital to African leaders and governments, they followed readily and ended up in the web of the International Monetary Fund (IMF), the World Bank, the Paris club and the London club of creditors. The end result is that our economies are doomed and hence complete dependence on the West and erosion of the concept of independence[32].

It is obvious that, the conspiracy of the West has direct effect on the development of the Nigerian economy. The economists and political power brokers of the West manipulated statistics to the effect that the marketing boards were exploitative of the local farmers; that the corporations were a restraint on trade and efficiency; that the public sector management of the economy was corrupt and undesirable; and that the government "had no business in business" but should deregulate and privatize the boards and the corporations[33]. However, the economic meltdown experienced in 2009 saw the respective governments in the West injecting funds to public and private sectors to cushion the effects and maintain existing companies.

In 1986, the IMF/World Bank succeeded in convincing the Nigerian military government into adopting their Structural Adjustment Program[34].

The Marketing Boards were disbanded; public enterprises were deregulated; government intervention in the economy became discredited; monetary and fiscal policies of government were relaxed, and the free traders took over the reins of government. The result was the fall in the production of cocoa, cotton, hides and skin, rubber and palm produce between 25% - 35% in 1986 alone[35]. The value of the Naira fell from ₦1= $I in 1985 to 140 = $1as at August 2006[36]. In 2009, the exchange rate further fluctuated to ₦170 per $1 at parallel market.

It is apparent that with economic decline in emerging nations, the concept of independence with its legal quality will continue to erode as our economics will more or less be at the dictates of the developed countries. The concept of independence particularly as it affects African nations remains questionable.

3.5.3 POLITICS

One of the most evident characteristics of the African continent is that it has always been a "follower continent". That, it continues to remain a " follower continent", and, unless it finds faith and independence in its own peoples, action and government, its policies will continue to fail. Africa's continued economic decline, its financial and moral crisis will not only increase and deepen, but will also ultimately constitute a threat to the peace and stability of the entire world.

Developing countries including Nigeria have nothing to write or sing about in the area of deciding their political future and hence an affront on the concept of independence. Nigeria is presently being propelled to

democratize as a way of economic recovery. These forms of governments are imposed on us by the West. They ultimately dictate who eventually gets elected and who mans the key positions in government. Leaders are induced and or, coerced to follow a pattern of agenda that benefits the West. The heap of debt burden further worsen the plight of the average Nigerian to have a say in governance as that is dictated by the type of leader who will adopt and follow to the latter the policies of the creditor and donor countries. If independence means fully autonomous self government, then it is obvious that most of the developing countries cannot meet this criteria as seen above[37].

3.5.4 POVERTY

Poverty has a direct effect on the lives and well being of a people in a particular polity. For instance, in Nigeria, since the military was replaced with a democratic regime in May 1999, the life and living conditions of the average Nigerian continue to deteriorate. The hope of economic recovery is becoming more and more distant. But the government continues to follow the dictates of the West, with privatization, deregulation, liberalization, minimization of government involvement in the economy and retrenchment in public sector employment. The purchasing power of the consumer has considerably reduced. The result is that Nigeria is now flooded with second-hand goods, low-quality subsidized foreign goods from the West and Asia. This has the effect to further depress the few surviving industries in Nigeria.

As Nigeria became poorer and poorer, its leaders became more and more criminalized; lost more and more confidence on themselves and in the economy, and increased the keeping of their wealth in foreign countries. The dichotomy between the rich and the poor in Africa will intensify, increase the simmering and growing tension, crisis, and wars in Africa. Such a situation will increase the conflict between Africa and the West. This no doubt will violate the principle of independence as the people (commoners) continue to lose confidence in the ability of a state to protect their economic security[38].

3.5.5 IMF, WORLD BANK, PARIS AND LONDON CLUB OF CREDITORS

A number of low-income countries, mostly in Africa have become burdened by the debt situation from these international financial communities. This has made it extremely difficult for them to influence the prospects for economic development for these countries, even full use of traditional mechanism of rescheduling and debt reduction- together with continued provision of concessional financing and pursuit of sound economic policies may not be sufficient to attain sustainable external debt levels within a reasonable period of time.

The IMF/World Bank, the Paris club, and the London club of creditors have involved Nigeria, like other African countries, in debt-rescheduling, debt conversion, debt- buy back and deferred payments[39]. All of these have exacerbated the debt burden, rather than debt relief. The continued indebtedness of Nigeria to these creditor institutions would

mean that her affairs would have to be run by these institutions. If this is the position, wherein then lies the concept of independence. As at June 2005, these so called creditor institutions claimed to have cancelled 60 percent of Nigeria's debts and a host of other poor nations[40]. This claim is baseless, as the debt owed by Nigeria and the marginal percentage of that which is paid far out weigh that which is owed to these creditor institutions.

Before Nigeria and these other poor African nations qualified for these debt-relief's and, or cancellation, they had to establish a track record of reforms and sound policies through IMF and World Bank supported programs. These Structural Adjustment Programs have their great impact on the people and the economy. Prominent among these include the loss of the value of local currency, privatization, of public enterprises, withdrawal of subsidies, loss of jobs in the public sector and a host of others. These are done at the dictates of these creditor nations and thus limiting the concept of independence of these nations. As can be seen with most African nations and Nigeria in particular, these programmes have worsened the standard of living of Nigerians with the attendant social consequences. The privatization and commercialization dictated by these foreign governments have not yielded any positive result in terms of service delivery. Corruption is still apparent in the privatized agencies.

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CHAPTER FOUR
SOVEREIGNTY: ITS RECOGNITION, ROLE, ARGUMENTS FOR AND AGAINST

4.1 INTRODUCTION

State sovereignty has, for the past several hundred years, been a defining principle of interstate relations and a foundation of world order[1]. The concept lies at the heart of both customary international law and United Nations (UN) Charter. The concept remains both an essential component of the maintenance of international peace and security and a defence of weak states against the strong. At the same time, the concept has never been as inviolable, either in law or in practice, as a formal legal definition might imply. According to former Secretary General of the UN Boutros Boutros-Ghali, "the time of absolute sovereignty has passed; its theory was never matched by reality."[2]

Practically, sovereignty has routinely been violated by the powerful. In today's globalizing world, it is generally recognized that cultural, environmental and economic influences neither respect borders nor require an entry visa. The concept of state sovereignty is well entrenched in legal and political discourses. At the same time, territorial boundaries have come under stress and have diminished in significance as a result of contemporary international relations. Not only have technology and communication made borders permeable, but the political dimension of internal disorder and suffering have also often resulted in greater

international disorder[3]. Consequently, perspectives on the range and role of state sovereignty have particularly over the past decade, evolved quickly and substantially. The purpose of this chapter is to set out the scope and significance of state sovereignty as a foundation on which to explore contemporary debates on intervention as will be seen in chapters 5 and 6 of this thesis.

Sovereignty is the most glittering and controversial notion in the history, doctrine and practice of international law. It is a word which has an emotive quality lacking meaningful specific content. A discussion on this subject risks degenerating into a Tower of Babel. This in effect means that the controversy surrounding the discussion on sovereignty has no end. Thus there is little neutral ground when it comes to a discussion on sovereignty. In this chapter attempt will be made to consider the international instruments recognizing sovereignty, the role of sovereignty as well as the arguments in defence and against the usefulness of sovereignty.

4.2 INSTRUMENTS RECOGNIZING SOVEREIGNTY

An inquiry into the role and place of sovereignty in the present international society is relevant. This is because some lawyers especially in the West see sovereignty as basically against the idea of humanity[4]. This means that as long as sovereignty survives there is no hope for the protection of human dignity and human rights. Sovereignty is not withering away, state practice in its different forms confirms that verdict.

Similarly, former Socialist States, Third World and Western academics stress for different reasons that the idea of sovereignty is a fundamental guarantee for peace in our world.

In bilateral and multilateral relations between states, sovereignty occupies a very important place. Thus it is rare not to find insistence upon it in important treaties and declarations of international organizations. The most important multilateral treaty in our present time, the UN Charter, for example lists sovereign equality as the first principle upon which the organization is based. Article 2/7 protects states from the intervention of the organization in the their domestic jurisdiction. Moreover, Article 14 of the Draft Declaration on Rights and Duties of States prepared by the International Labour Organization (ILO) in 1949 provides that:

> *Every state has the duty to conduct its relations with other states in accordance with international law and with the principle that sovereignty of each state is subject to the supremacy of international law.*[5]

The United Nations Resolution 2625 (XXV)(the Declaration on Friendly Relations Resolution) gave in fact an important place to the principle of sovereign equality, it stipulates that:

> *All states enjoy sovereign equality, they have equal rights and duties and are equal members of the international community, not withstanding difference of economic, social, political or other nature.*[6]

Sovereign equality includes among other things that each state enjoys the rights inherent in full sovereignty.[7] This declaration makes it clear that the principles embodied in it constitute the basic principle of international law and as such would be the guidelines which all states and not only members of the organization should conduct their mutual relations. It must be noted that the ICJ has, in the NICARAGUA CASE,[8] stressed the importance of this declaration in relations between states, it held:

> *The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidations" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves.*[9]

This means in effect that the court has given a binding legal force to resolution 2625 independently of its relation to the UN Charter. Thus, within the UN, there is no diminishing importance of sovereignty. It is the central feature of the organization. Henry Kissinger, the former U.S. Secretary of State, was right when he stated that:

> *The United Nations Charter is based on the preposition that the United Nation is composed of sovereign states and therefore the United Nations has never been intended as a world government superceding the sovereign government*[10.]

Such an opinion indicates that sovereignty is the central pillar of the contemporary international system. There is no evidence that sovereignty is regarded within the UN as an obstacle to the maintenance of peace or the protection of human dignity or as an idea whose time has passed.

The Charter of the Organization of American States stipulates in its first Article that:

> *American states establish by this Charter the international organization that they have developed to achieve an order of peace and justice to promote their sovereignty, their territorial integrity and their independence.*[11.]

Articles 9, 10, 11, 15 and 16 insist as well on different aspects of sovereignty. The latter is not regarded in the charter as incompatible with struggling for peace and justice or attachment to human rights and human dignity.

The Charter of the Organization of African Unity[OAU], (now African Union)[AU] due to the specific history of the continent, which is characterized by foreign domination and intervention, respect for sovereignty and independence has a very special place. In this respect, the preamble of the African Union (AU) Charter makes it clear that the organization is "determined to safeguard and consolidate the hard won independence as well as the sovereignty and territorial integrity of her states.[12]

Article 3 of the AU Charter which deals with the principles of the organization, mentions respect for sovereignty and territorial integrity of each state and for its inalienable right to independence the fundamental criteria which must be satisfied by any entity willing to join the organization as a member.

In the Arab world, aspiration for the unity of all Arab people in one single state has been in the front, at least, from the time of decolonization. However, the Pact of the League of Arab States stresses in Article 2 that the League will work towards a close relationship between member states and co-ordinate their political activities with the aim of realizing the closer cooperation there, to safeguard their independence and sovereignty.[13] This means that the rhetoric of unity has given way to the reality of sovereignty. What emerges from these three important organizations is the fact that sovereignty plays a dominant role in their constituent instruments.

The Charter of the Islamic Conference also makes out of the respect of the sovereignty, independence and territorial integrity of each member as a fundamental principle of the conference. This is so despite the fact that Islam encourages the unity of the Umma (the Islamic nation). Moslem states were not deterred from proclaiming their strong adherence to the principle of sovereignty.

In 1989, while Europe was still furthering its prospects for a United Europe, most European leaders still believed that the European Economic Community (EEC) (Now European Union)[EU] had no business meddling into security matters. The former UK Prime Minister Mrs.

Margaret Thatcher was unready to discuss a new common currency, and Western Germany still insisted then that the time was not ripe to talk about a common bank. Moreover, when Jacques Delors, the President of the European Commission and arch champion of a united Western Europe was asked whether Europe was moving toward a political federation, he answered:

> *The 12 members have repeatedly and solemnly reaffirmed their will to build a political union. The creation of a single economic and social space by 1992 constitutes the foundations not for Gorbachevs common European house, but for a European community house* [14]

In other words, European states, after nearly 40 years of close co-operation, are not ready yet to give up the last and the most important elements of sovereignty.

It is obvious that these instruments which recognize the concept of sovereignty shows that sovereignty has an important role to play in the international society. Sovereignty is the guarantor of the co-existence of such differences in the international society. Whether or not this practice will remain is yet to be seen in the arguments for and against the concept as is considered in the latter part of this chapter.

4.3 ARGUMENTS IN DEFENCE OF SOVEREIGNTY

In this section, we shall be primarily concerned with the statements by scholars, academicians, lawyers and statesmen, which support the concept of sovereignty. Sovereignty is seen by some as the point of departure in settling most questions that concern international relations. Any attempt at spiriting away from it must remain meaningless.[15] Goodspeed rightly stated that:

> *The facts of present day international life makes it appear that despite the need for good faith in interstate relations and the development of complex interrelations among states, each state in the final analysis seeks to be its own interpreter of international obligations and maintains the right to determine its own standards of international conduct.*[16]

Sovereignty then is not lost in the fog of interstate relations; it is still a very important element of such relations. Beitz invokes a moral basis for defending sovereignty, he states that: "states like persons have a right to be respected as autonomous sources of ends"[17]. He argues that the claim to autonomy by a state must rest on the conformity of its institutions with some appropriate principles of justice[18].

It is in our opinion that the notion of sovereignty has its foundation in the psychology of nations and people. It is, as a matter of fact the

expression on the political and legal levels of the feeling of belonging to one community, which shares many common virtues. Carthy A, however, argues that lawyers must take into account the phenomenon of nationalism because its appearance in the form of the right to self determination touches upon so many aspects of what is commonly regarded as providence of international law[19]. He then adds that in some way or another one still has to suppose that the nation state is an individual subject of law with conscience[20].

We can infer from Carthys opinion that nationalism is the basis for adherence to sovereignty. This is so because the latter is the supreme form of self-determination. Further, because nationalism insists on particularism and distinct identity. Sovereignty then is the legal and political shield which protects that particularism and distinctness on the level of international society. Sovereignty is in the final analysis, the major criterion which differentiates between nationalism and internationalism.

A radical approach to defending sovereignty has been taken by G.F. Kannan. He insists that "the interest of the national society for which a government is to concern itself are basically those of its military security, the integrity of its political life, and the well being of its people"[21]. He sees these needs as having no moral quality. They arise simply from the status of national sovereignty which the state is supposed to enjoy. He adds that:

> *It is right that the state should be sovereign,*
> *that the integrity of its political life should be*
> *assured, that its people should enjoy the blessing*

of military security, material prosperity and a reasonable opportunity for as the declaration of independence put it, the pursuit of happiness[22].

In our opinion, this is a dangerous way of defending sovereignty because events of life reveal that some leaders in some states hide under this concept to unleash terror on their subjects. The reprisal of the Kurdish population by the former Iraqi leader, Sadam Husain and the killing of Muslims in the former Bosnia Hezegovina are cases in point.

W. Levi, after arguing that interaction and interdependence among states made the concept of sovereignty murky, states:

…. Nevertheless the demand for independence everywhere is responsible for the organization of international society in forming its institution including law, all designed to give substance to the demand[23].

Interdependence which is undeniably a real fact of international life does not in anyway hinder the importance of sovereignty. The latter, as we have seen has been maintained and insisted upon in the most adverse circumstance and situations. Also interdependence did not lead to a world government. On the contrary, it leads to fresh demands for giving sovereignty a real substance by a real reform of the existing mechanism of the international economic relations.

On the other hand, Wildhaber points out that:

…. Sovereignty expresses the essential position

of the state in the international system. It is a constitutional principle of international relations not because it can claim a higher sacredness, morality or cogency, but simply because it is at bottom, an empirically correct description[24].

This view once again confirms that despite the growing interaction between states, people and international institutions and despite the rapid extension of international law to regulate many new fields in the relations between states, sovereignty is still forging as it is the other name for statehood.

The former Soviet jurists used sovereignty as a legal and political weapon in their theoretical struggle against some capitalist views of sovereignty. Moreover, it is obvious that Soviet defence of sovereignty is not eternal, it is dictated by the realities of the international relations where capitalist states were a fact of life, and their transformation into communist state is not near by any means.

It is to be noted that sovereignty in the relation between the former Socialist States do not seem to be very rigid. In reality it no longer means complete internal and external independence in the running of the affairs of the state. It simply means in the words of Anard "freedom to act in the interests of the world revolutionary movement"[25]. According to this logic, the sovereignty of the socialist state cannot be used to claim the return to capitalism since this would not be in the interests of the socialist camp. It

undermines the gains of socialism and would be contrary to the progressive movement of history.

Third world lawyers are, like their politicians, ardent champions of sovereignty. In this context, Prakash Singh rightly points out that:

> *…. Sovereignty is the most treasured possession of the newly independent states. On one hand, it makes them the masters of their houses, on the other hand, it provides them with a legal shield against incursions or threats by strong states*[26].

This is truly a noble ideal. In practice it is difficult to imagine this reasoning in the present era. It is evident that the dominant interests of the super powers prevail as the true determinants of what constitutes intervention. French interests in Ivory Coast, even during the civil war in that country. Same can be said of Congo and other African countries. USA interests in Nigeria based on the oil rich mineral deposits etc. This indicates that these noble ideals are fast withering away.

It is also natural that sovereignty is a means of achieving demands for a fair share in the participation in international decision making process in different fields of international relations. This ideal too is difficult in practice and the only world body, the UN can have its decision upturned by a mere veto of any of the five permanent members.

On the internal sphere, sovereignty as Okoye remarks:

> *…..is a powerful instrument for shaping*

national identity, breaking the chains of subordination which are factors of backwardness and furthering social and economic progress[27].

However, the danger in the third world is that sovereignty in the internal sphere may well be used (and indeed has been used) in many instances, as a wall which masks and justifies violations of human rights.

In this context, it seems that insistence on sovereignty can be justified only when the state conducts itself in accordance with the basic standards for the protection of human rights and human dignity in times of peace and war. Those standards and norms can be found in the different instruments of human rights and in the practices of regional and universal organizations in the field of human rights.

On the external sphere of sovereignty third world lawyers insist on the necessity of giving independence its real meaning, especially on the economic sphere. Here it can be stressed that the classical concept of sovereignty needs to be reformulated.

The importance of independence as a legal principle in practice means the real sovereignty over natural resources. This would further mean real participation in the structure of the decision-making process concerning international economic relations. Here too the concept of sovereignty has suffered a set back. The unfavourable economic policies of the developed ones are obvious. There exist for instance unfavourable balance of trade between Nigeria and the USA. The end result is that

goods are dumped in Nigeria originating from the West hence a collapse of our industries with its attendant catastrophe on the unemployment level and aggravation of poverty which itself is a threat to peace and security.

This is not an exhaustive survey of the doctrine on the question of the role and the place of sovereignty in the international society. However, it shows that those who are attached to sovereignty and maintain that it still has a role to play invoke many grounds for their assertions. These grounds revolves basically within the under mentioned assumptions:

(a) That the state is still the main unit in the framework of the international society, sovereignty is on the legal and political levels, the expression of statehood[28].

(b) That in an international society, in which states follow different paths of development, share different ideologies, sovereignty means something. It indicates the preservation of national identity and consciousness[29].

(c) Others, especially from the third world, fear for their hard won independence and see that only sovereignty can preserve it. They insist at the same time that the idea of real sovereignty has not been attained yet. It must include full economic aspects as well[30].

(d) Others, the former communists in particular, believe that the time is not ripe yet for the abolition of sovereignty. Thus it is glorified and struggled for, since the realities of contemporary international society are against any opposite solution[31].

The reasoning no doubt from these assumptions is that without sovereignty, small states which are the majority of today's world would have very little chance of becoming free from outside domination. Thus in our minds, sovereignty must mean liberation. It must not become the instrument of killing freedom inside these very states. Sovereignty must protect human rights and human dignity and further their development.

4.4 ARGUMENTS AGAINST THE DOCTRINE OF SOVEREIGNTY

There is a growing tendency in the West, which considers that the notion of sovereignty is obsolete and that it does not correspond to the developments, which have been taking place in the international society. It is to be noted that some contemporary international lawyers continue the attack against sovereignty, using different grounds for their stands. It is to be argued that the advent of nuclear weapons has created the objective social basis upon which it is possible to build a new political order for world affairs. This means impliedly that the state as the prime organizing and value realizing unit in world politics is no longer viable[32].

Falk made an interesting observation when he stated that:

> *My approach to international law has been influenced by a growing conviction that the present structure of international society cannot solve the problems of technetronic man[33].*

The argument of Falk as stated above reflects the fact that the problems which face humanity such as violence, hunger, pollution etc can only be solved on a plenary level. In effect, only a world government is capable of solving such a global challenge. Thus emerging issues as terrorism evidenced in the attack on the United States, Britain, Israel, Iraq, Afghanistan, Spain etc can only be solved on a global basis according to this argument. It is clear that this argument does not really apply taking into cognizance the fact that most of the emerging issues giving rise to modern day terrorist activities as evidenced above differ. Further, the prevailing environmental and social factors in each of these sovereign entities also differ which makes this argument difficult to construe. Of course, if one looks at the realities of international relations, it is very hard to find a move in the direction which Falk advocates. Though, some states are doing their best to solve these problems not by relinquishing their sovereignty, but by insisting that sovereignty must have a central role in the process. In July 2005, Niger Republic for instance requested the assistance of the Nigerian Government in solving their hunger crises as that nation was struck by famine as a result of draught. This the Niger Republic did without abandoning their sovereign status by recognizing too that their inherent right to sovereignty subsists.

Another argument is that advanced by Friedman, who maintains that only three states may claim rightly that they are sovereign, the former USSR, China and the USA. Friedman's argument is based on the notion that these states are capable of making an effective military plan. The

expression on Friedman's view can be construed to the effect that he sees sovereignty as an obstacle to more integration and hence real development. This cannot be so, since sovereignty is adapting itself to the realities of international relations for more cooperation in order to solve the dire problems which our world faces. The European Union and the Economic Community of West African States to mention a few can be seen as examples in this area.

It must not be forgotten that any rejection of the role of sovereignty in international society would, in practice, be in the interest of the developed countries and their multinational corporations. These corporations no doubt are struggling for the abolition of borders and jurisdiction in order to have direct access to markets and national resources. This is evident in Nigeria where multinational corporations particularly in the oil sector have held sway on the Nigerian economy with devastating consequences.

The crux of the matter is that any call for integration and the abandonment of sovereignty will never be in the interest of the weak units of international society. This is so because, by so doing, they will lose everything, including control over their destinies and their social, cultural and political particularism. Thus, it is obvious that interdependence is not taking over the concept of sovereignty. Even with interdependence in economic life, states will have a great measure of freedom in running their affairs and are indeed attached to their sovereignty.

It is also obvious that the demand for human dignity and its fulfillment is largely dependent upon performance of governmental functions. Developments within the field of human rights in some instances (the European Convention on Human rights) and (the African Charter on Human and Peoples Rights) now African Union (AU) for instance led to the establishment of some machinery which allows individuals to take their cases outside the jurisdiction of their own state. This for instance is not an abrogation of the concept of sovereignty but can be seen as limited or qualified sovereignty.

It is our humble opinion that third world countries are justified in defending sovereignty to protect them from economic and cultural hegemony of the West. They nonetheless must accept that sovereignty should serve the protection of human dignity inside their territories. Sovereignty must not be used to justify violations of human rights either in times of peace or emergencies like internal war.

4.5 THE ROLE OF SOVEREIGNTY IN CONTEMPORARY INTERNATIONAL LAW

State sovereignty denotes the competence, independence, and the legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without instruction from other sovereign states. These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of

states in these matters is not unlimited. It depends on developments in international law, including agreements made voluntarily and international relations.

As indicated earlier, IMF/World Bank loans to debtor nations are often attached with conditions. These conditions directly touches on the government of such debtor nations. The recent debt relief of 18 Billion Dollars to Nigeria have been alleged to be attached with numerous conditions, one of which is to fight corruption and privatize the remaining public enterprises.[34] This is a direct encroachment on the concept of sovereignty.

In accordance with Article 2 (1) of the UN Charter, the world organization is based on the principle of sovereign equality of all member states. In 1949 the ICJ observed that "between independent states, respect for territorial sovereignty is an essential foundation of international relations.[35] Thirty years later, the International Court of Justice referred to "the fundamental principle of state sovereignty on which the whole of international law rests.[36] As a hallmark of statehood, territorial sovereignty underlies the system of international order in relations among states. An act of aggression is thus unlawful. But the question remains as to whether the United States attack on Iraq without UN authorization violates this principle. The USA similar ventures into Panama, Haiti, Afghanistan etc is certainly outside the scope permitted by international law. Whether or not there exists a body to discuss and sanction the USA in this direction is yet to be seen.

The failure or weakening of state capacity that brings about a political vacuum within states leads to human tragedies. International and regional insecurity cannot be spared by collapsed states. Somalia, pre 2000, Yugoslavia, Sierra Leone, Liberia, Sudan, Ivory Coast, to say the least have been involved in civil wars on different occasions leading to serious human rights catastrophe and threat to international and regional peace. Whether or not the so-called humanitarian intervention should be resorted to prevent excessive human rights violations is entirely another issue. There is intense debate on the legitimacy of intervention on humanitarian grounds and it is not clear yet which side the clock will tilt. The then UN Secretary General Kofi Annan admitted this in his paper, "Two concepts of sovereignty" delivered in 1999.[37]

The evolution of the definition of a threat to international peace and security accelerated in the 1990s. For instance, while recalling Article 2 (7) of the Charter, the Security Council, in Resolution 688 (1991), nonetheless condemned the repression of the Iraqi civilian population in many parts of Iraq, including Kurdish populated areas. The Security Council at that time equally condemned attacks on civilians in Bosnia and Herzegovina, Sierra Leone, and in Kosovo which constituted grave violations of international law. It reaffirmed that persons who committed or ordered the commission of grave breaches of the Geneva Conventions and the Additional Protocols are individually responsible in respect of such breaches.[38] Kofi Annan,then as Secretary General in his opening remarks at the 1999 General Assembly stated that states bent on criminal behaviour should

know that frontiers are not the absolute defence.[39] It is thus obvious that events in the 21st century have broken new grounds on the concept of sovereignty.

Within the Charter of the UN, there is an explicit prohibition on the world organization from interfering in the domestic affairs of member states. What may be the Charters most frequently cited provision, Article 2 (7), provides:

> *Nothing contained in the present charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter.*

In summary, sovereignty is a key constitutional safeguard of international order. Despite the accelerated rate of economic globalization, democratization and privatization, the state remains the fundamental guarantor of human rights locally, as well as the building block for collectively ensuring international order. The equality in legal status of sovereignty also offers protections for weaker states in the face of pressure from the more powerful. This sentiment was captured by Algerian President Boueteflika who as the then President of Organization of African Union (OAU) addressed the UN General Assembly in 1999 and called sovereignty "our final defence against the rule of an unjust world"[40] Despite these challenges to state sovereignty, it remains the ordering principle of international affairs.

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CHAPTER FIVE

FACTORS RENDERING THE CONCEPT OF SOVEREIGNTY NEGATORY

5.1 INTRODUCTION

The previous chapter dealt extensively with the concept of sovereignty in the contemporary world order. Praises of the concept as well as arguments against it were examined. Whether which direction the pendulum should tilt has continued to generate extensive debates amongst international lawyers and notable personalities alike. In this chapter, other key issues will be examined. These issues as will be seen later constitute real obstacle to the concept of sovereignty. Issues such as self-determination, intervention, human rights, International humanitarian law, enforcement of treaty obligation of states etc have continued to have direct impact on the concept of sovereignty. Other sovereign states have had their capacity to act impaired owing to civil strife's and hence their inability to perform their roles in the maintenance of peace and world order. All these will be examined in its true perspective.

More so, there are important and widely accepted limits to state sovereignty and to domestic jurisdiction in international law. The Charter of the United Nations (UN) highlights the tension between sovereignty, independence and equality of individual states on the one hand, and collective international obligations for the maintenance of international peace and security on the other.[1] According to chapter VII, sovereignty is

not a barrier to action taken by the Security Council as part of measures in response to a threat to the peace, a breach of the peace or an act of aggression. Sovereignty of states, as recognized in the UN charter, yields to the demands of international peace and security. The status of sovereign equality only holds effectively for each state when there is stability, peace, and order among states.

5.2 SELF DETERMINATION

Self-determination as a concept has found difficulty in interpretation as well as its exact meaning in International law. Many people, mainly the minorities try to interprete the concept to suit their agitations whenever issues touching on their rights and aspirations are in issue. In many ways a central contemporary difficulty arises from the softening of two norms that had been virtually unchallenged during the cold war; the sanctity of borders and the illegitimacy of secession. For almost half a century, collective self-determination was limited to the initial process of decolonization. Existing borders were sacrosanct, and it was unthinkable that an area of a state would secede, even with the consent of the original state. OAUs Charter then, before the AU Charter was clear that colonial borders, although it is generally agreed that they were arbitrarily drawn, still had to be respected, or chaos would ensue.

At the end of the cold war, however, these relatively clear waters became muddied. First, the Soviet Union became a “former superpower”. Russia inherited the Soviet Unions legal status, including a permanent seat

on the Security Council, but 14 other new states were created. Shortly thereafter, Yugoslavia broke up into 6 independent states. Later in the decade, Eritrea seceded from Ethiopia. The weakening of the norms relating to borders and secessions is creating new tensions. In 2005, the Sudan's Peoples Liberation Movement/Army (SPLM/A) succeeded in forcing the national government in Khartoum to accept a peace settlement that virtually guarantees that southern region will achieve self-determination and autonomy after 6 years followed by a referendum in which only the people of the southern region will vote to secede or to remain within the nation of Sudan as stated in the Machakos protocol.

At the end of the six year interim period, which terminates in 2011, there shall be an internationally monitored referendum, organized jointly by the Government of Sudan and the SPLM/A for the people of South Sudan to confirm the unity of Sudan by voting to adopt the system of government established under the peace agreement, or to vote for secession. This was the peace agreement and proposed constitutional amendments intended to resolve Sudan's long-term civil war with the SPLM/A in Southern Sudan reached at the 2005 NAIVASHA Agreement.

While stakes are high regarding the likely secession of the people of Southern Sudan owing to the concept of self-determination, the same can be said of agitations in Nigeria calling for sovereignty of some parts of the most populous black nation. While it is clear that Biafran war seems to be part of Nigeria's distant past, echoes of Biafran currency in circulation and alleged seizures by law enforcement agencies in June 2006 is a threat to

Nigerian sovereignty. It is also on record that Alhaji Mujaheedeen Asari Dokubo has repeatedly called for self-determination for the people of the oil rich Niger Delta Region. He had held negotiations with the then Nigerian President Olusegun Obasanjo after he had threatened to bomb oil installations in the Niger Delta Region; calls for self-determination played a subtle role in the debates over resource control at the national conference. The national dialogue fell apart largely over claims by Southern delegates for control of 25 percent of oil receipts. By May 2009, escalation of violence was witnessed in the Niger Delta region owing to clashes between the Nigerian Military and the Niger Delta militants. The Federal Government of Nigeria on 24 June, 2009 declared amnesty for militants in the Niger Delta Region who lay down their arms. This led to the release of Mr Henry Okah of the Movement for the Emancipation of the Niger Delta (MEND). These claims, and, or calls for self-determination are in direct opposite to the concept of sovereignty.

5.2.1 THE PRINCIPLE OF SELF-DETERMINATION

The concept of the right of self-determination first appeared in President Woodrow Wilson's "Fourteen Points Speech[2]. This speech was aimed at settling the issue of colonized peoples who were subjugated by alien and, or foreign powers. Thus this right of self-determination in its historical context was concerned with the rights of people under colonial domination. The United Nations in Article 1, paragraph 2 of its Charter recognized respect for the principle of equal rights and self-determination

of peoples. Based on the language of the UN Charter, the UN General Assembly adopted on 14 December 1960, a Declaration on the Granting of Independence to colonial countries and peoples pursuant to United Nations General Assembly (UNGA) Resolution 1514. This includes provisions that confirm the right of all peoples to determine freely their political status, economic, social and cultural development.

Articles 1 and 2 of UNGA Resolution 1514 did not make any reference to indigenous peoples that are citizens of independent states having any right to exercise self determination. Thus any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country incompatible with the purposes and principles of the Charter of the United Nations is not in agreement with the Charter.[3]

The African Charter on Human and Peoples Rights in its Article 20, paragraph 1 contains very specific language about the right of all peoples to self-determination. However it expressed limits of this right to "colonized or oppressed peoples" seeking to free themselves from foreign domination, be it political, economic or cultural. It is clear that the exercise of the right to self-determination is confined to colonized peoples and the inhabitants of Trust Territories and other non-self-governing entities. Citizens of independent states may not claim the right of self-determination under the provision of international law. The secession of any indigenous group or any geographic region from the territory of an independent sovereign state is an internal affair of such state and is not an appropriate subject for international support or intervention. No such

secession can be considered valid unless it is formally approved by the governing authority of such state and rectified by the popular vote of all citizens of that state. Stringent as the conditions of this doctrine presuppose, it does appear however that its application in practice seems rather different. This no doubt can be seen in emerging states breaking barriers and becoming independent quite contrary to fulfilling the preconditions laid down by the UN charter. This no doubt has serious effect on the concept of sovereignty. Sudan which is the latest case in point is waiting for the creation of an independent Southern Sudanese Republic come 6 years time when a referendum will be organized and only voted by citizens of South Sudan. These emerging issues and others as will be seen later in this chapter are seriously eroding the spirit of the concept of sovereignty.

5.3 INTERVENTION

As a hallmark of statehood, territorial sovereignty underlies the system of international order in relations among states. An act of aggression is unlawful, not only because it undermines international order, but also because states have exercised their sovereignty to outlaw war. The principle of non interference in affairs that are within the domestic jurisdiction of states is the anchor to state sovereignty within the system of international relations and obligations. Jurisdiction broadly refers to the power, authority, and competence of states to govern persons and property within its territory. It is labeled “prescriptive” and

"enforcement". Prescriptive jurisdiction relates to the power of a state to make or prescribe law within and outside its territory. Enforcement jurisdiction on the other hand is about the power of the state to implement the law within its territory. Jurisdiction exercised by states is then the corollary of their sovereignty. Jurisdiction is clearly founded on territorial sovereignty but extends beyond it. Jurisdiction is prima – facie exclusive over a states territory and population, and the general duty of non intervention in domestic affairs protects both the territorial sovereignty and the domestic jurisdiction of states on an equal basis.

Within the Charter of the UN, there is an explicit prohibition on the world organization from interfering in the domestic affairs of member states. Article 2(7) provides:

> *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter.*

The provision of the UN Charter on this subject is clear.[4] But the question then is whether intervention can be reconciled with state sovereignty. A question now subject to intense debate in the international arena. Everyone knows, including the academia that "intervention" and "Sovereignty" are mutually exclusive notions. State sovereignty is one of the basic pillars on which world order rests, yet, there is a growing belief

that different forms of intervention are necessary in some cases to prevent or alleviate human suffering and human rights abuses. This is quite a contradiction with reference to the UN Charter.

A prerequisite for eventually removing the contradiction is to recognize that the various states constituting the world system are not equal, but that one given superpower is “more equal” than others. This assumption is not merely theoretical; it is graphically illustrated by political developments on the world stage, where the United States reigns supreme as the sole remaining superpower in the new unipolor world order. Consistency in the world system will be restored once we recognize that “humanitarian intervention” really means any type of intervention that Washington considers legitimate.

The crisis of globalization has seen sovereignty as an obstacle in the way of its further expansion. State sovereignty is no longer as absolute and inviolable as it once was, but has been transformed by modern technology into a relative notion, which can be, and indeed often disregarded. The demotion of the notion of state sovereignty from absolute to relative has been facilitated by the inability of the United Nations to present itself as a counter pole to the United States in the current unipolor world order. The structure of the United Nations reflects the global balance of power that emerged following the defeat of the fascist states in 1945, not the balance of power that emerged following the breakdown of the Soviet Union in 1981. The issue therefore is how to move from where the UN now stands

to where it should stand. That is a difficult problem to solve with might overwhelmingly prevailing over right.

While we must appreciate the difficulty in approaching this subject from an objective view, it no doubt forms the most controversial debate in modern day international system. It is clear that Article 2(4) is categorical on the prohibition of the threat or use of force. Article 51 expressly preserves the inherent right of an individual and collective self-defence of states. In addition, an exception to this rule would also be where UN authorizes such use of force.

On the basis of the famous CAROLINE CASE,[5] the customary right of self-defence presupposes three main conditions: Firstly, there must be a delict by another state; the delict must be of a kind which actually infringes or threatens to infringe the essential right of a state. Secondly, there must be a failure or inability on the part of the other state to prevent the delict or infringement. Thirdly, action taken in self-defence must be strictly confined to the object of stopping or preventing the delict or infringement and be reasonably proportionate to what is required for achieving the object.[6]

There has been instances of states asserting this right of self-defence. The military hostility initiated by Israel and the United Kingdom against Egypt over the Suez Canal in 1956 was justified by reference to self-defence[7]. In 1956 and 1967, Israel invoked the right of self-defence in hostilities against Egypt[8]. While in 1981, Israel similarly invoked the right for it's bombing of Iraqi nuclear reactors[9]. However in these and other

cases, the United Nations has not shown any inclination towards accepting the claimed justification of self-defence other than in response to an armed attack[10].

5.3.1 CLAIMS TO OTHER EXCEPTIONS

We have seen that only two exceptions are expressly allowed under the UN Charter. Force in self-defence when an armed attack occurs and action authorized by the Security Council. Beyond this, claims to other exceptions do exist. Though the international community has largely refrained from formally accepting them, they are a recurring theme in the law governing recourse to force and of intervention and as such merits closer attention. Their examination becomes sacrosanct in view of its encroachment on the concept of sovereignty in our present world. These exceptions are illustrated hereunder.

5.3.2 INTERVENTION FOR THE PROTECTION OF THE LIVES AND PROPERTY OF NATIONALS

The right of states to use force to protect the lives and property of nationals continued to be recognized throughout the period before the adoption of the United Nations Charter[11]. The United States Government at the Sixth International Conference of American States held in Havana in 1928 stated its rationale as follows:

> *What are we to do when government breaks down and American citizens are in danger of their*

lives……? I am speaking of the occasions where [Sic] government itself is unable to function for a time because of difficulties which confront it and which it is impossible for it to surmount. Now it is a principle of international law that in such a case a government is fully justified in taking action for the purpose of protecting the lives and property of its nationals. I could say that is not intervention……. Of course, the United States cannot forgo its right to protect its citizens[12].

In the period of the United Nations Charter, the existence of this right has continuously been asserted by a number of states including the UK, USA, France, Turkey to mention a few. That of course is not to suggest that controversy and disagreement does not surround the legality of that right.

At this point, it becomes necessary to recall a number of occasions in which this right has been asserted in the post – 1945 period:

(a) The British intervention in Iran (Persia), 1957.

(b) The Franco – British intervention in Egypt, 1956.

(c) The Belgian intervention in Congo, 1960.

(d) The USA intervention in the Dominican Republic, 1965.

(e) The Israeli intervention in Uganda, 1976.

(f) The USA intervention in Iran 1950.

(g) The USA intervention in Grenada, 1983.

(h) The United States intervention in Panama, 1989.

In the main, we shall not be delving in details all the contestable issues involved in all these chain of interventions, but a spot light on two of such may be ideal in order to highlight this kind of intervention and why in most cases a consequent violation of the concept of sovereignty.

In the case of Franco – British intervention in Egypt, the United Kingdom government, in several statements justified its action, inter alia on the ground that it was necessary to protect the lives of nationals. It did so by arguing that self-defence comprehends the protection of nationals[13]. The justification for British intervention was made in terms of self-defence under customary international law and not on the basis of a right exempt from Article 2(4) of the Charter of the UN. It is arguable that while reference may be made to the pre 1945 period for establishing the right to self-defence, this position has been limited by the provisions of the UN Charter placing restriction upon the use of force and consequently a violation of the sovereign status of Egypt.

The Israeli action at Entebbe, Uganda, in 1976 is another case in point. In this case an Air France airliner bound for Paris from Tel Aviv was hijacked over Greece after leaving Athens airport on 20th June, 1976. The airliner was carrying about 100 Israeli's and other passengers of different nationalities. At Entebbe where the airliner had been diverted to,

the hijackers released the non-Israeli passengers but continued to hold the Israeli passengers as hostages for the release of about 50 Palestinians imprisoned in various countries. Negotiations on the matter failed, consequently on 3rd July, 1976, Israel lunched a military operation to rescue the hostages at Entebbe. The hijackers were killed, as well as some Ugandan and Israeli soldiers.

It is worth noting that, the Israeli justification was a form of self-defence, with echoes of the United Kingdoms justification for its action in the Suez Canal zone on 31st October, 1956.[14] The above forms of interventions are highly controversial even though in the instant cases, the Security Council failed to adopt a resolution either expressing support for, or condemning the actions above[15].

In general, the form of intervention under discussion has found little favor with the overwhelming number of states members of the UN. This is in clear violation of the principle of sovereignty and the use of force as contained in Article 2 (4) of the UN Charter.

5.3.3 HUMANITARIAN INTERVENTION

The right of states to use force to protect the nationals of another state from arbitrary and inhuman treatment occurs in classical international law[16]. To examine these claims, it is important to undertake an inquiry into the relevant state practice in the post 1945 period. A number of occasions in which this right has been asserted include:

a) The Indian intervention in East Pakistan, (Bangladesh), 1971.

b) The Tanzanian Intervention in Uganda, 1979.

c) The French intervention in the Central African Republic, 1979.

d) The Vietnamese Intervention in Cambodia.

e) The Allied Force Intervention in Iraq, 1991.

f) The USA intervention in Somalia, 1992.

In the present context, we shall only highlight the Indian intervention in East Pakistan, which followed the declaration of independence by East Pakistan from Pakistan[17]. The striking feature of this intervention was the attempt by India in the Security Council to justify its action, firstly, in terms of self-defence in reaction to the bombing by Pakistani forces of airfields in India, and secondly, the protection of its vital interest arising from the threat posed by the mass exodus of refugees. The Indian intervention can be offered as an example of humanitarian intervention in the protection of human rights[18]. It is arguable however that a right to intervene exists in this area. In such conditions of course, when the denial of human rights gives rise to a threat, or potential threat to international peace and security, then the Security Council of the UN may exercise its powers under Chapter VII of the Charter to take collective measures to deal with the situation.

The residual right of individual states to intervene is doubtful in this field. Thus states cannot constitute vigilante or maintainers of international law through a process of more or less collective self-help. It is obvious that majority of contemporary legal opinion come down against the existence of a right of humanitarian intervention. This is so because,

the UN charter did not specifically incorporate such a right. Moreover, state practice in the past two centuries, and especially since 1945 had hardly provided any genuine case of humanitarian intervention hence the likelihood of its abuse by state actors. In essence, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law[19].

Recent events in the international scene are revealing, the events in Iran, Iraq, Sudan, Haiti, Afghanistan, Somalia, etc are worth mentioning here. The United States have on different occasions invaded these territories claiming her legality on humanitarian grounds. This ground has found no place in the UN enactments and these issues are completely against the principle of non-intervention as maintained by the UN and hence its attack on the sovereign status of these states. The Nigerian experience in this field will be discussed in the next chapter concerning her role in Liberia and Sierra Leone. Recognition of this exception will mean chaos, as stronger states will attack the weaker ones at the least excuse to justify this assertion.

5.3.4 INTERVENTION TO ENFORCE PROVISIONS OF A TREATY

The alleged right of intervention to enforce the provision of a treaty was that canvassed by Turkey when she attacked Cyprus, in 1974. Following the overthrow of the Makarios Government in 1974 by a coup

supported by Greece resulting in the establishment of Greek Cypriot military government. Turkey invaded the Island in the same month[20]. Turkey claimed that its intervention was justified under the Treaty of Guarantee[21]. This was made between Cyprus, Greece, Turkey and the UK in 1959. By this Treaty, Cyprus undertook to ensure the maintenance of its independence, territorial integrity and security as well as respect for its constitution[22].

The Legality of Turkish intervention is questionable in terms of Article 103 of the Charter of the UN. By this Charter, where there is a conflict between the obligations of members of the UN under the Charter and their obligations under any other international agreement, their obligations under the Charter should prevail. Thus Turkey, a member of the UN was prima facie bound by the provision of the charter to refrain from its military intervention irrespective of the right claimed by her under the Treaty of Guarantee. This no doubt is in clear violation of the concept of sovereignty recognized under the UN system.

5.3.5 INTERVENTION IN SUPPORT OF DEMOCARACY

This is otherwise known as the Reagan and Bush doctrine. It may be said to be closely connected with the one just discussed above. A claim of a right to intervene by force to impose or maintain democracy has been asserted. Instances are the USA intervention in the Dominican Republic (1965)[23], Grenada (1980)[24] and Panama (1989)[25] to mention just a few.

The doctrine underlying this from of intervention is hard to sustain. The difficulty lies in the fact that democracy cannot be defined with precision. Then again, there is the professed bias in characterizing unfavourable governments as undemocratic. The International Court of Justice appears to have rejected the doctrine in the NICARAGUA CASE[26] when it stated:

> *The court could not contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system* [27]*…..*

The court in the instant case refused to broaden the right of intervention to encompass democracy as advocated by the United States. To do this would mean opening the doors for chaos and consequently for bigger states to choose by coercion the form of government which best suits their interests. This is presently the position in Nigeria where the democratic set up dances with the tone dictated by the West in virtually all her policies. Recently, intervention upon suspicion of possession of weapons of mass destruction was the present position of the USA and her allies in attacking Iraq. All these exemptions relied upon by these state actors to justify intervention go contrary to the provisions of the UN charter and hence an affront on the spirit of sovereignty.

5.4 HUMAN RIGHTS

We must admit from the onset, that the choice of this topic for research and the current themes and issues on the subject are rather complicated and least exact. Be that as it may, research into this field has been a herculean task. That not withstanding a strenuous attempt will be made to present the issues the way they reflect the position of the international community and that, which is the position of the UN Charter.

Often, the counter to the internationalization of human rights is the doctrine of sovereignty, which on its face seems to preclude the implementation by external coercion of human rights standards. States that were colonies until recently, as well as countries that experienced frequent interventions, tend to be particularly eager to insist that implementation of human rights must occur in a manner that is consistent with strict notions of sovereignty. The UN Charter by its affirmation in Article 2 (7) that the organization is prohibited from intervening in matters that are essentially within the domestic jurisdiction of member states, seems to be reassuring members that the UN will not challenge internal state relations so long as no threat to international peace and security is present.

Whether this position expressed in article 2 (7) of the UN Charter is consistent with state practice remains much to be seen as we progress into this area. More so, the emergence of a serious human rights process at regional and global levels would seem to be the most impressive ethical

achievement of the past century. The fundamental idea that governments must act within certain prescribed limits and further that even political and military leaders might be held accountable for their actions if they amount to crimes against humanity and severe patterns of human rights abuses represents revolutionary developments.

These emergent international standards and their implementation are definitely challenging the idea that sovereignty provides governments with insulation against accountability provided that their actions are confined to territorial limits, and that their leaders have an immunity respected throughout the world. The cases of Yugoslav President, Slobodan Milosevic, Chilean leader, Augusto Pinochet, Iraqi leader, Saddam Hussein,Liberian leader,Charles Teylor,and Sudanese sitting president,Omar Bashir etc suggests that those responsible for inflicting horror on citizens have no longer any secure place to hide in the world. The establishment of the International Criminal Court by the Rome Treaty of 1998 seeks to give institutional solidity to this extension of accountability. The Treaty entered into force in 2002 following ratification by the requisite 60 countries. The court has jurisdiction over genocide, crimes against humanity, war crimes and aggression.

The point is that sovereignty and human rights are linked in complex, contradictory ways. Sovereignty can serve as a shield and pretext to enable a government to engage in abusive behavior toward its own citizenry. At the same time, it can also protect a progressive government that is committed to promoting the economic, social and cultural well-

being of its people against a geo-politically motivated intervention that seeks to exert pressure on a weaker state. Because of this dual nature of sovereignty, with its many variations, the issues raised about the relations between sovereignty and human rights in any particular case should always be considered in their broader context.

The prevailing view of sovereignty is as a status and condition of governance relating to the idea of territorial supremacy, which places the forced implementation of international human rights on a collision course with sovereignty. But if sovereignty is understood as residing in the people, the idea of popular sovereignty that has been historically associated with the French Revolution, then in many situations the realization of human rights is precisely the political project being espoused by "the sovereign" (i.e. the people). Even if sovereignty is associated with the state as a representative of the people, particularly a democratic state, then it is still possible to conceive of sovereignty as a bundle of rights and duties. This can be modified by the law making powers of the state, thereby creating the possibility that the acceptance of human rights, even with the prospect of some external accountability, is a fulfillment of sovereignty under contemporary conditions.

The viewpoint stated above seems especially applicable within the framework of the regional protection of human rights within Europe by way of the Court of Human Rights, and to a lesser extent, within the inter-American Court of Human Rights. In effect, the acceptance of external accountability for human rights, states seek to safeguard a democratic and

liberal future even against anti – democratic and anti – liberal forces within their own country. That is, sovereignty relinquishes a measure of territorial control in exchange for greater assurance that a desirable regional and national political climate can be maintained in the future.

In Africa, the African Charter on Human and Peoples Rights came into force in 1986. The Charter is consistent with that in Europe and the Americas. The Charter is also applicable to Nigeria, which ratified the Treaty. This in effect means that the sovereign status of Nigeria as far as it touches the issue of human rights spelt out in the Charter has been limited.

The bodies supervising human rights treaty obligation have tended to interpret any reservation to human rights treaties very narrowly. Indeed, is BELILOS V. SWITZERLAND[28]. The European Court of Human Rights held a reservation to be invalid despite the lack of objections by any of the other states, which were parties to that treaty. It is instructive to note that Nigeria did not only ratify the African Charter on Human and Peoples Rights, but went further to enact it into domestic legislation[29]. The implication of this according to the Supreme Court of Nigeria in the case of OGUGU V. THE STATE[30] is that the country has adopted the African Charter as part of her municipal law, and the provisions of the Charter are enforceable in the same manner as those of chapter four of the constitution.

Further in GANI FAWEHIMI V. ABACHA[31], the court held the view that no decree precludes Nigerian courts from adjudicating cases

complaining about violations against the African Charter, which is protected by International Law. According to the Court of Appeal, the federal government is not legally permitted to legislate out of its obligations.

In the case of OSHVIRE V. BRITISH AIRWAYS[32], the Court of Appeal held that it is useful to appreciate that an international agreement embodied in a covenant or treaty is autonomous of the Municipal Laws of contracting states as the high contracting parties have submitted themselves to be bound by its provisions which are therefore above domestic legislation. Thus any domestic legislation, which is in conflict with the convention, is void.

All these instances goes to show how human rights issues have continued to erode the concept of sovereignty even with the consent of the sovereign himself. The practice of the United Nations has shifted from respect for sovereignty to the protection of human rights. This shift has eroded the domestic jurisdiction limitation on UN authority. This has further posed a pattern of abuses that generate calls for UN sponsored "humanitarian intervention." Recent instances of Rwanda, Bosnia, Kosovo, Chechnya, Somalia, Sierra-Leone, Liberia etc both illustrate the impulse to intervene and the geopolitical limitation on intervention. Factors taken into account in most cases include capacity to address the situation, levels of risk, commitment and the interests at stake. This explains why the international community abandoned Rwanda in time of

need because there were no perceived interests. In the case of Chechnya, the high risk involved was the undoing.

It is evident that the spectrum of accepted meanings associated with both sovereignty and human rights establishes a domain of ambiguity that enables political actors with contradictory values and goals to invoke either or both poles for their instrumental purposes. For all these reasons, it is particularly important to deconstruct the sovereignty / human rights debate in relation to interests and values in context. No doubt as stated earlier, conclusion is difficult, but the position has been expunged for any reader who approaches the subject to balance the claim for sovereignty and the protection of human rights.

5.5 INTERNATIONAL HUMANITARIAN LAW.

Attempts have been made in several instances above which tend to show that the concept of sovereignty is withering away. Humanitarian consideration is another area where the UN has on several occasions made pronouncements on this subject matter. For instance, while recalling Article 2(7) of the Charter, the Security Council in Resolution 688 (1991), condemned the repression of the Iraqi civilian population in many parts of Iraq including the Kurdish populated areas[33]. The Security Council has repeatedly condemned attacks on civilians in Bosnia and Herzegovina, Sierra Leone and Kosovo, which constitute grave violations of international law. It has reaffirmed that persons who commit or order the commission of grave breaches of the Geneva Conventions and the

Additional Protocols are individually responsible in respect of such breaches[34]. Similarly, the establishment of international tribunals, with criminal jurisdiction as well as the International Criminal Court signal that atrocities committed against human beings by their own governments including war crimes and crimes against humanity, and the perpetration of genocide may trump claims of sovereignty[35].

The main interventions of the 1990s were justified, at least in part, on humanitarian grounds, though again the humanitarian dimensions were framed as threats to international peace and security. In most cases, the dire humanitarian situations were explicitly mentioned in the Security Councils authorization. The most extreme case being Somalia, where humanitarian appeared 18 times in Resolution 784 (1992). It is thus clear that sovereignty is not a defence for breaches of gross violations of fundamental human rights. Sovereignty does not connote unlimited power to do what is expressly forbidden by international law. This was the position adopted by the judges in the LOTUS CASE[36].

At the regional as well as global level, a great number of Conventions has been adopted for the protection of human rights, either in general or focusing on specific rights against genocide, apartheid, torture etc. Many of these rules protecting human rights have consolidated into customary rules of international law binding states whether they have ratified those conventions or not. The International Court of Justice in its advisory opinion in the case of RESERVATION TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF

THE CRIME OF GENOCIDE,[37] held that in such a convention, the contracting states do not have any interests of their own; they merely have, one and all, a common interest namely, the accomplishment of those high purposes which are the "raison d' `etre" of the convention. Consequently, many of these human rights instruments provide for an international mechanism of implementation and control which can be used by either states or individuals whether nationals of the state or foreigners. Human rights are no more internal affairs or as essentially within the domestic jurisdiction of a state. Consequently, sovereignty and the principle of non intervention does not constitute a defence in such matters neither does it protect heads of states from international prosecution. The case of President El Bashir of Sudan is an example in this regard.

International Humanitarian Law (IHL) covers the protection of victims of armed conflict and lays down international rules for the conduct of hostilities. The four Geneva Conventions of 1949 with their additional protocols of 1977 provide an extensive body of codified rules to that end. Some examples of the breaches are:

(a) Willful killing.

(b) Torture or inhuman treatment, including biological experiments.

(c) Willfully causing great suffering or serious injury to body or health, in particular rape.

(d) Compelling a prisoner of war or another protected person of the rights to fair and regular trial.

(e) Unlawful deportation or transfer or unlawful confinement of a protected person.

(f) Taking of hostages

(g) Making civilian population an object of attack. Etc.

These are just a handful of some of the breaches of IHL. The IHL contained in the Geneva Conventions of 1949 and the additional provisions contained in Protocol I of 1977 form the legal frame and basis for definition of the breaches that have to be punished. In other words, the international regulations indicate the types of crimes considered as breaches and which by their very nature and enormity cannot go unpunished by states.

It has been earlier stated that sovereignty cannot raise a bar when the issue of grave violations of human rights or breaches of IHL is in issue. The war crimes committed during the armed conflicts attending the breakup of the former Yugoslavia and during the Rwandan genocide of 1994 have been a glaring reminder of the international community's impotence or lack of will to punish those responsible for violations of international humanitarian law. The outcry caused by those tragic events prompted the UN Security Council to set up two International Criminal Tribunals, one for the former Yugoslavia and the other for Rwanda, to prosecute grave breaches of International Humanitarian Law in those two countries[38]. The operation of IHL Rules is at variance with the concept of sovereignty.

5.6 FAILED STATES

One of the challenges to traditional interpretations of state sovereignty has arisen because of the incapacity of certain states to effectively exercise authority over their territories and populations. In some cases, sovereignty is a legal fiction not matched by an actual political capacity. They are in the words of Robert H. Jackson, "Quasi – states"[39]. As mentioned earlier, the display of actual control over territory is a prominent dimension of sovereign status. Some commentators have even argued that failed states violate the substantive UN membership stated in Article 4 of the UN Charter in that they are unable to carry out their obligations[40].

The absence or disappearance of a functioning government can lead to the same kinds of human catastrophe as the presence of a repressive state or the outbreak of a deadly civil war. Resounding features of these so called failed states are anarchy, chronic disorder, and civil war waged without regard for the laws of armed conflict. These features, individually or collectively, inhibit or prevent a state from acting with authority over its entire territory. The failure of state sovereignty is obviously evidenced by the lack of control where territorial sovereignty is effectively contested by force internally. In this situation, insurgents may occupy and control large portions of the territory, inhibiting the state from carrying out its responsibility to maintain public security.

The political vacuum resulting from these circumstances leads to non-state actors taking matters into their own hands, the massive flight of

refugees, and the forced displacement of populations. These issues also create consequences of concern to other states, international organizations, and the civil society. In lending support to the intervention by the Economic Community of West African States in Liberia, Zimbabwe went so far as to take the position that when there is no government in being and there is chaos in the country, domestic affairs should be qualified as meaning "affairs within a peaceful environment[41].

The grave humanitarian consequences of the failure of state capacity has led the Security Council to override state sovereignty by determining that internal disorder may pose a threat to international peace and security. In the case of Somalia in particular, the complete absence of state capacity prompted the Security Council to authorize a Chapter VII intervention. This perspective is no doubt important in our study of the nugatory factors rendering the concept of sovereignty doubtful in that in such circumstances where a state is unable to perform its obligations to guarantee peace and security, intervention may be unavoidable.

5.7 TREATY OBLIGATION OF STATES

The last, though not the least to be considered in the factors rendering nugatory the concept of sovereignty is the performance of treaty obligations by states. State sovereignty may be limited by customary and treaty obligations in international law in the performance of their international obligations. State sovereignty therefore cannot be an excuse for their nonperformance. Obligations assumed by states by virtue of their

membership of the UN and the corresponding powers of the world organization presuppose a restriction of the sovereignty of member states to the extent of the obligations under the Charter.

Specifically, Article 1(2) of the UN Charter stipulates that "all members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter". Furthermore, member states are under obligation to achieve international cooperation in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion. This study further recognized the UN as a center for harmonizing the actions of states in the attainment of these common ends. Thus the charter elevates the solution of economic, social, cultural, and humanitarian problems, as well as human rights to the international sphere. By definition, these matters cannot be said to be exclusively domestic, and solutions cannot be located exclusively within the sovereignty of states. Issues raised in this chapter cannot be said to be exhaustive of the factors, which renders the concept of sovereignty nugatory. It is however instructive to state that these constitute the basic issues at stake today which has made the concept of sovereignty least exact in the literature of international law.

END NOTES AND REFERENCES

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CHAPTER SIX

SOVEREIGNTY OF STATE: NIGERIA'S EXPERIENCE

6.1 INTRODUCTTION

The previous chapters dealt extensively with the various components as it relates to the concept of sovereignty. Different aspects as it touches on the Nigerian state were highlighted. In this chapter, the study will be basically limited on the Nigerian experiment as far as this concept is concerned. Whether or not the Nigerian state existed as a sovereign entity prior to her independence on October 1, 1960 or, thereafter remains much to be debated.

Before independence, the British colonial lords administered the territory now called Nigeria. Nigeria's allegiance to the British Crown was not in doubt. Whether Nigeria maintains the allegiance is what academic commentators will be much interested in. As far as this thesis is concerned, our focal point will be to examine the position after independence to date and see whether the concept has direct bearing on Nigeria as a state. In trying to assess Nigeria's position, phases such as the 1st, 2nd , 3rd and 4th Republic's will be examined. Further to be considered are the military regimes of 1965- 1979,and that of 1983- 1999.The Nigerian Civil War as well as the attendant military coups will equally be highlighted as it affects democracy and hence sovereignty. Lastly, this chapter will discuss Economic Community of West African States Monitoring Group (ECOMOG)`s intervention in Liberia and Sierra-

Leone which was chiefly spearheaded by Nigeria and its consequent effect on the doctrine of sovereignty.

6.2 THE FIRST REPUBLIC (1960 - 1966)

The period between October 1, 1960 and January 15, 1966 when the first military coup took place, is generally referred to as the First Republic[1]. This is so despite the fact that the country became a Republic on October 1, 1963. It had a federal constitution that guaranteed a large measure of autonomy to four regions. It operated a democracy modeled along British lines that emphasized majority rule. The Constitution had an elaborate bill of rights and a functional, albeit regionally based multiparty system.

These democratic institutions were not enough to guarantee the survival of the republic because of certain fundamental and structural weaknesses. The most significant was the disproportionate power of the North in the federation in terms of political influences, population and land mass. The departing Colonial authority had hoped that the development of national politics would forestall any sectional domination of power. They however underestimated the effects of a regionalized party system in a country where political power depended on population. The major political parties in the republic emerged in the late 1940's and early 1950's as regional parties whose main aim was to control power in their regions. The Northern Peoples Congress (NPC) controlled the Northern Region[2], Action Group (AG) was in charge of the Western Region[3], the

National Council of Nigerian Citizens (NCNC) controlled the Eastern Region[4]. These regional parties were based upon, and derived their main support from the major groups in their regions. A notable and more ideologically based political party that never achieved significant power was Aminu Kano's radical Northern Elements Progressive Union, (NEPU), which opposed the NPC in the north.

In the general election of 1959 to determine which parties would rule in the immediate post colonial period, the major ones won a majority of seats in their regions, but none emerged powerful enough to constitute a national government. A coalition government was formed by the NPC and NCNC. Consequently Nnamdi Azikiwe (NCNC) became the Governor General (and President after the country became a Republic in 1963). Abubakar Tafawa Balewa (NPC) was named Prime Minister, and Obafemi Awolowo (AG) had to settle for leader of the opposition. The regional premiers were Ahmadu Bello, Northern Region, (NPC), Samuel Akintola, Western Region, (AG), Michael Okpara, Eastern Region (NCNC) and Dennis Osadebey, Midwestern Region, (NCNC).

Reasons advanced for the collapse of the First Republic were efforts by the NPC to use the federal government increasing power in favor of the Northern Region. The Northern Region with its preponderant size and population had the political advantage over the southern regions. The reactions to the fear of northern dominance, and especially the steps taken by the NCNC to counter the political dominance of the North, accelerated the collapse of the young republic.

Attempts by the NCNC to redress this regional power politics of the North by the 1962 census failed. All the regions knew that a favourable census result was a pre condition for control of the federation. This contest led to various illegalities: inflated figures, electoral violence, falsification of results and manipulation of figures[5].

Other events also contributed to the collapse of the First Republic. In 1962, after a split in the leadership of the AG that led to a crisis in the western region, a state of emergency was declared in the region, and the federal government invoked its emergency powers to administer the region directly. These actions resulted in the removal of the AG from regional power. Obafemi Awolowo, its leader, along with other AG leaders, were convicted of treasonable felony[6].

By the time of the 1964 general elections, politics had become polarized into a competition between two opposing alliances. One was the Nigerian National Alliance made up of the NPC and NNDP; the other was the United Progressive Grand Alliance (UPGA) composed of the NCNC, the AG, and their allies. Each of the regional parties openly intimidated its opponents in the campaigns when it became clear that the neutrality of the Federal Electoral Commission could not be guaranteed. Calls were made for the army to supervise the elections. The elections were finally held under conditions that were not free and fair. The Western Region became the "theatre of war" between the NNDP (and the NPC and the AG – UPGA)[7]. The rescheduled regional elections late in 1965 were violent. The Federal government refused to declare a state of

emergency, and the military seized power on January 15, 1966 thus heralding the collapse of the First Republic. This was the time Nigeria was left to exercise its sovereignty without interference by external powers. It was thought that all this political problems were internal affairs of Nigeria free from external intervention.

6.3 THE SECOND REPUBLIC (1979 - 1983)

The period referred to as the second republic ran between 1979 – 1983. The first elections were held in 1979 and the Federal Military Government handed over power to a civilian government on October 1, 1979. President Shehu Shagari headed the government. Five political parties contested for the 1979 elections. These parties included the National Party of Nigeria (NPN), Unity Party of Nigeria (UPN), Nigeria Peoples Party (NPP), Great Nigeria Peoples Party (GNPP), and the Peoples Redemption Party (PRP). The NPN dominated the second republic defeating Azikiwe of the NPP in a closely contested presidential elections.

A number of weaknesses besetted the second republic. Firstly, the coalition that dominated federal politics was not strong, and in effect the NPN governed as a minority because no coalition was formed to challenge its supremacy. Secondly, there was lack of cooperation between the NPN – dominated federal government and the 12 states controlled by opposition parties. Thirdly, and perhaps most important, the oil boom that

time had high expectations of growth from the populace which indeed never saw one.

There were many signs of tension in the country generated by the non payment of teachers salary resulting into a strike in 1981. Further to this, there was lack of consumer goods such as omo, soaps, beverages etc. The political situation continued to deteriorate leading to the crackdown on illegal migrants and a consequent expulsion of over 2 million foreigners in January and February 1983[8]. These foreigners were mainly from Ghana and Niger[9].

Corruption equally was rampant under the second republic. Major scandals involved the Federal Housing Scheme, the National Youth Service Corps, the Nigerian External Telecommunications, the Federal Mortgage Bank, the Federal Capital Territory Administration, the Central Bank of Nigeria and the Nigeria National Supply Company. There was massive capital flight estimated at US. $14 billion between 1979 – 1983[10].

The demise of the Second Republic was accelerated by the tension generated by the 1983 general elections, which were similar to those of 1964-65. As in the earlier elections, two major political camps were involved in the contest: The NPN and the Progressive Parties Alliance, comprising the UPN, the NPP and factions of the PRP and the GNPP. The NPN won landslide victories even in states considered traditional strongholds of the other parties like the west. In several places, violence erupted, and every election was contested in court. A number of the electoral verdicts were rescinded in view of evidence that results were

falsified. Under these circumstances, the military intervened in December 1983 bringing to an end the life span of the second republic[11]. As is the case with the collapse of the 1st Republic, the exercise of state sovereignty requires that government ensures peace and security which is a necessary ingredient of a sovereign entity. The indices of violence exhibited during the 2nd Republic are characteristic features of a failed state. A state that cannot maintain law and order lacks the basic requirement of a sovereign. In addition to this, constant military intervention in civilian administrations is an affront to stability hence its attendant encroachment on the concept of sovereignty.

6.4 THE THIRD BOTCHED REPUBLIC (1986 - 1993)

The period referred to as the Third Republic commenced with the setting up of a seventeen-member Political Bureau in 1986 by the then Head of State, General Ibrahim Babangida. The main task of this bureau was to formulate a blue print for transition programme to return the country to a democratic rule. Based on the recommendations of the Bureau, the Military Government decreed the formation of two parties in October, 1989. These parties were the Social Democratic Party (SDP) and the National Republican Convention (NRC). Other notable aspects of the transition included a new constitution review committee, a National Electoral Commission (NEC) and the setting up of a Constituent Assembly (CA) to ratify the draft constitution subject to final approval by the Armed Forces Ruling Council (AFRC). The AFRC promulgated the

new constitution by Decree Number 12 of May, 1989 after introducing amendments to the draft constitution.

In spite of these amendments, the 1989 constitution was similar to that of 1979. The presidential system was retained with minor amendments, such as the reduction in the number of senators from each state from 5 to 3. To participate in the Third Republic each prospective politician needed a clearance certificate from the Federal Electoral Commission.

The economic aspect of the transition centered on the Structural Adjustment Programme (SAP), while the social component included the process of Social Mobilization aimed at fostering a new social order and political culture. The general process was coordinated by the Directorate of Social Mobilization. The declared goals were social justice, economic recovery, mass mobilization and political education. The transition programme toward the establishment of the Third Republic was the most ambitious undertaken in Nigeria. It was more elaborate and deliberate. The goal was to prevent a recurrence of past mistakes. It was recognized that far-reaching changes involving more than the constitution and political institutions must be introduced. It was the most extended transition thus far, and this protracted schedule contributed to frequent changes in the agenda. The date of the final handing over of power was shifted from 1990 to 1992, and later 1993. State gubernatorial, assembly elections and the census was moved from1990 to 1991.

The Presidential Election was held on June 12, 1993 to usher in the Third Republic. This election was by far and large the freest and fairest election ever conducted in Nigeria. The results of this election was annulled by General Ibrahim Babangida[12], thus bringing to an end the life span of the Third Republic, which indeed, in reality never saw any republic as such, except for historical expedience[13]. The third republic was besetted with many problems which were challenging on the concept of sovereignty. Serious uprising and demonstrations marred the cancellation of the June 12, 1993 elections. There was bloodshed and anarchy witnessed particularly in the West. Chief MKO Abiola who was the supposed winner of the 1993 elections declared himself President. He was thereafter arrested and detained. Thus it was doubtful if the exercise of governmental powers (sovereign) laid in Chief Abiola or the then military government which could not keep faith in the transition programme. Here again the sovereign status of Nigeria was challenged as she could not exercise her powers properly in the maintenance of law and order.

6.5 THE FOURTH REPUBLIC

The death of General Sani Abacha in June, 1998 who was military Head of State and his replacement by General Abdulsalami Abubakar paved the way for the journey into Nigerias Fourth Republic. It may be argued for academic convenience that how can Nigeria be in the Fourth Republic when she has not had the Third? What is construed as the Third Republic is a chain of transition programmes which never saw an end. Be

that as it may, the 4th Republic came into existence on May 29, 1999 when the present democratic structure was installed. The Fourth Republic is a moment of noble temptations and amorphous political system.

There is no doubt that it is a period Nigeria was served with a booming second slavery and opening the doors to yet another cocoon of disintegration. The indices are revealing. The basic amenities shrinked and dwindled while anarchy loomed large at the horizon. The political class showed and continued to show high level of gross indiscipline and egocentrism. The greatest policy-misdirection conceived as a new beginning by operating a capitalist oriented system in poverty striken society such as ours had made most Nigerians lose faith in that new brand of democracy. Central to these disaffections was the religious abiding of the World Bank and IMF conditionality whose major stake is towards the pauperization and under-development of developing nations.

At the national and state levels, the operators of government claimed that they owe nobody explanation on issues bordering on accountability and state transparency, not even to the national and state assemblies. Indeed those that voted them into the various offices were not even in contemplation. The non-implementation of budgets had become the landmarks of the Fourth Republic and when the legislators rise with intent to impeach the President or Governors the main issues were often trivialized. In most states, the personality of the Governors was synonymous with the personality of the states. The Governors made the states their private estates disbursing funds at will. The Fourth Republic

Politicians had offered as a symbol of service to their fatherland which is no doubt at variance with the true spirit of nation building and national progress[14].

Apart from corruption which has been the watch word of the Fourth Republic, other issues such as the validity of April, 2003 and 2007 elections are still fresh in the minds of many Nigerians. The International Election Observer Mission from the National Democratic Institute for International Affairs, the Commonwealth, and the European Union all declared that the April 2003 and 2007 elections were substantially compromised through electoral fraud. These allegations are important, for widespread electoral fraud would undermine the integrity of elections and sap public confidence in the electoral process. This disenchantment could cause popular support for civilian rule to decline, which could in turn raise the spectre of yet another military coup to topple an illegitimate government[15]. The 2007 "Do or Die" elections witnessed widespread fraud and electoral violence. Some of the contestants are still in court challenging the outcome of the elections while a good number of the results were annulled by the electoral tribunals.

These factors no doubt accounted for the fall of the First and Second Republics. These electoral abuses have continued to be challenged in the various courts in Nigeria and it goes to show that the politicians themselves are not in agreement with the results of the April 2003 and 2007 elections. Despite these anomalies, the Fourth Republic have continued with much patience from the Nigerian public with poverty at its

highest level while prices of petroleum products have continued to be increased at will. Nigerians hope that a better cure will certainly come when another option is given them to choose the next batch of leaders come election in 2011. This again will depend to a large extent whether the elections will be free and fair[16]. Free and fair elections are a precondition to stability. A state that cannot guarantee peace and order is a failed state. A failed state hangs its sovereignty in the balance, as the exercise of its governmental powers in the protection of the citizenry cannot be guaranteed. Poverty, stringent unemployment, strikes and the like promote instability. The forth republic with all the encouragement it received from the public from its inception ought to have performed much better than it did if peace and stability must be achieved.

6.6 MILITARY COUPS SOVEREIGNTY AND DEMOCRACY IN NIGERIA

The aspects to be considered here namely, military coups, sovereignty and democracy have a direct impact on the sovereign status of a nation. While Nigerian coups ensure the suspension of the sanctity of a constitution, the supreme law binding on all within a territory and hence the erosion of the rights protected therein on individuals. Democracy on the other hand having ensued from the majority of votes of the population of a country should as such govern according to the dictates of the enabling legal environment[17].

Military coups have continued to evolve within the African continent and beyond despite the world wide slogan of democracy preached everywhere in the world today. In Africa coups are the order of the day eg in Mauritania in 2006 the soldiers there seized power owing to the absence of the President of that country who had travelled out of the country. On the contrary, countries within Africa do not seem to practice the democratic principles as endorsed by the West from where this has been blindly copied[18]. Whether or not Africans themselves will ever cherish any form of democratic representation is yet another issue. It can generally be agreed that, the level of corruption of our political leaders, their sit tight posture as well as their inability to yield to the yearning's of the generality of the population has very much accounted for lack of faith in this form of government on the African soil[19].

On the Nigerian context, military coups and democracy have been a knotty issue since independence. The first Nigerian national election took place in 1964, four years after the country gained independence from Britain. It wasn't a propitious start. The election was marked by boycotts, malpractices and violence. The Nigerian National Alliance won a large majority in the elections after the main opposition grouping, the United Progressive Grand Alliance (UPGA), refused to take part. A supplementary election held in the Eastern Region in March 1965 led to the UPGA winning every seat[20]. This led to series of unrests and violence. A military coup in 1966 brought Major General Johnson Aguiyi-Ironsi, an ethnic Ibo from the Eastern Region, to power. However he was killed a

few months later, and was followed by Lt-Col Yakubu Gowon from the Christian North. Relations became extremely poor between the federal government and the Ibos of the Eastern Region. In 1967, the Eastern Region proclaimed its independence as the Republic of Biafra. Violence between the federal troops and the forces of Biafra broke out. It is estimated that up to a million people died in the war, mainly through starvation, before the federal forces forced a Biafran surrender in 1970. This will be considered in detail in paragraphs 6:7 of this chapter.

Increasing opposition to continuous delays from Yakubu Gowon over the holding of free elections led to his overthrow in a bloodless coup in 1975[21]. He was replaced by Brigadier Murtala Ramat Muhammed who was assassinated six months later and followed by Lt Gen Olusegun Obasanjo who organized a transition to civil rule in 1979[22]. Alhaji Shehu Shagari of the National Party of Nigeria was elected president, and a civilian government took office. He was re- elected in 1983.

However, by the end of 1983, the civilian government was overthrown by a military coup led by Major General Mohammadu Buhari. His regime was itself deposed in 1985 by a military coup led by Major General Ibrahim Babaginda. General Babaginda pledged to transfer power to a civilian administration in 1990. In 1987 this transitional period was extended to 1992. A comprehensive timetable of democratic activities was published, local government elections were held and a draft constitution was drawn up. Political parties were legalized in 1989. In 1990, a military Coup led by Major Gideon Gwaza Orkar was attempted

but was suppressed on that same day[23].

Elections to the bicameral National Assembly were held in 1992. Presidential elections were due to be held later in the year but were postponed. Presidential election was finally held on June 12, 1993. Initial results from the elections indicated that chief MKO Abiola had won the majority of votes in 19 states and thus declared himself president[24].

A couple of days later, the results were annulled by the ruling National Defence and Security Council. General Babaginda stated that the polls had been marred by widespread irregularities. He thereafter established an Interim National Government and resigned. He was replaced by Chief Earnest Shonekan, who was to supervise the organization of the local elections to be held in 1993 and presidential elections in early 1994. Within a couple of months, Chief Shonekan resigned and General Sani Abacha assumed power. He dissolved all existing organs of state and installed his own regime.

Supreme executive and legislative power was vested in the Provisional Ruling Council (PRC). In 1995, General Abacha announced a three year programme for transition to civil rule, whereby a new president was to be inaugurated in October, 1998, following elections at local, state and national level. A new constitution was to be formally adopted in October, 1998.

General Abacha was replaced by General Abdulsalami Abubakar[25]. General Abubakar immediately organized a transition programme. Key dates in the electoral calendar were :December 1998, local government

elections, January, 1999, state elections, February 1999, National Assembly elections and presidential elections May, 1999. This transition programme was vigorously pursued and the military handed over power on May 29, 1999 to President Olusegun Obasanjo[26]. Frequent changes in the polity has had devastating consequences on the economic development of Nigeria. Military coups have had great impact on the concept of sovereignty. The sovereign as is recognized today cannot hide under the guise of sovereignty to unleash havoc within a given state. The suspension of the constitution by military governments erodes the constitutional safeguards of the majority of the citizenry. Their inalienable human rights having been encroached upon does not meet the requirements of a civilized community. An ensuing calamity in terms of crisis would result in greater hardship within a given state.

6.6.1 THE BURDEN OF THE PAST AND PROSPECTS FOR THE FUTURE.

Nigeria, despite her potential to become one of the leaders in Africa, was hobbled by turbulent and unstable governments. Since attaining independence, Nigeria has been unable to institutionalize democratic governance. By July 2009, Nigeria had spent more years under military rule than civilian; 29 to 19, while those 29 years of military rule were under approximately seven different rulers. Virtually all regimes in Nigeria, whether civilian or military, were marked by corruption, abuse of office, and gross mismanagement of the economy. Specifically, civilian regimes

have been destabilized by ethnic tensions and corruption. Compounding this mismanagement, fluid ethnic, regional and religious tensions have critically affected most civilian regimes. Ethnic tensions have been highly susceptible to institutional manipulation, ethnic and religions riots have periodically erupted. The First Republic (1960- 1966) was raven by tensions between the numerically (and therefore politically) dominant North and the economically dominant South. An increase in the number of states multiplied the number of politically active ethnic groups so that today, people discuss Nigerian political geography in terms of six "zones", each with distinct economic, agro-climate and ethnic characteristics[27].

As a result of all these factors, Nigerian democracies have been characterized by transition elections that were relatively peaceful and accepted by the populace (1959, 1979, 1993,1999), followed by "Second election" (1964, 1983, 2003) that were corrupt and often violent as incumbent manipulated the process in order to stay in power. Thus, the electoral process has tended to discredit civilian regimes, already strained by a common theme of economic mismanagement and ethnic tensions, even further. In this context, the degree of corruption that took place during the April 2003 and 2007 elections given the 1983 events remains at the bottom line of every Nigerian voter. All these instabilities constitute the hallmark upon which the sovereignty of states becomes shaken by civil strives, anarchy and confusion resulting in the breakdown of law and order.

6.6.2 THE IMPLICATIONS OF SOVEREIGNTY ON NIGERIAN DEMOCRACY

Given this checkered history, the importance of the current elections becomes clear. The nature of civilian rule in the Fourth Republic; the degree to which ethnic, regional and religious tensions surface, and whether or not the populace and the military consider the April 2003 and 2007 elections to have been credible emerge as the primary factors to be considered when assessing the stability of the Fourth Republic.

Politics in the Fourth Republic have been turbulent, yet so far democracy has endured. Obasanjos inauguration in May 1999 was heralded as a seminal event and his administration was greeted with cautious hope by Nigerians and the international community. No doubt, there are worrying signs. Between 1999 and the elections in 2003 and 2007, political, ethnic and factional violence had all increased. The Niger Delta states, the heart of the oil-producing region, witnessed a sharp rise in local ethnic violence. Christian – Muslim hostilities have erupted in several Northern states, culminating in the riots surrounding the Miss World Contests[28].

In terms of the electoral process, opposition political parties have felt that the odds were stacked in favor of the ruling Peoples Democratic Party (PDP). They alleged that the ruling party had circumscribed access to state owned media, that they had received insufficient information from the Independent National Electoral Commission (INEC) to participate in

electoral processes, and that the ruling party has used state resources for partisan purposes[29].

These signs are worrisome. The opposition parties challenged the election results of the presidential election in court. On the one hand, opposition parties do not believe that the election results were valid, and this could determine the stability and legitimacy of the government. On the other hand, however, was the fact that these parties were not violently rejecting the election results by taking up arms or calling for military intervention. Instead, they protested the results of the electoral process by taking the matter to court. International Election Observer Missions declared that the April 2003 and 2007 elections were substantially compromised by electoral fraud. These allegations were important, for this could undermine the integrity of elections and confidence in the electoral process[30].

Other disturbing scenarios have continued to emerge within the Nigerian scene. The persistent price increases on petroleum products with its drastic effects on the poverty-ridden population is itself a challenge to the survival of the Fourth Republic. In August 2005, another hike was announced for the sale of petroleum motor spirit (PMS) from N50 to N65 per litre while AGO was moved from N65 to N75. The average worker has continued to be impoverished as the take home pay continues to diminish in comparison with increasing prices of commodities. More disturbing is the trend of politically motivated killings that has become the order of the day. These killings are taking extra ordinary dimensions and

security agencies have found no answer to this emerging challenge of break down of law and order[31].

Whether or not Nigeria remains under democratic civilian regime is more than a mere academic question. Nigeria is one of the giants of Africa, demographically, economically and politically. Nigeria's strategic importance to Africa lies in its potential to be a regional hagemon in West Africa, and in the international arena is tied to the country's status as a major oil producer. Within the African continent, a stable and prosperous Nigeria can become a force for regional and continental security. A rift within the Nigerian state will no doubt have a devastating effect within Africa and beyond. The importance of credible elections cannot be underestimated. The exercise of sovereign powers by the elected representatives of a given state must equally reflect that the governed too are given their due rewards. Mass poverty is itself a challenge to stable polity and hence its attendant consequences as it relates to peace and order. Traditional challenges to sovereignty has been shown to exist in virtually all the elections conducted in Nigeria. Chaos and disorder are indices of a failed state and hence an affront to the concept of sovereignty.

6.7 THE IMPACT OF 1967 – 1970 CIVIL WAR ON NIGERIAN SOVEREIGNTY

One of the events which has had a devastating effect on the sovereign status of Nigeria since independence was the Nigerian Civil War. The Nigerian Civil War broke out on 6th July, 1967. The war was the

culmination of an uneasy peace and stability that had plagued the nation from independence in 1960. The Nigerian Civil War was fought to reintegrate and reunify the country. Soon afterwards, the battle to consolidate the legacy of political and military dominance of a section of Nigeria over the rest of the federation began with increased intensity. It is this struggle that eventually degenerated into coup, counter coup and a bloody civil war. The immediate cause of the civil war itself may be identified as the coup and the counter coup of 1966, which altered the political equation and destroyed the fragile trust existing among the major ethnic groups. As a means of holding the country together in the last resort, the country was divided into twelve states from the original four regions in May 1967[32]. The former Eastern Region under Lt. Col Ojukwu saw the act of the creation of states by decree "without consultation" as the last straw, and declared the region an independent state of "Biafra". The Federal Government in Lagos saw this as an act of secession and illegal. Several meetings were held to resolve the issue peacefully without success. To avoid disintegration of the country, the central government was left with only one choice of bringing back the region to the main fold by force.

The declaration of secession made war not inevitable but imminent. At the down of July, 1967, the first shot was fired signaling the beginning of the gruesome 30 month civil war and carnage. Preparations for war had already been set in motion on the Nigerian side by May 1967[33]. All the soldiers of Northern, Western, and Mid-Western origin had been

withdrawn from the East and redeployed. Four of the regular infantry battalions of the Army were placed under the command of 1 Brigade and redesigned 1 Area Command[34]. The Commander-in-Chief ordered mobilization of ex-service men. Out of those called up, about seven thousand in number, four other battalions were formed[35]. Increased recruitment from the personnel of the Nigeria Police Force was embarked upon. The civilians were trained in civil defence duties. In mobilizing the people of Nigeria, the Federal Government had to make the war look a just cause, to stop the disintegration of the country.

On the Biafran side, preparation for war was put into high gear as soon as the troops of non-Eastern origin withdrew from Enugu in August 1966. Thousands of people poured in for recruitment. Training was embarked upon both for officers and soldiers who were mainly lecturers and university students. Before the outbreak of hostility, the Eastern Region had no sufficient arms since all the soldiers who returned to the region did so without their arms while the soldiers who were withdrawn from the East departed with their weapons. However at the outbreak of the war, the Eastern Region had succeeded in securing arms and ammunition from France, Spain and Portugal[36].

The Federal side expected a quick victory while the Biafrans saw the war as that of survival and were ready to fight to the last man. By August 1967, the war had been extended to the Mid-Western region by the Biafrans with the aim to relief pressure on the Northern front and to

threaten the Federal Capital, Lagos. Both sides employed political, diplomatic, psychological and military strategies to prosecute the war.

By the end of April 1969, after almost two years of bloody and destructive war, the envisioned quick victory had eluded the Federal side, the rebel enclave had been drastically reduced in size but the Biafrans were still holding on. More peace conferences were held but non-achieved a cease – fire and an end to the war. The federal army embarked on a strategic envelopment of the remaining Biafran enclave. By December 1969, it was obvious that the end of the Civil War was near. The self-acclaimed Head of State of Biafra, Lt. Col. Ojukwu, realizing the hopelessness of the situation fled the enclave with his immediate family members on 10th January, 1970. The Commander of the Biafran Army who took over the administration of the remaining enclave surrendered to the Federal Government on 14th January, 1970 bringing an end to the war, secessionist attempt and blood shed.

At the Diplomatic level, the Federal Government mounted a serious campaign to dissuade other countries particularly the super powers, then USA, USSR and the United Kingdom from recognizing the secessionists. The war was painted as an adventure by an individual. The government continued to represent the entire country in the international organization where a very strong propaganda was mounted to continue to portray the war as one to reunite the country. This made it possible to win the support of the super powers and to continue to discredit Biafra. Through this support, Nigeria was able to import more arms and equipment from all

over the world to prosecute the war. In order to show that she was prepared for a peaceful solution to the conflict, Nigeria continued to participate in peace talks organized by the international community[37].

The Nigerian Civil war was a threat to her sovereignty with a great impact on international law. This can also be seen in the area of the doctrine of recognition of states. During Biafras war of independence, five states, Viz, Tanzania, Gabon, Ivory Coast, Zambia and Haiti recognized it as an independent state during the rebellion. This was so even though no state entered into formal diplomatic relations with Biafra. It is therefore questionable, whether uniform procedures of the doctrine of recognition of states apply universally or is dependent on the political exigency called to question. A uniform procedure in international law is difficult. However the position is exposed as the general practice obtains today.

6.8 ECOMOGS INTERVENTION IN LIBERIA AND SIERRA-LEONE: A CASE OF THREATENED SOVEREIGNTY

Among all of Africa's conflict – ridden sub-regions, West Africa has been the most volatile and explosive. Personalized autocracies, dysfunctional political institutions, economic disequilibrium, social decay, religions fundamentalism, mass poverty and an unfavourable international environment have triggered civil conflicts resulting in the breakdown of law and order, collapse of national sovereignties and the outflow of refugees across national borders, causing massive humanitarian crisis[38].

West Africa's list of crises grew to immense proportions in the 1990s. Cataclysmic civil wars in Sierra Leone and Liberia resulted in state collapse. Admirably, West Africa, more than any other sub-region in Africa, has taken proactive steps to establish a regional security mechanism to manage its own conflicts. Established in 1975 as a regional body for economic integration, the Economic Community of West African States (ECOWAS) expanded its mandate in 1990 when it created a Cease – Fire Monitoring Group (ECOMOG) to intervene in domestic conflicts that threatened regional peace and security[39]. Its debut operations in Liberia between 1990 and 1997 was the first such action by a sub-regional grouping in Africa to principally rely on its own financial, material and military resources to intervene in internal conflicts. In neighboring Sierra-Leone, ECOMOGs intervention in 1997 to reinstate the government of President Tejan Kabbah was unprecedented and extraordinary.

The ECOMOG experience in Sierra Leone is illustrative. The 21st Session of the Authority of Heads of State and Government's had recommended that "the Sierra-Leonian crisis be resolved through a combination of dialogue to foster national reconciliation and the strengthening of ECOMOG"[40]. They decided to adapt the mandate of ECOMOG to "reflect the new exigencies of peace and national reconciliation in Sierra-Leone.

Civil war broke out in Liberia in December, 1989. The Economic Community of West African states (ECOWAS) intervened in August 1990 through the ECOWAS Monitoring Group (ECOMOG) which it had set

up[41]. The decision by a few ECOWAS countries to intervene in Liberia received broad support and applause from many quarters[42]. Infact, it is the only example in the world of a regionally based peace keeping force sent to a country within that region to oversee the resolution of a conflict. However, this ECOWAS decision also raises the serious question of the legality of the intervention in internal conflicts in the Post – cold war era.

The Treaty that created ECOWAS Customs Union made no provision for a collective security or peacekeeping role. But the problems of integration and security as a pre-condition for developments were never lost on its member states[43]. In 1978, a protocol on Non-aggression was adopted requiring member-states to take intra-regional disputes to the organization for peaceful resolution[44]. This protocol however, addressed neither the issues of threats coming without the region nor threat that are purely internal. In 1981, this inadequacy was supplemented by another protocol on mutual defence. This defence pact which took effect in 1986, additionally provided for ways of dealing with internal armed conflict within any member state engineered and supported actively from outside likely to endanger the security and peace in the entire community[45].

It is instructive to note that after almost three years of ECOMOGs intervention in Liberia, the UN Security Council became seized of the Liberian conflict by its unanimous adoption of Resolution 788 (1992) of 19 November 1992. By that resolution, the Security Council determined that the deterioration of the situation (civil war) in Liberia constituted a threat to international peace and security particularly in West Africa as a

whole, and imposed under chapter vii of the Charter, a general and complete embargo on all deliveries of weapons and military equipment to Liberia except destined for the sole use of ECOMOG.

At this point, we need not dwell on the military operation in Liberia and Sierra-Leone, but we will be more concerned with the legal aspects of ECOMOGs intervention and its consequent effect on the host state in terms of her sovereign status. One of the legal issues raised by the ECOMOG intervention in the Liberian crisis had to do with whether the problem in Liberia fell within the expected scope of Article 52 of the UN Charter relating to the maintenance of international peace and security. In considering this issue, it is of course incontestable that ECOMOG was intended to end the carnage, blood-shed, anarchy and human suffering in Liberia and to restore peace, order, security and stable democratic polity in that country. It was also aimed at preventing the crisis from escalating and thus spilling over into other states and creating a grave threat to international peace and security in the West African region.

It can also be argued that ECOMOG's intervention in Liberia was "anomalous" as the idea of a military interventionist force is not quite in tandem with the basic aim of ECOWAS, which is regional integration. In this context, it becomes obvious that the ECOWAS Treaty of 1975 did not envisage a peacekeeping role for the organization.

Furthermore, evidence abounds that the UN consistently supported ECOMOG's activities in Liberia[46], and significantly went further to establish the United Nations Observer Mission in Liberia (UNOMIL) to

undertake monitoring and supervisory operations simultaneously with ECOMOG. The significance of UNOMIL in this context lies in the novelty of the UN undertaking a major peacekeeping operation with another organization, in this case, a sub-regional organisation[47].

The issue of authorization by the Security Council of regional arrangements for peace keeping is another dimension to these matters. Article 53 of the UN Charter provides that regional arrangements for enforcement action must be with the authorization of the Security Council. The issue therefore would be whether the provision of Article 53 extends to every one of the arrangements undertaken by regional or sub regional organization in crisis areas. The sub – regional peace keeping operations by ECOMOG in Liberia was endorsed by the OAU. That is the regional body. In that context, it became in a way like a regional effort.

The ECOMOG's intervention in Liberia as an example of modern developments in peace keeping bears out the underlying philosophy set out in Boutros Ghalis Agenda for peace. In an obvious evaluation of the past as a basis for his position, he observed that:

> *In the past, regional arrangements often were created because of the absence of a universal system for collective security. Thus, their activities could on occasion work at cross purposes with the sense of solidarity required for the effectiveness of the world organization. But in this new era of opportunity, regional*

arrangements or agencies can render great services if their activities are undertaken in a manner consistent with the purposes and principles of the Charter, and if their relationship with the United Nations and particularly the Security Council is governed by Chapter VII[48].

Identifying the potential advantages of these regional arrangements in the face of the primacy of the United Nations for the different facets of the peace process, he observed further that they could not only lighten the burden of the Council, but also contribute to a deeper sense of participation, consensus and democratization in international affairs. Seeing them as highly complementary to the UN efforts, Boutros Ghali observed that:

Their joint undertakings would encourage states outside the region to act supportively. And should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort[49].

As the foregoing pages have shown, the legal dimensions to the process must provide the proper foundations for peace keeping in all its modern ramifications. The final conclusion would be that lack of a clear cut authorization in terms of legality for ECOMOGs intervention will be an affront to the sovereignty of both Liberia and Sierra-Leone. In whichever dimension this goes, it is difficult to state with clarity where the argument will lie either for or against intervention. Be that as it may, this example of a regionally based peace keeping effort has been commended worldwide and hence its ability to check the spillage of serious refugee problem within the region.

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CHAPTER SEVEN

FINDINGS, SUMMARY AND RECOMMENDATIONS.

7.1. FINDINGS

A cursory look at the chapters examined in this study reveals several findings and observations. These observations have further affected the concise understanding of the subject under discussion. A state as earlier noted is a political entity possessing sovereignty. A state need not be subjected to any higher political authority. A state can be seen as a centralized organization of the whole country. Most of the basic characteristics and functions of the state is to maintain law and security[1]. It is however worth noting that some of the states of today have failed to meet this target. States like the Sudan, Iraq, Ivory - Coast, Sierra - Leone, Liberia, Somalia, Yugoslavia, Afghanistan e.t.c have at one time or the other been engaged in civil war and hence unable to perform one of the most essential functions of a state in the maintenance of law and order.

Another obvious observation that can be seen is with respect to the attribute of statehood. Even though the only legal source on the matter, the Montevideo Convention on the Rights and Duties of States have listed certain criteria which a state must possess to be recognized as such. Such criteria's as permanent population, defined territory, government and capacity to enter into relations with other states are not in most cases

mutually co existent. The former situation of Somalia (pre- 2000 with it's lack of central government for years as well as the former Yugoslavia with its de-fecto territorial division prior to the Dayton Agreement shows that this traditional requirement might necessarily need not be complete[2].

Closely akin to the observation made above arises yet another issue relating to the Palestinian question and the Israeli position with regard to population and territory as an attribute of statehood. Israel undoubtedly a state has had its boundaries not delimited nor definitely settled. Yet Israel exercises all the functions of an entity called a state. Thus there seems to be no clear-cut definition nor attribute which goes to show that a state of today need necessarily posses to be recognized as such.

As earlier noted, sovereignty is well entrenched in legal and political discourse. It is however observed that territorial boundaries have come under stress and have diminished in significance as a result of contemporary international relations. Not only have technology and communication made borders permeable, but the political dimension of internal disorder and suffering, have also often resulted in greater international disorder[3].

Sovereignty is the most glittering and controversial notion in the doctrine and practices of international law. It may be observed that the time of absolute sovereignty has passed as its theory have never in history been matched with reality. If sovereignty donates the competence, independence and equality of states, then the concept is a mockery as same has been routinely violated by the powerful. In today's globalizing

world, it is generally recognized that, cultural, environmental and economic influence neither respect borders nor require an entry visa[4].

This study from the onset acknowledged the independence of states as the hallmark for peaceful co existence. It may as well be observed that the weakening of state capacity brings about a political vacuum within states. This vacuum in most instances leads to human tragedies. International and regional insecurity cannot be spared by such collapsed states. Somalia, Yugoslavia, Sierra Leone, Liberia, Sudan, Ivory Coast, Afghanistan to say the least have at one time or the order been involved in civil wars on different occasions leading to serious human rights catastrophe. This had on several occasions led to a threat to international and regional peace. This observation goes to show that the specific meaning of independence cannot be matched by reality.

Another obvious observation is with respect to the principle of non-intervention. The principle of non-intervention as earlier noted in this study is the anchor to state sovereignty. Article 2 (7) provides for an explicit prohibition on the world organization (The UN) from interfering in the domestic affairs of member states. Here again the question remains as to whether intervention can be reconciled with state sovereignty having regard to the numerous exceptions to the prohibition of intervention in affairs that are within the domestic jurisdiction of states. Intervention and Sovereignty are mutually exclusive notions. There has been a growing belief that different forms of intervention are necessary in some cases to prevent or alleviate human suffering and human right abuses[5].

The growing calls for humanitarian intervention in recent days seems to mean that humanitarian intervention can be any type of intervention that Washington considers legitimate. While we must appreciate the difficulty in approaching this subject, it no doubt forms the most controversial debate in modern day international law. While it is clear that there is prohibition on the use of force, certain exceptions exist which are further compounded in certainty as earlier considered in chapter five. It is therefore in our opinion that the notion or concept of non – intervention as formulated by the United Nations lacks clarity and hence its lack of focus in this area[6].

As earlier seen in this thesis, the concept of self – determination arises yet another dimension to our study with obvious difficulties. We have seen earlier that the concept of self-determination was initially limited to colonized or oppressed peoples. Thus collective self-determination was limited to the initial process of decolonization. As may be observed now, the concept has found difficulty in interpretation. This is because new entities are breaking barriers. Yugoslavia, Eritrea and recently Sudan. It is clear that Articles 1 and 2 of the UN General Assembly Resolution 1514 did not make references to indigenous people that are citizens of independent states having any right to exercise self determination[7].

The secession of any indigenous groups or any geographic region from the territory of an independent sovereign state is an internal affair of such state and is not an appropriate subject for international support or intervention. No such succession can be considered valid unless the

governing authority of such state formally approves it, and ratified by the popular vote of all citizens of that state. This in practice seems rather different. This no doubt can be seen in emerging states breaking barriers and becoming independent quite contrary to fulfilling the pre-conditions laid down by the UN Charter. Sudan's case in point shows that, referendum to approve Southern Sudan as a separate state will only be voted for by citizens of the South Sudan. These emerging issues are far from clear and are making the concept of sovereignty least exact both in theory and practice.

As earlier noted in chapter five, the counter to the internationalization of human rights is the doctrine of sovereignty. This on its face seems to preclude the implementation by external coercion of human rights standards. We have seen the emergence of serious human rights processes at regional and global levels in the past century[8]. We have also seen the fundamental idea that government must act within certain prescribed limits and further that even political and military leaders might be held accountable for their actions if they amount to crimes against humanity.

It would be observed that these emerging international standards and their implementation are definitely challenging the concept of sovereignty. The point has already been made that sovereignty and human rights are linked in complex, contradictory ways. The acceptance of external accountability for human rights occurs within a setting in which

demographic states seeks to safeguard a democratic and liberal future even against anti- democratic and anti- liberal forces within their own country.

As earlier examined above, it can therefore be observed that human rights issues have continued to erode the concept of sovereignty even with the consent of the sovereign himself. The practice of the United Nations has shifted from respect for sovereignty to the protection of human rights. This shift has eroded the domestic jurisdiction limitation on UN authority[9]. This has further posed a pattern of abuses that generate calls for UN sponsored humanitarian intervention. It becomes evident that, the specimen of accepted meanings associated with both sovereignty and human rights establishes a domain of ambiguity that enables political actors with contradictory values and goals to invoke either or both poles for their instrumental purposes.

This thesis no doubt evaluated the classical role of UN in dispute resolution. We no doubt equally emphasized that on some occasions the UN has been remarkably slow in taking action. This was the case in the first Gulf war between Iran and Iraq. This UN inability to act on schedule has left catastrophic consequences and burden to several entities as was the case of Somalia, Rwanda, Chechnya, Sudan, Liberia, Sierra- Leone just to be specific. It could be observed that, the inability of the UN to act on schedule will make intervention rather selective[10]. This will further pose a pattern whereby sovereign states will see the UN as a suspect organization whose motives cannot be predicted nor understood with precision.

Chapter five of this thesis dealt with the role of the UN in the maintenance of international peace and security. This was considered when evaluating Article 24 of the UN Charter. By this, the UN confers on the Security Council primary responsibility for the maintenance of international peace and security. The Security Council while doing this acts on behalf of the UN. Charter vii of the charter and in particular Article 39 governs action to be taken when there are threat to the peace, breaches of the peace and acts of aggression.

It was further noted in chapter six that three legal principles guide peacekeeping operations[11]. These include that the force must be autonomous, consent of the host state and non-use of force except in self defence. This means that the principle of non - interference in the internal affairs of these parties is vital to peacekeeping operations. The basic observation here is that this rather important role of the UN with regard to peace keeping is not strictly provided for in the UN Charter. This is not withstanding the fact that it is the basic constitutional document of the organization. Another observation lies in the ability of the UN to carry out peace keeping operations without the use of force. This is clearly not feasible as was the case in Congo in 1960, Yugoslavia in 1992, Somalia in1992 to mention a few. Another obvious observation may arise a question as to which of the organs of the UN has the authority to create a peacekeeping force. This is because, the issue may then turn on whether the appropriate organ has acted. If not, whether the force so created is

legal. This issue came up with the creation of the UN emergency force in Egypt during the Suez crisis (1956). Lack of clarity or vagueness of a mandate can mar peacekeeping effort[12].

7.2 SUMMARY

From the onset, this thesis has been primarily concerned with the examination of the concept of sovereignty in international law, issues, challenges and lessons for Nigeria. So far, several issues have been canvassed in this study. These issues range from the concept of statehood, sovereignty, recognition of sovereignty, factors which renders the concept of sovereignty nugatory and intervention. These issues formed the bedrock of this thesis which and as such has been considered in detail. For the purpose of this summary however a highlight of these issues becomes necessary.

A state is an organized political community controlled by one government. In international law, a state is a political entity possessing sovereignty. One of the most basic characteristics of the state is the regulation of property rights, investment, trade and the commodity markets. Thus a sovereign state is one which is not subordinate in its capacity for international action to any other legal entity[13]. The state further put up agencies competent to deal with foreign states in the way accepted as normal by the international community.

The legal criteria for statehood include population, defined territory, government, capacity to enter into relations with other states

independence and diplomatic recognition. We have further seen that the possession of all these characteristics is rather difficult in practice. Even though these technical requirements serve as a guide, it by no means imply that a sovereign state must meet all these criteria stated above.

State sovereignty donates the competence, independence and legal equality of states. It was a profound transformation in the concept of political authority which spanned over the middle ages. State sovereignty has for the past century been a defining principle of interstate relations and a foundation of world order[14]. The concept lies at the heart of both customary international law and the UN Charter. It remains both as an essential component of the maintenance of international peace and security. As earlier noted the concept has never been as inviolable, either in law or in practice. Sovereignty has routinely been violated by the powerful. In today's globalizing world, it is generally recognized that cultural, environmental and economic influences neither respect borders nor require an entry visa.

The concept of state sovereignty is well entrenched in legal and political discourse. At the same time as earlier noted in this thesis, territorial boundaries have come under stress and have diminished in significance as a result of contemporary international relations. Not only have technology and communication made borders permeable, but the political dimensions of internal disorder and suffering have also resulted in greater international disorder[15]. Consequently perspectives on the range and role of state sovereignty have particularly over the past decade evolved

quickly and substantially. With the above in mind several academicians, lawyers, and statesmen have advanced arguments for and against the concept of sovereignty. It is difficult to state with precision weather any of the arguments could be preferred. However, this goes to show how complex this area of research is in the present world order. As glittering as the concept of sovereignty may seem, several negative factors tend to make it appear least exact in the literature of international law. Issues such as self determination, intervention, human rights, international humanitarian law enforcement of treaty obligation of states, failed states etc pose a great challenge to the concept of sovereignty.

Self determination in its historical context was concerned with the rights of people under colonial domination. But with the end of colonialism, the concept has been misinterpreted and misapplied by minorities to suit their rights and agitations whenever issues touching on their rights and aspirations are in issue. The softening of these norms relating to self determination saw Yugoslavia, breaking up into independent states, Eritrea breaking up from Ethiopia etc[16]. Sudan is equally on the verge of such division while in Nigeria agitations are high within the Niger Delta region for secession. The application of this concept is quite at variance with the trusts and wordings of international law on the subject.

While self determination violates the sovereign status of nations, intervention on the other hand is hard to construe when examining the wordings of article 2 (7) which prohibits intervention. There is the

growing belief that intervention and sovereignty are mutually exclusive notions. The crises of globalization have seen sovereignty as an obstacle in the way of its further expansion. State sovereignty is no longer as absolute and inviolable as it once was, but has been transformed by modern technology into a relative notion, which can be, and often disregarded[17]. Several exceptions have been advanced on the rule against non-intervention. These exceptions include intervention for the protection of the lives and property of nationals, humanitarian intervention, intervention to enforce the provisions of a treaty, intervention in support of democracy, human rights, international humanitarian law etc. These exceptions have on several occasions been resorted to by states to advance their argument in support of intervention with its attendant effect on sovereignty.

Another challenging aspect on the concept of sovereignty arises because of the incapacity of certain states to effectively exercise authority over their territories and population .In some places, sovereignty is a legal fiction not matched by an actual political capacity. The absence or disappearance of a functioning government can lead to the same kind of human catastrophe as the presence of a repressive state or the outbreak of a deadly civil war. Features of these are anarchy and civil war waged without regard for the laws of war. These may result in lack of control and hence inhibiting a state from exercising its sovereignty, particularly in the maintenance of public security. As evidenced in the case of Somalia, the UN Security Council held that internal disorder could pose a treat to

international peace and security. This no doubt poses a challenge to the concept of sovereignty.

The performance of treaty obligations by states may also limit our understanding of the concept of sovereignty as earlier seen in this study. Obligations assumed by states by virtue of their membership of the UN and the corresponding powers of the world organizations pre suppose a restriction on the sovereignty of member states to the extent of their obligations under the charter. Article 1 (2) of the UN Charter stipulates that all members in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present charter. The performance of some of these obligations may run counter to the principles of sovereignty.

Nigeria's experience as far as the concept of sovereignty is concerned is indeed challenging. This can be evidenced from the time Nigeria was administered by the British Colonial lords up to independence and extending beyond. The 1st, 2nd, 3rd and the 4th republics offered some challenges to the survival of Nigeria's entity as a state. This was primarily so as elections marred by malpractices and violence have on each occasion shaken the Nigerian state. On the other hand military coups in Nigeria have left a diverstating effect on democracy and sovereignty. On most of these occasions, they have ensured the suspension of the Nigerian constitution. This in effect means that the guaranteed rights provided therein eroded and hence the citizenry are left without a legal shield to resort to in terms of violations of some of these rights.

Again, the Nigerians civil war fought between 6th July 1967 and 14th January 1970 had a direct impact on the sovereignty of Nigeria as well as international law. This can also be seen from the doctrine of recognition of states. During that war, five states, viz, Tanzania, Garbon, Ivory Coast, Zambia, and Haiti recognized Biafra as an independent state during the rebellion. This was so even though, no state entered into any formal diplomatic relations with Biafra.

Another point of interest to international law and the doctrine of sovereignty was Nigerians intervention in Sierra Leone and Liberia during periods of civil war in those countries. This Nigeria did through the ECOWAS Monitoring Group (ECOMOG). However, the decision to intervene raises serious questions of the legality of the exercise in the post cold war era. This is so because the treaty that created the ECOWAS Customs Union made no provision for a collective security. It is instructive to note however that almost three years of ECOWAS intervention in Liberia, the UN Security Council became seized of the Liberian conflict by its unanimous adoption of Resolution 788 (1992) of 19th November 1992. By the resolution the Security Council determined that the deterioration of the situation (civil war) in Liberia constituted a threat to international peace and security particularly in the West African sub- region. There was no clear-cut authorization in terms of legality of ECOWAS intervention. If this is the position, then this violates the sovereignty of Liberia and Sierra Leone. Whichever way this goes, it is

difficult to state with clarity where the arguments will be either for or against intervention.

7.3 RECOMMENDATIONS

Stretching from chapters one through six no doubt reveals the nature scope and extent of the concept of sovereignty with its attendant lessons revealed in the course of the research. The state is the guarantor of peace, law and order. The sovereign status of a state needs to be protected if peace and security must be ensured. Sovereignty on the order hand denotes the competence, independence and legal equality of states to decide and act without intrusion from other sovereign states. As seen in this thesis, events in the 21st century have broken new grounds as globalization, modern communication science and technology recognizes no frontiers. The continued attack on the sovereign status of nations without recourse to the UN is to open the window for chaos and anarchy.

Preemptive action against any sovereign entity can be found in article 42 of the UN Charter. As an international body, the UN can create an institution responsible for taking appropriate action in the event of any world disorder. This will enable the UN function effectively in the task of collective security. This will further define with precision what constitutes sovereignty and intervention.

We have also seen that collective self determination in its early period referred to colonized states. This concept as it is now mostly referred to marginalized states in terms of economic, political, and social

constraints etc. However a discussion of the subject has seen how self determination is affecting the sovereignty of states. Many interest groups including minorities now hide under the banner of self determination to create chaos and tension seeking cessation from their host countries. This succession lacks clarity in terms of legality as clearly stated in this study. Self determination as a concept has to be firmly rooted to check the spate of unrests and fresh demands for secession with catastrophic effects on security and safety.

The practice of the UN it seems has shifted from respect for sovereignty to the protection of human rights. This shift has drastically eroded the domestic jurisdiction limitation on UN authority. It is evident that this practice has posed a pattern of abuses for the so called humanitarian intervention. Sovereignty and human rights have established a domain of ambiguity. This is often used by political actors with contradictory values to invoke this mode of intervention to serve their interest. Again, this humanitarian dimension is sometimes framed as threat to international peace and security. Though, sovereignty is not a defence for breaches of gross violation of fundamental human rights, nevertheless, invoking this at the least excuse to prosecute an intervention would constitute danger to peace and security. Humanitarian intervention need be precisely defined

The inability of the UN to fix precise legal boundaries to the exercise of the right to the use of force has created confusion in the study of the concept of sovereignty. Apart from the two recognized rights to the use of

force, customary international law has evolved several exceptions which are gaining grounds in the course thereby eroding the concept of sovereignty as understood by scholars, politicians and lawyers alike. The Nigerian experience of this concept in her intervention in Liberia and Sierra Leone did not help matters either. The attitude of the UN in endorsing the intervention in Liberia and Sierra Leone did not assist us in arriving at the conclusion to the study of sovereignty. Against this background, the development and classification of rules of the exercise or the right to the use of force will be timely for the world body (UN).

The resolution that sets a peace keeping operation in motion would define the mandate of the peace keeping force. This is what is called political and legal terms. The political goals should be consistent with the legal power of the Security Council and should be legally attainable. Lack of clarity of the mandate can mar a peace keeping arrangement. Spelling out clearly the mandate of any mission by the UN would avoid confusion and remove difficulty in the operation.

It may be noted, however that, because of its radical origins the concept of sovereignty has always been controversial and meaningful debate often obscured by political expediency. Viewed from this context, it is important that some coherence be brought into the theory and exceptions carefully examined. This is undoubtedly a major task for all lawyers who may have a direct responsibility for addressing their state practice. We hope what has been presented in this thesis will be of some consequence. The recent United States led intervention in Iraq on the ill-

conceived notion of the possession of weapons of mass destruction without UN authorization is least exact in the interpretation of the concept of sovereignty and the doctrine of non intervention.

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