

“The ‘African- State’ Sovereignty in the 21st Century on Spotlight: Building Paradigms”

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ABSTRACT:

The ‘African-state’ seems to be undergoing a major metamorphosis on the realization that it is sovereign. What need re-asking is; when did Africa become conscious of being sovereign? An aspect of sovereignty that has been overstressed is the concept of state sovereignty and to a lesser extent the citizen sovereignty. A paradigm must take place in the definition of sovereignty extending it to the third unofficial level- ‘individual sovereignty’ (leaders’ sovereignty). This paper analyzes sovereignty of the African state in the context of intervention by the International Criminal Court (ICC). In so doing, it raises the question on what direction this third level of sovereignty is likely to take. In its inner-core, the universality principle of UN: Universal Declaration of Human Rights (UDHR) strength is put on test. Is it going to stand with Africa’s new position with ICC which sort of think leaders rights are lightly addressed making them embarrassed before their subjects.

Key Words: African-state/ Sovereignty/ State Sovereignty/ Citizen Sovereignty/ Human Rights/ International Law/ Responsibility to Protect

ACCRONYMS

US	United States
AU	African Union
WB	World Bank
DRC	Democratic Republic of Congo
ICC	International Criminal Court
IMF	International Monetary Fund
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 INTRODUCTION

Sovereignty seems to be the one thing that has kept states to remain what they are, ‘international political entities’. In the contemporary era, it stands identical to some body of law that ubiquitously sustains it. It’s

important to inquire whether these are laws of the citizens or laws of nations, or both because it can be construed that sovereignty is defined by laws of citizens and that of nations. These laws are thus source of legitimacy giving sovereign holder authority. Discussions on liberations bear some point of reference to the concept of sovereignty. It is cautious to understand that the drive of liberation is continuous since the structure of world community of states will always make some entities dominated (thus need for liberation) as others are dominant.

Is 21st century moving contrary to the 'African State'? Why asking this is because Africa-state has found itself virtually in every global organization and body of law that govern states. Whether by choice or due to fashion of state behavior is another thing. The realization that some of these bodies are anti-sovereignty is a big point of contention and may be a neo-liberation move by the African-state. Some ingredients of sovereignty summarily bring insights into this discussion; *authority* (Wolf, 1990); suggests that the holder of sovereignty possesses authority, a right to command and correlatively the right to be obeyed), and *territoriality* which define a people in terms of membership. Is membership a constant and does the international interplay of states redefine it to make it universal? To many states now, mention of sovereignty is just but claims to the concept. There seems to be no absolutism due to the relationship between internal and external dimensions of states. The struggle of liberation of states as pushed by forces like MAU-MAU did not end with independence.

2 THE BACKGROUNDS TO THE EARLY DYNAMICS INTO AFRICAN STATE

Over the years, states have continued to evolve. The African experience portrays a continent that was invaded by imperialists who had very clear and specific interests;

- The wealth (natural resources) and
- The labor; at initial stages but

The imperialists' interests changed as their stay advanced with time and as the dynamics of their states kept changing. Several factors played into the impetus for the Scramble for Africa, most of these were to do with events in Europe rather than in Africa. By the beginning of the 1880s only a small part of Africa was under European rule, and that area was largely restricted to the coast and a short distance inland along major rivers such as the Niger and the Congo. The Scramble for Africa (1880-1900) was a period of rapid colonization of the African continent by European powers. But it wouldn't have happened except for the particular economic, social, and military evolution Europe was going through.

First of all, the success of Britain in halting the slave trade around the shores of Africa though the inland story was different with Muslim traders from north of the Sahara and on the East Coast still trading and many local chiefs were reluctant to give up the use of slaves. Such reports of slaving and markets were brought back to Europe by various explorers, such as Livingstone, and abolitionists' movements expanded in Britain and Europe by day.

Secondly, the European exploration during the nineteenth century was a common event. Barely a year went by without a European expedition into Africa. The boom in exploration was triggered to a great

extent by the creation of the African Association by wealthy Englishmen in 1788 in search of fabled city of Timbuktu and the course of the Niger River and many other sites then to behold. As the century moved on, the goal of the European explorers changed, and rather than traveling out of pure curiosity they started to record details of markets, goods, and resources for the wealthy philanthropists who financed their trips.

Thirdly, it is historically realized that Henry Morton Stanley a naturalized American (born in Wales) who of all the explorers of Africa is the one most closely connected to the start of the Scramble for Africa. Stanley had crossed the continent and located the 'missing' Livingstone, but he is more infamously known for his explorations on behalf of King Leopold II of Belgium. Leopold hired Stanley to obtain treaties with local chieftains along the course of the River Congo with an eye to creating his own colony (Belgium was not in a financial position to fund a colony at that time). Stanley's work triggered a rush of European explorers, such as Carl Peters, to do the same for various European countries.

Finally, all these ushered in capitalism. The end of European trading in slaves left a need for commerce between Europe and Africa. Capitalists may have seen the light over slavery, but they still wanted to exploit the continent - new 'legitimate' trade would be encouraged. Explorers located vast reserves of raw materials; they plotted the course of trade routes, navigated rivers, and identified population centers which could be a market for manufactured goods from Europe. It was a time of plantations and cash crops, dedicating the region's workforce to producing rubber, coffee, sugar, palm oil, timber, etc for Europe.

And all the more enticing if a colony could be set up which gave the European nation a monopoly.

Of course other reasons included; Excitements which were buoyed by steam engines and boat technologies, Medical Advances, Politics of expansion in Europe, and Military Innovations.

The European state evolution however, finds itself around the period of classical antiquity which began with the rise of the city-states of Ancient Greece and rise of empires which later fortified themselves into organized systems and later becoming some of the present states.

Majority of states have however come to existence through hard struggles. From www.historytoday.com, the Westphalia Treaty of October 24th 1648 ended the thirty years monarchic and religious wars fought in Europe, one of the most destructive conflicts in its history. It marked the triumph of diplomacy which ushered in the sovereignty of states. From Westphalia order, emerged the modern European state system - creating the basis for the modern international system of independent states. The core of the treaty expounded the FOUR main principles from the treaty:

- i. The principle of the sovereignty of nation-states and the concomitant fundamental right of political self-determination,
- ii. The principle of (legal) equality between nation-states
- iii. The principle of internationally binding treaties between states and,
- iv. The principle of non-intervention of one state in the internal affairs of other states.

In fact, it marked the beginning of an international community of law between sovereign states of equal legal standing, guaranteeing each other their independence and the right of their peoples to political self-determination. Though very foundational indeed in the history of sovereign states, in fact, not all scholars agree that it deserves this status. In Krasner (1999) "Nowhere in the settlement's treaties is a sovereign states system or even the state as the reigning legitimate unit, prescribed. Certainly, Westphalia did not create a sovereign states system *ex nihilo*, for components of the system had been accumulating for centuries up to the settlement; afterwards, some medieval anomalies persisted". By *ex nihilo* it means sovereignty arising out of nothing.

"Sovereignty is a signature feature of modern politics ... 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: supreme authority within a territory. 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", Philpott (2010).

In matters of sovereignty as in Juma (2012), "by use of states, the world can be transformed into a peaceful era" in light of complexities inherent and struggles of personalities and institutions, and likely contradictions of application of international law. The African state in its diplomacy is getting resoundingly cognizant of its due sovereignty though having voluntarily found its members sign conventions they now disown.

3 THE PROBLEM STATEMENT

While sovereignty remained a pillar of international law in the protection of states and their territorial integrity, developments in the post cold war period suggests fundamental erosion of that provision. The 1990s onwards witnessed a shift in paradigm in which international intervention became generally and increasingly acceptable in situations of gross violation of human rights and on humanitarian grounds. The promulgation of the Rome statute through which the ICC was created was based on these. The court's mandate is to handle international crimes of genocide, war crimes, and crime against humanity, all constituting gross violation of human rights. As of 2013, of the 122 member states to the Rome Statute, thirty four are African states.

African states, collectively under the AU and some individually have repeatedly expressed displeasure at the intervention by the ICC in Africa, arguing that court is targeting states in the continent unfairly, besides interfering with their sovereignty. The anti-ICC rhetoric has gained momentum, more recently with the appearing in the court by the sitting president of Kenya and his deputy, Uhuru Kenyatta and William Ruto respectively after failed concerted efforts to indict president Bashir of Sudan. The cases before the ICC currently are primarily from African states, namely Kenya, Uganda, Sudan, Democratic Republic of Congo, Central African Republic, Ivory Coast, Mali and Libya. It's on that basis that the paper analyzes intervention by the ICC and its impact on Africa's politics.

4 OBJECTIVES OF THE PAPER

- To find out the future of the UDHR in the light of anti-ICC crusade

- To find out African leadership interpretation of sovereignty and the realities thereof.
- To find out Africa's interplay in the 21st century international politics.

5 SIGNIFICANCE OF THE STUDY

This study will be useful to scholars of Political Science, International Relations and Diplomacy, Students and Practitioners of International Law, and general reading for those trying to understand the interplay between the international community and the liberation of Africa in the 21st century.

6 METHODOLOGY

This paper adopts a qualitative study design through the use of thematic approach to objectives, some case assessment of African countries, and report evaluations to arrive at paradigms.

Through thematic approach, some relevant themes are developed in a bid to discuss the objectives guiding this study. Case assessment as used here highlights the different encounters of some African countries intercourse with international organizations on matters of sovereignty while reports evaluated are meant to enhance paper discussion and conclusions.

In meeting the study objectives, this paper isolates some of the following issues for thematic study:

- Sovereignty and Statism: Theories and Criticisms
- The ICC Interventions and the Sovereignty Question in Africa
- Sovereignty and International Organizations

7 THEORETICAL FRAMEWORK

Analysis of politics from perspectives of state interests and humanitarian intervention brings to fore two different theoretical approaches, namely realism and neo-liberalism. The most appropriate category of the realist theory for such a study is the original or classical realism that's identified with scholars such as Hans Morgenthau (Morgenthau, 2005). Among the most important assumptions of the theory are that states are the most important actors in international. Crucial in the realist thought are concepts of survival in anarchical international system and interest defined as power. In a world in which sovereign nations compete for power, survival constitutes the minimum goal of foreign policy and the core national interest (Dougherty, 2001). In the realist analysis of politics, political leaders think and act in terms of interest defined as power. Furthermore, political realism does not identify the moral aspirations of a particular nation with the moral laws that govern the universe (Morgenthau, 2001). Analysis of the thought of anti-ICC crusaders reveals that their position is informed by their interest, the need to consolidate and maintain power, as well as to keep away international actors that may be perceived to be interfering with sovereignty of their states.

The neoliberal institutionalism analyzes international relations by emphasizing the significance of international organizations or institutions in diminishing conflicts, particularly in the post cold war era (Dougherty, 2001). According to neoliberal institutionalism theory, international organizations are systemic level phenomenon that may shape system structure. The subject of inquiry here involve judicial

intervention by an international institution, thus underscores the relevance of the theory to the study.

In political arena, neoliberals are concerned with issues of governance and democratization, protection and promotion of human rights among other issues. It is thus the neoliberals who advocate for intervention in situations of gross violations of human rights, thus countered by anti-interventionism as jeopardizing sovereignty of nations.

8 SOVEREIGNTY AND STATISM: THEORIES AND CRITICISMS

Sovereignty remains a very good norm and it is what keeps states equal in the international framework. Critics to it question its exclusivity in matters of territory as inconsistent with the universality principle of human rights. Its existence has formed the nature of international politics in Palestine, and Tibet which has been a tributary state to the Chinese empire for long. Many conflict resolutions have been blocked by the concept- sovereignty.

According to (Streeten, 1999), "when the nation states were founded, the city-states and feudalism that preceded them had become too small for the scale of operations required by the industrial revolution. The political institution therefore was adopted to the new industrial technology, to the roads, railways and canals. The nation state was then a progressive institution But now the nation state, with its insistence on full sovereignty, has become, at least in certain respects, an obstacle to further progress. It has landed us in several Prisoners' Dilemma situation: each nation acts in its own perceived rational self-

interest, and the result is that every country is worse off."

This is expanded further by Juma and Sitienei (2013) while suggesting that the move to regionalization in Africa is a testament that there are discrepancies to the state systems. "The operation of states in an ever more complex international system both limits their autonomy ... and impinges increasingly on their sovereignty. Sovereignty ... (is) divided among a number of agencies- national, regional, and international- and limited by the very nature of this plurality" (Held, 1995).

The conventional thought arising from the Westphalia Treaty was that sovereignty is absolute. How is it possible that sovereignty might be non-absolute if it is also supreme? Scholars such as Alan James argue that sovereignty can only be either present or absent, and cannot exist partially (James 1999, 462-4). 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 and Hobbes 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's practices of sanctioning intervention, and the international criminal court.

According to Cleophas Tsokodavi in 'Sovereignty - the legacy of the Treaty of Westphalia to international relations' "Apart from ending the Thirty Years War, the historical importance of the Treaty of Westphalia (1648), also known as the Peace of Westphalia or the Peace of Exhaustion for the international relations, is that it is generally credited with the historical origin of the sovereign state - the subject of international relations". Sovereignty as a cornerstone concept of international relations is not monolithic. It keeps on changing with historical times just like any socially construed norm. This can be observed in European integration which has widened over time, as its institution now consists of twenty-seven members, and deepened, as it did in the 1991 Maastricht Treaty, which expanded the institution's powers and reconfigured it as the European Union. Far from a replacement for states, the European Union rather "pools" important aspects of their sovereignty into a "supranational" institution in which their freedom of action is constrained (Keohane & Hoffman 1991). They are no longer absolutely sovereign.

9 THE ICC INTERVENTIONS AND THE SOVEREIGNTY QUESTION IN AFRICA

It is good to flashback on the probable genesis of the problem of African state sovereignty. The African state position may bring questioning of her independence process in totality. Juma (2012) makes a suggestion to this, "the independence process in most African countries was characterized by a semblance of

unity of indigeneous people against their colonial master. In Rwanda, however, the agitators allied with the colonialists and directed their wrath against a section of their population".

The concept sovereignty, based on international law, secured more or less a sacrosanct position in which for long it was presumed to be absolute. As pointed out earlier, the Westphalia Treaty that laid the foundations of the modern state system was unequivocal about sovereignty. The United Nations Charter made clear provision for state sovereignty. Both the UN and OAU charters reinforced the concept of sovereignty by making provisions of "respect for territorial integrity" and "non-interference in internal affairs of other states". In Africa's context, these provisions were almost taken to be absolute for the first three decades after independence. In the 1970s for instance, the continent faced some of the worst dictatorial regimes characterized with some of the most serious human rights violations since the Nazi Holocaust. Such included those of Idi Amin of Uganda, Marcias Nguema of Equatorial Guinea, and Emperor Bokassa of Central Africa. However, such rulers remained at the helm for quite along time. Latin America was not doing any better with a number of states there being under military totalitarian regimes. In Asia, the atrocities committed by the regime of Cambodian Pol Pot against his own people gives a glimpse of what was happening in a number of third world countries during the period (Oluoch, 2012a).

However it is important to note that the serious violations of human beings with the state being the perpetrator in a number of these countries to a large extent contributed to the rise of international human rights regime from the 1980s onwards (Oluoch, 2012b).

International regimes have been defined as principles, norms, rules and decision making procedures around which actor expectations converge in a given issue area (Krasner, 1985). These developments, compounded with the end of the cold war led to shift in paradigm with respect to sovereignty from the early 1990s.

First of all, the collapse of the Soviet Union and subsequent end of the cold war ushered what scholars of international relations dubbed as "the New World Order". This would be a world in which cooperation would replace conflictual pattern in international relations. Much of the prescription of what would characterize international relations would constitute the neoliberals thinking. International Institutions such as United Nations would take its right place (Nye, 1996). By implication, the UN would support intervention in situations where there are threats to international peace and security. Indeed, the global body' chief executives, first Boutros Boutros-Ghali, then Kofi Annan, faced with serious conflicts such as the ones of Somalia, Rwanda, and Yugoslavia, among others, advocated for intervention.

Second, the neoliberals' thought gained momentum as a reality of the collapse of the Soviet Union. United States remained the sole superpower thus had to implement some of its foreign policy values aggressively. These include global democratization and promotion and protection of human rights.

Furthermore, the post cold war conflicts took more of intra-state as opposed to inter-state dimensions, thus characterized with some of the worst human rights violations. Such were the cases of Rwanda genocide, the civil wars, ethnic cleansing in the former

Yugoslavia, the civil wars in Somalia, Liberia, Sierra Leone, and Ivory Coast. These are developments that prompted major global players to adopt strategies of intervention.

In Africa, unlike with the case of the OAU charter, the African Union constitutive Act (1999) provides for intervention on two grounds: on humanitarian ground in situations of gross violations of human rights and when there is threat to legitimate order of a state.

Intervention varies in dimensions from say speech by foreign leaders and other international actors on the one hand to military intervention. In between are various political and economic dimensions such as support for opposition leaders, economic sanctions, freezing of development aid, condemnation of actions of state leaders, and others. Intervention by the ICC is a more recent phenomenon, the Rome Statute having been operational from 1998. It is primarily a judicial mechanism that acts as a global resort in regard to crimes against humanity, war crimes, and genocide. The court aims at ending impunity, a problem that has affected a number of African countries for decades.

Since the election of Uhuru Kenyatta and Ruto as president and deputy president of Kenya respectively in 2013, a number of African states and AU have taken critical look at the international court, pointing out that it is a tool of neocolonialism, a term which apparently has resurfaced after some decades of little relevance. In his speech at the AU extraordinary Heads Summit, President Kenyatta unleashed a stinging attack on ICC, arguing that, "These interventions go beyond interference in the internal affairs of a sovereign state. They constitute a fetid insult against Kenya and Africa", adding that the

world court is being used by the world's major (declining imperial) powers, notably USA, Britain and EU and certain eminent personalities against the election of his government (Sunday Nation, 13.10.2013). It is important to note that top on the agenda of the extraordinary summit was the issue of mass walkout by the African states, specifically in relevance to Kenya's case.

That the AU heads summit resolved to oppose the trial of Kenyan leaders at The Hague pointing out that no senior government officer in power should be taken to the court during his term in office raises fundamental issues. First, if that were to be an effective resolution then it would shield a leader such as Sudan's Al-Bashir whom an arrest warrant had been issued against by the same court for crimes of genocide and crimes against humanity. It is noteworthy that a fundamental aim of the Rome statute was to end global impunity, a problem in which a number of African states had been victims. Second, as the former UN secretary general, Kofi Annan, himself an eminent African personality, warned that if Africa withdraw from the Rome statute would be "Africa's badge of shame" (DN, 9.10.2013). By the AU and its individual member states attempting to shield African leaders from individual responsibility under the guise of protection of sovereignty, they are making a departure from international norms and law particularly those relevant to international human rights regime. That is simply unacceptable from the neo-liberals standpoint.

Fourth, while the anti-ICC forces blame the institutions for its handling of Africa's affairs, a number of Africa's cases at the court were taken there by the African governments. Such include the cases of

Kenya, Uganda, and the Democratic republic of Congo among others. Furthermore, the cases of Libya and the Sudan were referred to the court by United Nations Security Council as per the provisions of the Rome Statute. From such positions, accusing the global criminal court is unconvincing.

Fifth, the ICC is a court of the last resort. In relation to the fourth argument above, many of those countries which referred their cases to it lacked the judicial capacity besides lack of political goodwill to handle the cases. Denouncing the court may amount to the Hobbesian state of nature in which it is war of all against all, and survival for the fittest. In a continent which has a history of atrocities and blatant violations of human rights, with the state being the perpetrator in some cases, withdrawal from the court may be a return to the dark days.

Sixth, the governments of many of the AU member states which are signatories to the Rome statute seem not to have the grasp of the provisions guiding the operations of the ICC. In the past several months they have taken initiatives to either defer the Kenyan cases, or transfer them to East Africa. Though the initiatives have taken various approaches such as shuttle diplomacy, AU ministerial and heads Assembly Resolutions, to pleading with the UN Security Council, these have not borne fruits. A realist would critic them as not able to learn from history.

Seventh, the manner in which many of those involved in the anti-ICC campaign send their messages across is a manifestation of decline in diplomacy. In his analysis of diplomacy, Morgenthau observes that the twentieth century Great Power relations was affected by decline in diplomacy, thus leading to some of the major

conflicts and wars (Morgenthau, 2005). Decline of diplomacy in contemporary Africa's context would be a serious setback for the continent particularly considering the numerous conflicts that the continent confronts.

10 SOVEREIGNTY AND INTERNATIONAL ORGANIZATIONS

As the world continues to be experiencing unprecedented crisis of security posed by terrorism, and economic pinch, when it is expected to have been calling for stronger international interventions, voices of state sovereignty continue to echo feelings of neo-independence. This position of African states especially supports the realists' age long theory of state sovereignty in this case survival which somehow has a renewed 'Pan-Africanism' of the 21st century in it yet not ignoring neo-liberalist institutions is a great contradiction.

Crimes against humanity have been for quite some time a moral chorus by many international organizations as a postlude to the dreaded world wars. In 1948, the vast majority of states reiterated in the Universal Declaration of Human Rights (UDHR) their resolve to respect the over 30 separate rights for individuals though not legally binding and having no enforcement provisions, the declaration interfered not with sovereignty of states nonetheless. The European Convention for the Protection of Human Rights and Fundamental Freedoms in 1948 set pace with commitments of refraining from crimes against humanity and punishment of those engaged in genocide. This moved inches closer to the ICC of 1998. In the 1960's, two covenants bolstered this resolve further, the Covenant on Economic, Social and Cultural Rights (CESCR) together with Covenant on

Civil and Political Rights (CCPR) bound most world states to the respect for human rights.

As Africa and other world states come to terms with the realities of human rights where violations have been transnational, it is as if the punishments of offences have hit African-state much. It is this point that engineers our thought on the concept of 'Leaders Sovereignty', the third sovereignty concept. The Westphalia treaty describes the first concept very well (territoriality and its requirements) whereas Kofi Annan and Boutros Ghali in Nyanswa (2013) highlights as also the 2001 International Commission on Intervention and State Sovereignty (ICISS) held in Canada documented Secretary General Annan expanding sovereignty to include the Responsibility to Protect which is a second concept of sovereignty.

Faced with a coincidental circumstance on African leaders, it seems there is a partial enforcement of human rights violations which targets the 'Africa state' sovereignty. Where leaders (the apex of authority) are under threat, then according to this school Africa-state sovereignty is under threat. Isn't this suggesting that Leaders sovereignty is at stake and thus suggesting a contradiction to the Vienna Convention on Diplomatic Immunity which recognizes heads of states as chief diplomats?

International organizations have been known to have respect for states as main actors in international relations. A point that is building confusion in current ICC engagement with some African states is the position of the heads of states in relation to their individual behavior and the expectation from the international organizations. When persons assume state office are their actions amounting to the

equivalence of the states sovereignty? This calls for distinguishing individual and state actions. This has become increasingly hard with the Sudan and Kenyan cases involving the persons of heads of states at the ICC. Whether it amounts to sovereignty issue is debatable, and which sovereignty? This discussion opts to build paradigms by separating individual's actions (real state representatives) from states in this matter of ICC because generalization is what is causing the perceived embarrassing situations in these cases.

Kenya's Foreign Secretary views that "it is going to be the first time a serving head of state is brought before any court of any kind, not just here, but anywhere in the world, and I could challenge you to tell me in what place on earth a serving president has been brought before a court of justice" The Standard, 10th October 2013, Geoffrey Mosoku reported. Though the contention does not separate for future precedence whether cases arising from state officers actions in active service should be treated similarly to pre and post-arising actions. This paper foresees a gap in separation of state actions and individual actions of those who assume state office (leadership) despite being considered culpable by international organizations' standards.

Mosoku ibid further records the Foreign Secretary as saying, "in most cases, in fact more countries that are considered more advanced than ours, it is clear that presidents are not hauled before court, and that in many cases, the courts have to wait for their day after the president leaves office".

It is understandable that the work of international organizations are shaped by existing international

politics and dictated by balance of power practices. Migdall (1988) points that "real political system operates outside conventions of formal state sovereignty". Could this be why the position of heads of states are ignored in criminal matters by ICC jurisdiction? By observing Zaire (now DRC) under Mobutu Sese Seko 1965-97, where formal state sovereignty collapsed and rather than providing security to citizens the regime held on to power through opposite means. Robert, Jackson (1984) notes that "global recognition of the sovereignty of the Zairean state was central to Mobutu's political strategy, especially this allowed him to attract diplomatic support and foreign aid ... this bestowed such prerogatives on rulers of weak African states."

Formal sovereignty is good in international politics and should be key analytical issue of forming decisions of international organizations. As Robert and Migdall notes, care should be taken so that international organizations are not swayed by the music of sovereignty without deep look at the merits of all issues referencing to it in practice of international relations. Sovereignty of state and citizens has complimentary effects. And this applies to leaders' sovereignty which currently in practice is latent in state sovereignty.

Amid differing views pitting international organization like ICC as an impediment to 'African state' sovereignty, it is important to posit that this dreaded court only permeates itself into African issues of crimes against humanity as a last resort. The failure of local mechanisms to address such cases allows Rome statute intervention.

11 CONCLUSIONS AND RECOMMENDATIONS

Intervention gained prominence and acceptability from the 1990s particularly following the nature of conflicts and the gross human rights violations that characterized them. Initially, the emphasis was on political and economic interventions. However, these were not found to be effective in addressing international crimes. It is against that background that the Rome Statute that made provision for the creation and the powers of ICC was promulgated.

The ICC has been criticized from being used as tool by the world's major powers, arguing that its work interferes with sovereignty of the states in the continent. However, it is important to point out that a number of countries in Africa for decades after independence were plagued with civil wars and other forms of violent conflicts. The nature of conflicts that took place in the continent and other countries such as Yugoslavia made it necessary to come up with the ICC to address the magnitude of the crimes. As such, the progress that has been made through the ICC makes its critics having little leeway. States will find themselves being given pariah status, thus isolating them and subjecting their citizens to undue hardship. National leaders who are isolated by the international community will equally find themselves irrelevant if they cannot conduct international relations.

The developments in the past couple of decades or so indicate that while sovereignty is still fundamental in international relations, the way it was viewed in the past has actually changed. States can no longer claim it as a defense in situations of conflicts and gross violations of human rights. In the case of ICC, it is the responsible individuals and not the state that stand

accused. In modern constitutions such as the one of Kenya, it is the people who are sovereign, in accordance to neo-liberals thinking (GOK, 2010).

African states should therefore strengthen their democracies. Institutions of governance should be strengthened by being made more accountable and transparent. For democracy to work effectively it require countries to have educated electorate and educated ethical leadership who would manage governments based on the rule of law and constitutionalism. These would minimize cases that may require the interventions by the ICC and other international actors. Besides, these would lead to cooperative, as opposed to conflictual international relations between African states generally on the one hand and other states and international institutions on the other hand. Furthermore, this would give Africa the opportunity to forge ahead on addressing socio-economic issues. It is also important to note that the ICC cases are dividing African states, as evident in lack of cohesive concrete resolutions during the past couple of AU Heads' Summit.

Despite the fact that many African states have voluntarily made themselves part of international organizations in pursuit of relevance in international politics, the feeling that the 'African state sovereignty' is being tampered with is rife among these very states in the wake of ICC cases on serving African heads of states. This is therefore enhancing what can be termed as neo- independence wave, a want of liberation from subjugations from institutions of world powers.

Whereas the Vienna Convention in its preamble stipulates "believing that an international convention on diplomatic intercourse, privileges and immunities

would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems". A seeming somewhat collective disrespect of African state leadership is being felt by the continent. This convention's immunity of state leadership guarantees respect to such holders of state office in judicial cycles, which the ICC is however non-segregative/considerate about on matters of crime against humanity.

When other thinkers dwell much on the legal aspects in this kind of discourse, it is gainsaying for scholars of politics and diplomacy to dig into issues of the adequacy of state sovereignty and citizen sovereignty which are tied to Boutros Ghali- Kofi Annan's 'responsibility to protect' and Westphalia liberal theory of state sovereignty respectively in relation to what this paper fronts as a third (contemporary) theory of sovereignty involving persons with immunity in international politics especially the leaders of states.

Nyanshwa (2013) alludes, "human rights and national sovereignty in the field of international relations has been an issue of concern. With growing trend towards globalization, the relationship of human rights and sovereignty has become increasingly analyzed along several dimensions. Some western liberal scholars have formed the view that national sovereignty has lost some of its all- encompassing supreme authority; international politics and domestic politics have becomes increasingly close ..."

In adopting the Boutros- Annan concept, Nyanshwa ibid further suggests that sovereignty exists beyond

the state and that the time of absolute sovereignty has passed because its theory was never matched by reality, especially to the needs of the people as pertains matters of governance.

As globalization and regionalization take shape in world politics and as Africa becomes conscious of her diplomacy, can new light be shed on sovereignty? The Euro-centric debate on the same built consensus that there was nothing wrong with the concept. The vibrant normative debate by Africa in the decades of high continental conflicts opposed the Euro-centric view and heralded the notion of 'responsibility to protect'. This, therefore, means possibility of new dimensions in the concept can still be expected.

In the thinking that some of the national sovereignty has been compromised, as international organizations change the face of local-state politics, this seems to be in clash with its own conventions. If the states are sovereign then those presiding over them are also sovereign within their terms of office. This paper suggests that the international politics may think of recognizing the immunity granted to serving heads of states as leadership sovereignty which African states find disregarded if the polity find it in tandem with objectives of UDHRs set in 1948 though with a caution that there is nothing like collective sovereignty.

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