

THE DARFUR CONFLICT AND HUMANITARIAN CRISIS IN THE REGION: CAN SOVEREIGNTY OF STATES STAND AS A JUSTIFICATION FOR NON INTERVENTION?

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ABSTRACT

The conflict in Darfur has its origins in decades of economic and political marginalization by the power elites in Khartoum. The government of Sudan, a party in the conflict, has been reluctant to allow the international community, particularly the AU and UN to intervene by sending a hybrid force to the region. The government has argued that it is protecting the sovereignty of Sudan. The NCP government in its desperation to prevent the independence of the south and to hold on to power in the forthcoming elections in 2009, recruited militias known as the 'Janjaweed' to suppress the uprisings in Darfur. This combined with rising insurgency by various rebel groups, to provide fuel for the disastrous civil conflict that has displaced more than two million people and killed at least 200,000 others. The paper analyzes the Darfur conflict, the humanitarian crisis in the region and examines whether the issue of sovereignty can stand as a justification for the non-intervention principle in the Darfur case. The paper argues that the position of AU on 'intervention and non-interference' as articulated in the Constitutive Act should be clarified to make its conflict resolution engagements in the continent more effective. The paper also concludes that the GoS cannot continue to plead sovereignty while the lives of millions of Darfurians are being lost or dehumanized.

Introduction

The Darfur conflict attracted international attention as a result of outcry from scholars, NGOs, world leaders, media, humanitarian organisations and many other concerned bodies. The media considers the situation in the region as the worse humanitarian crisis in the world today. In order to awaken the interest and awareness of the public, in the hope that this would provoke intervention from national governments or

international bodies, words such as ‘genocide’, ‘ethnic cleansing’ and ‘scorch earth’ have been used to describe the conflict (Cornwell, 2004:51).

Though the conflict in Darfur has deep historical roots, it intensified as from 2003, when the Darfur Liberation Front (DLF) renamed itself the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM) emerged to challenge the Government of Sudan (GoS) over marginalisation and neglect of the region. The rebel groups from onset were not united and rarely coordinated because they are mainly amalgamation of village defence groups. There has been rivalry between the two SLA leaders, Abdel Wahid al Nur, a Fur and Minni Minawi, from Zaghawa ethnic group; the two also have differences with the leader of JEM, Khalil Ibrahim. The armed resistance has been pursued along tribal lines, the largest segments mainly, the Fur, Zaghawa, and Masaalit (de Waal, 2007:1040).

The GoS responded by opting to deal with the situation as an internal uprising, using its military and the government backed Janjaweed drawn from a segment of Darfur’s Arab pastoralists, and Arab immigrants from Chad, whose interest is mainly land. In using the Janjaweed, the GoS allowed the crisis to escalate beyond control and demonstrated less concern to the plight of the Darfurians and more concern to the political implications of the rebellion in the region. The GoS turned a blind eye while the Janjaweed carried out ‘mass extermination of civilians, villages, homes and rebel supporters. They engaged in murder, rape and displacement of over a million people in the Muslim populated Darfur’ (Bhatti, 2007:6).

Despite many efforts to resolve the Darfur conflict, beginning with the Njdmna Humanitarian Ceasefire Agreement, signed on 8 April 2004, various efforts by the AU

and UN, a near solution is yet in sight ¹. The GoS has generally resisted interference in what it insisted were its sovereign affairs. AU's policy towards Sudan was to monitor humanitarian ceasefire agreement, assist in confidence building and improve security. AU in its pursuance of an 'African solution to African problems' has its efforts severely retarded by limitation of financial resources, logistics and its 7000 peacekeepers are inadequate to cover Darfur's vast terrain about the size of France (Murithi, 2007).

The UN Security Council Resolution 1706 passed on 31 August, 2006, invited the GoS's consent to deploy 20,600 UN Hybrid force to the region. The GoS has been reluctant to allow deep external involvement and also access for humanitarian workers into certain areas, thus blocking relief materials from reaching Internally Displaced Persons (IDPs). The position of GoS has remained that it is defending the sovereignty of Sudanese state.

The objective of this paper is to examine whether sovereignty of states can stand as a justification for non intervention in Darfur. To achieve our objective, the paper is divided into five parts. Part one introduces the paper. Part two deals with conceptual and theoretical issues. Part three provides a background of the conflict, and also examines the evolving dynamics in the conflict. Part four examines whether sovereignty can justify non intervention in Darfur. Part five concludes and offers recommendations

Conceptual Clarifications

Our task here is to determine working definitions for this paper.

Sovereignty

Many scholars have attempted to define sovereignty without coming up with a unified position. Popular sovereignty was introduced by the social contract school in the mid seventeenth century. A political scientist, Jean Bodin (1576), define sovereignty as the source of a state's authority, regardless of its form of government. Black's law dictionary followed this absolutist perspective by defining sovereignty as 'supreme, absolute, and uncontrollable power by which any independent state is governed'.²

A sovereign state possesses the highest political authority and supreme will in a state. It makes and applies laws, impose and collect taxes, make war and peace, and form treaties with different countries (Bhatti, 2007:7). Though sovereignty gives the right to govern, it belongs to the people and is exercised through the electorate. Sovereignty is delegated into three powers-the legislature, the executive and judiciary. The International Commission on Intervention and State Sovereignty in a report titled: state sovereignty and the responsibility to protect stated that sovereignty has dual responsibility. Internally, it has a responsibility to preserve human rights and externally, it should serve to further the protection of international peace and security. Prevention of conflict is the essential goal of sovereignty. The ICISS report states that the defense of state sovereignty does not mean an unlimited power. The Charter of the UN aims at protecting all member states; Article 2 states the UN's respect of the sovereignty of member states. Article 24 gives the Security Council responsibility to maintain international peace and security.

The definition offered by Stephen Krasner (1999) in his work titled *Sovereignty: Organised Hypocrisy* is very instructive. He argues that sovereignty is being eroded by modern globalization and the expectation of the ever dynamic international system. He

also observes that sovereignty is limited by mutual recognition and the expectation from the international norms such as universal human rights is impacting on the Westphalia notion of sovereignty. The paper finds the Krasner's views on international legal sovereignty useful. International legal sovereignty, he argues, is the mutual recognition between states. Sovereignty is thus subject to international recognition and without international recognition; a sovereign nation is not sovereign. Krasner also argues that sovereignty in the Westphalian context does not allow other states to intervene into domestic affairs of other states, even to protect citizens whose rights are being abused by their states. This notion he observes is hypocritical as it has been abused by states.

In the light of the discussion above, the paper sides with the arguments that sovereignty does not imply that states are free from obligations to citizens and responsibility to members of the international society.

Humanitarian Intervention

International relations literature define humanitarian intervention in variety of ways including humanitarian assistance and forcible military intervention (Ramsbotham and Woodhouse, 1996:xii). *The CSS Strategic Briefing Papers* view humanitarian Intervention as an armed intervention in another state; without the agreement of that state to address a humanitarian disaster, in particular caused by grave and large scale violations of fundamental human rights. The key aspects of this definition are related to sovereignty and human rights. First, for such intervention to take place, sovereignty of the state being intervened in must be breached. Second, for an intervention to be humanitarian, the desire to address violations of human rights should be the driving force to act.

The international law approach to defining humanitarian intervention has been developed by Sean Murphy (1996:11-12) who states that;

Humanitarian intervention is the threat or use of force by a state, group of states, or international organisations primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.

This definition suggest that humanitarian intervention could be a threat to a state that fails to protect the rights of its citizens to make it change its behaviour by one or more states or the actual use of force on the such a state to make it comply. The dilemma here is that a single state or few venturing into another state for humanitarian intervention may be perceived of doing so or may actually do so for pure national interest which may not be in the best interest of the citizens of the state being intervened. An example here is the superpower role being played by the United States in Iraq, which to a very large extend falls short of a desirable international humanitarian intervention.

The UN Charter under Article 24(1) and Chapter VII gives the Security Council power to take measures necessary to “restore international peace and security”. These provisions also allow the Security Council to authorise action based on subsequent agreements, such as the Universal Declaration of Human Rights. The Security Council can authorise an intervention if consensus can be reached that a certain humanitarian disaster is a threat to international peace and security. There have been several arguments by scholars that the Kosovo case did not meet this requirement. The authority of the Security Council should be overridden; however, there is increased concern that this authority might prevent a necessary intervention from taking place. The opinions of states also differ over the composition of the Security Council. While some want to uphold its

role, others point to its inherent flaws and the way it is dominated by the veto-holding permanent five and call for reform/ expansion of the council.

The definition offered by Ramsbotham and Woodhouse (1996) that humanitarian intervention has a wide range of meanings and contexts and that military intervention is only one option, is instructive and will guide discussions in this paper. Agwu (2007) further strengthens this position, when he stated that when a state like Sudan fails in its responsibility to protect the fundamental rights of its citizens and military or dictatorial intervention becomes the only option, such a state has detracted from its sovereignty. The next section discusses the views of scholars on the legality and legitimacy or otherwise of humanitarian intervention.

Theoretical Overview

There is no consensus among international relations scholars on the legality and legitimacy of humanitarian intervention. The positions of two schools of thought on humanitarian intervention will be discussed here. On the one hand are the realists and pluralists; on the other hand are the solidarists and cosmopolitanists.

The realist and pluralist argue that intervention undermines international order. The realists perceive the international system as anarchic, and the pluralists view the international society as a community of sovereign and independent states in pursuit of common goals which include peace and security. The realists argue that the state is the only sphere of morality. States and their citizens have no overriding obligations to the citizens of other states, and governments should not risk their resources both material and

soldiers lives except for the security and interest of their own nation. States will not intervene into another state except to serve their national interest, after due consideration of the huge resources, both financial and military that will go into such intervention.

Both the realists and pluralists point to a lack of consensus on the universality of human rights and on the principles guiding such intervention as such the legal basis for such action is not clear. Michael Walzer (1992:86-90) a leading proponent of this school argues that:

...even though the fit between government and the political life of its people may be bad, this is no justification for humanitarian intervention. We must act as if governments are internally legitimate, because to do otherwise threatens the autonomy necessary for the natural, if painful, emergence of free, civilised polities.

The overriding concern of this school of thought is that intervention will undermine the autonomy and self determination, which would as well undermine their political destiny.

The second category, the solidarists or internationalists view human rights as universal norms and justice as an important component of international order. Human rights values are given the same weight as the state system values. Sovereignty is seen as conditional and linked to internal legitimacy and requires government to respect at least minimally the wellbeing and human rights of their citizens. The main position of this school is that the principles of sovereignty and non intervention cannot shield governments or other perpetrators of gross violations of human rights. Smith (1999:289) states that:

It follows, then, that a state that is oppressive and violates the autonomy and integrity of its subject forfeits its moral claim to full

sovereignty. Thus, a liberal ethics of world order subordinates the principle of state sovereignty to the recognition and respect of human rights...The principle of an individual's right to moral autonomy, or to put it differently, to the human rights enshrined in the Universal Declaration on Human Rights, should be recognized as the highest principle of world order, ethically speaking, with state sovereignty as a circumscribed and conditional norm.

The argument that states have mixed motives for intervening is not an excuse for not doing so. Daudelin, (2000:17) observed that harnessing national interest is a key to the success of interventions. This view is further supported by Abrew (1998:65) that states have begun to redefine national interest more broadly in ways that acknowledge the relationship between humanitarian crisis, national, political and economic security. Self interest of a state many coincide with humanitarian motivations for intervening to prevent gross violations of human rights and mass deaths which are preventable.

The views propounded by realists and pluralists, and, solidarists or internationalists are instructive as to why intervention should be support or not. With respect to the situation in Darfur, the views of the paper are expressed by the latter, that a state like Sudan cannot continue to plead sovereignty because it has failed in its responsibility to protect the fundamental rights of its citizens and prevent mass murders of citizens.

Background of the Conflict in Darfur

Darfur is located in the North Western region and is composed of three states namely; North, South and West Darfur. It shares borders with Chad on the West, Libya to

the North West, and Central African Republic to the South East. The region's population has been estimated at about four or five million (HRW, 2004:6). The region's people are diverse ethnically, linguistically and culturally. There are more than 30 ethnic groups in Darfur and most of the people are Muslims. The ethnicity of the people is often described by language, and by occupation. While the first description locates the Darfurians who claim African descent, and Darfurians who claim Arab descent, the second, describes their occupation as either farmers or pastoralist. Darfur's center is inhabited by African sedimentary farmers, made up of three principal ethnic groups namely the Furs, Zaghawa, and Masaalit collectively known as 'Zurga' or blacks. The northern and southern parts of the region are inhabited by Arabs and Arabic speaking nomads. A lot of transformation has taken place in Darfur such that no part of the region can be said to ethnically homogenous. There has been a "degree of movement and intermarriages between the groups and social classes, resulting in the blurring of ethnic distinctions" (de Waal, 2005).

The conflict in Darfur has its origin in decades of economic and political marginalisation, tension over increasingly scarce farmland and water resources, maldistribution of political power and sharing of oil revenue between Northern and Southern Sudan. Whereas some scholars argue that the conflict in Darfur started in 2003, others such as Gerrard quoted in de Waal (2005), observed that the foundation of the conflict was deeply laid by British colonial rule. The British incorporated Darfur into Sudan in 1916. However, the bulk of resources were devoted towards Khartoum and the Blue Nile Province, leaving the rest of the country relatively underdeveloped.

This pattern of marginalisation continued after independence was achieved in 1956. During the 1968 elections, factionalism within the ruling Umma Party led candidates, notably Sadiq al-Mahdi to try to divide the Darfurian electorate by blaming the region's underdevelopment on the Arabs. At the same time, the Libyan leader, Muammar Gaddafi who had become focused on establishing an Arab belt across the sahel also exacerbated the Arab-African dichotomy. With the intensification of the conflict as from 2003-2004, certain communities notably the Fur, Masaalit, and Zaghawa began to identify themselves as 'Africans', 'blacks', and 'marginalised' in contrast to earlier description of themselves as Sudanese or Darfurians (HRW, 2004:6).

The current conflict in Darfur is the latest configuration of a protracted problem. Alex de Waal observed that various types of conflicts had been endemic in Darfur since the 1980s. These include, the inter communal violence, the Chadian militias who used the region as a base to fight their country, banditry, and other counter insurgency by Sudanese armed forces and their proxy militias (de Waal, 2005). It was easy for small arms to be acquired by various groups and communities in the region partly due to the regions lack of effective governance. In 2003, two local groups became prominent in the anti-government operations. These were the SLM/A and the JEM, who claimed to seek justice, and redress over decades of marginalisation, socio-economic neglect and discrimination towards African Darfurians by successive governments in Khartoum.

In 2003, the attacks carried out jointly by SLM/A and JEM was said to be unprecedented in Sudan, thus prompting the government to redefine its counter insurgency strategy. The GoS mobilised military intelligence, the air force and the

Janjaweed. The Janjaweed was outfitted as a force with communications equipment and artillery and put at the centre of the new counter insurgency strategy of the government. Sufficient military resources were also poured into Darfur, since the government had more financial resources coming from oil derived from southern Sudan. Oil revenues rose from zero in 1998 to almost 42 percent of total government revenue in 2001, after the entry of Talisman Energy Inc, Canada's largest independent oil and gas producer. The GoS announced in 2000 that it was using oil revenue to build a domestic arms industry. The military spending of 90.2bn dinars (\$349.2 million) for 2001 consumed more than 60 percent of that year's oil revenue of 149.7bn dinars (\$580.2 million). Military expenditures, which did not include domestic security expenditures officially, rose by 45 percent from 1999 to 2001. This was reflected in the increasing government purchase and use of helicopter gun ships. Russia admitted it had exported to Sudan twenty combat vehicles and twelve attack helicopters in 2001 (Rone, 2003).

Evolving Conflict Dynamics in Darfur

The Darfur conflict attracted attention and responses within and outside Africa. AU made efforts to resolve the conflict by taking over the mediation started by the Chadian government in 2004. The N'djamena Humanitarian Ceasefire Agreement, signed on 8 April, provided the basis for subsequent diplomatic efforts on Darfur. The African Union Mission in Sudan (AMIS) put together a 3,500 observer force which was later increased to 7,000 with a mandate of peace keeping operations. In May and June 2004, peace talks were held in Addis Ababa, Ethiopia and from August in Abuja, Nigeria. The AU Summit in Addis Ababa on 7th July, 2004, focused on Darfur.

After several efforts to broker peace by the AU meeting in Abuja, Nigeria, an agreement was reached on May 5th 2006 between the GoS with the Minni Minawi faction of the SLA. The agreement was rejected by other groups and factions. Following the breakdown of the Abuja talks, fighting intensified in July and August, 2006 to extend that is threaten the situation on ground and operations. In response, the UN Security Council through resolution 1706 agreed to send a force of 20,000 international peace keepers to the region. The GoS rejected this plan and offered to send 10,000 Sudanese soldiers instead of the proposed UN peace keepers. The GoS demonstrated its position further by refusing to honour the invitation to attend UN Security Council meeting on August 24, 2006 and went further to ask the AU force in Darfur to leave by the end of September (The Guardian, September 25, 2006).

The Darfur Peace Agreement (DPA) signed in May 2006 by the GoS and a faction of the SLA/MM, failed to resolve the conflict. Implementing the agreement has been problematic because majority of the rebel groups were not parties to the agreement. The GoS's insistence on buying off or destroying rebel factions also contributed to the growing violence and displacement (Crisis Group, 2007:1). Consequently, the lasting tribal reconciliation process that would have been achieved through the Darfur-Darfur Dialogue and Consultation prescribed in the DPA has not been possible. Both the National Congress Party (NCP) led GoS and the rebel groups have not allowed the DDD-C process to begin because both view it as a threat. The NCP led GoS fears that unity among Darfurians will result in opposition buildup in the region, thus undermining its success in the forthcoming 2009 elections. The rebels on the other hand, whom have

become divided, are afraid of losing their positions as the only recognised movements representing the interest of Darfurians.

Crisis Group Report (26 November, 2007) observed quite aptly that the absence of a viable peace agreement has allowed new dimensions of the conflict to emerge. There have been several divisions among rebel groups resulting in the blurring of their identity. Some are becoming spoilers themselves rather than genuine representatives of the Darfur people. Internal fighting over land and power has resulted in fragmentation among Arab ethnic groups, and some no longer supporting the NCP led GoS. There have also been increased violence and insecurity in the camps of the Internally Displaced Persons (IDPs). The GoS is allocating the land of IDPs to pro-NCP Arab supporters and non-Arab such as the Zaghawa associated with SLA/MM.

While these continued, the humanitarian suffering has increased astronomically. As at early 2007, over 240,000 people have newly been displaced, adding to the over two million earlier displaced. Kidnapping and sexual assault of women by government backed forces have also continued (OCHA, August 2007).

Previously, the main conflict was between the government and its backed forces and militia against the rebels drawn largely from the non-Arab communities in the region. But recently, disputes over land and power have resulted in Arab on Arab clashes, and Arabs are beginning to align with non-Arabs. The IDPs camps are becoming increasingly violent and displaced persons are being manipulated by all parties.

With the recent divisions among the rebel groups, they have become more disorganised and inconsistent in their strategies, controlling very limited geographical areas each. Most of them rely on hit and run raids on government forces and other victims for survival. The attack on African Union Mission in Sudan (AMIS) base in Haskanita is one of such attacks. It is not clear whether it is aimed at looting or to send a message to AU or a manipulation by Khartoum or an outburst by unhappy forces affiliated to SLA/MM or an attempt by a new rebel group to announce their presence and capability.³ The site was pillaged and weapons and vehicles including an armoured personnel carrier were taken (Crisis Group, 26 November, 2007:5). Investigations carried out by office of Secretary General on the attack so far reveal that the rebels that attacked the AMIS base carried JEM insignia on their vehicles.⁴ In clear terms, such an act is irrational and condemnable as AMIS is in the region to provide support for the peace process.

The Humanitarian Crisis in Darfur

The conflict in Darfur has led to forced displacement of civilians from their homeland, and various means of livelihood. Civilians are partly displaced as a result of disruption of water sources, burning of crops and theft of livestock by government forces and government backed Janjaweed. Humanitarian organisations working in the region often accuse the NCP government of being responsible for these atrocities. The GoS has however denied involvement and argued that it is discharging its responsibility as a sovereign state. Civilians are turned out of military barracks and police stations when

seek refuge in such places or sent messages to such units alerting them of the attacks and requesting for help.⁵

In addition to igniting a humanitarian crisis of such magnitude in Darfur, the GoS has also been accused of obstructing international humanitarian assistance to displaced civilians. In addition, the GoS did not provide any significant aid to thousands of displaced victims. International aid workers were restricted from entering and moving in some locations in the region, which they were not barred from 2003. As a result of government's insensitivity to humanitarian situation and barring of relief workers, the president of International Committee of the Red Cross on March 6, 2004 declared that "the ICRC, under the present constraints, is not in a position to carry out any meaningful humanitarian operation (in Darfur)"⁶

The signing of the DPA has not stop further displacement of Darfurians. Crisis Group latest report indicates that more than half a million people have been displaced since the signing of the DPA, bringing the total IDPs to near 2.2 million. The Humanitarian community has also reported a rise in malnutrition rate especially in North Darfur (Crisis Group Report, 26 November 2007:6). In March 2007, the GoS and UN signed a Communiqué on Facilitation of Humanitarian Activities in Darfur (CFHAD).⁷

The Communiqué was welcomed as an important step forward in the relations between the GoS and the humanitarian community. Again, the GoS failed to honour the understanding based on the Communiqué. Fighting between rebel groups and the Government and its backed forces continued to displace more Darfurians and obstruct humanitarian work. By the end of June 2007, nearly all the IDP camps near Darfur three

state capitals were reported to be overcrowded (OCHA, July 2007). Another new dimension of the Darfur crisis is the rise of violence in the IDP camps, which has become a “home to a disempowered, disenfranchised, and overcrowded community with little hope” (Crisis Group Report, 26 November 2007).

The GoS knowing fully well that condition of the IDPs continues to draw Darfur into international spotlight and further indicting it of incapability to cater for its citizens, has pushed for IDPs to leave the camps. The government’s proposal for depopulating the camps is through ‘model villages’ in twenty five locations as new areas for returnees, who instead prefer their land. Thus this effort has failed largely due to mistrust by the IDPs of government’s sincerity. The NCP led GoS and other political aspirants are making a lot of electoral calculations for 2009 elections around Darfur. A united Darfur could mean an opposition to NCP, keeping it divided and/or delaying elections gives the NCP enough time to strategise. Elections were originally due in 2008, and census scheduled for February 2008. Both elections and census have been postponed due to opposition from SPLM, citing lack of release of funds, and elimination of religion and ethnic questions. The rebel non signatories found it difficult to unite partly due to divide and rule tactics by NCP and some as a result of tribal rivalry and mistrust.

Considering the magnitude of human rights violations attested to by both AU and UN inquiry into the crisis, though both avoided calling genocide, NGOs, humanitarian organisations, the media and some countries have called for military humanitarian intervention to address the crisis and arrest the situation from becoming another Rwanda in African history. The GoS has failed in its responsibility to protect fundamental rights

of citizens in the region. The role being played by NCP led government has been underscored as a more reason why nothing short of military/dictatorial intervention under Chapter VII of the UN Charter will address the crisis. In spite of the calls for this form of intervention, AU and UN have maintained their recognition and respect for Sudanese Sovereignty. The UN requested for Sudan's consent to deploy AU/UN Hybrid force, a consent which GoS demonstrates much reluctance to give and remained defiant arguing that it is acting within the jurisdiction of its sovereignty. Sovereignty of state by no means includes any claim of the unlimited power of a state to do what it wants to its own people.

⁸ The next section of the paper examine whether sovereignty of states can stand as a justification for non intervention in Darfur's case.

Darfur Conflict and Sovereignty of States

Since the Rwandan genocide of 1994, there have been more efforts to redefine sovereignty as control to sovereignty as responsibility. Sovereignty as demanded by the GoS is derived from the Westphalia conception of state's legal identity in international law. The concept provides a state with "order, stability and predictability in international relations since sovereign states are equal regardless of size or wealth" (ICISS, 2001:10). The norm of non-intervention enshrined in Article 2(7) of the UN Charter clearly states that a state is empowered to exercise exclusive and total jurisdiction within its territorial borders without other states intervening in its internal affairs.

A sovereign state can defend its territorial integrity and political independence. Conditions for upholding the principle of sovereignty is an obligation to respect every other's sovereignty and preserve international peace and security. A basic pillar of a

state's sovereignty is recognition by other sovereign states. Bhatti (2007:20) writes that under international legal sovereignty,

Recognition enhances security of a state both nationally and internationally as it possesses a legal entity in the courts of other nations. If a government or state is not recognised, then the actions of the state will not be valid. If states are recognised, then recognition helps states use their identity to gain resources, make connections, become signatories on treaties, and become an influential member of the international community. However, the lack of recognition will make it very hard for a state to gain international attention.

Under international legal sovereignty, a state is sovereign provided it is recognised by other sovereign states, where such recognition is denied, such a state is not a sovereign state. The AU and UN have maintained their recognition of Darfur as a sovereign state. While human rights groups, the US Congress and government of UK, and some media have condemned the massacre in Darfur as genocide, the AU and UN investigations into the crisis have concluded that the mass killings did not qualify the definition of genocides.

The AU Constitutive Act Article 4 (h) approves of the union's right to *intervene* in a member state; pursuant to a decision of the Assembly in respect of circumstances, namely war crimes, genocide and crimes against humanity.⁹ The same Charter of AU Constitutive Act promotes the policy of *non-interference* by any member state in the internal affairs of another. While these positions can be viewed as contradictory, Agwu (2007:165) has argued that *intervention* can be distinguished from *interference*. Intervention can be viewed as a concept and an event. AU's understanding of intervention is dominated by the physical, while the verbal connotes its concept of interference. Interference is intensely political; it could be remarked by a diplomat of a

state about the affairs of another state or an expression about certain issues. An intervention, in AU's conception describes the physical or material event. It is military in character, and involves the use of force (Agwu, 2007:166).

The kind of Intervention which the AU Charter prescribes is organisational humanitarian intervention. The UN Charter under Chapter VII allows regional arrangements Organisational humanitarian intervention (Agwu, 2007). Whether AU has put together a regional arrangement that is capable of embarking on enforcement of human rights in a country like Sudan is contentious. AU's avoidance of defining the Darfur crisis as genocide indicates that it did not want to become a victim of certain provisions of its Charter that still lacks clarity.

The dilemma the UN found itself in Darfur case is that it had to work within the provisions of its Charter. Article 2 (4) and 51 abolishes intervention into the affairs of a sovereign state by another, as intervention clearly violates their sovereignty. The only exception to the policy of non-intervention is found in Article 2(7) that Article 2(4) 'shall not prejudice the application of enforcement measures under Chapter VII'. This is the basic framework in which the UN is supposed to maintain peace and security in Darfur. Since the inquiry on Darfur dismissed the issue of genocide, it follows therefore that the UN did not push for the application of enforcement measures under Chapter VII. This dilemma partly explains why the UN rather than use force, respects the sovereignty of Sudan and request for the consent of GoS to deploy the proposed hybrid force to the region.

The dilemma of the UN also stemmed from the lack of political will of members of the Security Council. This has hampered its role in the past. An independent investigation of the Rwandan genocide commissioned by the AU predecessor, the OAU, condemned the Security Council and its members for having the opportunity to prevent the genocide but failing to do so (OAU 2000, Chapter 10, para 10.16). The role of the Security Council is further hampered by the competitive interest and intrigues by some of its members. The presence of the US government in Iraq and Afghanistan has made the GoS suspicious of the role western powers will play in the region. China has economic interest and commercial pursuits on the African continent. China's policy of non-interference translates to pursuit of its interest even at the detriment of the consideration of humanity. In Sudan, the Chinese have been reported to have acquired a stake in the oil industry.¹⁰ China's support has been a source of confidence to the GoS that China could use its position in the UN Security Council, as a permanent member to veto a UN resolution in its favour. When the UN through resolution 1556 of July 30, 2004 gave a thirty day ultimatum to the GoS to disarm the Janjaweed, the GoS resisted and warned that any serious act would be viewed as a hostile act.¹¹ In 2005, the 191 members of the United Nations formally endorsed a principle known as the "responsibility to protect." The responsibility to protect is the idea that mass atrocities that take place in one state are the concern of all states. The universal adoption of this principle at the United Nations World Summit in 2005 is a turning point in how states define their rights and responsibilities, and removes some of the classic excuses for doing nothing.

The other critical issue centre on the question of aim or purpose. What will be the aim of UN force in Darfur? The Darfur conflict has become more complex. It is no

longer between two major rebel groups (SLA and JEM) against the GoS and its allied forces. The conflict now involves different armed groups with no sharp lines in territorial delineation between the parties. The recent groups include Arabs hungry for land, whom were previously seen as solely government allies (Crisis Group Report, 26 November 2007:2). Core issues that spur the conflict among which are land, power, grazing rights, reform of local government and administrative structures are yet to be resolved.

The situation in the region may long have gone beyond a peace keeping force in which the consent of Sudan would be secured. But an enforcement action by the UN under Chapter VII of its Charter will be insufficient. What will be the strategic vision of the action? Will it be to displace the NCP led GoS? Which alternative political party/rebel group will be supported to fill this gap? An outright invasion or air assault as in Kosovo's case is impracticable in Darfur. The GoS has continued to exploit these loopholes to its advantage and preparation towards the 2009 elections. Sovereignty of states alone does not justify non-intervention in Darfur's case.

Conclusion

The question of whether sovereignty of states can justifies non-intervention in Sudan arose as a result of the role of the government in the conflicts and insistence that is acting as sovereign state. Reluctant to accept external support from the AU and UN, the GoS option of dealing with Darfur situation through the Janjaweed has been counter productive. Confrontation between the GoS forces and its allies and non-signatories groups has continued to displace more Darfurians further worsening the humanitarian crisis in the region. While the situation has continued to deteriorate, the AU and UN

have maintained their recognition and respect of Sudan as sovereign state, seeking its consent to deploy its Hybrid force of about 20,600 peacekeepers. This followed inquiries which ruled out genocide by the government. The AU in particular needs to further clarify its position on interference and intervention in Article 4(h) and 4(g) of the constitutive Act in order to pave way for meaningful peace operation on the continent. It has also been observed that it will not be sufficient for the UN to enforce action on Sudan under Chapter VII of its Charter due to evolving complex nature of the conflict in Darfur. Fresh questions have to be answered on what the UN force will do in Darfur. The conflict is no longer between government and its related militia and non-Arab ethnic groups. But the dispute over land and power has resulted in proliferation of armed groups and the surge of violence further displacing more Darfurians.

In the final analysis, the GoS cannot continue to plead sovereignty while the lives of millions of Darfurians are being lost or dehumanized. The AU and UN should mount more diplomatic pressure on the GoS to implement agreements such as the DPA and joint communiqué signed with the UN on the facilitation of humanitarian activities. With the emergence of more armed groups, peace talks will require broader participation including women. Leaving out certain groups could amount to creating potential spoilers when they excluded as signatories to agreements.

Glossary of Acronyms

AMIS	African Union Mission in Sudan
AU	African Union
DPA	Darfur Peace Agreement
GoS	Government of Sudan
HRW	Human Rights Watch
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Persons
JEM	Justice and Equality Movement
NCP	National Congress Party
OCHA	United Nations Office of the Coordination of Humanitarian Affairs
PDF	Popular Defense Force
SLM/A	Sudanese Liberation Movement/Army
SLA/MM	Sudanese Liberation Army, faction of Minni Minawi
UN	United Nations

End Notes

1. The 8 April 2004 Humanitarian Ceasefire Agreement provided the basis for subsequent diplomatic efforts on Darfur. It allowed the African Union to dispatch ceasefire monitors, and subsequently a force to protect these forces and civilians within its vicinity of operations.
2. Black Law Dictionary, [www. Hawaii.org/sovereignty.html](http://www.Hawaii.org/sovereignty.html) (accessed on 22 November, 2007)
3. Report of the UN Secretary General on the deployment of the AU/UN Hybrid operation in Darfur, UNSC/2007/653, 5 November 2007.
4. Report of the UN Secretary General. *Opp. Cit.*
5. The International Red Cross President made the statement during his visit to Sudan on March 6, 2004.
6. Human Rights Watch Report of April 2004 titled: Sudan Darfur in Flames: Atrocities in Western Sudan, stated that the abuses by government allied militias did not only stop at killings of civilians, rape and other forms of sexual violence against women, destruction of homes and water sources, looting of civilian property, but also abduction of children and adults including old men and women. See page 34.
7. for Communiqué signed between the GoS and UN on Facilitation of Humanitarian Activities in Darfur, on March 2007, see website www.unmis.org/english/2007/docs/UN-GOSCommunique-28mar.pdf
8. The Responsibility to Protect: Report of the International Commission on Intervention and state sovereignty. International Development Research Centre.

December, 2001. This report argues that sovereignty has responsibility to protect and that national governments should not use sovereignty as an excuse to violate rights of citizens.

9. The OAU, until its demise, adhered to the principle of non-interference in the internal affairs of states under article 4(1) of the OAU Charter. The right to intervention enshrined under article 4(h) of the AU Constitutive Act is informed by the concern expressed by African Heads of State and Government in the Preamble of the Peace and Security Protocol.
10. See Aderemi Oyewumi, 'enter the dragon' the guardian newspaper, lagos, april 9, 2006 pg 12.
11. Aderemi Oyewumi opp cit.

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About this paper

The Government of Sudan has at various times challenged calls for intervention into the humanitarian crisis in Darfur region, pleading its sovereignty as a justification. Sovereignty has responsibility to citizens and should not be an unlimited power by governments to do whatever they like with their citizens. The government, a party in the conflict, has been reluctant to allow the international community, particularly the AU and UN to intervene by sending a hybrid force to the region. This paper examines the evolution of the conflict in Darfur, the increasing humanitarian crisis in the region and assesses whether sovereignty of states justifies non-intervention in Darfur case. The paper also assesses the limits to which intervention is legitimized under the UN Charter and Constitutive Act of the African Union. The paper concludes that the GoS cannot continue to plead sovereignty while the lives of millions of Darfurians are being lost or dehumanized.

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