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International Law and State Sovereignty: a Focus on the Constitutive Act of the African Union

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Abstract

This article takes a critical look at the topic, International Law and State Sovereignty with a focus on the Constitutive Act of the African Union. With the rise of modern State and the emancipation of international relations, the doctrine of sovereignty emerged. Sovereignty in government is that public authority which directs or orders what is to be done by each Member State associated in relation to the end of the association. It is the supreme power by which any citizen is governed and is the person or body of persons in the State to whom there is politically no superior. International law encapsulates the intercourse between and among nations.

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The Constitutive Act of African Union (AU), in some of its provisions, tramples upon the sovereignty of States. In the light of the foregoing, this article sets to point out the various ways in which the Constitutive Act of the AU has impugned on the sovereign independence of States in Africa. The article also makes recommendation as to how States are expected to enjoy sovereign immunity.

Keyword: Sovereignty, International Law, State, African Union, Comparison

1. Introduction: Conception of Sovereignty

The concept of sovereignty is complex. In terms of law, the State exists as a sovereign power and as a political organization of society.[1] There are undermining different bodies (authorities), with specific legislative, executive, jurisdictional power; within the international society.[2] In each country, it participates in international relations on the basis of sovereign equality, which raises another meaning of sovereignty that complements national sovereignty and internal life.[3]

For the international legal order, sovereignty is a constituent element of State and international

1. Jana Maftei 'Sovereignty in International Law'. Acta Universitis. Juridical [2015] Vol. 11, No 1 -< https://www.researchgate.net/publication/311581450_Sovereignty_in_International_Law> accessed 23rd November 2019.
2. Ibid.
3. Ibid.

personality requires that public power is independent, which grants the equality of sovereign state.[4] Sovereignty is generally considered, as that general feature of the state, which represents state supremacy and independence of state power in expressing and achieving the governors' will as general will, compulsory for the whole society.[5] In 1928, the arbitrator Max Huber said in the Psalms Island Deal[6] (*USA v Netherlands*):

> *Sovereignty in the relations between States signifies independence; Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organization of States during the last few centuries and, as a corollary, the development of international law, has established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of*

4. Ibid.
5. I M Anghel 'European Union's Member States Sovereignty' University of Targu Jiu, Legal Sciences Series, [2010]. No. 2, 19-48. <http://journals.univ-danubius.ro/index.php/juridica/article/view/2798/2585> accessed on 16th December 2019.
6. USA V Netherlands Perm. ct. of Arbitration, 2 U.N. Rep. Int'l Arb. Awards 829 (1928) <https://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-5/island-of-palms-case-united-states-v> accessed on 16th December 2019.

departure in settling most questions that concern international relation.[7]

State Sovereignty is the quality of state power to be supreme in relation to any other existing social power within its territorial limits and independence compared to the power of any state or international body.[8] The quality being expressed in the State's right to determine freely, without any interference from the outside, is the purpose of its activities internally and externally, and the fundamental tasks, which it has to fulfill and the necessary means to achieve them respecting the sovereignty of other states and international law provisions[9]. Sovereignty can be seen from the international and domestic point of view, in political and legal terms,[10] aiming at

7. Case concerning sovereignty Palmas Island in the Palmas Island Deal.April 4. 1928, RSA. Vol. 11, p. 832. <http://legal.un.org/riaa/cases/vol_II/829-871.pdf> accessed 23rd November 2019.
8. Ibid.
9. G Vrabie, 'Constitutional Law and Contemporary Political Institutions. Iasi: Team <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwiX1pPyurrmAhXSzqQKHeXrBqkQFjAAegQIAhAB&url=http%3A%2F%2Fjournals.univdanubius.ro%2Findex.php%2Fjuridica%2Farticle%2Fdownload%2F2798%2F2377&usg=AOvVaw2ZWDtlqq-_HxHaPblEXIYq> accessed on 16th December 2019.
10. A Hauriou and J Gicquel Constitutional Law and Political Institutions (7th ed. Paris: Editions Montchrestien, 1980) <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjV2Pnczr7mAhWtyYUKHZrWD5YQFjAAegQIARAB&url=http%3A%2F%2Fjournals.univdanubius.ro%2Findex.php%2Fjuridica%2Farticle%2Fdownload%2F2798%2F2377&usg=AOvVaw2ZWDtlqq-_HxHaPblEXIYq> accessed on 18th December 2019.

explaining the need to limit state sovereignty or limitation of powers in favour of international bodies.[11]

In the State's definition formulated by Max Weber, it includes three conventional elements: territory, people and sovereignty, considering that the abstract term of sovereignty presupposes the state's monopoly to use of force.[12] Carl Schmitt explains the essence of sovereignty in the following terms: the sovereign produces and guarantees the situation as a whole. It has a monopoly on the latest decisions. Herein lies the essence of sovereignty that must be correctly and legally defined, not as monopoly of coercion or to lead, but the monopoly to decide.[13] In terms of international relations, it requires the existence of competing sovereignty, which raises 'legal equality of sovereignty," as the saying goes, "some freedoms stop where the freedom of others begins'. Thus, every state has the same sovereign power in international relations management.[14]

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11. B Pusca, Constitutional Law and Political Institutions. Braila: Editura Evrika. <https://www.scribd.com/document/394616398/bibligrapgy> accessed on 16th December 2019.
12. K Newton and J.W van Deth, Foundations of Comparative Politics: Democracies of the modern world. Cambridge UK: Cambridge University Press. <www.cambridge.org/9780521829311> accessed on 16th December 2019.
13. Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty (London: The MIT Press Cambridge 1985). <https://www.press.uchicago.edu/ucp/books/book/chicago/P/bo3649910.html> accessed on 16th December 2019
14. Ibid.

More importantly, with the rise of the modern state and the emancipation of international relations, the doctrine of sovereignty emerged. This concept, first analyzed systematically in 1576 in the *Six Livres de la République* by Jean Bodin, was intended to deal with the structure of authority within the modern state.[15] Bodin, who based his study upon his perception of the politics of Europe, rather than on a theoretical discussion of absolute principles, emphasized the necessity for a sovereign power within the state that would make the laws. While such sovereign could not be bound by the laws he himself instituted, he was subject to the laws of God and of nature.[16]

The idea of the sovereignty as supreme legislator was in the course of time transmuted into the principle which gave the state supreme power vis-à-vis other states. The state was regarded as being above the law. It is considered that the first known definition of sovereignty appears in Justinian's Digest in the following wording: *'Liberi populus externus is qui nullius alterius populi potestatis est subiectus.*[17] It means

15. Malcolm N. Shaw International Law (6th Edition Cambridge: Cambridge University Press, 2008) 21-22. <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1 &ved=2ahUKEwj6vfOjwLrmAhUHuaQKHQNXDzsQFjAAegQIBRAC& url=http%3A%2F%2Feuglobe.ru%2Fwp-content%2Fuploads%2F2017%2F01%2FMalcolm-N.-Shaw.-International-Law-6th-edition-2008.pdf&usg=AOvVaw187cT_LGu3EMBLRWQPx1w0> accessed on 16th December 2019.
16. Ibid.
17. A Alexe, The End of the Free World. (Bucharest: Aldo Press 2009). <https://books.google.com.ng/books?id=i1wpDwAAQBAJ&pg=PA99&lpg=PA99

'in the Romanian specialized literature the emergence of sovereignty is put into the equation along with the emergence of states.[18] Geamānu, for example, stated that sovereignty appears as an institution 'from the moment the states begin to exist.'[19] Another author considers similarly that 'sovereignty appeared with state power, as a feature, under the conditions of the decomposition of gentile society and the creation of the state.'[20] And in the foreign literature, authors considered in the same sense, that the issue of sovereignty occurred when there were at least two states near

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&dq=A+Alexe,+The+End+of+the+Free+World.+%28Bucharest:+Aldo+Press+2009%29&source=bl&ots=JyNb8G9YRs&sig=ACfU3U1miTASo7MUYze4GAu5_ZF-19zyA&hl=en&sa=X&ved=2ahUKEwjh5-rdwLrmAh UI4aQKHWGDA6UQ6AEwAHoECAwQAQ#v=onepage &q=A%20Alexe%2C%20The%20End%20of%20the%20Free%20World.%20%28Bucharest%3A%20Aldo%20Press%202009%29&f=false> accessed on 16th December 2019.

18. Ibid.
19. G Geamanu, The Fundamental Principles of International Law. (Bucharest: Editura Didactca Si Pedagogica 1967). <https://books.google.com.ng/books?id=CuW4sEd-I0sC&pg=PA50&lpg=PA50&dq=G+Geamanu,+The+Fundamental+Principles+of+International+Law.+%28Bucharest:+Editura+Didactca++Si+Pedagogica+1967%29&source= bl&ots=9HgcUsa34p&sig=ACfU3U3lTUD90bFpOvj-zUYyel7Shnqjgw&hl=en&sa=X&ved=2ahUKEwilso_MwbrmAhXO8qQKHQeKCikQ 6AEwAHoECAoQAQ#v=onepage&q=G%20Geamanu%2C%20The%20Fundamental%20Principles%20of%20International%20Law.%20%28Bucharest%3A%20Editura%20Didactca%20%20Si%20Pedagogica %201967%29&f=false> accessed on 16th December 2019.
20. G Moca, International Law. (Bucharest: Editura Politica 1983). <http://journals.univ-danubius.ro/index.php/juridica/article/view/2798/2585> accessed on 16th December 2019.

one another, in an attempt to maintain independence of one another.[21] However, there are authors who believe that we can speak of sovereignty broadly.[22]

In terms of ancient Greek, ancient state or the Roman State, the name of the concept appeared only later on.[23] Negulescu stated that the concept of sovereignty appeared in the 15th century for designating the position of the king in the feudal hierarchy and it came from Vulgar

21. M S Korowicz, International Organizations and Sovereignty of the Member States. (Paris: Editions A Pedone 1961). <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source= web&cd=1&ved=2ahUKEwjgl_CXwrrmAhUiMewKHUiFAXYQFjAAegQIBRAC&url=http%3A%2F%2Fcks.univn t.ro%2Fuploads %2Fcks_2015_articles%2Findex.php %3Fdir%3D08_political_sciences_european_stu dies_and_international_relations%252F%26download%3DCKS%2B2015_political_sciences_european_st udies_and_international_relations_art.123.pdf&usg=AOvVaw 1WEHYy73xxYH89bVQ4MiR8> accessed on 16th December 2019.
22. Hans Kelsen, 'Sovereignty and the International Law', [1960] (47) (4) The Georgetown Law Journal 627. <https://books.google.com.ng/books?id=4WyYDwAAQBAJ&pg=PA203&lpg=PA203&dq=Hans+K elsen,+%E2%80%98Sovereignty+and+the+I nternational+Law%E2%80%99,+[1960]+%2847 %29+%284%29+The+Georgetown+Law+Journal++627.&source=bl&ots=MW0FDFPXF-&sig=ACfU3U1CqDwSYREFNufX9k2len9wtQRcQg&hl=en&sa=X&ved=2ahUKEwia5-6r0b7mAhVGOBoKHZXVCU4Q6AEwCXoECAgQAQ> accessed on 18th December 2019.
23. B Aurescu, New Sovereignty: Between reality and political necessity in the international contemporary system. (Bucharest: All Beck, 2003). <http://journals.univ-danubius.ro/index.php/juridica/article/view/2798/2585> accessed on 18th December 2019.

Latin, the preposition super (above), from which arose the adjective *superanus* and the noun *supremitas*, which means the situation a man who, in terms of hierarchy, has no one above him, he is not subordinated to anyone.[24]

In the Middle Ages the concept of sovereignty recorded important developments. Jean Bodin, in his *Les six livres de la République* (1576)/Six books on the Republic (1576) defines sovereignty as *summa potetas*, which recognizes no other higher authority. In the conception of Bodin, sovereignty is absolute, perpetual, indivisible, inalienable and imprescriptible.[25] Jean Bodin believes that 'sovereignty is the absolute and perpetual power of a Republic, which the Latins call Majesty Sovereignty is not limited, nor in power, nor in content, nor in time.[26]

The beginning of the modern era marks a change of system, after the peace treaties of Westphalia, ending the War of 30 years (1618-1648), in order to ensure the lasting peace in Europe, it is established that the main international actor is the State-nation, endowed

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24. P Negulesca, Course of Romanian Constitutional Law. (Bucharest: 1927). <https://www.wipo.int/edocs/lexdocs/laws/en/ro/ro021en.pdf> accessed on 16th December 2019.
25. A Alexe, (n 20).
26. M C Jacobsen, Jean Bodin and the Dilemma of Modern Political Philosophy. Roman Studies, vol. 48. University of Copenhagen: (Museum Tusculanum Press 2000). <https://global.oup.com/academic/product/popular-sovereignty-in-early-modern-constitutional-thought-9780198745167?cc=us&lang=en&> accessed on 16th December 2019.

with absolute sovereignty.[27] This element allowed common approaches both from the representatives of *jus-naturalism* (especially Hugo Grotius) and of positivist doctrine in an attempt to clarify important notions in defining the concept of sovereignty relative to the principle of sovereign equality, which is an equal right recognized to all international actors, in terms of non-interference in the internal policies of other states, and territorial independence of states.[28] In, *The Struggle of Law*, Jhering shows explicitly the right as political force,[29] the object of struggle for collective interests and for power, and noted that the state is simply limited only by its will. Any sovereignty is offensive, according to a Romanian author.[30]

The doctrine of the social contract and sovereignty of the people has been the basis of the first bourgeois constitutional acts.[31] The end of the 18th century brought new developments in the concepts related to sovereignty. State

27. Ibid.
28. Ibid.
29. R V Jhering, The Struggle for Law, Translated by Laylor, John J. Newyork: (Legal Classics Library 1991). <https://www.lawbookexchange.com/pages/books/20007/rudolph-von-jhering-rudolph-von-ihering/the-struggle-for-law> accessed on 16th December 2019.
30. D Nastase & M Maties, The Future of National Sovereignty of Romania in the European Intergration perspective <https://www.thefreelibrary.com/Competence%2C+ participation+and+political+loyalty+in+the+ process+ of...-a0219310508 > accessed on 18th December 2019.
31. Ibid.

sovereignty turns into national sovereignty.[32] The attributes of sovereignty are transferred from the monarch to the nation and the people. The expression of this trend is illustrated eloquently by the American States Declaration of Independence (1776) and the Declaration of the Rights of Man and Citizen, and the Constitutions of France during the revolution (1789-1793).[33] Article 3 of the Declaration of the Rights of Man and Citizen expresses the idea of national sovereignty for the first time: 'The source of all sovereignty resides essentially in the nation. Nobody, no individual can exercise authority that does not explicitly proceed from it'. The National sovereignty principle was taken by the French Constitution of 1791 stated in Article 1 that sovereignty is indivisible, inalienable and imperceptible. Sovereignty belongs to the nation; no group of people, no any individual may assume the exercise of the sovereignty.[34]

The 20th century will mark the evolution of the concept of sovereignty.[35] The transition from classical senses considered more lenient

32. Ibid.
33. R Miga-Besteliu, International Law: Introduction to Public International Law. (Bucharest: All. 1998). <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd= 1&ved=2ah UKEwjhldH-8LrmAhWFoaQKHVAwAw4QFjAAeg QIBBAB&url=http%3A%2F%2Fjournals.univ-danubius.ro%2Findex.php%2Fjuridica%2Farticle%2Fdo wnload%2F2798%2F2377&usg=AOvVaw2ZWDtlqq-_HxHaPblEXIYq> accessed on 16th December 2019.
34. Ibid.
35. Ibid.

interpretations, more flexible, with emphasis given by the interstate cooperation, of respecting the international obligations assumed by the States as international actors.[36] In the first half of the 20th century, many authors already were talking about relative sovereignty of the state. Pasquale Fiore shows that a state can operate without the interference of other states, but within the limits set by international law. Furthermore, Jean Delvaux stated in 1935, that maintaining the principle of sovereignty is incompatible with the international law; on the contrary, with the limits set by international law, the sovereignty does not any longer mean arbitrary power and without reservations.[37]

In the period after the Second World War, it considerably develops negative conceptions of sovereignty, the motivation being that sovereignty in the classical sense made possible the abuse of power and the war. Some authors go so far as to challenge the legal personality of the state and therefore also its ability to have rights and obligations.[38] Depending on their political goals and the two major totalitarian systems of the 20th century, nationalism, socialism and communism had specific approach on sovereignty.[39]

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36. Ibid.
37. B Aurescu, New Sovereignty. Between reality and Political Necessity in the International Contemporary System. (Bucharest: ALL Beck 2003). <http://journals.univ-danubius.ro/index.php/juridica/article/view/2798/2585> accessed on 16th December 2019.
38. Ibid.
39. Alexe (n 20).

We see that over time, the sovereignty was seen as incompatible with international law, finding fundamental contradictions between its absolute character-building and the need for establishing international legality.[40] After 1945, with the adoption of relevant documents in this matter underlying the international legal order, it seems that they managed to reconcile the state sovereignty and ensuring the international legality.[41] The collaboration between states is achieved according to principles where respecting the sovereignty occupies an important place.[42] This principle is established among several international documents with universal value.

1.1 The Search for the Supreme in the State

Sovereignty-centered thinking asks *per se* who or what is *seperanus;* to whom or what the special quality is to be ascribed 'of being the supreme power or supreme order of human behavior'.[43] Drawing this question into the center is the third feature of sovereign-centered political theorizing. Since mid-early modern times, this supreme power has been the state; for Cohen, it remains the state; for Grimm, the place of supreme power is vacant, but his thinking remains sovereignty-centered.[44] What marks the essence of the idea of

40. Ibid.
41. Alexe (n 20).
42. Vrabie (n 16)
43. Christian Volk 'The Problem of Sovereignty in Globalized Times' [2019] Law, Culture and Humanities 17 <https://journals.sagepub.com › doi › full > accessed 18th December, 2019.
44. Ibid.

a supreme power is that all other powers-economic or civic- are thought to be enclosed and subordinate. This, in turn, has consequences, since the actions of these subordinate powers are regarded as less significant and less important than that which the supreme power, the state, does.[45]

To what extent is that view problematic? It is problematic, because sovereignty-center thinking, according to Claire Cutler,[46] thereby avoids the questions as to "(...) who or what thinking, the exercise of political and legal power is allocated to the public sphere of the government; economic relationships and activities, in contrast, are not deemed to be directly political and are associated with the private spheres of individuals and markets. The economy is therefore, at best, an object of political action.[47]

It is therefore also symptomatic that theorists of sovereignty, as Grimm and Cohen, when considering global political processes, know only two kinds of actor – states and *global governance* institutions.[48] Private economic actors are not considered at all. What the state and *global*

45. Ibid.
46. Claire Cutler, 'Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy,' [2001] (27) (2) Review of International Studies 136. <https://www.jstor.org › stable> accessed 18th December, 2019.
47. Ibid.
48. Jean L. Cohen, Globalization and Sovereignty: Rethinking Legality, Legitimacy; and Constitutionalism (Cambridge: Cambridge University Press, 2014) 5-7; <https://www.cambridge.org › core › books › globalization-and-sovereignty> accessed 18th December, 2019. Dieter

governance institutions do is political, and political is equated with significant, important, primary; the economic, in contrast, is equated with secondary, private, profane.[49]

Hidden behind this, of course, is also a normative program, namely that of the (democratic) self-determination of society through the state.[50] But there is a high price to be paid for this program: the political power of private-economic actors remains invisible. [51]Despite the political influence and participation of global private economic actors in the generation of national and international law, global standards, the filling of international contracts, ordinances and regulations, they cannot be captured conceptually by sovereignty thinking. Global private economic actors have a political "non-status" in sovereignty-centered thought. However, this thinking produces a growing gulf between the theory and practice of the factual exercise of power in a globalized age. To the extent to which this separation is upheld and the economic materiality of global relationships of power and rule are not considered in conceptual terms, sovereignty thinking also remains blind to those

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Grimm, Sovereignty: The Origin and Future of a Political and Legal Concept (New York: Columbia University Press, 2015) 4. <https://www.amazon.com › Sovereignty-Political-Concept-Columbia-Studies> accessed 18th December, 2019.

49. ibid.

50. Thomas Pogge, 'Cosmopolitanism and Sovereignty,' [1992] 103) Ethics 61.<https://www.jstor.org › stable> accessed 18th December, 2019.

51. Ibid.

causes that prevent the realization of their normative postulates in the world.

Wendy Brown, on the other hand, in her considerations on sovereignty, strives to capture this economic materiality of global relationships of power and rule. She argues that states and sovereignty "come apart from one another" due to the growing power of transnational economic institutions and the dominion of the political rationalities of neoliberalism. This does not necessarily result in a decline in power and significance of the State, but it leads to the fact that "states persist as non-sovereign actors. Brown is convinced that "many characteristics of sovereignty" migrated to the "unrelieved domination of capital" (and religiously legitimated violence) which appears and acts as a new sovereign these days.

Brown's thesis of a separation of state and sovereign argues for detaching the analysis of the global transformation of power and domination from a heuristic of sovereignty. To conceive of capital as a uniform and self-contained, sovereignty entity, leads to an under-complex analysis that ignores the struggle in the field of the political and economy, and fails to grasp the actual democratic problem.[52] An example can help to illustrate our concerns: Andreas Nioike pointed out that a purely technical issue, such as the

52. Robert Jackson, 'Sovereignty in World Political: A Glance at the Conceptual and Historical Landscape,' [1999] (47) (3) Political Studies 424. < https://onlinelibrary.wiley.com›doi›abss>accessed 18th December, 2019

harmonization of accounting standards, which has been implemented by the International Accounting Standards Board (IASB), a private agency based in London, is of great political importance.[53]

At the heart of the transition from the historic cost to current fair value accounting "perceives companies as property of its owners" and "takes an investor's perspective," historic cost accounting, in contrast, "gives much more weight to other stakeholders of a company – most notably to creditors, but also to management and employees.[54]

The decision to implement fair value accounting proved during the financial crisis of 2007-2008, and like many others, it was taken within the established channels and institutions to which citizens generally are denied access. There are disputes, even political battle within these private organizations and among the involved actors, producing winners and losers with tremendous political and economic costs, although the public is neither aware of it nor involved. In short, there is no uniform and self-contained sovereign entity, named capital, with a homogenous will that can shape the overpowering of all other interests. The problem is of a different

53. Ibid.
54. Anne-Marie Slaughter, 'Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks,' [2004] (39) (2) Government and Opposition. <https://www.law.upenn.edu › 1646-slaughter-annemarie-disaggregregated>. Accessed 18th December, 2019

shape: the organization and composition of our economic coexistence is not a matter of public debate and struggle in which political alternatives become visible as competing options on the political stage and with the need to justify and convince. Rather, political decision-making and standard-setting is outsourced to semi-public or even private organizations, such as global law firms, consultancies, expert commissions, standard-setting agencies.

1.2 Sovereignty and Modern International Warfare

The revolution and use of drone technology as a modern weapon of warfare has generated serious debates about its legal, moral and political consequences.[55] Some States, for instance, the United Kingdom (UK) and the United States of America (USA), have since been using this technology to hunt down terrorists and other enemies (including, particularly with respect to the USA, her predatory citizens abroad).[56] Critics of these state-sanctioned strikes argue that the acts are in breach of international law because they violate the sovereignty of states on whose territories the attacks are carried out.[57] Moreover, these acts breach the laws of armed conflicts, particularly the negation of the principles of distinction, military necessity and proportionality.

55. Matthias Zechariah, 'Drone Strikes and Implications for State Sovereignty' [2016] 2) (1) University of Jos Law Journal 92-93. <https://scholarcommons.usf.edu/jss/vol7/iss4/7/> accessed on 16th December 2019
56. Ibid.

The most serious aspect of concern is the killing of unarmed, innocent civilians, thereby depriving them, unlawfully, of their right to life guaranteed by national and international human rights instruments.[58]

These attacks also pose moral and political questions because they are liable to provoke resentment and grief by victims, as well as sever diplomatic relations between or amongs states concerned.[59] If any innocent person is killed, even accidentally by drones, there is likelihood that the attackers will lose more and more allies out of resentment.[60]

However, proponents of drone strikes argue that it is legal under both state and international law to launch such strikes for purposes of self-defence against armed groups; that it is more effective of collateral damage; it is cost-effective, as well as safer to the personnel launching the combat.

Furthermore, states on whose territories the strikes are launched, either expressly or implied, give their consent for such campaigns to be

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57. Ibid.
58. R P A Bamidye, 'A Qualified Defense of American Drone Attacks on Northwest Pakistan under International Humanitarian Law' Being the text of an article presented at the International Studies Association Annual Convention in Montreal, Canada, on March 17, 2011; also published in Boston International Law Journal [2016] (30), 409. <http://eportfolios.macaulay.cuny.edu/menonfall16/files/2016/08/Robert-Barnidge-22A-Qualified-Defense-of-American-Drone-Attacks22.pdf> accessed 16th December 2019.
59. Ibid.
60. Ibid.

launched on their territories, which therefore rules out illegality in the action.[61]

The issue of drone force is critical in view of the globalization of terrorism. Thus, terrorism cuts across state boundaries, so also the use of lethal drones could be a geographically, unbounded warfare.[62] As these ferocious terrorism and drone strikes – clash, the consequences of their encounter boomerang on state sovereignty, human rights and international humanitarian law (IHL).[63] Moreover, developing countries, e.g. Sudan, South Sudan, Somalia, Mali, Central African Republic, Kenya embrace any external counter-terrorism aid and measures, including the use of predators drones, offered by their partners to flush out or eliminate terrorists. Of course, these counter-terrorism measures come with attendant problems, such as abuse of human rights and violations of rules of armed conflict. Furthermore, there is possibility of these lethal drones falling into the hands of non-state actors themselves, who may in turn, use it to unleash disastrous strikes on targeted innocent civilian population and government targets.[64]

In this regard, a drone is an unmanned or pilotless aircraft, also known as unmanned aerial vehicle (UAV), remotely piloted vehicle (RPV),

61. International Bar Association 'The Legality of Armed Drone under Internation Law", Background Paper by the International Bar Association's Human Rights Institute [2017] <www.ibanet.org/Human_Rights_Institute/council-resolutions.aspx> accessed on 16th December 2019.
62. Ibid.
63. Ibid.
64. Ibid.

remotely piloted aircraft (RPA), remotely operated aircraft (ROA), remotely piloted air vehicle (RPAV), and unmanned combat air vehicle (UCAV). Drones are of different types, models, configurations and characteristics.[65] A drone can either be remotely operated (from a control room) or it can be pre-programmed to operated autonomously by computerized devices. Drones perform multiple functions or have multiple uses, ranging from civilian or peaceful purposes to police, military or intelligence purposes.[66]

Originally, drones were developed to collect intelligence and conduct surveillance and reconnaissance.[67] They are used for intelligence gathering (e.g. by the police, intelligence services and the military) in agriculture (e.g. crop spraying), in search and rescue missions during disasters, filming in sports, wildlife management, scientific and environment/ecological tracking, remote sensing and mapping, delivering of medicine, human rights monitoring and communications networks.[68] Others include news coverage, oil and gas exploration, aerial photographing and power line monitoring.

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65. ICRC, 'The use of Armed Drones must comply with Laws' [2013] <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>. accessed on 16th December 2019.
66. Ibid.
67. T Deen, 'Unmanned Dronees - Targeted Killing Vs. Collateral Murder' North American Inter-Press Service, 20 Aug. 2013, <http://www.ipsnews.net/2010/06/unmanned-drones-targeted-killing-vs-collateral-murder/>, accessed on 16th December 2019.
68. Ibid.

The second major use of drones is for targeted killing of alleged terrorists or insurgents,[69] e.g. Al.-Qaeda and the Taliban and their associates.[70] The use of drones for military strikes has aroused serious controversy because of its implications for peace and security, state sovereignty, human rights and humanitarian law.[71]

1.3 The Emergence of African Solution to African Problem

The devastating effect of the Cold War on Africa, and, in particular, the post-Cold War multiple problems and challenges faced by contemporary Africa, have again renewed the debate and imperative for unity in Africa.[72] The dominant view is that a divided and marginalized Africa is grossly incapable and not in a position to respond to the complex and varied problems of wars, civil conflicts, terrorist activities, disease, economic crisis, increasing poverty and underdevelopment, and the traumas of globalization.[73] Out of this seemingly hopeless situation, has emerged a new

69. Ibid
70. Ibid.
71. Douglas Cox and Ramzi Kassem 'Off the Record: The National Security Council, Drone Killings, and Historical Accountability' [2014] (2) Yale Journal on Regulation <http://digitalcommons.law.yale.edu/yjreg> accessed on 16th December 2019.
72. Terry M Mays, 'African Solutions for African Problems: The Changing Face of African-Mandated Peace Operations' The Journal of Conflict Studies [2003] 23 (1) <https://journals.lib.unb.ca/index.php/JCS/article/view/353> accessed 25th November, 2019.
73. Ibid.

debate on the future of Africa in the 21st century.

At the start of the new millennium, we see the emergence of Africa indigenous approaches to solving some of the continent's problems, as illustrated by some of the regional peacemaking, peacekeeping and conflict management interventions in west, Southern Africa and the Horn of Africa.[74] These home-grown efforts to maintain peace and security on the continent, despite their limitations and challenges, have been framed as the 'Try Africa First' approach, that is, African solutions to African problems.[75] The emergence of assertive regionalism, in particular, the use of economic groupings in Africa as structures for regional peace and security, are perceived as part of the Africa renaissance, that is, the revival of structures for regional peace renewal of the continent on the eve of the 21st century. Despite the limitations of the contents of African renaissance, the transformation of the OAU into the African NEPAD has led to the view that these coherent and comprehensive programmes and frameworks for Africa's renewal and hope for a better future for the continent, would put Africa in a strategic position to 'claim' the 21st century.[76]

Peace operations have been undergoing an evolutionary change on the African continent.

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74. Ibid.
75. David J Francis Uniting Africa: Building Regional Peace and Security System (Ashgate Publishing company, [2005] 96.)<http://www.iss.co.za/AF/RegOrg / unity_to_union/pdfs/oau/hog/9HoGAssembly1999.pdf> accessed 25th November, 2019.
76. Ibid.

Originally, the United Nations (UN) or European countries organized and/or led peace operations onto the African continent. However, an increasing number of African-mandated and/or African-manned peace operations emerged in 1990. This article briefly explores the reasons behind the shift from western to African-mandated and/or African-manned peace operations, the trends related to the Africanization of these missions, and the results of this change.

At least these factors have guided the transition to 'African solutions for African problems'.[77] First, African states prefer to solve their own problems and reduce the influence of external actors in continental affairs.[78] Second, Western States initiated a withdrawal from African conflict management after the disasters in Somalia and Rwanda, leaving a vacuum for African contingents to fill. Third, the rise of African sub-regional hegemons provided the jumpstart sub-regional international organizations required to mandate and field peace operations forces.[79]

Indeed, there is a preference among African states for "African solutions to African Problems.[80] This sentiment is well reflected in the African Union Constitutive Act and its Protocol on Peace and Security Council, which reaffirms the

77. Mays (n 44.)
78. Ibid.
79. Ibid.
80. Adam Keith, The African Union in Darfur: An African Solution to a Global Problem Journal of Public and International Affairs [2007] 18, 1.< https://jpia.princeton.edu/sites/jpia/files/2007-7> accessed 25th November, 2019.

determination of Africa to be a master of its own destiny.[81] Nowhere has the vision of African solutions to African problems been more challenged than in the peace and security realm. The AU has struggled to mobilize resources to address various security challenges with minimal success.[82] From Somalia to Darfur, the organization is increasingly looking towards the international community to provide resources to match the preponderance of the security challenge on the continent. It is this inability of the organization to secure peace and stability on the continent on its own which provides a reality check on the practicality of the concept of African solutions to African problems.[83]

The endeavour of putting the concept of African solutions to African problems into practice has not been an exclusive challenge of the AU only.[84] Infact, regional peacekeeping efforts undertaken under the auspices of ECOWAS and SADU have faced similar challenges. For example, despite the commendable work of ECOWAS Mission in Sierra Leone and Liberia, the Security Council had to approve UN-led missions and much

81. Ibid.
82. Ibid.
83. Keith Gottschalk and Siegmar Schmidt, The African Union and the New Partnership for Africa's Development: strong institution for Weak States? Internationale Politik und Gesellschaft 4: 138-158. <https://www.semanticscholar.org/paper/The-African-Union-and-the-New-Partnership-for-for-Gottschalk-Schmidt/cc1573019a3455d36a7ae92997ead4cef6361c8b> accessed 25th November, 2019.
84. Ibid.

resources in both countries (UNAMSIL and UNAMIL for Sierra Leone and Liberia respectively). The same can be said of DR Congo where after a brief intervention by SADC, the UN-approved MONUC as the primary organ to secure peace and stability in this war-ravaged country.[85] As realizing the concept of African solutions to African problems is a challenge to both regional organizations and the AU itself. So far, I have examined the previous efforts undertaken by the OAU and later the AU and other regional organizations like SADC and ECOWAS to realize the vision of African solutions for African problems.[86] I also deciphered the challenges encountered and gave modest proposals on some possible mechanisms to realize this vision where Africa can ably take care of challenges to its own peace and security.[87]

The OAU was established to promote regional cooperation among newly independent African countries. The organization's specific purposes

85. Ibid.
86. Ebiokpo Botei 'How can the African Union Improve on its Function of being the "African Solution to African Problems" with Regard to Conflict Resolution?' American International Journal of Social Science[2015] 4 (4) 39-45. <https://www.google.com/search?q=Ebiokpo +Botei +%E2%80%98How+can+the+Africa n+Union+ improves+ on+its+Function+of+being+the+%E2%80%9C African+Solution+to+African+Problems%E2%80%9D+with+ Regard+to+Conflict+Re solution%3F%E2%80%99+ American+International+ Journal+of+Social+Science [2015]+4+%284%29+39-45&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-beta&channel=fflb#spf=1574674620233> accessed 25th November, 2019.
87. Ibid

were to promote the unity and solidarity of African states; coordination and cooperation to improve the lives of African peoples; defence of their sovereignty, territorial integrity and independence; the eradication of all forms of colonialism; and the promotion of international co-operation.[88] In practice, the OAU was largely devoted to the consolidation of post-colonial states in Africa.

Given that the OAU had no legislative powers, its objectives were to be achieved primarily via the harmonization of Member States' policies.[89] The OAU's 'supreme organ' was the Assembly of Heads of States and Government (AHSG), whose role was to 'discuss matters of common concern to Africa with a view to coordinating and harmonizing the general policy of the Organization.'[90] The work of the AHSG was operationalized by the Council of Ministers (CM), composed of Member States' foreign or other ministers and charged with implementing AHSG decisions and coordinating inter-African co-operation in accordance with AHSG instructions.[91] In addition to the AHSG and the CM, the OAU had an Addis Abba-based General Secretariat and a Commission of

88. Ibid.
89. International Refugee Rights Initiative, 'From Non-Interference to Non-Indifference: the African Union and the Responsibility To project September, 2017 <https://reliefweb.int/report/world/non-interference-non-indifference-african-union-and-responsibility-protect> accessed 25th November, 2019.
90. Charter of the Organization of African Unity, 479 UNTS 39, 25 May 1963, [OAU Charter], art II (1) <https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963>. accessed 25th November, 2019.
91. Ibid art II (2).

Mediation, Conciliation and Arbitration.[92] The latter, a judicial dispute resolution mechanism, was "stillborn and has never worked"[93], because "member states have shown a strong preference for political process of conflict resolution rather than for judicial means of settlement."[94]

Other bodies were created subsequent to the 1963 adoption of the OAU Charter. In 1993, the Mechanism of Conflict Prevention, Management and Resolution (MCPMR) was established as a political decision-making body, functioning at the Head of State, ministerial and ambassadorial levels, whose decisions were operationalised by the OAU Secretariat's Conflict Management Center (also known as the Conflict Management Division).[95] The MCPMR also included a military arm, known as the Field Operations Section, and the Peace Fund, which provided financial support.

Despite the establishment of a dedicated conflict prevention body, the OAU's role in conflict resolution and crisis management has been "characterized by modest success in a few cases and dismal failure in most others."[96] At the core of this failure was the organisation's legal framework which presented a particular impediment to its potential for conflict prevention

92. Ibid art VIII.
93. Ibid art XIII
94. Ibid art VII.
95. [International Panel of Eminent Personalities, 'Rwanda; The Preventable Genocide', Organization of African Unity, 2000 <https://www.refworld.org› pdfid> accessed 25th November, 2019.
96. Ibid.

and resolution. The OAU Charter affirmed member states' adherence to a number of core principles, including "[n]on-interference in the affairs of States."[97] This situated internal conflict beyond OAU jurisdiction and rendered the MCPMR's Central Organ legally unable to respond to internal strife, except in the rare instances in which the affected state consented to intervention. The OAU Charter also stressed the "sovereign equality of all Member States" and "[r]espect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence."[98] Relatedly, Member States pledged to settle disputes peacefully by "negotiation, mediation, conciliation or arbitration."[99] The OAU's rigorous adherence to these principles – non-intervention in particular – coupled with persistent financial difficulties, effectively prevented it from tacking conflict in Africa.[100]

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97. Organization of African Unity, 'Declaration of the Assembly of Heads of States and Government on the Establishment on the Establishment within the OAU of a Mechanism for Conflict Prevention, Management and Resolution' 13 RSQ 174, 1994 paras 13-15. <https://www.dipublico.org › oau-declaration-on-a-mechanism-for-conflict-> accessed 25th November, 2019.
98. Ibid para 17.
99. R. Murray, 'Preventing Conflicts in Africa: The Need for a Wider Perspective' Journal of African Law, 45l: 13-24, p. 16 <https://reliefweb.int › sites › reliefweb.int › files › resources> accessed 25th November, 2019.
100. P. Mweti Munya, 'The Organization of African Unity and its role in Regional Conflict Resolution and Dispute Settlement: A crictical Evaluation' Baston College Third World War Journal, 19 B. C: 537-592, 1998-1999, p. 578 <lawdigitalcommons.bc.edu›cgi›viewcontent> accessed 25th November, 2019.

2. The Constitutive Act of the African Union

The failure of the OAU to tackle conflict was among the issues that led to the 2001 transformation of the OAU into the AU. The end of the Cold War precipitated major political changes in Africa, including democratic changes. The first formal indication of the OAU's declining relevance in this new political landscape came in the form of the 1990 Declaration on the political and socio-Economic Situation in Africa, which acknowledge that the "era of focusing mainly on 'political liberation and nation building' should make way for a new era of greater emphasis on economic development and integration."[101] This economic development agenda was concretized in 1991 with the adoption of a treaty establishing the African Economic Community – known as the Abuja Treaty.[102] Its primary objective was "to promote economic, social and cultural development and the integration of African economies"[103] through the gradual coordination of the continent's existing sub-regional economic communities and the establishment of new policies, programmes and institutions.[104]

Eight years later, however, African leaders committed to forming an African union that would fast track the creation and implementation of the institutions contemplated by the Abuja Treaty.[105]

101. OAU Charter, art III (2).
102. Ibid arts III (1) & III (3).
103. OAU Charter, art III (4).
104. P, Mweti Munya, n (72).
105. OAU Assembly of Heads of State and Government, 'Declaration on the Political and Socio-Economic situation in Africa', AHSG/Dec.1 (XXVI), 9-11 July 1990

The AU superseded the OAU and incorporated the African Economic Community (AEC) on 26 May[106]2001, when its Constitutive Act entered into force.[107] The AU has been described as "essentially a merger of the largely political ambitions of the OAU and the mainly economically minded AEC, with the addition of some organs and with an acceleration of pace in economic integration."[108] The AU supplanted the OAU largely out of a sense of frustration among African leaders about the slow pace of economic integration and awareness that the many problems on the continent necessitated a new way of doing things.[109]

The OAU was majorly based on Sovereignty of States that she is made up of. The purpose was to promote unity and solidarity of the African States.[110] It was to defend the sovereignty and the territorial integrity of the African States.[111] The Charter provides:

> *The Member States of the OAU, solemnly affirm and declare their*

<www. peaceau.org › uploads › ahg-decl-3-xxix-e> accessed 25th November, 2019.

106. 'Treaty Establishing the African Economic Community, adopted 3 June 1991, entered into force 12 May 1994, 30 ILM 1241,<https://au.int › treaties › treaty-establishing-african-economic-community> accessed 25th November, 2019.
107. Ibid art 4 (1) (a).
108. Ibid art 4 (2).
109. OAU Assembly Heads of State and Government, 'Sirte Declaration' AHSG/Draft/Decl (VI) Rev 1, 9 September 1999 <https://en.wikipedia.org › wiki › Sirte_Declaration> accessed 25th November, 2019.
110. Art II (i) (a) of the Charter of the OAU 1963.
111. Ibid (i) (c) of the Charter of the OAU 1963.

> *adherence to sovereign equality of all Member States, non-interference in the internal affairs of Member States, respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence.*[112]

The above was tagged 'absolute non-interference in the internal affairs of member states, which was taken to ridiculous levels and led to the misrule by so many past African Head of States'. Busumtwi-Sam explains that the OAU Charter's non-interference norms:

> *May have succeeded in minimizing certain types of conflict...specifically inter-state conflict fuelled by irredentism or other trans-boundary claims, but they also contributed to the initiation and intensification of other types of conflicts by legitimizing the preservation of the status quo and delegitimizing the grievances of disaffected groups...As a result, little was done to address the underlying political and socio-economic problems that gave rise to and sustained the vast majority of violent African conflicts.*[113]

112. Ibid Art III (1) - (3) of the Charter of the OAU 1963.
113. J. Busumtwi-Sam, "Architects of Peace: The African Union and NEPAD", Georgetown Journal of International Affairs, 7 (1): 71-81, 2006, 74. (Busumtwi-Sam 2006)

The AU's Constitutive Act modified the OAU Charter principles, "conscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of the continent-wide development and integration agenda.[114] While the AU Constitutive Act still prohibits the use of force or threat to use force among Members States of the Union,"[115] and also mandates "[n]on-interference by any Member State in the internal affairs of another,"[116] this is followed by a further principle recognizing "the right of the Union to intervene:

> *In a Member State pursuant to a decision of the Assembly [of Heads of States and Government] in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."[117]" AU Member States also have the right to request intervention*

114. Constitutive Act of the African Union, adopted 11 July, 2000, entered into force 26th May, 2001, 2158 UNTS (AU Constitutive Act),

115. F. Viijoen, International Human Rights Law In Africa, Oxford University Press, Oxford, [2012], <https:// academic.oup.com › chinesejil › article-pdf › jmt022> accessed 25th November, 2019.

116. B. Kioko, 'The Right of Intervention under the African Union's Constitutive Act from Non-interference to Non-intervention', International Review of the Red Cross, 85; 807-824, [2003] <www.operationspaix.net › DATA › DOCUMENT › 5868~v~The_right_of> accessed 25th November, 2019.

117. Constitutive Act of AU, Preamble para. 8.

from the Union in order to restore peace and security."[118]

2.1 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2012

Another important legal institution that affects sovereignty of States under the AU is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).[119] One of the most pressing challenges the international community is experiencing today in the context of population movements is the problem of internal displacement.[120] While not being a new phenomenon, it reached worrying dimension after

118. Ibid art 4 (f).

119. African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2012. <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> accessed on 16th December 2019.

120. F Z Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, <https://www.researchgate.net/profile/Flavia_Zorzi_Giustiniani/publication/256032192_New_ Hopes_and_Challenges_for_the_Protection_of_Idps_in_Afric a_The_Kampala_Convention_for_the_Protectio n_and_Assistance_of_Internally_Displaced_Persons_in_Africa/links/574c215b08ae538af6a50d25/New-Hopes-and-Challenges-for-the-Protection-of-Idps-in-Africa-The-Kampala-Convention-for-the-Protection-and-Assistance-of-Internally-Displaced-Persons-in-Africa.pdf > accessed 31st January, 2019.

the end of the Cold War.[121] Today, the sheer number of internally-displaced persons (IDPs) in the world, coupled with the human rights violations that they face, shows at once the dimension and the gravity of the problem. Situations of mass displacement generally put considerable stress on affected communities and negatively impact the overall stability and development of the territorial State.[122] In some cases, displacement may also fuel tensions and conflict, which if not properly addressed, frustrate peace building efforts.[123]

Unlike refugees, who fall under the protection of international instruments,[124] and who have specific UN agency – the United Nations High Commission for Refugees (UNHCR) – to assist them, IDPs cannot rely on comparable standards

121. Ibid

122. The Brooking Institution, 'Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building',<https://www.brookings.edu/wpcontent/uploads/2016/06/2007_peaceprocesses.pdf> accessed 31st January, 2019.

123. K Koser, 'Introduction: Integrating Displacement in Peace Processes and Peace Building,' [2009] (28)(1) Refugee Survey Quarterly, 5. <https://www.brookings.edu/wp-content/uploads/2016/06/2007_peaceprocesses.pdf> accessed on 16th December 2019

124. Such as the 1951 UN convention relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugees Problem in Africa. <https://www.unhcr.org/excom/scip/3ae68cd214/persons-covered-oau-convention-governing-specific-aspects-refugee-problems.html> accessed on 16th December 2019.

or mechanisms for their protection.[125] Their own State, while having the primary responsibility to assist and protect, is often unable or unwilling to fulfill its duty and owing to sovereignty concerns, hampers international actors from acting in its place.

Against this background, the recent initiative taken by the African Union (AU) to draft the Convention for the Protection of Internal Displacement and the Protection of and Assistance to Internally Displaced Persons in Africa is an important development, because it demonstrates the continued progress and support for IDPs in the region. The AU Executive Council decided to draft a treaty focused specifically on the internally displaced persons in 2004.[126]

The problem of internal displacement is particularly acute in Africa, which hosts approximately 11.6 million IDPs – almost half (45%) of a global total of around 26 million.[127] The gravity and urgency of the problem were once again

125. M Asplet and M Bradley, 'Introductory Note to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa [Kampala Convention]', [2013] (52)(1) International Legal Materials [ILM], p 398 <https://www.jstor.org/stable/10.5305/intelegamate.52.1.0397> accessed 31 January 2019.

126. African Union Convention For The Protection And Assistance of Internally Displaced Persons In Africa [Kampala Convention] <https://www.ifrc.org/docs/idrl/-%20to%20add/auconventionprotectionidps2009.pdf> accessed on 31st January, 2019.

127. M Mannak, 'Africa Home of World's Displaced People', [2009] Digital Journal <http://www.digitaljournal.com/article/280802> accessed 31st January, 2019.

brought to fore by recent events in Sudan, a country which unfortunately boasts the largest population of IDPs in the world (around 5 million). In 2017, Darfur, a region that already had a population of 2.7 million IDPs, the situation dramatically deteriorated when 317,000 more people were displaced, and the Sudanese government expelled 13 international aid agencies in the region.[128]

The framework of the Convention for the Protection and Assistance of IDPs is based on the assumption – undisputed under international law – that States bear the primary responsibility to respect, protect, and fulfill the rights to which the internally displaced are entitled, without discrimination of any kind.[129] Accordingly, the text of the convention establishes a series of obligations on States Parties during all the different phases of displacement.[130]

Foremost among these obligations are those to prohibit and prevent arbitrary displacement, to respect and ensure respect and protection of IDPs' human rights, to ensure individual criminal responsibility and the accountability of non-State actors involved in activities causing or contributing to displacement, and to maintain the civilian and humanitarian character of the protection and assistance of IDPs.[131]

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128. R Crilly, 'A Million Face Starvation as Sudan Shuts Down' The Sunday Times, 6 March 2009, <http://www.timesonline.co.uk/tol/news/world/africa/article5854944.ece> accessed 31st January, 2019.
129. Kampala Convention Art 2 para 4.
130. Ibid.
131. Ibid Art 3 1(a), (d), (4).

Mindful that the primary bearers of obligations often coincide with the same subjects who directly or indirectly cause displacement, State Parties have also assigned a special role to the African Union. The responsibilities of the AU are outlined in the Convention,[132] which conceives of the organization as both a coordination mechanism and, in exceptional circumstances, such as when a State is unable or unwilling to cope with a displacement crisis in its territory, as a major support or substitute for State action.[133]

The Convention lists among its objectives that of providing for the respective obligations, responsibilities and roles of armed groups, non-Sate actors and other relevant actors, including non-governmental organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.[134] The obligations of State Parties relating to protection and humanitarian assistance are also dealt with in the Convention.[135] This article is unprecedented in human rights treaty law. In fact, as well known, detailed provisions regarding humanitarian assistance and, in particular, the contentious issue of humanitarian access can be found only in the law of armed conflict.[136]

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132. Ibid Art 8.
133. Ibid.
134. Ibid Art 2 (e).
135. Ibid Art 5.
136. D Plattner, 'Assistance to the Civilian Population: The Development and Present State of International Humanitarian Law', [1992] (32)(288) International Review

Internal displacement could not be adequately dealt with in the absence of a genuine and vigorous effort to foster durable solution. AU leaders meeting in Uganda in October 2009, realized the need for durable solutions and noted:

Refugees and internally displaced persons are sometimes unable or unwilling to return to their homes immediately after their displacement and as a result, spend many years or even decades in camps and therefore require durable solutions to their displacement situation.[137]

The need for a special regime of protection only ceases to exist, once normal conditions are restored. The endeavor to seek lasting solutions to displacement is also enshrined in the Kampala Convention, entitled, 'Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation'.[138] The article starts by providing for the promotion and the creation of "satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in

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of the Red Cross, 249. <https://www.cambridge.org/core/journals/international-review-of-the-red-cross-1961-1997/article/assistance-to-the-civilian-population-the-development-and-present-state-of-international-humanitarian-law/FEB4457699E5A31599BDDF8FE5976A66> accessed on 16th December 2019.

137. Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Protection of and Assistance to Internally Displaced Persons, Transmitted by Note of the Secretary-General, para. 29, U.N. Doc. A/64/214 (Aug. 3 2009) <https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/64/A_64_214.pdf> accessed on 31st January 2019.

138. The Kampala Convention, Art 11.

circumstances of safety dignity."

The second paragraph then affirms that "State Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions". This latter provision establishes that return has to be voluntary, and, accordingly, that the individuals concerned need to be involved in decisions regarding durable solutions.

In respect to another provision entitled Compensation,[139] enjoins States Parties *inter alia* to provide appropriate forms of reparation for arbitrary displacement, as well as for damages incurred as a result of displacement. As far as property rights and lands are concerned, This Article[140] requires the establishment of "appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons."

This Convention is linked to the Protocol Relating to Peace and Security (PSC) of the AU by incorporating the provisions of the said Protocol.[141] This Convention empowers the AU to intervene in a given country where Internally Displaced Persons (IDPs) are maltreated. The rationale for intervention and the extent it can be employed by the AU to protect and assist victims of

139. Ibid Art 12.
140. Ibid Art 11.
141. Art 8(1)&(2) of the 2012 Convention.

intermittent intrastate warfare has been a subject of intense debate.[142] It is, however, recommended that such an intervention should be with a view to ameliorating the conditions of the IDPs and therefore, it should not degenerate to another warfare.

2.2 Extraordinary African Chambers (EAC)

Yet another institution that reduces the sovereign powers of Member States of the AU is the Extraordinary African Chambers (EAC). In August 2012, the African Union and Senegal established the Extraordinary African Chambers (EAC) within the Senegalese Judicial system to 'prosecute and try a person(s) most responsible for crimes and serious violations of International Law, Customary International Law and International Conventions ratified by Chad, committed on the territory of Chad during the period from 7th June 1982 to 1st December 1990'.[143] The Chambers' Jurisdiction covers genocide, crimes against humanity, war

142. S Ekpa and N H M Dahlan, 'Sovereignty, Internal Displacement and Right of Intervention: Perspectives from the African Union's Constitutive Act and the Convention for the Protection and Assistance of Internally Displaced Persons'. [2016] (7) Journal of Legal Studies, 25, <http://repo.uum.edu.my/22943/> accessed 20th October, 2017, T Murithi, 'African Union's Transition from Non-Intervention to Non-Difference: An Ad-hoc Approach to Responsibility to Protect' [2009] (1), IPG, 90-106.

143. Statute of the Extraordinary African Chambers within the Senegalese judicial system for the prosecution of international crimes committed on the territory of the Republic of Chad during the period from 7 June 1982 to 1 December 1990, article 3; Human Rights Watch, 'Soldiers Who Rape, Commanders Who Condone: Sexual

crimes and torture,[144] setting a precedent as an internationalized criminal Tribunal, operating exclusively on the basis of universal jurisdiction.

The Court comprises the Investigative/Pre-trial Chamber, Indictment Chamber, Trial Chamber and Appeals Chambers.[145] Article 11 of the EAC Statutes provides that the Chamber shall be composed of two Senegalese Judges and two alternate Senegalese Judges, and an AU Member State non-Senegalese President nominated by the Senegalese Minister of Justice and appointed by the Chair Person of the AU Commission. The Extraordinary African Chambers shall be dissolved in their own right once all judgments are final.[146] Inaugurated in February 2013 in Dakar, Senegal, the Chambers convicted Hissène Habré, former President of Chad (1982-90) of Crimes against humanity, war crimes and torture, and sentenced into life imprisonment on 30th May 2016. On April 27, 2017, an Appeals Court confirmed the verdict.[147]

3. Conclusion

It is considered a fundamental element of the existence of the State or the legitimate source of

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Violence and Military Reform in the Democratic Republic of Congo', July 2009, <https://w.w.w.hrw.org/report/2009/07/16/soldiers-who-rape-commanders-who-condone/sexual-violence-and-military-reform> accessed 18th June 2019.

144. Ibid Art 4.

145. Ibid Art 2.

146. Ibid Art 37.

147. J Bigio and R Vogelstein 'Countering Sexual Violence in Conflict' [2017] Council on Foreign Relations (Center

the authority within a State and even a "modern myth which was often violated in the international practice", the sovereign equality of States remains the binder that coordinates the other rules and principles of contemporary international law and it "directs and organizes peace structures as a whole, in the sense of maintaining and developing peaceful relations in the world". The concept of sovereignty has developed with states and evolution of international relations and it had to adapt to frequent challenges arising from different levels: sub-national, transnational, supranational and global.

On the other hand, the excesses of African leaders have whittled down the doctrine of sovereignty on the African continent. Since the original aim of liberty of all African countries from European colonialism, there is a need to de-emphasize non-interference, especially where the rights of citizens are involved. Electoral violence has replaced military coups in some states on the African continent. State sovereignty has to give way where undemocratic practices are involved. There is a need to embrace modern ways of governance that grants dividends of democracy to citizens and not a rule of impurity.

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for Preventive Action Women and Foreign Policy). <https://www.google.com/search?q=J+Bigio+and+R+Vogelstein+%E2%80%98Countering+Sexual+Violence+in+ Conflict%E2%80%99+[2017]+Council+on+Foreign+ Relations+ %28Center+for+Preventive+Action+Women+and+ Foreign+Policy %29. &ie=utf-8&oe=utf-8&aq=t&rls=org. mozilla:en-US:official&client=firefox-beta&channel=fflb> accessed 18th June 2019.