CONFLICTS AND THE WEAKENING OF SOVEREIGNTY IN INTERNATIONAL LAW: A CASE STUDY OF LIBERIA AND SIERRA LEONE

[1]BRITTO, BONIFACIO ADEREMI, [2]OGUNNIYI, OLAYEMI JACOB

[1]Department of History and International Studies, Faculty of Arts, Lagos State University, Ojo. Lagos, Nigeria
[2]Department of History, Faculty of Arts, University of Ibadan, Ibadan, Nigeria
E-mail: [1]rembritt_6@yahoo.com, [2]ayoyemlove@yahoo.com

Abstract - Fundamentally, in international law, the principle of state sovereignty is very paramount. This implies that, states under international law have certain inviolable rights inherent to statehood and are formally equal to all other states. But prior to the 20th century, absolute sovereignty which never literally existed with states, but within kingdoms as exclusive powers was vested in the Monarchs but nonetheless, the fiction of the absolute sovereignty of equal states gained hold and came to be recognized as the foundation of modern in international relations as theory. However, with the advent of the 20th century, absolute sovereignty started to weak especially with the successive measures that have been taken to create a system of "collective security" in international relations which arguably weakens the concept of absolute sovereignty. Further afield, there is also the issue of increased interdependence of states at many levels, including trade levels, information diplomacy, and state membership of international organizations as well as the establishment of international Tribunals. It is against this background therefore, that the paper made use of secondary data to examine how conflicts and issues of collective security has affected or weakened sovereignty in international law. The focus of the paper will be within the time frame of the Liberian civil war and the Sierra-Leone crisis.

Keywords - Absolute Sovereignty, Conflicts, International law, State.

I. INTRODUCTION

ECOWAS intervention in Liberia and Sierra Leone does not have any solid anchor in international law. The only possible justification are that it was necessary for humanitarian reasons or; was the action of a regional organization acting under article 52 of the United Nations Charter Yet even if humanitarian intervention is valid under international law, ECOWAS action is questionable since it does not seem to satisfy many of the requirements for a valid humanitarian (Brownle, 1990).

In international Law, the principle of state sovereignty (Dixon, 1998) cannot be overemphasized. In other words, this implies that states have certain inviolable rights inherent to statehood and are formally the equal of all other states (Black Law Dictionary, 1993) Also, states have international independence, combined with the right and power of regulating their internal affairs without foreign diktats such that sovereignty is the most extensive form of jurisdiction under international law. In general terms, it denotes full and unchangeable power of a piece of territory and all the persons from time to time therein [2]. Sovereign is defined in [3] as:

> States whose subjects or citizens are in the habit of obedience to them, and which are not themselves subject to any other (or paramount) state in any respect

Prior to the 20th century, absolute sovereignty which never literally existed with states, but within kingdoms, as exclusive powers was vested in the Monarchs but nonetheless, the fiction of the absolute sovereignty of equal states gained hold and came to be recognized as the foundation of modern international relations as theory [3]. However, with the advent of the 20th century, absolute sovereignty started to wane especially with the successive measures that have been taken to create a system of collective security in international relations which arguably weakens the concept of absolute sovereignty.

Furthermore, there is also the issue of increased interdependence of states at many levels, including trade levels, information diplomacy and state membership of international organizations as well as the establishment of international tribunals. State membership of international organizations at any level will definitely limit the sovereign power of the state. This of course, has to do with the issue of collective security and also the issue of bounding themselves in covenants with other members of the international organizations, that is, United Nations Organizations (UNO), European Union (E.U), African Union (A.U.) or sub regional organizations like the Economic community of West Africa states (ECOWAS) (George, 1962). Consequently, decisions of councils in international organizations often times limits the absolute powers a state may want to exercise. It is against this background that conflicts and the weakening of sovereignty in international law that the paper focuses on using the Liberia and Sierra Leone crisis and the subsequent intervention of ECOWAS (ECOMOG) as a case study.

II. INTERVENTION AND STATE SOVEREIGNTY: LIBERIA AND SIERRA LEONE AS CASE STUDIES

ECOWAS intervention in Liberia and Sierra Leone does not have any solid anchor in international law (Brownle, 1963). The only possible justification are that it was necessary for humanitarian reasons or; was the action of a regional organization acting under article 52 of the United Nations Charter Yet even if humanitarian intervention is valid under international law, ECOWAS action is questionable since it does not seem to satisfy many of the requirements for a valid humanitarian (International Law and Law Commission, 1949).

At the time of the creation of the Organization of African Unity (OAU) in 1963, Ghana's founding President, Kwame Nkrumah, was in a minority of one in calling for the establishment of an African High Command. The idea was to establish a supra-national standing army involving all independent African states pooling their resources together to advance the liberation of Africa and to protect in the OAU's Charter condemning political assassination and rejecting a clause binding them to ensuring "good government". In this write-up, an attempt will be made to briefly examine the ECOWAS intervention in Liberia and Sierra Leone and its legality.

LIBERIA

It all started when the ECOWAS Standing Mediation Committee (SMC) met in Banjul, The Gambia in August 1990 to discuss the deteriorating Liberian civil war, which had erupted seven months earlier. Of the sixteen ECOWAS members, only five, (The Gambia, Nigeria, Ghana Guinea and Sierra Leone were present. The meeting established an Economic Community of West African State Ceasefire Monitoring Group (ECOMOG) with military peacekeepers from Nigeria, Ghana, Guinea, including Sierra Leone and, by 1991, the force was mandated to supervise a ceasefire and establish an interim government to organize elections after twelve months.

The main rationale for the ECOMOG intervention included: limiting the deleterious effects of Liberia's war on sub regional stability, protecting ECOWAS nations, and reliving humanitarian suffering in Liberia. The seven-year war ultimately drove 750,000 refugees into neighbouring Guinea, Cote d'Ivoire, and Sierra Leone, triggered a decade - long war in Sierra Leone, spilling over sporadically a into Cote d' Ivoire and Guinea. At the start of the war, about 3,000 Nigerian, Ghanaian and Sierra Leonean citizens being held hostage by Charles Taylor's National patriotic front of Liberia (NPFL), and Liberia's war would eventually account for 200,000 most civilian deaths.

Several ECOWAS states involved in the intervention had concrete interests in the stability of Liberia among Taylor's NPFL were individuals who had been involved in the unsuccessful Gambian coup in 1981. The coup had been strongly backed by Libya, which had provided arms and training facilities to the NPFL, as well as to its Revolutionary United Front (RUF) allies in Sierra Leone. Guinea and Sierra Leone were directly affected by the flow of Liberian. Refugees, while Guinea had 30,000 citizens trapped in Liberia [5]. Sierra Leone had similar reasons as Gambia to be concerned about Liberia, since the NPFL had Sierra Leonean dissidents within its ranks who were vowing to destabilize its country. These fears later proved to be well founded as the Liberian conflict triggered a civil war in Sierra Leone in 1991 (Grotins, 1963).

Despite these strong security and humanitarian justifications, francophone Burkina Faso, Cote d' Ivoire and Senegal were opposed to what they regarded as usurpation of the ECOWAS Authority's powers by the Standing Mediation Committee. To ECOMOG, the traditional francophone /Anglophone divisions within ECOWAS and traditional fears of Nigeria's hegemonic ambitions were revived by the ECOMOG intervention in Liberia.

The Burkinabe leader, Blaise Compare, was the most vociferous opponent of ECOMOG, arguing that the SMC could only intervene in interstate conflict and not in civil wars. But despite his strong legal arguments, Compaore's own military interventionism exposed him to charges of hypocrisy. First, Burkina Faso was suspected of sheltering Gambian dissidents determined to destabilize the regime in Banjul. Second, Compaore was the' strongest backer of NPFL rebels in Liberia and also supported RUF rebels in Sierra Leone. There are credible reports that he sent troops and arms to both countries, provided camps for military training to both rebel groups, and benefited from illicit mineral and other exports from both countries. In Angola, Compaore has been accused, in a UN report, of backing UNITA rebels.

Nonetheless, the arguments used in establishing ECOMOG had a more solid basis in politics than in law, and ECOMOG was justified largely on humanitarian and regional stability grounds. The ECOWAS intervention in Liberia did not conform to the constitutional legal requirements of ECOWAS. Neither the 1978 ECOWAS Protocol on Non-Aggression nor its 1981 protocol relating to Mutual Assistance on Defense provided clear legal justification for the intervention. The 1978 Protocol commits member to setting disputes peacefully, refraining from supporting subversion or aggression, and pledging to refer disputes to a Committee of the ECOWAS Authority.

The 1981 Protocol permitted intervention in sub regional conflicts only in cases of an externally - directed threat, a conflict between two ECOWAS states or an externally - sustained internal conflict. By the time of ECOMOG's intervention in Liberia, some members had not yet ratified the 1981 Protocol due,

in part, to fears about Nigeria's preponderant weight in the military structure (Ofodile, 1994). Mail and Cape Verde ad refused to sign, while Benin, The Gambia and Mauritania had not yet ratified it.

Even the body that took the decision to establish ECOMOG was on shaky legal foundations. The Standing Mediation Committee was intended, as its name suggests, only mediating rather than attempting to impose solutions on conflicts. Article 4 of the document establishing the SMC talks only of "mediation procedures" and nowhere is military action referred to. Taylor's NPFL also did not give its consent to ECOMOG's intervention in Liberia. Only after several sub regional peace conference did the full ECOWAS membership recognize ECOMOG's role in Liberia though Burkina Faso and to a lesser degree, Cote d'Ivoire, continued to provide military assistance to the NPFL.

But despite ECOMOG's questionable legality, the intervention was provided legitimacy by important organizations and governments. Most western governments backed ECOMOG as a worthy effort by Africans to solve their own problems, though they desisted from providing its peacekeepers with strong logistical support until 1996. OAU Secretary General, Salim Ahmed brushed aside legal argument against ECOMOG, saying: "to argue that there was no legal base for any intervention in Liberia is surprising. Should the countries in West Africa just leave the Liberians to fight each other? Will that be more legitimate The CJMT Chairmen in 1990, Yowerj Museveni, also supported the pro-ECOMOG Camp, support external involvement in cases of massive refugee flows to neighbouring countries the UN at first lent more cautious support to ECOMOG, but by 1993, the world body had sent 368 unarmed military observers to Liberia before taking the lead in negotiating the Cotonou peace accord in 1993.

SIERRA LEONE

The war in Liberia spilled over into Sierra Leone in March 1991 as a result of the NPFL sponsoring a military invasion by RUF rebels. Charles Taylor had earlier promised Sierra Leone that it would "taste war" for supporting ECOMOG in Liberia. Nigerian, Ghanaian and Guinean troops were sent to Freetown as part of efforts to protect Sierra Leone's capital from RUF rebels. The West African soldiers were in Sierra Leone under bilateral military agreements signed with successive governments in Freetown. On 25 May 1997, a military coup toppled the elected government of Ahmed Tejan Kabbah, and the West African forces were expelled to the outskirts of Freetown. Kabbah fled to Conakry, and asked ECOMOG, which was concluding its successful mission in Liberia to restore him to power. This request the existence of bilateral military treaties with an election government, and the fact that the international community continued to accord diplomatic recognition to Kabbah and refused to recognize the military junta, provided greater legal justification for ECOMOG's intervention to restore Kabbah to power than its earlier intervention in Liberia [8].

After the 1997 coup, ECOWAS called for a return to constitutional rule and imposed a blockade on the putschists who enjoyed little popular support. The coup leader, Major Johnny Paul Koromah at first agreed to an ECOWAS decision to reinstate Kabbah to power by 22 April 1998, but then talked about staying in power unit 2001 after several clashes with Koromah's forces, Nigerian troops restored Kabbah to power in March 1998, with strong backing from the OAU Campaore again publicly questioned Nigeria's motives, asking "just what might be the intentions of those who have employed force for the restoration of President Kabbah" Senegal's sud-Quotidien newspaper criticized Nigeria's eternal quest for leadership" and its "opportunism" in transforming the departing ECOMOG force in Liberia into another ECOMOG force in Sierra Leone (Beyelin, 1997).

But the intervention was not simply a case of an overbearing *Fax Nigeriana.* While some of Nigeria's army generals personally benefited from revenues written off as ECOMOG expenses and the mission did bolster Nigeria's self-image as a sub regional power, the operation also helped an isolated Nigerian leader, General Sani Abacha, to ward off the threat of severe international sanctions against his regime. When Olusegun Obasanjo was elected in February 1999, he withdrew most of Nigeria's solders from Sierra Leone, forcing the UN to subsume the remaining 3, 500 Nigerian soldiers into UNAMSIL, a more international peacekeeping force.

Several ECOWAS states, particularly Guinea and Liberia, which shared common borders with Sierra Leone, had far more of an interest in the stability of Sierra Leone than Nigeria Even Charles Taylor, who had been fuelling the war in Sierra Leone by backing the RUF, hosted over 120, 000 Sierra Lone refugees Liberia suffered two military incursions from Guinea between 1999 and 2000 Two military incursions were also launched into Guinea from Liberia and Sierra Leone is September 2000. Both Taylor and Guinean leader, Lansana Conte, appear to be sponsoring rebellions against each other and are proving to be among West Africa's most prominent interventionists, rendering the Mano river basin one of the most unstable regions in the world.

Cote d'Ivoire also had a strong interest in sub regional stability; it still hosted about 200,000 refugees from the Liberian civil war Senegal, a consistent critic of the Nigeria's role in Sierra Leone, became the most enthusiastic supporter of a Nigeria presence in the ECOMOG mission in Guinea-Bissau in 1998, after Senegal had launched its own brief

military intervention in Bissau, with Guinea, amidst concerns of arms trafficking to secessionists in Senegal's Casamance region This force was later replaced by an ECOMOG force involving Benin, Gambia, Niger and Togo, which had to be withdrawn in May 1999 partly as a result of its inability, due to financial and material weaknesses, to deal with continuing instability in Bissau. The force was also withdrawn because of a change in the political situation following the ousting of President Joao Vieira by his chief of staff General Ansumane mane.

III. THE LEGALITY OF ECOWAS INTERVENTION

The central place of the principle of non-intervention in traditional international law hardly needs emphasis; sovereignty is the foundation of international law. Intervention is simply another way expressing duty to respect the sovereignty of other states. Still more fundamental is the rule that no state or group of states may use or threaten to use, armed force against the territorial integrity or political independence of another country

Clearly undertaken without the consent of the state on whose territory it occur. In the case of Liberia, there may be some form of consent but the possibility of armed resistance nevertheless means that the operation has a distinctly military character. Customary International Law recognized two grounds on which a state could intervene in another *"to put"* an end to human rights abuse that appeared to have reached intolerable proportions. Those grounds were to protect the lives and property of its own national and to provide humanitarian intervention (Lillich, 1996).

The foundation of the doctrine of humanitarian intervention in International Law has been the shared concern of all individuals for the minimum condition of survival for all humanity. It was an extraordinary remedy, an exception to the postulates of state sovereignty and territorial inviolability based on Kinship and minimum reciprocal responsibility of all humanity. The theory is that violation of human rights has consequences beyond the limit of the territory in which they range. One of such proponent is Vattel, who acknowledge that the right of humanitarian intervention was vested in every state. Thus by the 19th century, the establishment of such doctrine was well established. Writing in 1905 Oppenheim said, "should a state venture to treat its own subjects or part thereof with cruelty as would stagger humanity, public opinion of the rest of the world would call upon the powers to exercise intervention of the purpose of compelling such states to establish a legal order of things within its boundaries sufficient to guarantee to its citizens an existence more adequate to the ideas of modern civilization" (Temple, 1991).

At that time however, war or the use of force was lawful. The declaration of war in a normal sense was an enjoyment of a liberty belonging to sovereign state [5]. It was not declared in a normal sense; a sense had the onus to justify the use of force or coercion. The existence of a considerable choice of vaguely worded grounds of justification, however, made the discharge of this onus quite easy (Reismann and McDougal, 1994).

World experience with respect to war has changed the status of the law considerably. While the covenant of the League of Nations maintained the right of states in respect of war and self-help, severe limitations were placed on a states right to resort to coercion by the kellog-Briand pact [5]. The UN Charter added new dimension to the prohibition against the use of force by the threat or use of force . This radical change in customary law causes the controversy in assessing the legality of humanitarian intervention after 1945.

IV. THE UNITED NATIONS CHARTER AND THE PRINCIPLE OF INTERVENTION

The Charter of the United Nations, Particularly Article 2(7) expressly prohibits the threat or use of force by states With the exception of self-defense and collective self- defense under Article 51, self-help by states is no longer legal. Is it then possible that in spite of this general prohibition, forceful intervention on humanitarian grounds is still permissible even under the Charter 2 on this matter view are sharply divided. The controversy centers around the interpretation given to Articles 2(4), 2 (7) and 51 of the Charter in the of the general purpose and principle of the organization. Those who interpret the Charter strictly argue that it prohibits the use of force completely with the exception the self-defense. On the other land, others contend that the Charter only forbids the use of force for certain specific purpose, spelt therein, and if contrary to the purpose of the Charter, Humanitarian intervention is not one of these purposes.

Those who contest the legality of the doctrine contend that the legal basis for humanitarian intervention is very tenuous. They argue that apart from self-defense and two collective self-defense, self-help by states is now illegal. The Charter in Article 2(4) expressly prohibits the threat or use of force and Article 51 saves the use of force only for self- defense. Nowhere is intervention mentioned. Even who define self-help broadly does not support the view that humanitarian intervention is lawful.

It is further argued that other international document on the question expressly prohibit the use of force except for self-defense, collective self-defense, and action under Charter VIII of the UN Charter. Neither in the UN Declaration on Principle of International Law Concerning Friendly Relations and Co-operation among States, nor in the definition of Aggression of

14 December 1974 (both prohibiting the threat or use of force), is the use of force for humanitarian purpose either mentioned or discussed. On the basis of this, it is safe to conclude that the doctrine seems at odds with the needs of modern international life and there is no authority favoring its legality.

A strong argument is presented by those who help that the Charter does not prohibit the use of force for humanitarian purposes [9]. In their view, the charter actually strengthened the doctrine by its stress on the rights of the individual and linkage of individual rights with international peace and security (Lauterpacht, 1980).

One of the basic purposes of the United Nations is the maintenance of international peace and security through effective collective measures and removal of threats of the peace. Human rights are no longer a matter of state domestic jurisdiction. In a world of interaction and interdependence, deprivations on others constitute a threat to the peace in a region and the world at large. The preamble to the Universal Declaration of Human Rights emphasizes the inseparability of human rights and international peace It recognizes the inherent dignity and the equal and unalienable rights of the members of the human family as the foundation of freedom, justice and world peace. These rights should be protected by law "if man is not be compelled to have recourse, as a last resort to rebellion against tyranny and oppression "The violation of Human Rights being a threat or breach of the peace, the security is seized with mandatory jurisdiction under Chapter VII of the Charter. And under Article 56 of the Charter member state pledge themselves to take joint and separate action in defense of human rights [13].

It also argued that Article 2(4) of the Charter does not prohibit the use of force per se but only for specific unlawful purposes "against the territorial integrity or political independence of any state, or in any manner inconsistent with the purpose of the UN" Humanitarian intervention is not one of these. In any case violation of Human Rights is inconsistent with the purposes of the Charter [11].

The decision whether to intervene to protect human right involves both moral and practical consideration and is subject to a number of restrictive conditions. While the right decision in a particular case cannot be prescribed in advance, it is clear that the number of cases meeting the condition will be small. Taking into account all the likely consequences, there will usually be extremely weighty reasons not to accept intervention on whatever grounds. A usable general definition of 'humanitarian intervention' would be extremely difficult to formulate and virtually impossible to apply rigorously.

CONCLUSION

A brief examination of how political actors have defined sovereign authority through the course of modern history demonstrates that the rules of sovereignty vary, and thus the concept is neither fixed nor constant. Rather, it is subject to changing interpretations that alter the environment in which states relate to each other. These changing in turn affect the ways in which states are constrained and enabled to act in their international relations. The case studies strongly indicate that while some international orders emphasize the state, others emphasize the nation and that this emphasis tends to, oscillate between the two. We find that structural variable along cannot account for these differences. The grand Allies operated within an international environment in 1815 similar to that faced by the Allies in 1919. Yet, their solutions to the dilemmas differed considerably. Twenty-five years later the wining wartime coalition adopted territorial policies similar to those embraced by the Grand Alliance a century earlier. Now there are strong indications that the emphasis has swung toward the national legitimation of sovereignty and away from the sovereignty of the state. We have tarried to show that this occurs because our understanding of sovereign authority is inert- subjective largely based on the peoples and beliefs that a dominant coalition comes to adopt in the process of constructing an international order.

From the foregoing it can be said that military intervention can sometimes be a means of securing human rights, there should be no underestimation of more patient approaches, and in particular on the significance of gradual sea-changes in values and in diplomatic practice as a means of achieving some of the same objects. Among the many causes of the end of the Cold War was the slow erosion of communist belief, and the strengthening of human rights thinking, especially under the Helsinki process. Snail-like change achieved what sudden intervention could not have done.

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