

UNIVERSITY OF NAIROBI
INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**THE IMPACT OF FOREIGN AID ON THE SOVEREIGNTY OF STATES:
A CASE STUDY OF KENYA (1980 – 2005)**

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DECLARATION

This dissertation is my original work and has not been presented for a degree in any other University.

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Above all, I give God all the glory! He has made all things possible.

DEDICATION

This work is dedicated to my family, for their tireless support, encouragement and love throughout this study period.

ABSTRACT

State Sovereignty is a concept formulated in the latter part of the 16th Century. The concept depicts the ability of a nation-state through its government, to have control over its domestic and foreign affairs. This study therefore seeks generally to examine the impact of foreign aid on the sovereignty of states. The study also sets out two other objectives namely: to find out what interests the donors seek to fulfil through the extension of foreign aid to the developing nations and to re-examine the relevance of the concept of state sovereignty in the contemporary international system.

The study utilizes the dependency theoretical framework as the analytical tools. Based on this theory, the study arrives at a number of conclusions: first, that due to the low level of economic development of the developing countries, which has resulted in their over dependency on foreign aid from both bilateral and multilateral donors, the sovereignty of the developing states has been interfered with. The interference has been associated with the stringent conditionalities imposed on the recipient developing countries. The said conditions must be met before foreign aid is either partially disbursed or fully disbursed. It was found that, although foreign aid benefits the recipient countries in some ways, the donors benefit more from the extension of foreign aid. The study also reveals that due to the economic status of the donor countries as compared to the dependency nature of the developing countries, the concept of state sovereignty is fast losing its relevance.

In the final analysis, the study concludes that through foreign aid, state sovereignty of developing countries is constantly interfered with. This can be attributed to African

governments' record of bad governance due to unaccountability and lack of transparency in the management of public affairs and Africa's dependency syndrome.

(Habel Nyamu, Daily Nation, November 1999.)

LIST OF ACRONYMS

AFDB	- African Development Bank
GDP	- Gross Domestic Product
GNP	- Gross National Product
HIPCs	- Heavily Indebted Poor Countries
IMF	- International Monetary Fund
IOs	- Inter-governmental Organisations
NATO	- North Atlantic Treaty Organisation
NGOs	- Non- Governmental Organisation
ODA	- Official Development Assistance
OECD	- Organisation of Economic Co-operation and Development
SAPs	- Structural Adjustment Programmes
UN	- United Nations
UNDP	- United Nations Development Programme
WTO	- World Trade Organisation

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CHAPTER ONE

THE IMPACT OF FOREIGN AID ON STATE SOVEREIGNTY: AN INTRODUCTION:

1.0 INTRODUCTION:

This study examines the impact of foreign aid on state sovereignty especially the extent to which foreign aid from bilateral donors and multilateral institutions like the World Bank, International Monetary Fund (IMF) affect the sovereignty of the developing countries especially in Africa. This will bring to the fore the economic relationships that exist between the donor countries and the recipient countries in this era of globalisation, democracy, and human rights.

This being an introductory chapter, it seeks to give the conceptual definition of state sovereignty and the background of state sovereignty. The problem arising out of these economic relations between donors and recipient nations will be discussed. Furthermore, this chapter includes the objectives of the study, justification, literature review, theoretical framework, hypotheses and methodology.

1.1 BACKGROUND

When “State sovereignty” is mentioned, issues like what makes a state sovereign and how that sovereignty can be lost come to mind. According to the provisions in the Monte Video Convention, for a state to be recognised, it must have the following characteristics namely: a defined territory, a permanent population, a government and the capacity to enter into relation with other states in the international system. Recognition of a state can take different forms. It can take the form of agreement between states, message of congratulations. Absence of diplomatic recognition does not necessarily mean that the state does not exist. Recognition can either be De facto or De Jure. Sovereignty as a concept was formulated in the latter part of the 16th century with reference to the new phenomenon of the territorial state. It referred in legal terms, to the elemental political fact of that period, the appearance of a centralized power that exercised its law-making and law-enforcing authority within a certain territory.¹

This power, which was originally vested in an absolute monarch, was superior to other forces in the territory. Soon, this power could not be challenged either from within the territory or outside it. It later became a supreme power. This whole idea of supreme authority over a certain territory became a political fact, which signified the victory of the territorial princes over the universal authority of emperor and pope. on one hand, and over the aspirations of the feudal barons, on the other. (Morgenthau, 1991). These political facts were transformed by the doctrine of sovereignty into a legal theory and made them generally acceptable.

¹ Morgenthau, Politics Among Nations: The struggle for power and peace (6th ed), New Delhi. Kalyani publishers, 1991, p.328

Sovereignty was regarded as appertaining to a particular individual in a state to whom allegiance was due. And as such the sovereign could not be made subject to the judicial process of his country. Therefore, it was only fitting that he could not be sued in foreign courts. This personalisation was gradually replaced by the abstract concept of state sovereignty but the basic mystique remained.² Sovereignty has been viewed generally as independence of a state and equality with other states. This is a situation where the states do not routinely obey any higher political authority. States are free to regulate their own internal matter without external interference. The independence and equality of States made it philosophically as well as practically difficult to permit municipal courts of one state to manifest its power over foreign states without their consent. The case illustrating the territorial jurisdiction and sovereign immunity is The Schooner Exchange – Vs- McFadden. Where it was decided by the US Supreme Court Chief Justice Marshall that the jurisdiction of a state within its own territory was exclusive and absolute but it did not encompass foreign sovereigns.

This doctrine has been maintained throughout the modern period of history and has provided the national democratic state with a potent political weapon. Under Article 2(7) of the Charter of the United Nations, it states that ‘nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state... but this principle shall not prejudice the application of enforcement measures under Chapter VII.’ Under chapter VII, breaches of international peace and acts of Aggression attract appropriate measures that could be meted out by the United Nations Security Council against any culprit- the state. Sovereignty of state is synonymous with state independence, which means state being the supreme authority in its territory. It is free to manage its internal and external affairs according to

² Ibid.

its discretion provided it is not limited by treaty or common international law. The term signifies equality of state among others meaning that no nation tells any other what laws to enact and enforce and no nation is subordinate to another except to international law. Article 2(1) of the charter of the United Nations testifies also to the equality of all state members. Sovereignty is also synonymous to unanimity amongst states. Irrespective of the size, population and power of any state, with reference to the legislative function all nations are equal. For instance, in an international conference creating new law for the international community, the vote of a small nation, say Panama counts as much as the vote of the United States, and both their votes are required to make the new rules of international law binding for both.³

With the end of Cold War, violent disintegration became the plight of many states. There were pressures for global humanitarian action, which sometimes involved forced intervention, quest for peacemaking and keeping around the world (Francis Deng, 2000). All these measures taken by the international community resulted in the interference of internal affairs of sovereign states. In Africa and in many other parts of the world, states began to undergo a serious national identity crisis in which situation sovereignty was being contested. It began to lose its genuine meaning. In the light of the above, states strive to be responsible to their citizens, making sure the security and general welfare of their citizens are in place. In carrying out this responsibility, due to the interdependence and dependence among states, and the interactions that exist in international system, each state seeks its own interest through its foreign policy. According to scholars, foreign policy is the key element in the process by which a state translates its broadly conceived goals and interests into concrete courses of action to attain these objectives and preserve interests.

³ Ibid p.332

The achievement of any state depends heavily on its economic, military, and technological power (Bertrand De Jouvenel, 1957 pp.31-32). Where these are lacking, like in the case of developing countries especially African countries, they usually look for assistance from the developed rich countries, which in turn seize the opportunity to foster their own interests by attaching certain conditionalities to the aid they give. These conditionalities consequently affect the sovereignty of these African states. This is because, where there is no authority, there is no sovereignty. (Bertrand 1957).

“Foreign Aid on the other hand is the fulfilment of an obligation of the few rich nations toward the many poor ones”(Morgenthau, 1962 p.301). United States is one of the countries that has a policy of Foreign aid due to its interests abroad, which can only be supported if foreign aid is available. This explains the fact that foreign aid, most often is used in furthering the interests of donor, which consequently affect the sovereignty of the recipient nation.

From the foregoing, it can be seen that there are circumstances in International Law under which sovereignty of state can be compromised. This is when there is a breach of international peace and security, abuse of human rights, genocide, among others. No where has it been mentioned that Foreign aid / assistance is one of the grounds by which state sovereignty can be interfered with. This study seeks then to examine the impact of Foreign Aid on the sovereignty of states.

1.2 PROBLEM STATEMENT

Developing countries specialize in primary commodities for export to rich countries from which those commodities are re-exported as manufactured products back to poor developing countries. This has bred an exploitative relationship in which the financial and economic resources of developing countries are controlled by the international economy.

As a result of the value added to those manufactured products, they cost much more than the primary commodities. Developing countries therefore spend fortunes in paying for those finished products.⁴ In other words, developing countries earn very little from their export of primary goods and spend much more on their imports, hence the budget deficits. This has resulted in developing countries seeking foreign assistance to support government expenditures. The funding comes from both bilateral and multilateral sources in form of loans which attract some interests; grants; while some come in form of developmental projects.

As the borrowing continued, the debt accumulates to the point that the government finds it difficult to service the loans. As a result, developing countries become dependent on donor support and the

⁴ Ferraro, Dependency Theory: An Introduction, Mount Holyoke College, South Hadely, MA, 1996.

vicious cycle continues. Of course, this gave the donors the opportunity to attach all manner of conditionalities to foreign assistance. Some of these conditions posed some problems for developing countries namely:

- Dwindling of economy due to repayments of interests and principal.
- Country having less money to finance public needs like education, health, and infrastructure.
- Destabilization of domestic economy through possible increased inflation.
- And finally, since public debt increases the cost of investible funds in the economy, it reduces the growth capacity of the economy.⁵

Another cost of the current aid system to Africa is that it wastes much national energy and political capital in interacting with donor agencies, and diverts attention from domestic debate and consensus building.⁶

As a result of aid dependency of African countries, repayment of debt becomes a huge problem for the continent. Between 1990 and 1993, African region transferred \$13.4 billion annually to its external creditors. This amount is four times as much as governments in the region spent on health services and education.⁷ The debt became too heavy for the continent that the World Bank and the International Monetary Fund (IMF) brought forward debt relief proposal for the Heavily Indebted Poor Countries (HIPC's). Out of the 41 HIPC's countries, 34 are from sub-Saharan Africa. That gives the picture how heavily indebted our continent is.

⁵ Institute of Economic Affairs, The citizen's Hand book on the Budget: A guide to the budget Process in Kenya, 2002, p. 44.

⁶ Kanbur R., Aid, Conditionality and Debt in Africa, Finn Tarp (ed), Routledge, 2000, p. 10

⁷ Ibid p. 11

From the foregoing, the main reason why developing countries seek for foreign aid is to eradicate poverty, enhance the standard of living in the region and of course to pay their debt. Unfortunately, those needs are not fully met as donors seek their own interests too. Donors look for export market, buy political alignment⁸ all in the name of assisting less developed nations. Donors have used foreign aid in the interference of the internal affairs of recipient countries while they seek their own interests. This has been achieved through the imposition of stringent conditionalities. For instance, United States wanted Kenyan government to pass 'Anti-terrorism Act' to ensure that their citizens and property are protected. The question is who determines which legislation to be enacted, the donor or the government of the individual state? During the cold war period, foreign aid was extended to those developing countries that threw their weights behind United States in their fight against communism.

Turning to multilateral institutions –(the World Bank and the I M F), their assistance has equally been tied to economic policy reforms. In the 1980s, the majority of the developing countries experienced very intrusive policies in the name of Structural Adjustment Programmes (SAPs) which were designed to supposedly improve a country's foreign investment climate. This was done by eliminating trade and investment regulations, reducing government deficits through cuts in spending especially in areas of health, education, and housing, and massive layoffs in the civil service. This has a negative impact on state that is the primary provider of those essential goods and services.

⁸ O'Kelly, Aid and Self help: A general guide to Overseas Aid, Charles Knight & Co. Ltd, London, 1973 p. 32

The whole action undermined the role of state and resulted in shortfall of such services in countries that are badly in need of them. The application of these programmes has led to the complication of financial difficulties and crisis of external payments in these developing countries. When some countries tried to end SAPs because of the serious social strife that they generated in countries like Senegal and Mali, it resulted in immediate cessation of all international financial assistance, forcing such countries to restore SAPs.⁹

As a result of the above- mentioned problems, several questions beg for answers:

Why are the donors trying to regulate the internal affairs of the developing countries in the name of assisting them with aid?

What interests do donors seek to protect?

Can the developing countries still maintain their sovereignty in spite of their over dependency on donors? The question can go on and on... but in view of the above- mentioned problems, this study seeks to answer some of these questions.

⁹ Hammouda, Rethinking Bretton Woods from an African Perspective (1999) p. 74

1.3 OBJECTIVES OF THE STUDY

Main objective:

1. To evaluate the impact of foreign aid on the state sovereignty.

Specific objectives:

1. To find out what interests donors seek to fulfill.
2. To re-examine the relevance of the concept of sovereignty in the international system.

1.4 JUSTIFICATION OF THE STUDY

This study has both academic and policy justifications.

1.4.1 Academic justification:

As the issue of sovereignty of state has both political and legal ramifications in the international system, this study will add to the literature already in circulation.

Furthermore, little was said about the impact of foreign aid on the state sovereignty. This study will examine the said impact of foreign aid, which I believe will add to the body of knowledge in that respect.

1.4.2 Policy justification:

Sovereignty is still an important element of any state. No state would want to be denied of its sovereignty because that is an important element that gives every state that sense of equality among others. Therefore, it is essential for any state to know when its sovereignty is being eroded through foreign aid or other means. It will therefore guard against such practice by understanding what it means to interfere in one's internal affairs.

1.5 LITERATURE REVIEW

The literature review will be divided into two parts. One part will be on state sovereignty while the other will be on Foreign aid.

1.5.1 Review on State sovereignty:

Most literature on state sovereignty dealt mostly with the meaning and the relevance of the concept of state sovereignty. That is, whether the concept actually exists in the real sense of the word in international system. Hardly did some of the literature make an overt link between foreign aid and the weakening nature of the principle of state sovereignty in developing countries.

Coulombis and Wolfe viewed state sovereignty as the ability of a nation-state, through its government, to be master in its house, to have control over its domestic foreign affairs, to have the options of entering or leaving alliances, of going to war or remaining neutral so as to best defend its interests.¹⁰ They further expressed that some countries are more sovereign than others, giving developed countries as an example of those that enjoy the substance and the letter of state sovereignty while the smaller countries, if strategically located are penetrated by the great powers and can be called 'sovereign' but not in the real sense of the word. It is true that these scholars have pointed out that smaller countries do not enjoy the true sovereignty but did not explain further the reasons for such situation. For example, over dependency on foreign aid could be one of the reasons.

Maritain¹¹ was of the view that the concept of sovereignty has raised so many conflicting issues. Reason being that the original, genuine philosophical meaning of the concept had not been sufficiently examined and seriously tested. He expressed that political philosophy should eliminate sovereignty both as a word and as a concept because when considered in its genuine meaning, the concept is wrong and misleading. In a nutshell, Maritain pointed out that the proper and genuine meaning of sovereignty is a right to supreme independence and supreme power which is a natural and inalienable right and secondly, a right to an independence and a power which in their proper sphere, are supreme absolutely or transcendentally. Having explained the genuine meaning of sovereignty, he explained that a state could not assume the characteristics of a genuine sovereign since the state is a part and an instrumental agency of the body politic. That its supreme independence and power are subject to its laws and administration, and its right is by virtue of the

¹⁰ Coulombis and Wolfe, Introduction to International Relations, New Delhi, 1981, p.69

¹¹ Maritain J, The Concept of Sovereignty, The American Political Science Review, vol.44, No. 2, 1950 pp.343-357.

basic structure or constitution. The author here is only concerned with the interpretation of the meaning of sovereignty and not whether it is being eroded and by what.

Thompson brought to the fore the different theoretical meanings of sovereignty. For liberal interdependence theorists, sovereignty means the state's ability to control actors and activities within and across its borders. For realists, sovereignty is the ability of state to make authoritative decisions such as decision to go to war.¹² Given these schools' views on sovereignty, she points out that international relations theorists make conflicting claims about the status of sovereignty in the post-cold war era. She suggested that sovereignty is best viewed in terms of state authority and not control, she admitted that the concept of sovereignty is very complex and summarized that sovereignty gives the state the meta-political authority to decide on issues, activities and practices that fall within their authority realm and that which is outside their authority.¹³ To the questions, to what degree is the territoriality of third world states real? And how much devolution or erosion in state control over violence is consistent with sovereignty, the author explained that sovereignty is largely in the eye of the beholder, meaning that most states are sovereign because others recognize them as such. This may explain the current situation of some developing countries, which are under the spell of some super powers in the international arena, where, because of lack of economic power of the developing countries, the developed nations treat them as though they are not sovereign states by dictating to them how to run their internal affairs. In essence, the main issue here is how the interdependent world is affecting the states' meta-political authority. The scholar tried to explain that the devolution of state control especially the third world states has something to do with the interdependent nature of the international system. But, there was no clear

¹² Thompson J, State Sovereignty in International Relations: Bridging the Gap between theory and empirical research, *International Studies Quarterly*, 1995, vol.39, No.2. pp.213 –233.

¹³ *Ibid*, p.225.

mention that due to foreign aid given to developing countries, and the conditionalities that come with it, they have lost some grip of their sovereignty.

The answer to that question could lie behind Ferraro's theory of 'Dependency', which was developed in view of the fact that economic growth in the advanced industrialized countries did not naturally lead to growth in the poorer countries. In fact, Ferraro (1996)¹⁴ explained that studies have shown that economic activity in the developed countries often led to serious economic problems in the poorer countries. This could be the reason for the unstable territoriality of the third world countries. Hence, the problem of sovereignty.

Krasner¹⁵ explained that analysts have viewed sovereignty differently. While some argue that it is being eroded through globalisation and the like, others were of the view that sovereignty is being sustained. Furthermore, while some analysts suggest that new norms such as universal human rights represent a fundamental break with the past, others view it as the preferences of the powerful. The scholar explained that this whole confusion showed that the term sovereignty has been used in different ways which also revealed the failure to recognise that the norms and rules of any international system will have limited influence and will always be subject to challenge due to its logical contradictions such as 'intervention' versus promoting 'democracy'.¹⁶ Krasner further pointed out the four different sovereignty has been used:

¹⁴ Ferraro, *Dependency Theory: An Introduction*, Mount Holyoke College, South Hadley, MA 1996, p.1

¹⁵ Krasner, *Sovereignty, Organised Hypocrisy*, Princeton University Press, New Jersey, 1999 p.3

¹⁶ Ibid.

- ❖ Domestic sovereignty, which refers to the organization of public authority within a state and the ability of public authorities to exercise effective control within its borders of their own state.
- ❖ Interdependence sovereignty referring to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants or capital across the borders of their state.
- ❖ Westphalian sovereignty which refers to political organization based on the exclusion of external actors from authority structure within a given territory; and finally;
- ❖ The international legal sovereignty, which refers to the mutual recognition of states or other entities that have formal juridical independence.¹⁷ This explanation shows that there are different ways through which sovereignty can be viewed. So far, the scholars are trying to explain what sovereignty means, whether it exists or not and not necessarily trying to find out if it is being eroded by foreign aid.

Morgenthau in his view points out that there is still some confusion as to the nature and the functions of the concept of sovereignty which was formulated in the latter part of the 16th century with reference to the new phenomenon of the territorial state which referred to the appearance of a centralised power that exercised its lawmaking and law-enforcing authority within a certain territory. At that time, the power vested in the Monarch was superior to other forces in the territory.¹⁸ He points out that much as the doctrine of sovereignty has been maintained throughout the modern period of history and has provided the national democratic state with a potent political weapon, yet, that same principle is subject to re-interpretations, re-visions and attacks in the field of international law.¹⁹

¹⁷ Ibid p.9

¹⁸ Morgenthau, *Politics Among Nations : The struggle for power and peace* (16th ed.) New Delhi; Kalyani Publishers, 1991 p.328

¹⁹ Ibid p. 329

As some scholars express that the concept of sovereignty poses some confusion in its interpretation as to whether it exists or not, Article 2(7) of the Charter of the United Nations tried to clear the confusion by stating clearly that “nothing in the present Charter shall authorize the United Nations to intervene in matters within the domestic jurisdiction of any state...”, though this cannot prejudice the measures under chapter 7 of the same Charter. This simply tells us that nation states are sovereign but not absolutely. Any given circumstance can change the equation.

Loewenstein argued that the concept of sovereignty has a dual connotation. The first being derived from Roman-Byzantine theory and practice by Jean Bodin which signifies the supreme right and power of the state to determine the conditions of its internal structure and order while the second connotation was derived from Hugo Grotius concept of paramountcy to the existence and position of the states in their inter-state relations.²⁰ He pointed out that although the internal sovereignty of the state has in recent times been challenged by the pluralist theory with success, the term has maintained its rank as the cornerstone of international law and inter-state relations. This was evident in the (1949) International Law Commission of the United Nations ‘Draft Declaration of the Rights and Duties of states’ which inferred under article 1, the independence of the state, and the right to choose its form of government; the equality in law with every other state (Art.5); and the duty of non-intervention in the internal and external affairs of other states (Art.3) among other provisions.²¹ Having said that, Loewenstein still believed that although the assumptions of both the equality and the independence of states are found in legal documents, they are fictions due to the political realities, which have been at variance with the rigid legal formalism of state sovereignty.

²⁰ Loewenstein, Sovereignty and International Co-operation, The American Journal of International Law, vol.48, No. 2, 1954, p.222

²¹ Ibid p.223

In his view, states have never been equal due to the big gap in their power potential and in the degree of their independence.

Therefore the notion of sovereignty, equality and independence of states is merely semantic and the rules of international law can no longer control the dynamism of inter-state power relation.²²

For Barkin and Cronin, the concept of sovereignty should not be seen as a static, fixed concept as some scholars believe it to be. In their view, the concept should be seen as a variable, which rules are neither fixed nor constant but rather subject to changing interpretations. Therefore, the state as a basic analytic unit should be scrutinised in the international arena.²³ In other words, state sovereignty depends on the relations between states, which means that it is the nature of that relationship that determines the degree of state sovereignty. That means, the more powerful a state is, the more sovereign it becomes.

1.5.2 Review on Foreign Aid:

There are varied definitions of foreign aid. It has been defined as official development assistance, or any form of western government financial grant to African nations, ranging from technical assistance projects to structural adjustment lending, programme assistance and food aid (Van de

²² Ibid.

²³ Barkin and Cronin, *The State and the Nation : Changing Norms and the Rules of Sovereignty in International Relations*, International Organization, vol. 48, No.1 (1994) Massachusetts p.107

Walle, 1996). According to Mc William (1968), foreign aid is viewed as grants and long-term loans for the industrial and socio-economic development of poorer nations.

Foreign aid has also been expressed to be all aspects of economic relations between developed and developing countries, which includes grants, loans and private investment and trade (Kenyatta 1968). There are two components of foreign aid namely, bilateral and multilateral aid. Bilateral aid is extended by agencies of donor governments to the recipient governments. For example, the US Agency for International Development or Japan's Overseas Economic Co-operation Fund. While on the other hand, multilateral assistance is extended by contributions from wealthy countries and administered by agencies like United Nations Development Programme and the World Bank / International Monetary Fund (IMF) (Worlds Bank, 1998).

Morgenthau defined foreign aid as the "fulfilment of an obligation of the few rich nations toward the many poor ones".²⁴ He underscored the fact that foreign aid can be used to further the interests of the donor and that foreign aid is the goal of foreign policy.

Riddle in his view agreed to the fact that foreign aid was an important facet of international relations in the 1950s due to the poverty of the developing countries, which originated from the colonial links between western imperial powers and their overseas territories.²⁵

Nicolas (1996) argued that the aid has been the primary instrument of the west's relationship with Africa which simultaneously stabilized the continent but failed to encourage the emergence of

²⁴ Morgenthau, A Political Theory of Foreign Aid, The American Political Science Association, vol. 56, No.2, 1962 p.301

²⁵ Riddell, Foreign Aid Reconsidered, Great Britain: James Currey Ltd, 1987, p.85

strong states there.²⁶ In his view, the question as to whether aid will be given or not depends on the interests of the donor. If the donor has no interest in any issue, foreign aid may not be an issue for discussion.

According to Goldsmith, foreign aid is supposed to encourage low-income states to develop but critics across the ideological divide accused foreign aid of doing the opposite. Foreign aid was seen as a means through which untrustworthy leaders repress their populace, and the means for corroding indigenous democratic institutions which are needed for national well being and self-determination.²⁷

For Easterly, foreign aid has been viewed as the means through which African countries can be given a 'big push' in order to end the poverty in the region. To this end, Gordon Brown, the UK Chancellor of the Exchequer called for a doubling of foreign aid in January 2005.²⁸ But the question is, did the aid help? What impact does it have on the state sovereignty?

Kanbur argued that foreign aid has failed in Africa, that aid conditionality has also failed and that there is very little chance of recovery under the current institutional arrangements. He proposed for a simultaneous heavy debt relief and major institutional reforms, which would reduce African aid dependence and make the people and their governments accountable. Africa's poor performance

²⁶ Nicolas Van de Walle, *The Politics of Aid Effectiveness in Africa Now*, 1996 p.236

²⁷ Goldsmith, *Foreign Aid and Statehood in Africa*, The International Organisation Foundation, Massachusetts Institute of Technology, 2001, p. 124

²⁸ Easterly, *Can Foreign Aid save Africa?* Saint John's University, Clemens Lecture series, 2005, p. 1

was also blamed on Africa's specialization in primary commodities at independence and on poor policies.²⁹

According to Tarnoff and Nowels, from the end of World War 2 until the early 1990s, the underlying objective of US foreign aid had been the defeat of communism, economic development and policy reforms, to reduce the attraction to communist ideology and to block Soviet diplomatic links and military advances.³⁰ But, with the end of the cold war, some of the programmes were discarded and new ones embarked on, such as contributing towards the global war on terrorism which is top on the list of US interests followed by the promotion of economic growth, reducing poverty and combating the global HIV/ AIDS pandemic. In other words, US foreign aid goals depend solely on what their interests are. Any consequence arising there from has not been considered here.

Svensson was of the opinion that the poor aggregate record of past aid disbursements was as a result of moral hazard problem which affected adversely the aid recipients' incentives to undertake structural reforms.³¹ He believed that, although some critics felt that there is no relationship between aid and growth, and that aid does not benefit the poor, aid conditionality could help if the donor is committed. By commitment, the scholar meant that, by letting a donor be in charge of the disbursement decision might be the best way to assist the poor. Here the scholar ignores the fact that donor being in charge of disbursement decision borders on the erosion of sovereignty of the recipient government.

²⁹ Kanbur, Aid, Conditionality, and Debt in Africa, Cornell University, sk145@cornell.edu. Finn Tarp(edu) Routledge, 2000 p.3

³⁰ Tarnoff and Nowels, Foreign Aid : An Introductory Overview of U.S Programs and Policy, The Library of Congress. CRC Web, Code 98-916

³¹ Svensson, When is Foreign aid Policy Credible? Journal of Development Economics, vol. 61, 2000, p. 63

From the above literature, it is clear that some scholars are still questioning the relevance of state sovereignty as powerful states enjoy the true meaning of sovereignty while weak states do not enjoy the same. So, is state sovereignty still relevant? On the issue of foreign aid, some scholars have viewed it as a means through which the powerful states foster their interests. This paper therefore seeks to show the impact of foreign aid on the sovereignty of states in general and Kenya in particular.

1.6 THEORETICAL FRAMEWORK

This study will be grounded more appropriately on dependency theory. This helps to understand the inequality that exists in the international system. Dependency theory was developed in the late 1950s under the guidance of the Director of the United Nations Economic Commission for Latin America, Raul Prebisch.³² This theory was developed in view of the fact that economic growth in the advanced industrialized countries did not naturally lead to growth in the poorer countries. Instead, studies suggested that economic activity in the developed countries often lead to serious economic problems in the poorer countries.³³

Dependency is an explanation of economic development of a state in terms of external influences namely; political, economic, and cultural on national development policies. According to Theotonio Dos Santos, dependency is a historical condition that shapes a certain structure of world economy such that it favours some countries to the detriment of others and limits the development

³² Ferraro, *Dependency Theory: An Introduction*, Mount Holyoke College, South Hadley, MA, 1996, p.1

³³ Ibid

possibilities of subordinate economies..., a situation in which the economy of a certain group of countries is conditioned by the development and expansion of another economy, to which their own is subjected.³⁴

Dependency theory views international system as comprising of two sets of states, one being dominant and the other dependent or one being the centre and the other periphery. In such situation, the dominant states are the advanced industrial nations in the Organisation of Economic Co-operation and Development (OECD) while the dependent states are those of Latin America, Asia and Africa with low per capita GNPs, which rely heavily on the export of a single commodity for foreign exchange earnings.³⁵

The second feature of dependency is that the external forces play a great role in the economic activities of the dependent states. These external forces include multinational corporations, international community markets, foreign assistance, communications, and any other means by which the advanced countries can represent their economic interests abroad.

The third feature of dependency theory is that the interactions between the dominant and dependent states reinforce as well as intensify the unequal patterns. In summary, dependency theory explains the unavoidable inequality that exists in the international system today. These kind of unequal power relations between the centre and the periphery do not allow the poor nations to be self-reliant and independent and the poverty continues to rage.

³⁴ Theotonio Dos Santos, 'The Structure of Dependence', in Fann and Hodges, 'Readings in U.S Imperialism, in Ferraro, Dependency Theory: An Introduction, South Hadley, MA, 1996, p.2

³⁵ Ibid

1.7 HYPOTHESES

This study will be guided by the following hypotheses:

1. Continued dependency on foreign aid leads to the erosion of state sovereignty.
2. Foreign aid conditionalities constitute a direct interference in the internal affairs of the recipient states.
3. Foreign aid conditionalities are used to foster the interests of the donors.

1.8 METHODOLOGY

The study will be based on both primary and secondary sources of information.

Primary data: this will be sourced from interactive interviews with some of the executive officers in the Ministry of Foreign Affairs, Ministry of Finance(External Resources Division), Senior lecturer, USIU.

Secondary data: this will be derived from, inter alia, literature in the field of the study, research conducted in the libraries and on the internet which include published and unpublished works, journals, newspapers, textbooks, magazines, conference notes, and any other material of relevance to the study. Through these sources, the sentiments of the leaders and the civil society regarding the impact of aid on state sovereignty will be appreciated. This will help in the analysis of the data and subsequent conclusion.

1.9 CHAPTER OUTLINE:

Chapter 1: The Impact of Foreign Aid on State Sovereignty: An Introduction.

Chapter 2: An overview of the debate on the principle and practice of State sovereignty.

Chapter 3: Foreign aid and its impact on state sovereignty: The Kenyan Experience.

Chapter 4: Foreign Aid and State Sovereignty: A critical Analysis.

Chapter 5: Summary, Conclusions and Recommendations.

CHAPTER TWO

AN OVERVIEW OF THE DEBATE ON THE PRINCIPLE AND PRACTICE OF STATE SOVEREIGNTY:

2.0 INTRODUCTION:

Scholars have expressed different views about the principle and the practice of state sovereignty. Some have actually raised questions about the validity of the principle of state sovereignty given the manner in which some of the activities are being conducted in the international scene. These

activities they believe contravene the whole purpose of the sovereignty principle. This chapter therefore seeks to give an overview of the debate on the principle and practice of state sovereignty. Among the issues to discuss include a detailed meaning of state sovereignty, sovereign immunity, theories about state sovereignty and finally the erosion of state sovereignty.

2.1 What state sovereignty means:

From the literature reviewed in the previous chapter on state sovereignty, there is a general understanding of the meaning of the principle of state sovereignty in the international system.

It means that the state is independent and, theoretically, equal with other states. It shows that a state does not routinely obey any higher political authority. A state that is sovereign is very free to regulate its own internal affairs. According to Coulombis and Wolfe,³⁶ a major characteristic of a nation state sovereignty has been defined as supreme state authority that is subject to no external limitations. For example, the French philosopher Jean Bodin (1530-96) was concerned with the division and sectionalism that had always resulted in frequent civil wars in France. Bodin's main objective was to strengthen the position of the monarch as the source of order and unity throughout France. Bodin defined the state as "a lawful government of several households, and their uncommon possessions, with sovereign power".³⁷ Sovereignty was taken to be a supreme power over citizens and subjects that is not restrained by law. That means the King was given the right to make, interpret, and execute law unrestrained by all human authority. He was subject only to the laws of God and to fundamental natural laws.

³⁶ Coulombis and Wolfe, Introduction to International Relations: Power and Justice. New Delhi, Prentice Hall of India, 1981, p.68.

³⁷ *ibid* p.68

The famous British political philosopher, Hobbes,³⁸ gave the sovereignty concept a wider meaning. He slowly shifted its emphasis from the person of the King to the abstraction called government or state. Through his writings during the turbulent years in England (1640-1651) which were marked by factionalism and bloodshed, Hobbes's main purpose was to strengthen the authority of the King and of absolute government and in order to limit conflict and to preserve the collectivity, he believed it was necessary to concentrate all social authority in the sovereign. The sovereign was equated with the state, which in turn was equated with the government. A sovereign was seen as a 'mortal God'.

Sovereignty can be distinguished between internal and external sovereignty. Internal sovereignty refers to the supreme and lawful authority of the state over its citizens, while external sovereignty refers to the recognition of a state by all other states of its independence, territorial integrity and inviolability of each state as represented by its government. In essence, as Coulombis and Wolfe put it, "sovereignty is the ability of a nation-state, through its government to be master in its house, to have control over its domestic affairs and its foreign affairs, to have the options of entering or leaving alliances, of going to war or remaining neutral so as to best defend its interests." However, that is in theory. In practice, some countries enjoy this principle of sovereignty more than others. Most often, the great and powerful countries penetrate through the very weak countries in order to satisfy their own interests.

Some scholars like Herz believe that the nation-state is the kind of political unit that can best keep a territory "impermeable", and protect its inhabitants given the anarchic nature of the international

³⁸ Hobbes in Coulombis and Wolfe, Introduction to International Relations: Power and Justice, New Delhi, Prentice Hall of India, 1981, p.68

system. This is not always the case in practice. Citing Iraq as an example, the inhabitants were not fully protected against the deadly impacts of war during the US invasion of the country.

2.1.2 Sovereign Immunity:

Under International Law, certain persons and institutions are immune from the jurisdiction of foreign municipal courts. The principal actors amongst them are foreign states and foreign heads of state, diplomatic agents, consuls, international institutions, their officials and agents.

Sovereignty until recently was regarded as appertaining to a particular individual in a state and not as an abstract manifestation of the existence and power of the state.³⁹ The sovereign was a definable person, to whom allegiance was due. As an integral part of this mystique, the sovereign could not be made subject to the judicial process of his country. As such, it was only fitting that he could not be sued in foreign courts. This personalisation was gradually replaced by the abstract concept of state sovereignty but the basic awe of the sovereign remained.

Furthermore, the independence and equality of states made it difficult to permit municipal courts of one country to manifest their power on foreign sovereign states, without their consent. The case of Schooner Exchange vs McFaddon illustrating the territorial jurisdiction and sovereign immunity has been discussed in the introductory chapter. Sovereign immunity is closely related to two other legal doctrines namely: Non-justiciability and Act of state. These concepts posit an area of international activity of states that is simply beyond the competence of the domestic tribunal in its assertion of jurisdiction. For instance, the courts would not adjudicate upon the transactions of

³⁹ Malcolm Shaw, International law(U.K, Cambridge University press,1997) p.492

foreign sovereign states. On the other hand, the principle of jurisdictional immunity asserts that in particular situations a court is prevented from exercising the jurisdiction that it possesses.⁴⁰

Immunity may be absolute or restricted. The role of the sovereign and of government in the eighteenth and nineteenth centuries gave rise to the concept of absolute immunity whereby the sovereign was completely immune from foreign jurisdiction in all cases regardless of the circumstances. However, the growth in the activities of the state, especially with regard to commercial matters, led to the modification of the rule of absolute immunity in most countries. Negative reactions coming from some government agencies, public corporations, nationalised industries and other state organs also facilitated the shift from absolute to restrictive immunity where immunity is provided only for governmental activity (*acts jure imperii*) and not state's commercial activities (*acts jure gestionis*). Again, with the evolution of international Law of human rights, absolute immunity of state was history.

Under article 1(3), United Nations Charter states that one of its purposes and principles is "to achieve international co-operation in solving international co-operation in economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion..." The Charter of the United Nations makes reference to the realization of human rights in several articles of the Charter. Much as the international law is still concerned with the protection of state sovereignty, it does not want to do it at the expense of the freedom of the population to express and effect choices about the identities and policies of its government. With the adoption of the

⁴⁰ ibid

Universal Declaration of Human Rights by the United Nations General Assembly in 1948, human rights were given a sacred ambience.

Furthermore, with the provisions of the Universal Declaration of Human Rights being constantly repeated and reaffirmed in several instruments like national constitutions, Universal and Regional instruments, it is argued that Universal Declaration of Human Rights with its principles has become part of International customary law which is binding on all states even without their express consent. The Charter of the United Nations require that all states act in accordance with its principles, therefore every state has the obligation to maintain international peace and security. Under **article 55 of the Charter of the United Nations**, it states that 'the United Nations shall promote universal respect for and observance of human rights'. It is therefore imperative that states promote and protect all human rights and fundamental freedoms regardless of their political, economic and cultural systems. What this means is that, when the issue of human right abuses comes into play, state sovereignty takes a second place as every state has the obligation to promote and protect human rights the world over.

In the 19th century, the doctrine of state sovereignty and domestic jurisdiction was treated with awesome respect. States regarded their actions as falling within their own territory and jurisdiction of which no other state has the impetus to interfere in the internal affairs of other states. The only exception at the time were issues relating to piracy, *jure gentium* and slavery.⁴¹ Concerns were later developed towards international instruments regarding the treatment of the sick and wounded soldiers, prisoners of war especially during the Second World War. States were then required to exercise minimum standards in the treatment of aliens. At this point, certain agreements of a general welfare in nature were beginning to be adopted by the turn of the century. The second

⁴¹ *ibid* p.200-201

world war also contributed to the speedy development of human rights law since there was absolute need for the international system to maintain international peace and protect human rights.⁴²

In order to make the protection of human rights more effective, the General Assembly of the United Nations passed the resolution 32/127 of 1997 appealing to states to establish regional machineries for the protection and promotion of human rights. As a result thereof, three main systems of Regional Human Rights (Shaw, [1997] pp.270 –293) were established namely:

- a. The European Convention system
- b. The Inter-American Convention system
- c. The African Charter Convention system

All these Conventions were proof of the fact that all states have rights and obligations towards the protection of Human rights. In effect, where any state fails in its duty to protect human rights within its territory, any member of the international community has the right to question the authority of that state and possibly bring suit against the individual in authority for any abuse of human rights, sovereignty of that state notwithstanding. This can be illustrated with the cases of Yugoslavia, Rwanda and others during their internal conflicts, which resulted in increased human rights abuses as a result of violence that goes with it. This violence is perceived by the United Nations to be a threat to international peace and security. As a result of the outcry for human rights abuses, United Nations called for trials against those perpetrators in the former Yugoslavia and Rwanda.

⁴² ibid

I must say that in the case of Rwanda, reactions to the merciless killings and abuse of human rights came rather too late. Given the United Nations resolution establishing regional machineries for the protection and promotion of human rights as mentioned above, one would expect an immediate intervention in Rwanda to stop the killings. But nothing happened until after the fact. Does it mean that during the Rwanda genocide, the international community went to sleep, or did they decide to observe the true principle of state sovereignty of non- interference in the internal affairs of the states in spite of all the prevailing documents on the protection of human rights? This leaves one to wonder whether the intervention in human right abuses is dependent upon who is involved in the matter. What happened to the powerful states in the international system and the United Nations? Did they turn a blind eye to the situation simply because Rwanda had nothing to offer? If one compares the Rwandan case to what has been happening in Somalia, one wonders why America is bent on flushing out the Islamic leaders in the country and supporting the government of the day. Yet, nothing was done during the Rwandan genocide.

Pursuant to the adoption of Resolutions 827 and 955 respectively, the United Nation Security Council established War Crimes Tribunal for the former Yugoslavia in 1993 and for Rwanda in 1994.⁴³ These Tribunals were created pursuant to articles 41 and 42 of the United Nations Charter under which the United Nations Security Council has the power to determine what constitutes a "threat to the peace, breach of the peace and act of aggression, and shall be taken...to maintain or restore international peace and security."⁴⁴ These tribunals for Rwanda and the former Yugoslavia have a growing number of people in custody. This has raised questions towards the absolute nature of state sovereignty. Much as all the states value their sovereignty, the horrendous tragedies

⁴³ Blakesley C, Atrocity and its prosecution in, The Law of War Crimes, Kluwer Law International, The Netherlands, 1997, p.190.

⁴⁴ The Charter of the United Nations.

emanating from intra-state conflicts, poor treatment of citizens and neighbouring communities have resulted in eroding the intrinsic meaning of national sovereignty and non-interference in internal affairs of states, in order to ensure international access to the affected masses within the state borders.

2.2 A Review of theories on state sovereignty:

There have been debates as to whether the principle of state sovereignty is still relevant in this contemporary international system. There were arguments that the principle of state sovereignty was designed for the terrain of the western world, while some were of the opinion that due to the new developments in the international system like the declaration of human rights, democracy, globalization e.t.c, the principle of sovereignty should take a different outlook. Such thoughts and debates have originated from different theories ascribed to state sovereignty. These include among others, sovereignty as the making of the western powers, sovereignty as a responsibility, and sovereignty as a rule of international law.

2.2.1 Sovereignty: The Making of the Western Powers:

Some scholars have proposed for the reconsideration of the notion of state sovereignty with a view to reforming the practice. Their views were guided by the developments in the international arena, such as frequent occurrence of internal wars which are caused by ethnic conflicts and the collapse of legitimate authority, the increasing flow of refugees worldwide, spread of pandemic diseases across borders and the misery that goes with it. They argue that due to the insufficiencies

of state sovereignty, its rigidity should be reconsidered. This will help to understand and manage the international existence (Kegley 1993 in Grovogui 2001).

There are complaints that the belief in this westphalian sovereignty obscures otherwise fluid international dynamics and relations of power. Thus, they find it paradoxical that the regime of sovereignty as enclosed territories persists as the privileged mode of international existence. These were the views expressed in Grovogui's work.⁴⁵ There is some sense in what the theorists are saying regarding state sovereignty in the sense that if the doctrine of state sovereignty is to be observed to the letter, what happens when there are ethnic conflicts within a given state? Would the international community just sit and watch as the state goes on fire? – all in the name of observance of the principle of state sovereignty!

If we look at the other side of the coin, one would wonder how the international system would be like if the doctrine of sovereignty is not in existence. What type of relationship would exist between the powerful states and the weak ones if the doctrine of sovereignty were to be wiped out? As it is today, the weak states, mostly found among the developing countries especially in Africa, are being threatened by the rich states with their economic, military, and technological powers. A good example is the invasion of Iraq by the US when the doctrine of sovereignty ought to have been observed. Given the trail of destructions in Iraq, which is ongoing, one wonders whether there is any more validity in the term 'state sovereignty'. This shows that in practice, the principle of state sovereignty is not fully observed when it concerns the less powerful states. The more powerful a state is, the more sovereign it becomes and vice versa. According to the former UN Secretary General Boutros Boutros-Ghali, the concept of state sovereignty has always been

⁴⁵ Grovogui S.N, in Dunn and Shaw (eds), *Africa's Challenge to International Relations Theory*, Hounds Mills:Palgrave, 2001,p.29.

violable as the time of absolute sovereignty has passed and the theory was never matched by reality.⁴⁶

Other scholars like Lyons and Mastanduno (1993, 1995), Jackson (1990) and Kaplan (1995) argued that post-colonial states possess neither internal coherence nor credible governments to be granted the status of full sovereignty. Here I differ with the scholars because once a state possesses a defined territory, a permanent population, a government, and has the capacity to enter into relation with other states, full sovereignty should be granted the state under international law. More over, there is nothing like half sovereignty. A state can either be independent and sovereign or not – there are no two ways about it. Whether the government of a state is credible or not does not take away the fact that, it is a sovereign state. The principle of ‘sovereignty’ should form an integral part of a state once that state is recognised in the international system. As Mazrui (1963) expressed, sovereignty was seen as something which a territory could keep only if it meets certain standards namely, satisfactory relations with European peoples. And such relation was trade. Sovereignty in his view was something that can be bestowed on a state by other states at the time that state is being recognised.⁴⁷ That means sovereignty cannot be separated from the state. But in practice, states especially the powerful ones decide on whether to recognise the principle of state sovereignty or not where developing countries are concerned. That explains why a state can wake up one day and decide to invade another. Yet, the whole meaning of state sovereignty borders on non-interference in the internal affairs of another state. This was expressed by Stowell in Kangethe’s (1975) work when he stated that, “non – interference is the most important rule of

⁴⁶ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, <http://www.iciss.ca>

⁴⁷ Ali A. Mazrui, *Consent, Colonialism and Sovereignty*, p.44

international law, to deny it would be to remove from international law the system of territorial sovereignty and to deprive the principle of the independence of states of all meaning".⁴⁸

Grovogui is of the opinion that the doctrine of sovereignty is influenced by the status of the actors in the international arena. That means, the more powerful a state is in terms of domestic resources, economic capabilities, etc, the more sovereign that state becomes. This could be attributed to the historical distribution of power and strategic resources that were initiated in Europe during its ascendancy to global hegemony. Sovereignty for him represents a historical mode of global governance, which was intended to bring about a moral order of identity and subjectivity. The European sovereigns namely; the dynastic rulers, princes, and also the powerful political European elites, such as the merchants, industrialists and capitalists, generated sovereignty.⁴⁹ This regime of sovereignty was as a result of power dynamics and global conflicts. What one could deduce from the above representation is that the powerful Kingdoms at the time needed to safeguard what they had acquired through their might. And since it was a game of 'survival of the fittest', no ruler wanted to lose what it had conquered in his possession, hence the regime of sovereignty.

From the foregoing, it would be safe to express that the term 'sovereignty' was simply handed down to the developing world at a time when they have no such powers- economically and otherwise to be able to safeguard their possessions as their counterparts in the developed world, where sovereignty originated based on nation's power and domestic resources. Can we then assume that sovereignty is alien to African states? A sovereign nation should be one that has what it takes to be sovereign so as to control and manage one's possessions. And not the one that

⁴⁸ Kangethe G.J, A legal and Political Analysis of Article 111(2) of the O.A.U(AU) Charter.

⁴⁹ Grovogui, in Dunn and Shaw (eds), Africa's Challenge to International Relations Theory, Hounds Mills: Palgrave, 2001, p.30.

constantly asks for handouts for its sustenance. Following the rules of the international law in place, the doctrine should be respected. The question is, is the doctrine of state sovereignty practicable in Africa? Are the states in Africa perceived by their counterparts in the North as being sovereign despite all their needs, sufferings, and conflicts?

Jackson's (1992)⁵⁰ view is that, there was a blanket extension of international morality to the colonial empires by the western powers after the Second World War. This extension was to stop colonization and effect sovereignty. In his view, these small states did not have what it takes to be sovereign as was mentioned previously and as such should not be treated as sovereigns. The small and of course weak states could not deliver what was expected of them – domestic security and welfare, and therefore not worthy to be sovereign states. It touches on what I have said earlier that the term 'sovereignty' has always been interpreted along the power line. What each state is capable of doing in the international scene determines its sovereignty. It is not enough that the state has all the attributes of a state as prescribed at the Monte Video Convention, things like population, government, defined territory, etc.

He believes that the main reason why small states, Africa included, ascribe to the doctrine of 'non – interference in the internal affairs of a state, which he regarded as 'negative sovereignty' was to shelter African autocrats. Jackson believed that the Western generosity has led to the survival of illegitimate, incapable, disorganised, divided, corrupt and even chaotic states, which are unworthy of equal treatment as sovereign entities.⁵¹ But Grovogui is of the view that global processes including economic activities influence various regimes of sovereignty. This view he shared with

⁵⁰ *ibid* p.31

⁵¹ *ibid*.p.32.

Qureshi⁵² who expressed that a state's economic sovereignty forms the basis for its internal and external economic relations. It is the totality of the economic powers of a state as well as its equal status in international economic relations.

Under the framework of International law, state sovereignty conveys lawful independence from the authority of other participants in international economic relations. This statement is supported by the principle of equality between states as provided under article 2(1) of the Charter of the United Nations, which provides that "the organisation is based on the principle of the sovereign equality of all its members."⁵³ Just as the sovereignty and equality of states have been described as basic constitutional doctrines of the law of nations under public international law, there is also the doctrines of sovereignty and equality under international economic law only that in this case, sovereignty is translated in terms of control over a state's permanent resources, its economic system and the rules of engagement in international economic relations.⁵⁴ The issue is not whether a state is a sovereign state but whether the state is economically sovereign. This is the only time a state can freely and autonomously organise itself, and exercise a monopoly of legitimate power within its territory. That means, without economic sovereignty as is the case with most African states, interference in the internal affairs of the states will always be expected or experienced.

Grovogui, in Dunn and Shaw (2001), believes that the applicable regimes of sovereignty do not solely depend upon material domestic conditions or the capacity of the sovereign to prevent external encroachment rather, there is some kind of collective decisions amongst some powerful states to establish particular rules, norms and mechanisms of resolution of competing interests such

⁵² Asif H. Qureshi, *International Economic Law*, p.34

⁵³ Charter of the United Nations.

⁵⁴ Asif H. Qureshi, *International Economic Law*, p.35

as conflicting wills and contradictory desires of autonomy and interdependence, antagonism and cooperation, exclusion and inclusion of freedom and subordination, etc. That's exactly what the western powers did. In fact, they set the rules of sovereignty.

It will be proper to point out that the historical desire by the western sovereigns to 'emancipate' themselves from mutual and collective alienation through cooperation, which led to collective rules of mutual recognition, was brought about due to the centuries of antagonisms among themselves. As a result of the antagonisms, the peace of Westphalia, treaties of Augsburg, Vienna, etc, established a fictitious equality among states, which were unequal in size, capacity and in other respects.⁵⁵ This fictitious equality among states allowed European states to form alliances like 'The Holy Alliance', 'the North Atlantic Treaty Organisation' (NATO), etc. As a result of the above situation, there was clamour for self-emancipation for other members of the European/ Western order through the principles of recognition of equal sovereignty and wilful reciprocity.⁵⁶

With this brief historical insight about the origin of fictitious sovereign equality, one could see that the treaties which came into force during that period were meant to secure peace globally, not that the states were truly equal in practice. This explains why there are still invasions of the less powerful states – in terms of their economic, military and technological strength, by the very powerful ones in order to satisfy their own needs and desires. Deep down, the states are very much aware that sovereign equality is only theoretical. One might ask, what has been the perception of the western world towards the developing world in terms of sovereign equality? At the beginning of the eighteenth century, the western hegemonic powers never viewed Asia, Africa and other

⁵⁵Grovogui, in Dunn and Shaw (eds), *Africa's Challenge to International Relations Theory*, Hounds Mills: Palgrave, 2001, p.34.

⁵⁶ *ibid.*

polities in the same light as the western states. The hegemonic powers have always supported and cared for the less powerful European states while the expectations and needs of others including Africa were subordinated to their own needs and interests. The choice of the means of support depended on their disposition of the subordinates towards the international régime, particularly their willingness or not to align their political, ideological or economic expectations with the hegemony's wills, and interests.⁵⁷ Obviously, there is no assistance that goes without certain conditionality, which is always in favour of the donor. The recipient is always expected to play to the tune of the donor. It is all about manipulation, which was evident in the political context of the 'Berlin African Conference' for example, the related partition of Africa and the questionable treaties leading to the partition. All these showed the European powers intentions to determine the status of Africa, and the requisite form of autonomy applicable to Africans and its subordination within a larger moral order. Gauging from the above, Africa's fate had long been determined by the western world and little wonder that Africa still suffers the manipulation and subordination to date.

As Grovogui in Dunn and Shaw (2001) expressed, the sovereign rules that applied to Europeans were different from those applied to non-Europeans especially African states. A good example is the sovereignty regimes applicable to the Congo, Belgium, and Switzerland. Despite the fact that Belgium, at the time of its inception in 1830, lacked all but a few features of the more established states, the European powers supported it all the way and guaranteed its survival. Prohibiting outside political interference in its internal affairs protected its independence. In the same vein, Switzerland received assistance from the European powers. In contrast, the attitudes of the western powers toward Africa have not been so charitable as evidenced in the central Africa where the

⁵⁷ Ibid.p34

polities were amalgamated in the colonial discourse as 'The Congo', which did not follow the westphalian way.⁵⁸ Because of the assistance Belgium and Switzerland received from the western powers, which assistance encroached on the autonomy and sovereignty of the Congo, there was a huge transfer of significant resources from the Congo to Belgium and Switzerland. This is just a reminder that the term sovereignty may lose its meaning at any time depending on who is interpreting the meaning. So far as the national interests of the powerful states are being achieved, the interests of the weak states can always be compromised. A good example is how the western powers including the USA, and Switzerland, multinational corporations and foreign individuals provided the incentives for the related corruption and the networks through which funds were siphoned out of Zaire (Congo). All these brought the country to the brink of bankruptcy, making it more dependent upon the whims of international financial institutions for its salvation.⁵⁹

Many African writers have expressed their opinions about state sovereignty which they believed should encompass the moral obligations of rulers, the will and desire to freedom and human dignity. These were expressed through their respective works which include, inter alia, Ngugi's 1968 'A grain of wheat', Wole Soyinka's 'Dance of the forest', and Ahmadou Kourouma's 'The suns of Independence'. The writers are not only criticising the historical modes of global governance by which means the hegemonic powers mishandle the international system but also the domestic tyranny where rulers themselves do not respect the 'sovereignty of the citizenry. This is what the critics believed that led to the continued subordination and exploitation of African states ab initio. When our national leaders give the impression that they cannot manage their own nation.

⁵⁸ Clapham(1996) in Grovogui, in Dunn and Shaw, Africa's Challenge to International Relations Theory, Hounds Mills, Palgrave, 2001,p.36.

⁵⁹ Blumenthal(1979) in Grovogui, in Dunn and Shaw, Africa's Challenge to International Relations Theory, Hounds Mills, Palgrave, 2001, p. 40.

then, those with their economic, military, political and technological power, will take advantage of the situation and manage our states for us. At times, this management is not always beneficial to us. Sometimes, it is to our detriment – robbing Africa of self-determination and ‘positive’ sovereignty.

2.2.2 Sovereignty as Responsibility:

With the end of the cold war, and the disappearance of the bipolar alliance system, peace, security, respect for principles of human rights and democratic freedoms were expected. Instead, violence, disintegration became the order of many states. For example, the situations in the former Yugoslavia, former Soviet Union and crisis in African continent would testify to the humanitarian tragedies which in some cases led to partial or even total collapse of some states. All these issues had brought pressure for global humanitarian action, which sometimes involved forced intervention, as well as urgent quests for peacemaking and peacekeeping around the world. As the international community responded to the post -cold war tragedies, resulting from internal conflicts, the traditional concept of sovereignty began to erode. If the principle of state sovereignty were to be observed, there would not be international access to the affected masses within the borders of the affected states. This has generated some reactions from vulnerable states designed to reassert the traditional principles of sovereignty and territorial integrity. A lot has also been said and written about the processes of economic, political and cultural globalisation, which the post-cold war world is undergoing now.

In Africa and in many other parts of the world, there is a national identity crisis, which states are struggling with and in which sovereignty is contested. Deng, in Harberson and Rothchild (2000) argued that the crisis is rooted primarily in the problems of racial, ethnic, cultural and religious diversities which is as a result of gross disparities in the shaping and sharing of power, national resources and opportunities for social, cultural and economic development.⁶⁰ In other words, in a situation like this, it is the state that has more power, security for its people that enjoy the principles of state sovereignty. Under normal circumstances, a sovereign state should be concerned about the welfare of its people, provide them with adequate protection and assistance and if need be, invite international co-operation to supplement their own efforts. That means, sovereignty is viewed as a concept of responsibility for the security and general welfare of the citizens, with accountability at the regional and international levels. But where the government fails in its moral responsibility to care for its citizens, it creates some conflict and when it fails to permit international involvement, it is only then that international intervention is such a moral imperative. A good illustration is the events that took place in the former Yugoslavia, the horrific situation in Kosovo and in some parts of the former Soviet Union, which showed that the crisis is truly global. As Boutros Boutros- Ghali (former UN Secretary general) observed in his “**Agenda for peace**”: ‘poverty, disease, famine, oppression and despair abound, joining to produce 17million refugees, 20 million displaced persons and massive migrations of peoples within and beyond national borders. These are both sources and consequences of conflict that require the ceaseless attention and the highest priority in the efforts of the United Nations.’⁶¹

⁶⁰ F.M Deng: Reconciling sovereignty with responsibility in John W. Harberson and Donald Rothchild (eds) Africa in World Politics. Boulder, West view press(2000) p.354.

⁶¹ ibid p.355

Of all these cases of internal conflict and their severe consequences, Africa is heavily affected especially in Rwanda where the world witnessed genocide comparable to the horrors of Nazi Germany. In order to protect and assist the masses trapped in internal conflicts, there is need to reconcile the possibility of international intervention with traditional concepts of national sovereignty. As mentioned above, the primary responsibility for addressing internal conflicts is now placed on the states concerned, with some kind of sharing of responsibility and accountability at the sub-regional, regional levels and residually, throughout the international community, both multilaterally and bilaterally. With this apportionment of responsibility, national sovereignty acquires a new meaning. Instead of being seen as a means of insulating the state against external scrutiny or involvement, it is rather postulated as a normative concept of responsibility. Thus national sovereignty now requires a system of governance that is based on democratic popular citizen participation, constructive management of diversities, respect for fundamental rights and equitable distribution of national wealth and opportunities for development.⁶² In the light of this argument, the state should be held responsible for everything that takes place within its borders. In effect, it is the state that is in a position to correct any wrongdoing that takes place therein unless a situation arises where the state invites foreign assistance. But where the state fails in its duties, it will be exposed to both internal and external scrutiny. The question here is, what then went wrong during the Rwanda genocide? Why did the whole world keep quiet when innocent souls were being massacred? That whole sense of responsibility, internal and external scrutiny simply disappeared! Or did it go like the statement in George Orwell's 'Animal farm' that "all animals are equal but some are more equal than others..." If we invoke the theory that, national interests of the

⁶² ibid p.357

powerful states are considered first before others, it then follows that the Rwandese were 'less equal' than others, for their interests to be considered first.

As Winterbourne expressed that although every state under international law is believed to be sovereign, there are different levels of sovereignty, which vary between states and a lesser degree of sovereignty does not render a state devoid of international personality.⁶³

The conclusions of the 1992 international conference on human rights protection for internally displaced persons underscored the extent of the changes in perspectives on the confrontation between the universal standards of human rights and the parochialism of traditional ideas of sovereignty. The report on the above mentioned conference states that the "steady erosion" of the concept of absolute sovereignty is making it easier for international organizations, governments, non-governmental organizations to intervene when governments refuse to meet the needs of their populations and when substantial number of people are at risk. Hence, the concept of sovereignty is understood more in terms of conferring responsibilities on governments to assist and protect persons within their territories.⁶⁴ In the same vein, Boutros Boutros-Ghali wrote that, respect for sovereignty and integrity is "crucial to any common international progress, but the time of absolute and exclusive sovereignty... has passed, that its theory was never matched by reality, and that it is necessary for leaders of states to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world".⁶⁵ This statement is true of today's world in the sense that no state is completely self sufficient. Both the powerful states and the weak states

⁶³ Winterbourne A, The Erosion of State Sovereignty, <http://www.associatedcontent.com> p. 1

⁶⁴ Francis M. Deng in Harberson and Rothchild (eds) Africa in World Politics, Boulder; Westview press, 2000, p. 359.

⁶⁵ Ibid. p. 360.

need one another in some ways for survival. The only problem is that the powerful states, most often, use their position in the international system to compromise the poor states.

2.2.3 Sovereignty as a principle under International Law:

According to Morgenthau (1991), the doctrine of sovereignty has provided democratic states with some kind of security of 'a potent political weapon'. At the same time, the term has been subject to revisions, reinterpretations and attacks under international law. This is as a result of the two incompatible assumptions that are of essence in international law.

The first assumption is that international law imposes legal restraints upon individual nations. While the second assumption is that these same nations are sovereign – meaning that they are the supreme law-creating and law-enforcing authorities and not subject to legal restraints.⁶⁶ With these two assumptions, the question is what is the exact role of the term sovereignty? Or has it outlived its usefulness? Morgenthau expressed that sovereignty is consistent with decentralised, hence weak and ineffective, international legal order, meaning that sovereignty is compatible with international law, which is seen as being a decentralised legal order in two ways. First, the rules of international law as a matter of principle, are binding upon those nations with express consent. Secondly, many of those rules are so vague and ambiguous, and so qualified by conditions and reservations thereby creating loopholes for individual nations to get off the hook of compliance. If the term 'sovereignty' is to be viewed in this light, it then shows that the term is in a fluid state. It is neither here nor there, hence the varied interpretations of the same.

However, only a few rules of international law could bind upon nations irrespective of their consent. These rules are called the common or necessary international law whose binding force

⁶⁶ Morgenthau H.J, *Politics Among Nations*, New Delhi, Kalyani, 1991, p.329

does not affect the sovereignty of the individual nations, making state sovereignty a legal concept. "For without the mutual respect for the territorial jurisdiction of the individual nation, and without the legal enforcement of that respect, international law and a state system based on it could obviously not exist".⁶⁷

In the field of international law, sovereignty is synonymous with the following: **Independence, Equality and Unanimity (Morgenthau, 1991)**. **Independence** signifies the supremacy of the authority of the individual nation, which consists in the exclusion of the authority of any other nation. Consequently, each nation is free to manage its internal and external affairs according to its discretion except where it is limited by treaty or common international law.

Equality on the other hand shows that, if all nations have supreme authority within their territories, none can be subordinated to any other nation in the exercise of its authority. Nations are subordinated to international law and not to one another, meaning that they are equal. This was captured under article 2(1) of the Charter of the United Nations where it states that, "the organization is based on the principle of the sovereign equality of all its members." The third synonym of sovereignty is **Unanimity**, which means that with reference to the legislative function all nations are equal regardless of their size, population, and power. For instance, in any international conference where new law is being created for the international community, the vote of any nation say Kenya counts as much as the vote of the United States. And the votes of both nations are required to make the new rules of international law binding for them. In theory, that is how it should be, but in this anarchic international system, the practice is different. Everything comes into play when nations interact with one another ranging from economy, politics, geographical location, military, technology, to the size of the individual nation among other things.

⁶⁷ Ibid.p.330.

To that end, the following are not what sovereignty is but are often believed to be, as propounded by Morgenthau (1991).

- Sovereignty is not freedom from legal restraint: it cannot be affected by amount of legal obligations by which the nation limits its freedom of action. It is not the quantity of legal restraints that affects sovereignty, but their quality. Provided the supreme lawgiving and law-enforcing authority of the state is not affected by the legal restraints, the state will remain sovereign.
- Sovereignty is not equality of rights and obligations under international law. There could be elements of inequalities of rights and obligations amongst nations, yet the sovereignty of these nations still remains. This statement may appear to be in line with article 2(1) of the Charter of the United Nations which states that “ the organization is based on the principle of the **sovereign equality** of all its members”. The sovereign equality mentioned therein could be interpreted to mean that all nation members are sovereign. The article did not specify whether all the members have equal rights and obligations. For instance where peace treaties impose heavy disabilities upon the defeated nation with regard to size and quality of the military establishment, reparations, economic policies, and the conduct of foreign affairs in general, the vanquished is not thereby deprived of its sovereignty. A good example is where Germany, Austria, Hungary and Bulgaria remained sovereign states despite the one-sided legal obligations with which the peace treaties of 1919 burdened them.⁶⁸ It has been observed that where there is a contention between states regarding compliance with legal obligations, it is usually the treaty that is revisited and not sovereignty of any state.

⁶⁸ Ibid p.333

➤ Sovereignty is not actual independence when it comes to political, military, economic or even technological matters. The mere fact that some nations are interdependent with regard to the above mentioned issues, and some are dependent on others with regard to the same, may make it difficult if not impossible for certain nations to fully exercise their independence in domestic and foreign matters yet, their supreme law-giving and law-enforcing authority within their territory remain legally intact. Morgenthau is trying to explain that the mere fact that a nation is dependent on others does not remove the fact of its sovereignty. I believe that once a nation is dependent on another for important needs especially economic needs, that nation's sovereignty will definitely be affected, however small. The dependency does not remove the entire sovereignty, but something has gone out of it. That freedom to do what the state deems fit will be lacking due to certain conditionalities surrounding the economic dependency. This is what the developing countries experience in the international arena. Their sovereignty has not been taken away from them but the pressure that is coming from the powerful states puts their sovereignty in question. If state sovereignty does not guarantee actual independence in political, military, economic or technological matters, equality of rights and obligations, freedom from legal restraint, then, of what purpose is the principle of sovereignty?

2.2.3.1 The erosion of sovereignty:

Sovereignty has been a defining principle of interstate relations and a foundation of world order. It has been an essential component of the maintenance of international peace and security and a defence of weak states against the strong.⁶⁹ But in practice, the concept has always been violable due to several factors some of which are prescribed under international law and the Charter of the United Nations. For instance, state sovereignty may be limited by customary law, treaty obligations in international relations, provisions of the UN Charter like chapter VII of the Charter which provides that state sovereignty is never a barrier to action taken by the Security Council in response to a threat to the peace, a breach of the peace or an act of aggression.⁷⁰ That means that state sovereignty can be enjoyed if international peace and security are observed.

Apart from the above mentioned factors that bring about limitation to the principle of state sovereignty, cultural, environmental, and economic influences have also been used in this globalizing world to violate the principle of state sovereignty by the powerful states despite the fact that the concept is well entrenched in legal and political discourse.⁷¹ The process of globalization is responsible for the emerging interdependence and interconnectedness of states. It is through this interconnectedness that the weak and developing states find solace in their relationship with the rich countries. This is what breeds dependency.

Globalization has indeed increased the importance of non-state actors such as transnational non-governmental organisations (NGOs) and inter-governmental organisations (IOs) to the point that

⁶⁹ International Commission on Intervention and state Sovereignty, The Responsibility to Protect, <http://www.iciss.ca> p.2

⁷⁰ Ibid p.4

⁷¹ Ibid p.2

IOs have become influential in global politics. The increase in the number of international organisations and the expansion of their functions have actually restricted an individual country's sovereignty to some extent.⁷² A good example is the extensive involvement of the world's leading financial institutions namely the World Bank, the IMF, and the World Trade Organisation (WTO) in domestic economic affairs of their members through their penetrating systems and rules. This is as a result of lack of proper economic establishments which forced many underdeveloped nations to resort to foreign assistance and intervention. This in turn deprived their governments of the control of their own economy.⁷³ The bilateral donors cannot escape this blame. They take advantage of their predominant economic status and infringe upon other countries' economic sovereignty.

As Zhongying argued, the developed countries most often turn to double standards in economic affairs and apply their self-concocted theories like "human rights being superior to sovereignty" and "economic integration outweighing sovereignty", to force the weak nations into conceding some of their inherent privileges.⁷⁴ Some critics also argued that humanitarian justification for intervention were usually a pretext for intervention motivated by strategic, economic and political interests.⁷⁵

For purposes of non-military intervention, sanctions have been used by some powerful states against the weak ones. Sanctions can be economic or political as well as embargoes of various types. Sanctions are meant to impose a course of conduct on a state by banning or restricting that

⁷² Zhongying, Globalization vs. Economic Sovereignty, China Daily, 2 December, 2005, <http://yaleglobal.yale.edu>

⁷³ Ibid.

⁷⁴ Ibid

⁷⁵ International Commission on Intervention and State Sovereignty: The Responsibility to Protect, <http://www.iciss.ca>

state's economic, military or political relations. Sanctions are carried out as punitive countermeasure against illegal acts- criminal or civil. For example, alleged acts of aggression or alleged breaches of international obligations⁷⁶ as contained under chapters XI-XIII of the UN Charter. But in today's world, sanctions are carried out against any state irrespective of what its offence is. In the developing world today, one might say that their offence is 'poverty' because being poor as a nation attracts 'all sorts of sanctions and conditionalities'.

Economic sanctions which include trade and commercial restrictions and sometimes embargoes on imports and exports, flights and the seizure of a state's assets abroad have been levelled against some of the developing countries. A good example is when the United States issued travel advisory to its citizens against travelling to Kenya, citing high crime rate in the country. Could that be the only reason or was there a hidden agenda?

Political sanctions which include among other things, restraint on the means and extent of a state's level of armament and refusal of entry of political leaders into the territories of other states have not been spared either. Some of African political leaders have been refused entry to western countries. If not for the dependency of the developing countries on the rich developed nations, would these be happening?

2.3 CONCLUSION:

There is no doubt that the principle of state sovereignty was formulated to safeguard both state territory and its inhabitants. But following the conflicts and the abuse of human rights within state territories, certain measures need to be taken in order to protect the citizens. Such measures like

⁷⁶ Ibid p.14

intervention by the international community as provided by the United Nations Charter constitute to erosion of the principle of state sovereignty.

However, there are other interferences which resulted from the anarchic nature of the international system where every state focuses its attention on what benefits it most with no regards to the sovereignty of other states. These circumstances are purely economic where the very rich and developed nations use their economic status to infringe on the sovereignty of other poor nation. This can be attributed to globalization where cultural, environmental and economic influences have been used to violate the principle of state sovereignty despite the concept having been entrenched in legal documents. It does not matter whether a state feels it is sovereign or not. The factors that shape the principle of state sovereignty in this globalized world are the economic, military, political and technological strength of a state.

CHAPTER THREE

FOREIGN AID AND ITS IMPACT ON STATE SOVEREIGNTY: THE KENYAN EXPERIENCE:

3.0 Introduction:

Foreign aid has been an important facet of international relations. As the name suggests, it is supposed to facilitate development in the recipient country. Needless to say, foreign aid has its pros and cons as both the donor and the recipient strive to achieve their purpose through foreign aid. This chapter seeks to portray the impact of foreign aid on state sovereignty using Kenya as a case study. The issues that will be covered in this chapter include, among others, types of foreign aid, the purpose of foreign aid, foreign aid to Kenya and foreign aid conditionalities.

Using the words of Van de Walle, “ aid has been the primary instrument of the West’s relationship with Africa, that simultaneously stabilized the continent but failed to encourage the emergence of strong states there”.(Nicolas van de Walle, 1996). For the purposes of this study, foreign aid will be viewed in terms of grants or loans that one government or multilateral organization gives to a developing country to promote economic development and welfare (Sherry Snyder, 1997).

Foreign aid can also be seen as post World War II phenomenon which had two main objectives namely: the long-term poverty reduction in developing countries and also short-term political and strategic interests of the donors. It was during the cold war, when there was serious competition between the capitalists and the communists that foreign aid was used as a reward for any

developing country that supported super power ideology.⁷⁷ This means that the donor to secure its own interests especially bilateral donors can use foreign aid as a weapon. For example, with the end of the cold war, policy elites started re-assessing the justification for aid as an instrument of foreign policy. In 1995, the new Congressional Republic foreign policy leadership publicly targeted sub-Saharan Africa for aid cuts arguing that there are no significant American security interests in the region.⁷⁸ It seems that where a donor has no particular concern or interest in a region, the donor may be indifferent as to whether there is need for aid or not. It is the concern or interest of the donor that determines who gets what in terms of foreign aid. Thus when sub-Saharan Africa was targeted for aid cuts, it did not affect North Africa and the Middle East due to the presence of oil in the region, their proximity to Europe and the perceived threat of fundamentalist Islam. For example, U.S has explicitly spared Egypt from the rounds of budgetary cuts despite criticisms of the Mubarak regime's misuse of aid funds. Meanwhile France has taken care to maintain a high level of assistance to the Maghreb in recent years largely out of concern for the stability of the region in the wake of events in Algeria. In effect, the end of the cold war actually reduced sub-Saharan Africa's leverage against the West.⁷⁹

⁷⁷ World Bank policy Research Report, 1998

⁷⁸ Nicolas van de Walle, *The Politics of Aid Effectiveness in Africa Now*, 1996 p.236

⁷⁹ Ibid.

3.1 TYPES OF FOREIGN AID:

Foreign aid as mentioned previously is an official development assistance or any form of Western government financed grant to the developing countries.

This assistance can be transferred in the form of money, goods and services from one nation to another. According to Morgenthau (1962), there are six types of foreign aid namely;

- **Humanitarian Foreign aid:**

This is the type of aid that is extended to nations which are victims of natural disasters like floods, famines and epidemics. It is also extended to victims of war. It includes the services, provided by private organizations like churches and other foundations especially in the fields of medicine and agriculture.

Depending on the function performed by this type of aid, it could either be political or non-political.

- **Subsistence Foreign aid:**

This type of foreign aid is given to governments, which do not have enough resources to maintain minimal public services. The donor in this case makes up the deficit in the budget of the recipient nation in order to prevent any breakdown of order and the disintegration of an organized society.

Subsistence type of aid performs a political function of maintaining the status quo, without increasing its viability.

- Bribery:

These are bribes given by one government to another for political advantage, which formed part of the armory of diplomacy until the beginning of the nineteenth century.

During that time, it was very normal for a government to pay a foreign minister or an Ambassador of another country pension, which was seen as bribe. For example, Lord Robert Cecil the then Minister of Elizabeth, received pension from Spain. Another example is that of Sir. Henry Wotton, British Ambassador to Venice in the seventeenth century who accepted bribe from Savoy.

Today, in international society, foreign aid may no longer be used as pension but may still be used as bribe but in a disguised manner. That may explain why some bilateral aid especially money is withheld once a recipient nation declines to carry out certain functions like signing some legal documents which is in favour of the donor country. A good example is where the U.S withheld military aid to Kenya over the latter's reluctance to sign an agreement with the former protecting American soldiers from the international war crimes court.⁸⁰

- Foreign aid for Economic Development

This can be used to gain political mileage through the transfer of money and services for the stated purpose of economic development. Most times this type of aid serves other purposes leaning more to the interest of the donor while helping the 'economic development' of the recipient nation.

- Military Aid:

⁸⁰ Sunday Nation, May 29, 2005 p.1

This is a traditional way by which nations buttress their alliances through aid for military purposes. The seventeenth and eighteenth centuries were the classic period of military subsidies when nations like Great Britain worked hard to strengthen the military of their allies. During that time, two allies could pool their resources together where one would be supplying money, materials and training while the other would be providing manpower. But in the contemporary international system, military aid could be extended not only to allies but also to non-committed nations. For example, the military aid extended to Yugoslavia by the United States. Sometimes, military aid can be used as bribe where the recipient nation would be expected to abstain from a political course which could put in jeopardy the continuity of the military aid.

- Prestige Aid:

With this type of aid, the purpose is usually concealed by the ostensible purpose of economic development or military aid. For example, the purpose of constructing some highways in the recipient nation, in the area where there is no heavy traffic may not be simply that. There could be an undertone of political advantage for the donor. Again, airline operating at a loss with foreign personnel but under the flag of the recipient country is definitely not performing any economic function. The recipient nation simply wants to be seen as 'industrialized' but not to fulfil any economic needs of the country. This type of foreign aid establishes some kind of patent relationship between the generosity of the donor and the increased prestige of the recipient, which in turn increases the prestige of the donor. Nevertheless, some of these aids are necessary provided they are extended for the right purpose.⁸¹

⁸¹ Morgenthau H, A Political Theory of Foreign Aid, The American Political Science Review, vol. 56, No.2 (1962) pp. 301- 304.

3.2 THE PURPOSE FOREIGN AID SERVES FOR BOTH THE DONOR AND THE RECIPIENT:

There are varied reasons why countries engage in foreign aid policy. While recipient countries applaud the donor countries any time aid is given, the donor countries on the other hand count their blessings too for the fortune that aid will bring to them in return. In other words, both the donor and the recipient have interests to protect when it comes to donor funding.

3.2.1 Donor Interest:

In donors view, foreign aid to the developing countries will bring about rapid development by reducing poverty, enhancing health care, improving democratization, human rights etc. In a way, that is positive thinking. There will be true development if the aid given is used purely for those specific purposes and also if the aid is given without too many strings attached to it. By this, I mean too many conditionalities attached to the aid. The question here is who benefits more from the foreign aid - the donor or the recipient? One thing is certain; the foreign aid donor has some interests to protect.

According to Nelson J.M, there are some major strands of the US interest in the developing countries. These interests involve their relations with other countries in which situation. protection of U.S citizens and property, equal access with other nations to opportunities for trade and investment are very important to them. Secondly, there are interests which are related to the Cold War during which period there was continued access to military bases and other strategic facilities located in specific developing countries; other major concerns were maintaining ties with allies

and strengthening their defence capacity; delaying recognition of Communist China and its admission to the United Nations; discouraging trade, especially in Cuba and North Vietnam; and also encouraging independence or a pro-Western alignment in the foreign policy positions of developing countries.

Thirdly, due to the effect of the Cold War, there was a desire to encourage evolution of a responsible international community where conflicts should be resolved through peaceful channels and nations cooperate on economic, scientific and other mutually beneficial programmes. These interests were made clear in the U.S support for the United Nations Peacekeeping Missions, U.S actions to forestall violence and resolve disputes between say India and Pakistan or Indonesia and Malaysia.

Finally, there is the interest for the peace and pattern of the internal economic and political evolution in the developing countries. This brought about the humanitarian desire to ease and conquer poverty. As a result, U.S developed interest in encouraging economic growth abroad through the extension of several aid to needy countries. These developmental aid were meant to secure stability of new nations and the security of the United States.⁸² This simply shows that foreign aid always serves a purpose, partly in the interest of the recipient country and mostly in the interest of the donor country.

3.2.2 Foreign Aid as a Weapon:

Where developmental aid fails to put in check political crises, economic aid comes in handy, which can be used to influence the political situation in the recipient country. The outcome is

⁸² Nelson J.M, *Aid, Influence and Foreign Policy*, Macmillan, New York, 1968(pp.11- 25)

usually favourable to donor's interests.⁸³ For example, economic aid has been used in Brazil, the Dominican Republic, Guyana and other places to buy time for new regimes to consolidate their positions and then formulate programmes of action.

Foreign aid has been viewed positively where it has been used to ease some economic bottlenecks like unemployment, which can be a political threat. This was the case in Kenya where unemployed youth demonstrated and rioted resulting to government being forced to use loans to assist a voluntary National Youth Service. Donors have actually used aid to bring about or sustain democratic government. Aid can easily be withheld until desired results are achieved. For example, in Venezuela in 1963, terrorists sought to sabotage the elections in the country but the United States stepped up support for the Venezuelan military and police.⁸⁴ Much as economic aid would promote goodwill and diplomatic access without which the United States influence on certain issues would be limited, the dependence on the assistance by recipient countries and the stringent conditionalities attached to aid relegates the goodwill to a marginal objective.

From the foregoing, it actually looks like donors are the ones benefiting from the aid given to recipient countries to the extent that where the donors' interests are not satisfied; aid could be withheld or suspended. This was stipulated under US law in the mid 1960s, which stated that any aid that did not attract adequate compensation would be suspended, as was the case in Ceylon between 1963 to mid 1965. During the Cold War period, economic aid was used as a bribe to induce any country to refuse over flight and landing rights to Soviet Union or to delay the recognition of Communist China. Countries that permitted ships or aircrafts to carry goods to Cuba

⁸³ Ibid.

⁸⁴ Nelson J.M, *Aid, Influence and Foreign policy*, Macmillan, New York, 1968 (pp. 11-25)

or North Vietnam were not eligible for economic, military or food aid. Still at this period, using economic aid, developing countries were prevented from relying on Communist aid so that they would not have any alignment with the Soviet Block.⁸⁵

Foreign aid has often been used as a political weapon, which the donor government can easily give or withheld in order to achieve a desired result. For example, Britain withdrew the assistance offered to Tanzania simply because Britain did not approve of President Nyerere's strike. Another good example is the decision of the United States Senate in October 1971, to end all foreign aid and also emphasized the use of aid as a political weapon. Does this in any way show that the donors have the interests of the recipient countries at heart when the giving and the withholding of aid is at their whim and not considering the problems faced by the recipient countries especially among the developing nations.

3.2.3 Aid and the recipient Country:

Is Foreign aid given so as to solve some of the recipient's economic, social and political problems or is it given so as to fortify the position and the interests of donors?

Going through some of the literature, it was observed that the primary aim of foreign aid was to assist poor countries, to raise the standard of living of millions of people in the world, who live in poverty due to economic circumstances outside their control (Elizabeth O'Kelly, 1973). However, in practice, foreign aid does not exactly do just that. Donors use the opportunity to look for export market, buying political alignment all in the name of assisting less developed nations. This could be understood in the statement of the then Senator Frank Church ". Our aid has been a spreading money tree under which the biggest American businesses find shelter when they invest abroad".⁸⁶

⁸⁵ Ibid

⁸⁶ O'Kelly E., Aid and Self help: A general guide to Overseas Aid, Charles Knight & Co. Ltd, London, 1973 p.32

Going by this statement, it simply shows that the main purpose of aid is to satisfy donor's interests first and foremost. And because of the interests of the West who have remained the primary donors, they have placed greater emphasis on the importance of industrialization in the developing countries where agriculture has been predominant. This leans more towards 'trade' than 'aid'. Is this really going to help the developing countries?

Foreign aid comes in different ways: through grants, loans, material goods, etc. Have we stopped to think about the interest rates that accompany those loans? Some of these interests are so high that the service of the loans simply takes back almost half of the total aid. Now, how is this going to help the recipient country when it constantly struggles to pay back the loan with the same money it had borrowed? Having said that, some of these aid come with strings attached to it in the sense that there can be stipulations that the aid money must be used to purchase the required equipment or machinery from the donor country.⁸⁷ In the same vein, some donors insist that the personnel needed for certain development programmes must come from the donor country. For example, in Vietnam, many Americans were employed in the Agency for International Development Programme and earned as much in a week as most Vietnamese could do in a year. This as a result pushed up the cost of living in Vietnam making life almost impossible for ordinary Vietnamese and this brought about corruption and dishonesty.⁸⁸ When we hear that billions of dollars in aid has been given to a recipient country for a particular development programme, the

⁸⁷ Ibid p.36

⁸⁸ Ibid

question that should be asked is "How much is spent on salaries and allowances paid to the donor's personnel administering the aid?"

Another example where these stringent conditions attached to aid affect the lives of the population is Chile in the 1960s, when the World Bank, IMF and the United States agreed to continue providing assistance to Chile provided the recipient government would commit itself to major policy changes in order to assume some degree of financial stability. Chile carried out all the major reforms as prescribed by donors yet the cost of living at the end of the day continued to rise, and this is not good for the people. Will it not be better to extend aid to the recipient nation and allow them to put it to use in the areas that are affecting the nation without forcing them to spend it on areas prescribed by donors which at the end will cater for donor's interests rather than the recipient interests? It has been noted that excessive external pressure on the recipient government has two alternative dangers. One, pressure can strain a government beyond its capacity and hence weaken it or the government may reject the advice, confronting donors with the choice of withholding aid.⁸⁹ Hence, with reference to Ceylon, Washington Post observed that "Reform recommended solely on the basis of economic criteria and pursued before a country has been psychologically prepared could undermine the political foundations on which development rests."⁹⁰

This whole episode of donors benefiting from the aid extended to the recipient nations has been recaptured through the work of John Perkins (2004).⁹¹ In his work, the author described himself as a former economic hit man- a highly paid professional who cheated countries around the globe out of trillions of dollars. In his interview with one Amy Goodman, the author explained how they

⁸⁹ Washington Post, (August 22, 1966) in Nelson J.M, Aid, Influence and Foreign Policy, Macmillan, New York, 1968, p.88

⁹⁰ Ibid

⁹¹ Perkins J, Confessions of an Economic Hit Man: How the U.S uses Globalisation to cheat poor countries out of trillions, <http://democracynow.org>

were trained to build up the American empire- to create situations where as many resources as possible flew into the country, their corporations and the government. This was done through the extension of huge loans to recipient countries. The loan is usually much bigger than they could possibly repay and the condition attached to the loan would be that the recipient country would have to give ninety percent of that loan back to a US company or companies to build infrastructure for the recipient country. Now, where a country returns ninety percent of the loan to the donor's company for infrastructure, what is left of the loan for the recipient country? The money simply goes back to sender leaving the recipient country with such a huge loan to repay. The infrastructure put up would serve only the few rich ones in the recipient country and the majority poor would be stuck with the amazing debt that they could not possibly repay. A good example is the case of Ecuador, which owes more than fifty percent of its national budget for debt payment. And since they are unable to pay back the loan, their oil is used for payment in exchange.⁹² How is this country going to recover from heavy debt and high interest rate?

3.3 FOREIGN AID TO KENYA

Kenya like any other country in the developing world receives foreign aid from donors in the western world. What is of interest to us here is to find out the sources of Aid to Kenya, some of the uses in Kenya, under what conditions is this aid given and the extent to which these conditions may affect the sovereignty of Kenya in terms of government activities and legislations.

⁹² Ibid.

3.3.1 Sources of Foreign aid to Kenya:

About five years after Independence, the bulk of Kenya's foreign aid came from few sources namely the UK, the Scandinavian countries, Federal Republic of Germany, the Netherlands and Canada. They are known for their bilateral grant aid for development. During that period, Kenya's multilateral borrowing increased from 18% to 43% with hardening terms of assistance, which made Kenya resort to a growing amount of commercial borrowing.⁹³

Towards the end of 1973, UNDP had delivered about US\$30million worth of assistance in the areas of primary sector, education, and vocational training.⁹⁴ Kenya apparently was in dire need of financial support just like most African countries, soon after its attainment of independence. This of course would have put most developing countries in an awkward position in relation to their former colonisers who are today the super powers in the international community. These super powers are the ones with whom the countries in the developing world fought for their independence and freedom, they are the same people that are in the position to assist developing nations financially barely few years after independence. What an irony of life! Is it surprising why African countries are treated in the manner they are treated?

Kenya received both multilateral and bilateral assistance. The former came from the World Bank and the International Monetary Fund and the latter from the Western and the Scandinavian countries. Between 1990 and 1996, Kenya had a steady build up in nominal flows of official development Assistance (ODA). In 1990/1, Kenya received development aid equivalent to 14

⁹³ UNDP Governing Council Report on Kenya, 20th Session, 1975

⁹⁴ Ibid

percent of Kenya's Gross Domestic Product (GDP) and to approximately 45 percent of the government budget.⁹⁵

The official Development Assistance to Kenya includes both concessional loans i.e. loan with a grant element of at least 25 percent. Although Kenya receives both multilateral and bilateral assistance, it is the bilateral assistance that constituted Kenya's major source of aid, which constituted mainly grants while multilateral aid comes mainly in form of loans. The World Bank Group has been the major donor of the multilateral loan accounting for almost 80 percent of the total loans between the periods of 1970 – 96. African Development Bank (AFDB) accounted for 11 percent. Some of the bilateral aid donors to Kenya include inter alia: Japan, Germany, United Kingdom, USAID, Netherlands, Canada, European Community, Denmark, Sweden, China, Australia, Middle Eastern governments and aid Agencies.⁹⁶

TABLE 3.1. TOTAL AID FLOWS TO KENYA, 1980 –96

(Millions of US dollars)

Year	Total ODA

⁹⁵ Shantayanan et al, Aid and Reform in Africa, The World Bank, 2001 p.471

⁹⁶ Ibid p.524

1980	480.9
1981	535.8
1982	578.0
1983	519.6
1984	655.6
1985	526.5
1986	637.1
1987	752.6
1988	954.4
1989	1,091.9
1990	1,615.0
1991	1,102.1
1992	987.1
1993	869.7
1994	731.3
1995	1,020.9
1996	743.3
TOTAL	13,801.8

Note: ODA (Official Development Assistance) includes both concessional loans and grants.

Sources: Loan data from World Bank Debtor Reporting System; grant data from OECD-DAC.

(1999).⁹⁷

⁹⁷ Shantayanan et al, Aid and Reform in Africa, The World Bank, 2001 P.520

Following an interview with Former Ambassador Dr. D. Kikaya, it was discovered that Kenya receives two categories of foreign aid namely:

a) **Earmarked Funding or Tied aid:** Here the government identifies a need to support a specific programme or project and requests for external funding. For example, the British Government financed the Nkubu, Thuci Roads in Meru District. The Japanese government got involved in the financing of the geothermal plant in Nakuru and Sondu/ Mirui hydropower in Nyanza Province.

b) **Untied Aid or Fund for Balance of payment:** this is the category of aid given to assist the government in areas where the government feels they need technical funding like balancing the budget, balance of payment (where government does not have enough fund for importation). It is also used for the provision of health services, education or infrastructure.

At times government receives some aid in kind such as foodstuff, machinery, technical assistance etc. Following my interview with the Head of External Resources Division, European Union Section, it was established that in the 1980s, foreign aid accounted for 9.9 percent of the Country's GDP, it rose to 10.7 percent in the 1990s. This started dwindling towards the year 2000 and declined to less than 5 percent. This reduction of aid was as a result of the donor's conditionalities that come with the aid. Donors usually set targets for recipient countries to achieve before aid is extended to them. This means that where these conditions are not met, aid may be withheld or cancelled altogether. So the dwindling nature of aid to Kenya around the year 2000 was as a result of donors accusing the Kenyan government of poor governance during the era of KANU government.

3.3.2 The Uses and the benefits of aid to Kenya:

As mentioned previously in this chapter, Foreign aid serves different purposes. It is supposed to satisfy the interests of both the donor and the recipient, but the degree of satisfaction enjoyed by the recipient country is debatable. Kenya being a developing country has varied needs ranging from economic, developmental, commercial, political, to even environmental. Foreign aid as a result has been a major contributor to Kenya's development.

According to Primary sources of information following an interview with some of the government personnel, aid to Kenya has been used in different areas of development such as governance and poverty alleviation. Foreign aid has been used to bridge the gap in budget deficits, alleviate poverty, used for infrastructure development, like roads, provision of social amenities, health services, and education. With the improvement of infrastructure like roads more benefits come with it. For example the roads have opened up markets, which allow the farmers to dispose of their produce. This means more cash in their hands.

However, aid cannot serve its purpose in its entirety to the recipient country due to the conditionalities that are attached to foreign aid. These conditionalities will be discussed later in this chapter. The donor countries benefit from aid given to recipient countries. Apart from being satisfied that they have helped needy countries, it helps them to maintain a link and leverage on those recipient countries. The aid opens up markets for donor countries. It provides employment and other benefits for donor countries namely:

- a. It ensures opportunities for investors, contractors, and suppliers.

b. On the political front, it provides an opportunity to maintain allegiance with the governments that are aligned with them e.g. the aid relationships during the cold war era.⁹⁸ As there are two sides to a coin, recipients at times do not get that satisfaction from the extended aid. Due to some political and bureaucratic interference, foreign aid does not always yield those benefits it intended to. Again due to the issue of corruption, there is no free flow of the resources to the beneficiaries.

3.3.3 Foreign Aid and its conditionalities:

All types of Foreign aid usually come under different terms and conditions. However, they vary in degree. Generally, conditions precede the actual extension of foreign aid. It could be that recipients should meet certain standards in order to be eligible to receive foreign aid. These conditions can be traced back to the end of the Cold War. At the thick of things when Cold War was at its peak, foreign aid was flowing freely to developing countries for their allegiance to the Western countries and their role in stopping communism or capitalism as the case may be. But immediately after the Cold War, there was obviously not much need for any help from developing countries. All that pumping of aid into developing countries ceased or reduced drastically, and donors who were behaving like “father christmas” suddenly raised the bar/ hurdle very high. These hurdles represented good governance and democratisation. These are some of the criteria laid down for giving foreign aid to developing countries. Kenya did not escape this drag net. That means whenever the donor feels that recipient country has not fulfilled some of these conditions foreign aid can be denied that country.

⁹⁸ Shantayanan et al, Aid & Reform in Africa, World Bank, 2001, p.474

In the **Daily Nation** dated 13th May 1982 for example, it was reported that the Western Policies were blamed for the economic woes of developing countries, that major industrial powers will slap down third world pleas for vast financial aid at an IMF meeting and tell third world countries to tighten their belts. The question is, why were these issues of governance and democratization not a problem during the Cold War when aid was flowing in freely. And now Cold War has ended and suddenly, good governance and democratization became the criteria for aid flow to developing countries in general and Kenya in particular.

From the foregoing, it seems that aid given is mainly seen as a reward based on what the recipient country has done for the donor under bilateral type of aid. For example, Kenya and Tanzania were denied aid simply because they did not accept US condition of putting some regulations in place to enable US pursue terrorists unimpeded. Meanwhile, Uganda was given aid since it satisfied the US conditions. In another incident, Kenya was criticised for having failed to meet the anti-corruption criteria for eligibility for US development aid programme through the Millennium Challenge Account.⁹⁹

The following are some of the cases of the said corruption as reported in the Daily Nation (2006):

- Report by the Ndungu Commission highlighting cases of grabbed Public Land.
- Goldenberg case, which exposed loss of millions of shillings by the government in a fictitious gold and diamond export deal.
- Anglo leasing report focused on shady security contracts worth billions of shillings between the government and ghost foreign firms.

⁹⁹ Daily Nation, September 20, 2006, p.2

On the other hand, if these alleged cases of corruption are found to be true, then there is a good reason for one to question those issues of corruption. The question here is, who should be the whistle blower – the donor or the people? This is where government authorities should come into play to ensure that corruption is eradicated. Another question is, has the donor given the authorities time to carry out the necessary actions as this falls within their jurisdiction? Is aid denial the best option? Or is there any hidden agenda towards the denial of aid?

Foreign aid conditionalities can be so stringent in nature that the government finds itself in a difficult situation and feels so helpless. This is because the donors are the ones supporting the government capital budget. For instance in the 1991/1992 fiscal year, Kenyan government received \$873 million in official development assistance which comprised of about 11 percent of its Gross National Product (GNP). The resources came from 15 multi lateral and 17 bi lateral aid agencies. The loans and grants comprised 73.6 percent of the total capital budget.¹⁰⁰ All these loans definitely could not have come without strings attached to it. The attachments were that government in return, agree to carry out specified structural adjustment measures, political and economic conditionalities, that if not met, there would be reductions in current and future foreign aid allocations. Where government is threatened with aid reduction, it has not much choice but to adhere to the conditions stipulated as the government depends so much on aid. Is this not running the affairs of the government indirectly by the donors since they are the ones who decide what measures the government should take in carrying out structural adjustment programs?

Some of the Structural Adjustment Measures include:

- Privatization of the parastatals or Civil Service Reform

¹⁰⁰ Cohen J.M, Ethnicity, Foreign aid, and Economic Growth in Sub-Saharan Africa

Keeping the budget below 5 percent of the GDP or introduce monthly expenditure reporting systems into the financial operations of ministries, agencies, and parastatals.¹⁰¹ Further conditions were that the government should amend the constitution and issue legislation that would allow the emergence of a dynamic multiparty political system since it appeared to the donor community that the country was governed in an autocratic and irrational way, which promoted narrow ethnic interests. This was during the KANU regime.¹⁰² There was the condition that the government would support the emergence of a free press, ensure the protection of human rights and address the pervasive high-level corruption in government.

As previously mentioned, there is always a need to protect donors' interest.

Cohen in his work rightly put it that all these conditions were seen as very important in getting the government to terminate or reform policies that threatened aid agency investments and held back economic growth. Does this not point to the fact that donors put their interests first before anyone else? But what difference will it make when recipient nation continues to look forward for aid from donors? It will have to face the music of conditionalities or else the donor makes good its threat as it happened in the early 1990s when US Commodity and Military aid of about USD \$ 43million intended for Kenya was frozen for lack of implementation of the reform program by the Kenyan government.¹⁰³

Some of the objectives of the Structural Adjustment Programmes as introduced in 1979 by the World Bank and IMF in the developing countries include:-

To revive economic growth through increased resource mobilization and more efficient use of resources, greater reliance on market forces, private sector, reduction of government role in the

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Shantayanan et al, Aid and Reform in Africa, The World Bank, Washington D.C, 2001 p.479

economy, to phase out public sector monopoly, to eliminate barriers to foreign trade and investment e.t.c. All these would work in an ideal situation where developing countries are truly independent, able to do what they deem fit for their countries and at the right time for such changes without being coerced into carrying out such measures. Unfortunately, in the practical world we live in, developing nations are not yet "independent." They are told what to do and when to carry out certain reforms for their "own good" simply because they need financial support from donor community which insist on their fulfilling the above mentioned conditions before aid is extended to them.

Foreign aid conditionalities come in different forms. Based on the response of my interviewee-Head of External Resources Division, European Union section in the Ministry of Finance and Planning, foreign aid has an inbuilt technical assistance fund which goes back to donor through the technical assistance provided by the donor. For example, about fifty percent of aid money goes back to technical assistants sent by donors. The question is, what is left of that aid if almost half of the money goes back to the sender? Can we say that truly aid has been given to recipient country when the same would have to pay back more than it has actually received?

There is also what is known as the "Rules of origin." This is one of the conditions where the recipient nation must purchase any machinery or any other equipment that may be needed in the course of any development project from the donor's country or else no aid will be extended.

In order for aid to be extended to the government, the government has been made to put in place certain laws like 'The Economic Crime Act', 'Anti- terrorism Act', 'Anti- corruption law', 'Procurement Act', 'Financial Management Act', e.t.c. With all these conditionalities in place, how can anyone confidently say that the governments in developing nations are truly independent

of any other authority especially those in the western world / donor community. This will bring us to the next topic, the extent to which the conditionalities affect the sovereignty of Kenya.

3.3.4 The impact of Foreign aid conditionalities on the sovereignty of Kenya:

When we think of Foreign aid literally, the idea we have is that it is supposed to bring about rapid development to low- income developing countries. On one hand, one would say to an extent, that foreign aid has brought about some development to some needy nations like Kenya and some other African nations. Development here can be interpreted in different ways. Building new roads, which opens up new markets for farmers is a form of development. Provision of social amenities, health care, education, infrastructure, poverty alleviation in the rural and urban areas are all forms of development. The mere fact that foreign aid as we have seen previously, bridges the gap in the budget deficits which the local resources cannot fill is enough to say that truly foreign aid brings about development to developing countries. Of course, these developments did not come without some stringent conditionalities imposed on the government. As there are two sides to a coin, so are there two sides to these conditionalities, which I will call the positive and the negative foreign aid conditionalities. These will be discussed later in the chapter.

These two sides of conditionalities come about as a result of Africa being 'aid dependent' in the sense that only few of its states can carry out routine functions or deliver basic public services without external funding and expertise. The developing nations depend on official development assistance- ODA to help them perform the basic tasks of government. Statistically the Africa's net ODA receipts between 1993-97 totalled \$86.5 billion out of which only \$9.5 billion was foreign

direct Investment to Africa during same five year period.¹⁰⁴ Goldsmith (2001) quantified aid dependency by using a cut off point of 10 percent of gross national product. That means any state whose ODA represents more than 10 percent of national income for a sustained period has probably questionable sovereignty in key policy areas.

Table 3.2. Aid-dependent African countries (net official development assistance greater than 10 percent of GNP).

1975- 79	1980- 89	1990- 97
Botswana	Burkina Faso	Angola
Burkina Faso	Burundi	Benin
Burundi	Cape Verde	Burkina Faso
Central African Republic	Central African Republic	Burundi
Chad	Chad	Cape Verde
Comoros	Comoros	Central African Republic
Gambia	Equatorial Guinea	Chad
Guinea-Bissau	Gambia	Comoros
Lesotho	Guinea	Cote d'Ivoire
Malawi	Guinea-Bissau	Equatorial Guinea
Mali	Lesotho	Ethiopia
Mauritania	Liberia	Gambia
Niger	Malawi	Ghana

¹⁰⁴ Goldsmith, Foreign Aid and Statehood in Africa. The I O Foundation and the Massachusetts Institute of Technology, 2001, p.125

Rwanda	Mali	Guinea
Sao Tome and Principe	Mauritania	Guinea-Bissau
Seychelles	Mozambique	Kenya
Somalia	Niger	Lesotho
	Rwanda	Malawi
	Sao Tome and Principe	Mali
	Senegal	Mauritania
	Seychelles	Mozambique
	Somalia	Niger
	Tanzania	Rwanda
	Togo	Sao Tome and Principe
	Zambia	Senegal
		Sierra Leone
		Tanzania
		Togo
		Uganda
		Zaire/ DRC
		Zambia

Source: World Bank 1999c in Goldsmith, Foreign Aid and Statehood in Africa, the I O foundation and the Massachusetts Institute of Technology, 2001,p.126

A few African states did not fall under this category where foreign aid is proportionate to national income. They include oil producing and mineral exporting countries like Nigeria and manufacturing exporters like Mauritius to mention but a few. This does not mean that these oil producing and mineral exporting countries do not have areas in their governance to work on and improve on but they are not aid dependent hence no conditions are given to them. They are not held at ransom unlike other countries, which are aid- dependent.

Kenya as an aid- dependent country as indicated in table 3.2 between 1990 and 1997 attracted quite a huge external debt to pay from the 1980s (US\$ 3.4 billion) to 1990 (US\$7.1 billion). Most of this debt was aid- related but being a low- income country, Kenya qualified to be relieved of its debt. The substantial part of Kenya's bilateral aid was converted to grant basis. And between 1986 and 1992, bilateral donors provided Kenya with debt forgiveness of prior ODA debt of US\$ 700 million. The bilateral donors who forgave Kenya include the United States (US \$118.5 million + US\$38.7million), Germany (DM 600million), Canada (US\$90million), Netherlands, and the United Kingdom. Japanese government offset debt repayments with supplemental grant aid. This issue of aid-dependency has a big impact on the sovereignty of state. This brings us to the positive and negative impacts of aid conditionalities.

3.3.4.1 The Positive Impact of Aid Conditionalities:

Generally speaking, one would say that the positive side of these conditionalities is that, although things are done according to donors' prescription, they in turn bring with them some sort of development to the recipient country and freedom of the populace. We cannot outrightly say that all conditionalities given by donors have only negative impacts as we know that some of them

have brought some relief to the people. If we look at the political situation in Kenya between the years 1980 to 2001 for example, one would see that it was the period that saw serious internal political agitation for multiparty politics.

There was a constitutional amendment in 1982, making Kenya a de jure single party state (KANU) and a further constitutional amendment in 1988 leaving the president with the power to remove members of the Public Service Commission, the Judicial Service Commission and the Judiciary.¹⁰⁵

This political situation brought about domestic discontent with KANU government being the only recognised political party in the country.

It took the intervention of the donor community through their aid conditionalities to push for multi-party and democratic system in Kenya. The donor condition in 1991 was that the Balance of Payments support would be suspended. This whole exercise yielded a good result in that the constitution was further amended in pursuit of multi party system. This saw the first multi-party election in Kenya on 29th December 1992.¹⁰⁶ Given the above-mentioned event, one would agree with me that certain conditionalities could be very useful having brought about this monumental change in the political life of Kenya. But at times, these conditionalities are simply in place to secure the interests of donors while interfering with the internal affairs and the sovereignty of the recipient country. This brings us to the negative impact of aid conditionalities.

¹⁰⁵ Devarajan et al, *Aid and Reform in Africa*, The World Bank, Washington D.C, 2001 p.491

¹⁰⁶ Ibid

3.3.4.2 The Negative Impact of aid conditionalities:

When donors prescribe aid conditionalities, it simply means that the recipient country has less control on how aid money is utilised. How much more handicapped can they be than to lose the main essence of being a sovereign state- the law- giving and law- enforcing authority. For a government to lose that authority of decision-making is as good as not having a sitting government. African states are generally regarded as being aid dependent. And where the official development assistance of some African states represent more than 10 percent of Gross National Product (GNP), these states will have questionable sovereignty in key policy areas.¹⁰⁷

Let us look at the situation where donors give conditions that force the recipient country to purchase products from the donor country. This means that, the recipient government has been stripped of its independent decision to purchase products from wherever it finds them cheaper. This in a way means that the hard to get resources can be used in buying more expensive products from donors whether the recipient likes it or not. How would the recipient state manage its resources in relation to its needs when it is forced to use aid money according to donors' prescription? A good example is Eritrea, which discovered it would be cheaper to build its network of railways with local expertise and resources rather than be forced to spend aid money on foreign consultants, experts, architects and engineers imposed on the country as a condition of development assistance.¹⁰⁸ What does this tell us? That once foreign aid is extended to a country, the government of that country ceases to use its initiative and local expertise in managing the

¹⁰⁷ Goldsmith A.A, Foreign Aid and Statehood in Africa, I O Foundation and the Massachusetts Institute of Technology, 2001, p.125

¹⁰⁸ Anup Shah, U.S and Foreign Aid, [http://www.globalissues.org/Trade Related/Debt/USAid.asp#](http://www.globalissues.org/Trade%20Related/Debt/USAid.asp#)

resources it has acquired. Instead, the donor takes over the management of those resources, directing the recipient country on how and for what purposes to use the resources. Does it not border on undermining the sovereignty and the integrity of the recipient country? Every country has its priorities in terms of their needs. But in a situation where foreign aid is tied to certain conditions laid down by donors, those needs may never be met in order of preference of the recipient country.

One of the objectives of the structural adjustment programmes introduced in 1979 by the World Bank and IMF in developing countries was to reduce the role of the government in the economy. Is it not the individual government that understands the true state of its economy better than anyone else? In my opinion, donors' reduction of government role in its economy is tantamount to erosion of state sovereignty. Those advocating for free markets in the developing countries were of the view that Africa is poor because its governments have chosen bad policies. In an effort to correct these 'bad policies' in Africa, bilateral donors and international institutions extended structural adjustment loans ¹⁰⁹ with the aim of achieving some reforms. Objective being that the change will bring about growth. Did the adjustment loans induce better policies and growth? There was not much success. Most African countries that received structural adjustment loans have negative or zero growth and some have high inflation. See table below.

¹⁰⁹ Easterly W., Can Foreign Aid Save Africa?, Clemens Lecture Series, 2005, Saint John's University

Table 3.3. The outcomes associated with frequent structural adjustment lending:

African Countries	Number of IMF and World Bank Adjustment loans 1980-99	Annual per capita growth rate from the date of first structural adjustment loan	Annual Inflation rate from first adjustment loan to 1999
Niger	14	-2.30%	2%
Zambia	18	-2.10%	58%
Madagascar	17	-1.80%	17%
Togo	15	-1.60%	5%
Cote d'Ivoire	26	-1.40%	6%
Malawi	18	-0.20%	23%
Mali	15	-0.10%	4%
Mauritania	16	0.10%	7%
Senegal	21	0.10%	5%
Kenya	19	0.10%	14%
Ghana	26	1.20%	32%
Uganda	20	2.30%	50%

Source: Easterly W, Can Foreign Aid Save Africa? Clemens Lecture Series 2005, Saint John's University.

During the independence of most African states, it was understandable that foreign aid was needed to support the local efforts of the states. As time went by, foreign aid has risen to the level that without it, no significant public investment in some countries can be sustained as foreign loans and grants constitute a major share of African development budgets. A good example is Tanzania where foreign aid contributions have reached around the 75 per cent mark of the budget in the last five years.¹¹⁰

As a result of the above situation, African countries are over dependent on donor community and this leads to donor's stringent conditionalities. These in turn interfere in the internal affairs of the recipient country. Again, there will never be a proper relationship on an equal footing between the rich and the poor countries as long as more funds continue to flow within a system of government-to-government aid. There will always be that feeling of superiority among the donors in which case, the sovereignty of the recipient country will be treated with contempt. The heavy dependence on foreign aid by African countries towards certain sectors of the economy will make African governments to always look up to the international community for solutions and not feel confident enough to tackle their own problems.

Further impact of foreign aid conditionalities on the sovereignty of state rears its head in the areas of legislation of the government. The Kenyan government had to put in place certain laws as prescribed by donors or else, there would not be any funding of the government. Where has it been reported that U.S government prescribes to U.K government which laws to enact? This can only be happening in Africa because of their over dependence on donors. This forced enactment of say 'Anti-terrorism Act' has put some individual citizens in trouble in situations where they have been

¹¹⁰ Hyden G, No Short cuts to Progress, Heinemann Educational Books Ltd, London, 1982 p.165

mistaken to be terrorists. The question here is: Is the government not in a better position to know which laws to enact and at what appropriate time to do so, instead of being forced into doing that? Another example is where there was an attempt to force Malaysian government to change its political course and implement in totality Structural Adjustment Programmes in order to receive aid funding from the IMF. The government declined the offer and instead used the local resources and some resources from friendly countries. This attitude should be encouraged in Africa instead of just saying yes to every condition prescribed. In a situation where donor has tied aid to the purchase of equipment from donor countries, there is no regard for the needs of the recipient country. What the donor is interested in is just what it can benefit from the whole exercise and not whether the recipient of that aid is satisfied with what it is receiving or not. This may go well with the saying that ' a beggar has no choice'! Furthermore, the equipment or the machinery, which the recipient is being forced to purchase from donor country, may not be appropriate for the needs of the recipient country and this rules out any attempt to standardize uses of equipment as a way of reducing the range of spare parts needed.¹¹¹

Foreign aid has been politicized in the sense that as Hyden (1983) put it, in the case of the United States, preference in aid is given to those countries that are strategically important to the United States. In other words, aid is given not because a country is in dire need of help but because the country is in a position to give some strategic services to the donor. This does not give room for criticism as donor's foreign policy usually reflects a measure of national consensus while for the recipient, aid is viewed as being extremely important to the government. This in a way reduces the self-confidence and the authority a sovereign nation should have in order to critically handle anything that concerns the nation.

¹¹¹ Ibid p. 172

Finally, it is worth mentioning that foreign models are imposed on the recipient country's environment as a result of foreign aid extension. This happens when professionals are brought from donor countries to handle certain aid projects or programmes. These are people who have no clue about the new environment they found themselves in. They rely on the locals for guidance yet they are the ones to make all the key decisions regarding the foreign aid projects or programmes.

3.4 CONCLUSION:

Foreign aid can actually achieve the purpose for which it is intended if only it is advanced in good faith. Kenya being a developing country satisfies some of its needs through the foreign aid extended to it. This has been a major contributor to Kenya's development. For example, foreign aid to Kenya has been used in bridging the gap in budget deficits, alleviating poverty, providing infrastructure like roads, health services etc.

However, the stringent conditionalities attached to foreign aid have both positive and negative impact. On the positive side, Kenya achieved multiparty democracy in the 1990s following donors' insistence on multiparty system in Kenya as one of the conditions for foreign aid. Meanwhile, the negative impact outweighs the positive impact. As a result of the said stringent conditionalities, donor countries stand to benefit more from foreign aid. For example, where more than fifty percent of the aid money goes to technical assistants sent by donors for some developmental projects, what then is left for the recipient country? When we talk of 'rules of origin' as one of the conditions attached to foreign aid, it means that recipient nation must purchase any machinery or equipment needed in the course of any development project from the donor country.

When this condition is not fulfilled, the recipient country stands a chance of missing out on foreign aid. This interferes with recipient government's independent decision to purchase products from wherever it finds them cheaper. When donors insist that recipient government should put in place certain laws like Anti-terrorism Act, the intention has always been to protect its citizens and property.

As indicated above, Kenya falls under the category of aid-dependent African countries whose net official development assistance is greater than 10 percent of its gross national product between 1990 and 1997. This has affected its sovereignty negatively in the sense that certain conditions that come with foreign aid require that the government either enact new laws or amend the existing ones. Some of these conditionalities impact negatively on the sovereignty of recipient nations. They interfere in the internal affairs of the recipient countries and that is contrary to what foreign aid is meant to achieve.

CHAPTER FOUR

FOREIGN AID AND STATE SOVEREIGNTY: A CRITICAL ANALYSIS.

4.0 Introduction:

This chapter deals with the analysis of all the facts and figures contained in this study. It looks at the background of state sovereignty, the views of various scholars on the subject of state sovereignty, foreign aid in Africa for lack of strong economic backbone, foreign aid conditionalities and donors' criticism of developing governments' policies.

4.1 The Background of state sovereignty:

From the background of state sovereignty, what makes a state sovereign consists of the following as contained in the provisions of the Monte Video Convention:

- A defined territory: this tells us that every state has its individual boundary. Getting access into the territory without the state's consent will be tantamount to trespassing.
- A government capable to enter into relation with other states in the international community. This shows that any government in any state has been given the responsibility to manage and control both its internal and external affairs without any interference. Under international law, every government has the law giving and the law-enforcing authority within its territory. This was aptly stated under article 2(7) of the Charter of the United Nations which states that " nothing contained in the present Charter shall authorise the United Nations to intervene in

matters which are essentially within the domestic jurisdiction of any state... but this principle shall not prejudice the application of enforcement measures under chapter VII". It is only through the provision of the Charter will there be any kind of legal intervention in any territory. It is the Security Council that takes action against any state that threatens the international peace, breaches the peace or commits an act of aggression. Other than that, no state has any right to interfere in the internal affairs of other states. If we look at what is happening in the international field, the rich countries have actually taken over the role of the Security Council, marshalling out stringent conditions for the poor developing countries to adhere to. Some of these conditions brush on the wrong side of the principle of state sovereignty.

The sad thing is that the treatment is very selective. If you check the events that have taken place in the international scene, you could see that only the poor countries have always been bullied in different ways. It is either an invasion like in Iraq or an omission of action like in Rwanda or even serious threats to the state like Iran. Does it mean that other rich countries have never done anything wrong to attract similar treatment? This simply shows that action is taken when there is an interest to protect.

Furthermore, the United Nations Security Council could be said to be intervening in the sovereignty of state that threatens or breaches the international peace and security. This can be viewed as a genuine cause, but developed rich countries interfere in the internal affairs of developing countries through the extension of foreign aid to them. Meanwhile, they are after their own interest. Being poor and in need of financial assistance, does not constitute an offence,

therefore does not warrant any loss of state sovereignty in any way. But the international system is such that only the rich and strong states take control of the affairs in the system.

- And population: a state having population shows that the government stands to be checked and corrected by its people first should it go astray. Theoretically, when a state has all the attributes of a sovereignty state, not being rich should not in any way make it less sovereign as contained in the Monte Video Convention. But as it is in today's world, the amount of resources owned by a state actually determines the degree of its sovereignty.

That a state is sovereign means that the state is very independent and equal with other states. It also means that the sovereign state does not routinely obey any higher political authority. States are free to regulate their own internal affairs without external interference. International law has even gone a step further to grant restrictive immunity to sovereign states. This means that even the municipal courts of one state finds it difficult to manifest its power over foreign states without their consent. This notion is supported with the case of: **The Schooner Exchange – vs. – McFaddon** illustrating territorial jurisdiction as discussed in chapter one. Any interference will indirectly indicate that the state being interfered with lacks all the attributes of a sovereign state which indication is incorrect. With all these legal documentations stressing the importance of maintaining the principle of state sovereignty, still no change of attitude has been observed.

4.2 The views of various Scholars on the subject of state sovereignty:

From the literature review, there is a common understanding among the writers with regard to the meaning of state sovereignty. For example, Coulumbis and Wolfe understood state sovereignty to mean the ability of a nation-state, through its government, to be master in its house, have control over its domestic and foreign affairs. Maritain echoed the same sentiments by adding that the proper and genuine meaning of sovereignty is a state's right to supreme independence and supreme power, which is a natural and inalienable right.

If this were to be upheld and respected in the international community today, there would not be any incidents of interference in the internal affairs of any state. Unfortunately, this is not the case due to the economic, political, and technological discrepancies among the actors in the international arena. Just as Coulumbis and Wolfe put it, some countries are more sovereign than others. They expressed that the powerful states enjoy the substance and the letter of state sovereignty at the expense of the poor and the weak ones. From the foregoing, the meaning of state sovereignty is not actually in doubt. It is the practicability of the principle is the bone of contention. The richer a state is, the more sovereign it becomes and vice versa.

According to Thompson, the recognition of a state as a sovereign state is only 'in the eyes of the beholder'. A state assumes its sovereign status if others recognise it as such. This means that without economic, political and even technological power, sovereignty status of most developing countries is only but a mirage.

Much as many scholars still believe in the principle of state sovereignty, some are of the opinion that the term is only a fiction due to the political realities, which are not in conformity with the rigid legal formalism of state sovereignty. Scholars like Loewenstein, Barkin, and Cronin believe that sovereignty depends on the power relations between states. That is, the more powerful a state is, the more sovereign it becomes. This truly explains the current situation of the contemporary international system. The question is, is state sovereignty still relevant?

Now, chapter VII of the Charter of the United Nations empowers the Security Council to respond to any threat to international peace and security, a breach of the peace, gross violation of human rights, and an act of aggression. It is under such circumstance will there be limitations to the principle of state sovereignty. With this provision in place, it is still quite baffling that Rwanda genocide of 1994 took place under the watchful eyes of international community and nothing was done at the time. The only explanation is that Rwanda is simply a poor developing nation that has nothing much to offer. What other explanation could there be? Some scholars have criticised humanitarian intervention as being a pretext motivated by strategic, economic and political interests. This goes to show that there is always a hidden agenda in some of the actions of the powerful actors in the international community. They seem to promote their interests through foreign aid.

Historically, sovereignty represents a mode of global governance generated by European sovereigns as a result of power dynamics and global conflicts, antagonisms among themselves. As a result thereof the peace of Westphalia, treaties of Augsburg, and Vienna established a fictitious

equality among states that were unequal in size, capacity and in other respects. From this historical insight, **fictitious** state sovereignty was only created to quell the animosity and fighting between states not that the states were equal in any way. So, why would anyone think that this is the time the contemporary international community would see themselves as equals? Something that is not real. That natural instinct to acquire what is of interest to us irrespective of the legal provisions in place will always be rife in our every day interactions with others. Considering how poor most developing countries are, they lack the economic might to be able to enjoy full sovereignty.

Winterbourne's view supports the above sentiment as he rightly put it that every state under international law is believed to be sovereign, but there are different levels of sovereignty, which vary between states. For example, Pang Zhongying summarised the situation when he said that most of the world's leading economic entities like the United States, the European Union and Japan among others take advantage of their predominant economic status and infringe upon other countries' economic sovereignty.

4.3 Foreign aid in Africa for lack of strong economic backbone:

Kenya being our focal point, gained independence in 1963 and as such it is a sovereign state. It has all the attributes of a sovereign state as provided in the Monte Video Convention, yet its sovereignty has always been under attack from the donor community. Why is that so? The interference in state sovereignty usually comes through foreign aid, which has been an important facet of international relations. Given the economic situation of developing countries and their need to bridge the gap in their budget, they have resorted to foreign aid from donors and the leading multilateral institutions. In the process, the poor developing countries are made to accept

certain stringent conditions out of their desperate need for assistance. At the end, some of those conditions are found to be interfering in their internal affairs. The interference also comes through the stringent conditionalities that affect the prioritisation of government projects. This means that the government will have to abandon whatever plans it has laid out in order to comply with donors' conditions for foreign aid. What do we expect when recipient countries are constantly in need of economic support because their primary commodities do not fetch enough capital to sustain the poor developing nations?

The concern raised by a scholar was that foreign aid has failed to encourage the emergence of strong states in Africa. This points to the fact that foreign aid has been used to foster donor's interests and it also shows that poor nations cannot come out of poverty just by receiving aid from donors. Instead, they will be more and more dependent on donor aid.

Foreign aid serves different purposes for both the donor and the recipient. Just as stated in chapter three, economic aid promotes goodwill and diplomatic access without which the United States' influence on certain issues would be limited. This explains that it is through the extension of foreign aid that donors pursue their own interests. For example, it was during the Cold war that US used economic aid in bribing any country that was in a position to refuse over flights and landing rights to the Soviet Union or to delay the recognition of Communist China. There is always a hidden agenda associated with foreign aid. And of course, the recipient countries are in dire need of foreign aid, and therefore are ever ready to accept all sorts of conditionalities attached to aid.

Interference in state sovereignty could also come through utterances made by some envoys. For example the former British envoy to Kenya had once accused the Narc government that “Kenyan leaders are like ‘Marionettes’ who dance to the tune of others for money and not to the tune of their electorates”. Recently, some are even calling on the government to extend the tenure of the Electoral Commission of Kenya chairman Mr. Samuel Kivuitu so that he can oversee the forthcoming elections in the country. This type of action simply shows that such envoy with the backing of his country has no regards for state sovereignty. And because the country extends aid to Kenya, they feel that they have the right to say whatever they like. Why will they be the ones to tell the government what to do as if the government does not know how to run its affairs?

Has any government in the developing countries raised its voice in advising any government in the developed countries on what to do? It rarely happens if at all. It appears that the envoys are doing this simply because Kenya receives aid from their government. Does that give them the right to meddle in their internal affairs? All these point to the fact that developing countries will always go back for financial assistance from donors because the money is simply not there. They need their support. The former American envoy to Kenya, Amb. Hempstone was at the forefront pushing for multi-party system in Kenya in the 1990s. One could say that although utterances touching on domestic affairs of a host country constitute interference in the internal affairs of that country, sometimes such interference bears fruit. But do we allow our sovereignty to be eroded simply because we sometimes benefit from such interference? Why are the comments, complaints, insults or just simple remarks coming from only one direction? Diplomacy is about reciprocity, so why are African leaders not telling their counterparts in the west how to run their affairs? Is it not obvious that such interference is attributed to the foreign aid they receive? And of course, no one

bites the fingers that feed him'. Then, where is the principle of sovereignty by which all states are assumed to be equal? As has been mentioned previously, the principle of sovereignty does not match with the reality on the ground.

Economically, African countries are generally poor not because they lack all the necessary resources that could actually boost their economy if managed properly and transformed into better products, but because they lack the necessary technological skill to transform these primary resources into finished products. Take Nigeria for example, it produces crude oil, which is exported as primary product. This same product is later re-imported into the country as finished product at an exorbitant price. How can the economy of such country grow when it specialises in the exportation of primary products only?

The same applies to Kenya just like other African countries. Kenya exports raw tea and coffee that do not attract much profit as opposed to the finished products of the same. These same products are re-imported back into the country at a very high price. So, without very strong economic backbone, most developing countries do not have enough resources to take care of their needs and therefore resort to foreign aid as a means of bridging their budget deficits.

If we look at Kenya's Foreign Trade Summary from 1994 to 2000, we could see that the amount of money spent on the imports are much higher than the amount received for the exports. As a result, there is a negative trade balance. This means that the country is not doing very well in

International trade. More funds are spent on importation of finished goods as opposed to those coming from the exports.

The table below illustrates the above sentiment showing Kenya's Foreign Trade Summary from 1994 – 2000.

Table 4.1. INTERNATIONAL TRADE

Foreign Trade summary (shillings million)

Year	Direct Imports (CIF)			Exports (FOB)			Trade Balance
	Private Imports	Government Imports	Total	Domestic	Re-exports	Total	
1994	111123.17	3956.58	115079.75	83414.48	2228.17	85642.65	-29437.10
1995	146542.11	7907.39	154449.50	89399.26	4271.88	93671.14	-60778.36
1996	160856.54	5731.09	166587.63	113954.57	4220.72	118175.29	-48361.78
1997	184967.24	5390.99	190358.23	114495.14	5960.47	120480.84	-69902.62
1998	192206.64	5830.63	198037.26	115796.07	5455.17	121251.24	-76786.02
1999	187879.05	6592.45	194471.50	115406.31	7171.56	122577.87	-71893.63
2000	242636.46	5167.41	247803.87	119763.71	14763.35	134527.06	-
							113276.81

Direct Imports- Goods, which at the time of importation are cleared through the Customs for home use or deposited in bonded warehouses. They include Government imports and parastatals.

Domestic Exports – Goods grown, produced or manufactured in Kenya exported to other countries or supplied as aircraft or ship's stores.

Re – Exports – All imported goods, which are subsequently re-exported to other countries including aircraft or ship's stores.

Source: Customs and Excise Department¹¹²

This is a true indication that Kenya imports more from donor countries than they export hence, a negative trade balance throughout the indicated years. This actually reflects a general trend among the developing countries. Exporting only primary products does not create wealth. Hence, their constant search for aid. On the other hand, the developed countries benefit more from international trade. For instance, they enjoy the big market in the developing countries that awaits their finished products, which fetch them a lot of money. I wonder why donors always give the impression that they are the ones supporting the developing countries when in actual sense, it is through developing countries big market that the developed countries thrive in their international trade.

Due to the aforesaid handicap of some of these developing countries, they lack the economic backbone to take care of their needs. They therefore resort to foreign aid. There is this notion that donors have all the answers to their numerous problems.

Under 3.4.1, Kenya received development aid in 1990/1 that is equivalent to 14% of its Gross Domestic Product (GDP) or 45% of the government budget of that year. This shows that most of

¹¹² Central Bank of Kenya, Statistical Bulletin, Research Dept, June 2001

Kenya's budget support comes externally through foreign aid. This in a way puts pressure on government; it always tries to please donors. This may make the government to accept some conditions that may not be beneficial to it in the long run.

According to Goldsmith (2001), any state whose ODA represents more than 10% of its gross national product is aid-dependent and has probably questionable sovereignty in its key policy areas.

Looking at the data under 3.4.3, Kenyan government in 1991/ 2 fiscal year received \$873 million in aid. This comprised of about 11% of its Gross National Product (GNP) and 73.6% of the total capital budget. With these two high percentages, it is quite obvious that the country is aid-dependent following Goldsmith's representation. In such situation, the government does not have much choice but to fulfil all manner of conditions as prescribed by donors. As indicated in table 2., Kenya among other African states fall under this category. That explains why donors have always bombarded Kenyan government with all manner of conditionalities.

4.4 Foreign aid Conditionalities:

Multilateral institutions are not any different from bilateral donors. Each group has its own sets of conditions. In the 1980s, the majority of the developing countries experienced very intrusive policies. The World Bank and the IMF had equally tied to their assistance some economic policy reforms in the name of Structural Adjustment Programmes (SAPs). These in their opinion were supposed to improve a country's foreign-investment climate by eliminating trade and investment

regulations, reducing government deficits through cuts in spending especially in areas of health, education, housing and massive layoffs in the civil service.

Now, with all these aid cuts, how would people survive? Sovereignty is regarded as state's responsibility towards its people. How then will the state fulfil that responsibility when it is not capable of providing the basic needs of its people like health, education and housing? Again, when the breadwinners are laid off, what happens to the family members and the society at large? Of course the whole reform programmes had a very negative impact on states being the primary providers of those essential goods and services. In most of the countries, the whole process led the complication of financial difficulties and crisis of external payments. This will make the countries more dependent on the donors. With these types of conditionalities, one wonders what the donors take the developing countries for – Guinea pigs, with whom they can try all sorts of experiments. Yet, they are supposed to be sovereign like their counterparts in the west! This supports Morgenthau's views that foreign aid is used to foster rich countries interests abroad like U.S. In other words, it is not the interests of the recipient countries that are being considered first when aid is given.

This explains why a recipient country would give back almost 90% of the loan received to the donor as was indicated in chapter three of this study. This could be done through purchases of machineries from the donor countries or by way of making payments to the foreign personnel sent by the donors as part of the condition for aid. This shows that recipient countries continue to repay their debts, which make them more and more dependent on donors. This type of situation will only lead to more underdevelopment rather than development.

The whole world has been blinded by this element called 'foreign aid' including the recipients themselves. With the conditionalities that are attached to foreign aid, donors always stand to benefit. The interests on the loans go back to the lenders, then comes the 'rules of origin' where recipient is under obligation to purchase required machinery for any developmental project from the donor country. Some donors insist that the personnel needed for certain development programmes must come from the donor country. A good example is in Vietnam, where many Americans were employed in the Agency for International Development Programme and earned as much in a week as most Vietnamese could do in a year. This made life very difficult for the ordinary Vietnamese because of very high cost of living. As a result, corruption and dishonesty became the order of the day. In fact, one can say that some of the conditions attached to foreign aid gives room for corruption and dishonest. And at the end, no one remembers how it all started.

Table 3., is an indication that the structural adjustment loans extended to some African countries bore no fruits. Out of 12 African countries that received these loans, only 2 – Ghana and Uganda made a marginal growth of 1.20% and 2.30% respectively. This insignificant growth was made after several adjustment loans had been given to them. The rest of the countries made no improvement. The annual inflation rate of most countries was quite high including Kenya with 14% from 1980 – 1999. This simply shows that donors most of the time do not fully understand the needs of the recipient countries. They simply impose conditions on the recipients without proper consultation. How can it work? Donors should be reminded that because they give foreign aid does not mean that they understand the 'a, b, c' of that country. The government is there to propel the country forward because any responsible government should know the needs of its

people, except in situations where the government is very corrupt. Then, that will be a different story altogether. By all indications, it seems that donors' interests always come first because the US law in the mid 1960s stipulated that any aid that did not attract adequate compensation would be suspended. What more can be added? Going by these figures above, it may be an indication that African countries should be left to adjust and develop their respective countries at their own pace and time without external coercion.

Some foreign aid conditions require that the government amends some of its laws or enact new ones as indicated under 3.3.3 of this study. These laws are supposed to be the backbone of any sitting government. Now, how can another government tell the other to amend its laws or enact new ones? Yet, they are both sovereign states! What type of sovereignty is that? Among the Acts donors wanted Kenyan government to put in place before foreign aid could be extended to it include, Anti-corruption laws, Ethics law, Anti-terrorism law, etc. The government was also being forced to introduce poverty related programmes, which have no funding in the budget. Now, how can any government run its affairs through donors' specifications? This is pure interference in the internal affairs of the state.

Interference has also reared its head in the area of civil service when in 1992 government imposed recruitment freeze in response to the demands of international donors in order that international lending to Kenya could be restored. The effect of that move was that in 2006, it was reported in the Daily Nation of 15 September 2006 that there was a shortage of senior civil servants. Imagine a country without enough senior civil servants! Do we call that development or what? When such crisis arises, it is only the government and its people will bear the brunt of it all. Donors will not be

there to take the blame. Theirs is just to tell you what to do. Whatever comes out of it is your business.

Such situation will definitely affect the economy of any country making them more vulnerable and dependent, as the level of production will definitely fall.

Further conditions stipulated by the World Bank and IMF in the developing countries include inter alia, reduction of government role in the economy, and the elimination of barriers to foreign trade and investment. Who is in a better position to know what a country needs- the donors or the government? Who benefits from the foreign trade? It is the developed world since the developing countries specialize only in primary commodities, which yield little profit. All these reforms imposed on recipient countries most often benefits the donors more than the recipients.

This was echoed in Cohen's work when he said that all these conditions were seen as very important in getting the government to terminate or reform policies that threatened aid agency investments and held back economic growth. In other words, the donors work for their own interests. This explains what happened during the Cold war when developing countries were given economic aid depending on how strategically located the country was. As long as the country was able to frustrate the efforts of the enemy, foreign aid continued to flow. But as soon as the war ended, aid flow was reduced drastically.

In all these, one wonders what happened to the principle of state sovereignty which allows states to run their own internal affairs without any external interference. This points to the fact that state sovereignty is enjoyed by those states that are economically and politically strong. However, there are occasions when some of these conditionalities attached to foreign aid are beneficial to the

citizens of the state. Such conditions as freedom of press, protection of human rights, eradication of high-level corruption in the government and the like, could actually bring development to the country if they are successfully instituted. For example, if all the cases of corruption as reported in the Daily Nation can be prosecuted and all the money returned, the country may not even need foreign aid as a matter of fact.

These are cases of grabbed public lands, Goldenberg case where the government lost millions of shillings, Anglo leasing case where billions of shillings cannot be accounted for. It is in situations like this that donors are seen as 'God fathers' because given their economic position, they feel so free to say just anything, accusing the government of lapses, 'calling a spade, a spade'! The society in general and those in opposition welcome such move because donors appear to share their sentiments. I can say that what actually encourages donors to do some of the things they do even if it constitutes interference is that they receive some applause from the opposing side of the government. For example, in the 1980s and early 1990s, Kenya was a single party state following a Constitutional amendment in 1982. Then in 1988, a further Constitutional amendment was made leaving the President with the power to remove members of the Public Service Commission, the Judicial Service Commission and the Judiciary. This was the period that saw serious internal political agitation for multi-party system. As a result, donors at that time included transition to multi-party system as one of the conditions for foreign aid. The move was welcome by the opposition and majority of the populace as a strong tool to fight the alleged dictatorship in the single party system. Such donors were seen as the 'voice' of the 'voiceless' because through those conditionalities and internal agitation, multiparty system was born. This saw the first multiparty elections held on 29 December 1992.

Although the action of the donors may be seen as promoting democracy, it still did not remove the fact that this democracy was obtained by duress – condition for foreign aid. It can still be seen as interference in the internal affairs of the country even though the move was for the betterment of the country. The question here is should we play down the issue of interference when donors' action is for a good cause and bring up the issue when their action is not in our favour? And why is the issue of good governance and democratisation something to reckon with now and not during the cold war when aid to developing countries attracted no such conditions? It seems that foreign aid as a reward to compensate recipient country for any assistance rendered to the donor especially in the bilateral type of aid. A good example is where Kenya and Tanzania were refused aid just because they did not accept US condition in which they were required to include in their regulation clauses that would enable United States to pursue terrorists unimpeded. Uganda on the other hand was given aid since it satisfied the US conditions.

Coming back to the issue of governance and corruption, some of the recipient governments have not done wonderfully either. There is no one who would want to give out money without demanding for accountability. If any government is wallowing in corruption and bad governance, no lender will be ready to give such government any loan without strict conditions. One can only sympathise with the donors if the conditions they give are given in good faith and in the interests of the recipient. But most times, donors stand to benefit more from the aid given.

4.5 Donors' Criticism of developing Countries' Policies:

Donors sometimes criticise governments in the developing countries of having 'bad policies'. But when you take a closer look at the issue, you will find out that some of the policies have been drafted by donors themselves without due consideration of the actual needs of these nations. A good example is the Kenya's 1980 tripartite "Policy Framework Paper" between the government, IMF and the World Bank. This paper was to serve as the prerequisite for accessing the IMF's Structural Adjustment Facility or Enhanced Structural Adjustment Resources. Instead of the government drafting the policy statements, IMF and the World Bank staff did the job and presented it to the government for review and acceptance. In such circumstance, how could the donors now turn around and accuse the government of having bad policies when the government was meant to accept an already drafted policy in that particular case.

Nonetheless, our leaders must be encouraged to fight corruption, uphold human rights and promote democracy. It is only when these have been put in place that the government will appear to be responsible. This will definitely boost the confidence of the recipient government that will allow it to negotiate on equal footing with the donor country. Where the conditions for aid are not favourable, it will be able to say no. A corrupt government lacks confidence for fear of being exposed.

Our leaders should emulate Malaysia. It turned down IMF adjustment loan offer because it did not want to implement the Structural Adjustment Programmes. It showed that the government was not dependent on donor aid. But for countries whose foreign aid constitutes more than 10% of their

Gross National Product, they will find it extremely difficult if not impossible to turn down such an offer. Those are countries whose state sovereignty will always be interfered with. They will only complain about donor conditionalities and will still go back for more aid.

Donors have this perception that recipient countries do not do much in helping themselves that they rely on foreign aid for their survival. Donors need to be reminded that although they seem to be helping recipient countries with foreign aid, they need to do more than just aid. Promotion of trade between the developing and developed countries could be a better way of helping poor countries. Developing countries specialize in the production of primary commodities yet they receive 'peanuts' for their exports due to subsidies the donor countries give to their farmers. Donors should push for the removal of these subsidies at the World Trade Organisation rounds in order to help developing countries come out of aid dependency.

4.6 Conclusion:

In conclusion, there is enough evidence to show that donors extend foreign aid to developing countries, which aid is tied to stringent conditions. These conditions hamper the prospects of recipient countries getting rid of their aid dependency, which in turn forestalls development. In effect, recipients do not benefit as much as one would expect it to from foreign aid. Instead, donors appear to benefit more from the aid. And some of these conditions attached to foreign aid obviously interfere in the internal affairs of recipient countries leaving them with questionable sovereignty.

CHAPTER FIVE:

THE SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.

5.1 Chapter Summaries:

Chapter one set out to give the conceptual definition and the background of state sovereignty. It showed that under international law, any entity that has all the attributes of a state namely, a defined territory, a government, population, and has been recognised by other states, is qualified to be a sovereign state. Being a sovereign state means the ability of a natio-state, through its government to have control over its domestic and foreign affairs. It means in a nutshell that a sovereign state is an independent state, which is the law-giving and enforcing authority within its territory, and does not entertain any external interference.

The study further explored the research problem in an attempt to show the exploitative nature of economic relationships that exist between the rich countries (donors) and the poor developing countries (recipients). It is termed exploitative relationship in the sense that developing countries specialize in primary commodities for export while the rich countries transform those primary commodities into finished products. These finished products are re-exported back to developing countries at a very high cost. As a result of the above situation, developing countries earn very little from their export of primary goods and spend much more on their imports, hence the budget deficits. This has resulted in developing countries seeking foreign assistance to support government expenditures.

The study hypothesized that continued dependency on foreign aid has led to the erosion of state sovereignty and that foreign conditionalities constitute a direct interference in the internal affairs of the recipient states. These conditionalities according to the study were intended to foster the interests of the donors.

Chapter two gave an overview of the debate on the principle and practice of state sovereignty. The study tried to distinguish between internal and external sovereignty. Internal sovereignty referred to the supreme and lawful authority of the state over its citizens, while external sovereignty referred to the recognition of a state by all other states of its independence, territorial integrity and inviolability of each state as represented by its government. The study further showed the discrepancies between the legal meaning of state sovereignty and the actual practice of the same. This is as a result of the following theories on state sovereignty namely, sovereignty- the making of the western powers, sovereignty as responsibility, sovereignty as a principle under international law and finally the erosion of state sovereignty.

Following the above mentioned theories of state sovereignty, it was believed that the principle of state sovereignty was formulated at the time when dynastic rulers, princes and powerful european elites protected their possessions through their might. It was a period of 'survival of the fittest'. In essence, the developing countries are believed to have inherited an existing system that had no consideration of their background. Sovereignty being a state's responsibility towards the security and general welfare of its citizens, showed that failure by the government to take its responsibility seriously calls for international intervention under the law. The study further showed that although there are legal provisions for intervention in the sovereignty of states, there are circumstances underwhich intervention / interference of sovereignty has been purely economic.

Chapter three looked at the impact of foreign aid on state sovereignty. For this purpose, Kenya was used as the case study. Foreign aid in this study was viewed in terms of grants or loans extended by a government or multilateral organisation to a developing country for purposes of its development. The study explored the following : the purpose foreign aid serves for both donors and recipients, foreign aid to Kenya, which also touched on foreign aid conditionalities, and the impact of foreign aid conditionalities on the sovereignty of Kenya. The study explained that foreign aid has been an important facet of international relations, and given the economic situation of the developing countries and their need to bridge the shortfall in the budget, they have resorted to foreign aid from rich developed countries or leading multilateral institutions like the World Bank and the International Monetary Fund. This chapter expounded on the fact that through the extension of foreign aid, stringent conditionalities are imposed on recipient countries by donors. These conditionalities are found to be interfering in the internal affairs of these poor developing countries while at the same time, donors foster their own interest. Some of the benefits that have accrued to donors through aid conditionalities include getting about fifty percent of the aid money through payments made to technical assistants, who have been sent by donors, benefits from the 'rules of origin' where recipient nations are compelled to purchase any machinery or other equipment needed in the course of any development project from donor's country. The study also threw some light on the positive impact of aid conditionalities which saw the restoration of multiparty democracy in Kenya. To that end, one can say that there are both positive and negative impact of foreign aid conditionalities. However, the negative impact outweighs the positive impact.

Chapter four presented the critical analysis of foreign aid and state sovereignty based on the following: the background of state sovereignty, the views of various scholars on the subject of state sovereignty, foreign aid to Africa as a result of lack of strong economic backbone, aid conditionalities and donors' criticism of developing countries policies.

The observation made in this chapter is that inspite of all the legal provisions made with regard to upholding the principle of state sovereignty, other factors like globalization, human rights, economic status of both developed and developing countries played a major role in the interference and the intervention in the internal affairs of recipient countries. It was pointed out that due to weak economic status of most African countries, the world leading economic entities, while assisting developing countries with aid took advantage of their predominant economic status and infringed upon their economic sovereignty. The study also viewed aid conditionalities as 'the straw that broke the camel's back'. This is because both bilateral and multilateral donors push stringent conditions down the throat of recipient states due to the fact that they are aid-dependent. The study showed that some of the conditions attached to aid do not always bear fruits for recipients rather the benefits most of the time favour donors.

5.2 CONCLUSIONS:

This study has come to the conclusion that foreign aid conditionalities have notable impact on the sovereignty of recipient countries. This impact has both positive and negative sides to it. It is positive in the sense that foreign aid to Kenya for example has been used in different areas of development, governance and poverty alleviation. Foreign aid has also been used to bridge the gap in budget deficits, for infrastructure developments like roads, provision of social amenities, health services, education etc. Kenya's multiparty democracy was achieved in the 1990s through the

imposition of foreign aid conditionalities. However, due to lack of strong economic standing of developing countries, they have resorted to foreign aid, which comes with strings attached. Some of these conditionalities have resulted in recipient countries paying back to donors much more than they have received. As a result, recipient countries have remained dependent on donors' foreign aid.

The study further concludes that certain conditionalities on recipient countries are very intrusive in nature. Such conditions as structural adjustment programmes, or those that forces the government to enact new laws or amend the existing ones. These were found to directly interfere in the internal affairs of recipient countries and as such, their sovereignty continues to erode. From the foregoing, it has been shown that the hypotheses of this study have been confirmed namely, that continued dependency on foreign aid leads to the erosion of state sovereignty. Foreign aid conditionalities constitute a direct interference in the internal affairs of the recipient states and that foreign aid conditionalities are used to foster the interests of donors.

5.3 RECOMMENDATIONS:

Following the analysis of this study and the conclusions made, a number of recommendations have been proposed:

First and foremost the principle of State Sovereignty as provided under International law should be revisited and redefined in order to match the realities on the ground. It has been indicated that there are different levels of Sovereignty among states. It is in a way very natural to have such

stratification because practically, all states are not equal in every way as we have seen in this study. But that does not remove the fact that all are sovereign states because each state has fulfilled the basic requirements needed for attaining state sovereignty. Just as the saying goes, “All fingers are not equal.”, that does not remove the fact that all are fingers in their own way. On that note, I recommend that International Law should device a way to ensure that the principle of State Sovereignty is respected by all irrespective of the economic or political status of individual states.

There is need for proper and honest dialogue between the donor and the recipient: It is through dialogue that the donor gets to know exactly what the needs of the recipient country are. The donor should not just decide on its own what the aid money will be used for thereby imposing unnecessary conditions. For the recipient country to ask for aid, it means they already have some needs. Otherwise, there would not be any need to ask for aid. Donors should also be honest and transparent during the discussion to allow the recipient make an informed decision. Donors should be fair in dishing out their conditionalities. They should first understand the background of the recipient country: Their strengths and weaknesses, before coming down with impossible conditions.

Where donors feel that the recipient government is corrupt, they could channel their aid through community based organisation or better still set up institutions themselves. This will enable them to assist the country directly. This will save some cost as foreign aid has a very high transaction cost. For poverty eradication, donors should assist in opening up job opportunities for Africans where skills are needed.

African nations under the umbrella of African Union should come together and re-evaluate their position in the international arena. On realising the important position they occupy, they will be more confident and more strategic in their bargain with the donor community. There is need for increased government ownership and political will to implement and sustain reforms which is more critical than the volume of aid given. Donors should consolidate their process of extending foreign aid so that recipient nation will have a general picture of the whole process before committing itself.

Above all, recipient countries should keep their house in order, fight corruption, respect human rights and most of all tap into their resources and exhaust them before looking elsewhere for aid. They should also pay attention to other sources of income like remittance from abroad. Proper regulations should be put in place to encourage such remittance. This will help to alleviate poverty. The study has been completed. Further research can continue from here.

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APPENDIX:

Unstructured questionnaire on Foreign Aid

Q1. What types of Foreign Aid does the government receive from the donors?

Q2. Who are the major donors of Foreign Aid to Kenya?

Q3. To what extent does the foreign aid serve its purpose? (The benefits)

Q4. Under what conditions is foreign aid given?

Q5. Do these conditions in anyway disrupt the smooth running of the government activities?

Q6. Do these conditionalities interfere with the law giving and law enforcement of the government authorities and in which areas or in what form is the interference?

Q7. How has the government reacted to these conditionalities attached to the foreign aid?