THE FORCES OF SECESSION AND STATE COLLAPSE: SUDAN, SOUTH SUDAN, AND THE TRAJECTORY OF WAR: 1955–2026*

Abstract
This paper analyses Sudan's continuous wars from 1955 to 2026 through a combined International Law and International Relations framework. It argues that secession and state collapse stem from the failure of the post-colonial state to accommodate diversity within a centralised Islamo-Arabist project, amplified by political marketplace dynamics, resource curse, and regional proxy competition. International Relations theories—realism, constructivism, new wars, rentier state, and regional security complex—explain the persistence of conflict and the transformation of paramilitary actors like the Rapid Support Forces, which commercialised gold and violence. International law determines legality: South Sudan's 2011 secession was lawful as consensual secession under the Comprehensive Peace Agreement (2005), satisfying Montevideo Convention criteria and the Quebec Reference test, while Darfur claims and the RSF's 2025 Government of Peace and Unity in Nyala fail Montevideo and violate the prohibition on acquisition of territory by force under UN Charter Article 2(4) and the duty of non-recognition under ILC Article 41. The paper examines ICC jurisdiction under UNSC Resolution 1593, starvation as a war crime under Rome Statute Article 8(2)(e)(xix), and state responsibility for arms flows documented in UN Panel reports S/2024/65.

Keywords: Sudan, South Sudal, Secession, State Collapse, Self-Determination, International Criminal Law

1. Introduction

Sudan's continuous armed conflicts spanning from 1955 to 2026 do not represent isolated, episodic outbursts of violence; rather, they constitute a single, unbroken historical continuum of centre-periphery structural failure. Upon achieving independence on 1 January 1956, the newly formed state inherited the complex structural contradictions of the Anglo-Egyptian Condominium. This colonial administration had purposefully governed the northern and southern regions as distinct political, cultural, and economic entities under the Southern Policy of 1922–1937.[1] While the landmark Juba Conference of 1947 extractively secured a commitment from Southern traditional chiefs to pursue a unified state, it did so based on the explicit, unfulfilled promise of a federal constitutional architecture.[2]

This foundational political pact was decisively subverted by the 1953 Self-Government Agreement, which effectively centralised political, bureaucratic, and economic power within a narrow cartel of riverain *Jellaba* elites based in Khartoum.[3] The structural exclusion of the periphery reached its flashpoint during the 'Sudanisation' of the civil service and military command: out of 800 senior administrative posts vacated by departing colonial officers, a mere six were allocated to Southern officials.[4] This acute institutional marginalisation triggered the historic Torit mutiny on 18 August 1955 by the Equatoria Corps, an event that fundamentally inaugurated the first phase of the civil war and established a pathological pattern of coercive central assimilation met by armed peripheral resistance.[5]

To understand the systemic endurance and contemporary mutation of this conflict, this paper deploys a multi-perspectival International Relations (IR) framework:

Realism and the Intra-State Security Dilemma: Classic structural and offensive realism explain the institutional fragmentation of the state's monopoly on the legitimate use of violence. The Sudanese Armed Forces (SAF) and traditional state intelligence apparatuses operated in a perpetual, hostile competition with parallel paramilitary structures. The formalization of the *Janjaweed* militias into the institutionalised Rapid Support Forces (RSF) under the 2013 amendments to the Armed Forces Act created an irreconcilable domestic commitment problem.[6] This structural imbalance culminated in the outbreak of full-scale war on 15 April 2023 over contested timelines for security sector reform (SSR) and RSF integration. From an offensive realist perspective, both factions function as rational, power-maximising actors seeking regional hegemony through the control of gold fields, external patron networks, and advanced asymmetric military technology, such as unmanned aerial vehicles (UAVs).

Liberal Institutionalism and its Critiques: The structural failures of successive peace accords—including the Addis Ababa Agreement (1972), the Comprehensive Peace Agreement (2005), the Agreement on the Resolution of the Conflict in South Sudan (ARCSS 2015), and the 2019 Constitutional Declaration—underscore the limits of liberal

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[1] Civil Secretary, 'Southern Policy 1922–1937' (Civil Secretary's Circular, Khartoum 1922)
[2] *Juba Conference Proceedings 1947* (Sudan Government Archives 1947)
[3] *Sudan Self-Government Agreement 1953* (Egypt-UK-Sudan, 12 February 1953)
[4] PM Holt and MW Daly, *A History of the Sudan: From the Coming of Islam to the Present Day* (6th edn, Routledge 2011) 142.
[5] *Torit Mutiny Report 1955* (Sudan Intelligence Official Report, Khartoum 1955)
[6] Rapid Support Forces Act 2013 (Sudan); Armed Forces Act 2007 (Sudan) as amended

institutionalism.[7] These regimes relied heavily on institutional frameworks managed by the Intergovernmental Authority on Development (IGAD), the African Union (AU), and United Nations monitoring missions, yet they lacked robust internal or external enforcement mechanisms. The operational failures of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and the United Nations Mission in South Sudan (UNMISS) to maintain civilian protection mandates directly validate the critical Paris critique of the 'liberal peace building' paradigm, which naively presumes that top-down elite pacts and rapid democratic transitions can pacify deeply entrenched, militarised war economies.

Constructivism and Ideological Hegemony: Constructivist analysis reveals how the Khartoum state systematically constructed a monolithic, exclusionary identity matrix rooted in an aggressive Arab-Islamic hegemony. This culminated in the nationwide imposition of Sharia law under the patronage of Hassan al-Turabi, a direct breach of prior secular guarantees.[8] In response, peripheral actors constructed powerful counter-identities to legitimise their resistance. This 'war of visions' positioned John Garang's ideological vision of a secular, pluralistic 'New Sudan' against the marginalized African socio-ethnic identities mobilized across Darfur.

Political Economy, New Wars, and the Political Marketplace: The material drivers of the conflict are evaluated through Mary Kaldor's 'New Wars' thesis and Alex de Waal's 'Political Marketplace' framework.[9] Sudan represents a classic example of the privatization, commercialization, and transnationalisation of violence, where political loyalty is treated as a tradeable commodity bought via state-sanctioned extraction licenses and violence. The RSF stands as the archetypal marketplace actor: having captured the Jebel Amir gold mines discovered in Darfur in 2012, the paramilitary group established an independent transnational extraction network funnelling gold to global markets via Dubai-based shell companies like Al-Junaid, effectively replacing oil rents as the primary currency of political survival after the 2011 secession of South Sudan.[10]

While IR theory explains the structural motivations of these actors, international law provides the objective criteria to determine the legality and legitimacy of their actions:

The Legal Criteria of Statehood: The legal validity of territorial entities within Sudan is assessed strictly against the criteria set forth in Article 1 of the Montevideo Convention on the Rights and Duties of States 1933: a permanent population, a defined territory, a functional government, and the sovereign capacity to enter into relations with other states.[11] In alignment with the *declaratory* theory of recognition, as articulated in *Deutsche Continental Gas-Gesellschaft v Polish State*, recognition by third-party states does not create the legal personality of the state but merely acknowledges an existing empirical reality.[12]

Normative Limitations on the Threat or Use of Force: International law imposes absolute normative bans on the creation of states through illegal military intervention or internal aggression. This paper draws legal parallels between modern Sudanese breakaway factions and historical entities whose declarations of statehood were deemed null and void *ab initio* by the international community due to their conflict with *jus cogens* norms. This is seen in the UN General Assembly's rejection of the South African Bantustans and the Security Council's non-recognition of the Turkish Republic of Northern Cyprus (TRNC)[13].

Reconciling Self-Determination with Territorial Integrity: The central legal tension in this narrative lies in the conflict between the right of self-determination—guaranteed under Articles 1(2) and 55 of the UN Charter, Common Article 1 of the ICCPR and ICESCR, and Article 20 of the African Charter on Human and Peoples' Rights—and the sacrosanct principles of territorial integrity and *uti possidetis juris* preserved under Article 2(4) of the UN Charter and Article 4(b)

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[7]. *Addis Ababa Agreement on the Problem of South Sudan 1972* (registered with the United Nations Secretariat on 3 May 1973); *Comprehensive Peace Agreement between the Government of the Republic of The Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army 2005* (CPA, 9 January 2005); *Agreement on the Resolution of the Conflict in the Republic of South Sudan 2015* (ARCSS, 17 August 2015); *Draft Constitutional Charter for the 2019 Transitional Period* (Sudan, 4 August 2019).

[8] Francis M Deng, *War of Visions: Conflict of Identities in the Sudan* (Brookings Institution Press 1995) 33–45.

[9] Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (3rd edn, Polity Press 2012); Alex de Waal, *The Real Politics of the Horn of Africa: Money, War and the Business of Power* (Polity Press 2015).

[10] UN Security Council Panel of Experts on the Sudan, *Report of the Panel of Experts Established Pursuant to Resolution 1591 (2005)* (UN Doc S/2024/65, 15 January 2024).

[11] Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, art 1

[12]*Deutsche Continental Gas-Gesellschaft v Polish State* (1929) 5 Annual Digest of Public International Law Cases 11

[13] UNGA Res 2775 (XXVI) 'The policies of apartheid of the Government of South Africa' (29 November 1971); UNSC Res 541 (1983) 'Cyprus' (18 November 1983)

of the AU Constitutive Act.[14] This paper demonstrates that UN General Assembly Resolution 2625 (the Declaration on Principles of International Law) successfully reconciles this tension: the shield of territorial integrity is legally preserved only for those sovereign states that possess a government representing the whole people distributed over the territory without distinction as to race, creed, or colour.[15]

International Criminal Law and Accountability: Finally, the late-stage manifestations of the conflict are subjected to the statutory framework of the Rome Statute of the International Criminal Court (ICC).[16] This paper examines the activation of ICC jurisdiction through UN Security Council referrals under Article 13(b), the substantive elements of core international crimes under Articles 6 (Genocide) and 7 (Crimes Against Humanity), and specifically evaluates the war crime of intentional starvation of civilians as a method of warfare in non-international armed conflicts under Article 8(2)(e).

2. The Second Civil War 1983–2005: Greed, Grievance, Transnational Networks and Legal Internationalisation

The second Sudanese civil war fundamentally transformed the conflict from a localised, domestic centre-periphery grievance into a highly internationalised self-determination dispute. This phase was directly governed by UN Security Council Chapter VII interventions and complex international treaty law.

International Relations Analysis: The Political Marketplace, Rentier State Dynamics, and Transnational Advocacy

When President Gaafar Nimeiri unilaterally abrogated the southern autonomy frameworks and imposed the September Laws in 1983, Colonel John Garang de Mabior—a Dinka former officer of the Anyanya movement holding a PhD from Iowa State University—established the Sudan People's Liberation Movement/Army (SPLM/A).[17] Distinct from previous separatist movements, Garang strategically framed the struggle not around secession, but rather around the concept of a 'New Sudan'. This ideological paradigm called for a secular, socialist, and pluralistic democratic restructuring of the unified Sudanese state. This sophisticated framing successfully attracted critical regional and international support, initially from Mengistu Haile Mariam's socialist Ethiopia and Muammar Gaddafi's Libya, and subsequently from Eritrea, Uganda, and the United States.

Two core dynamics structurally intensified and prolonged the warfare: radical Islamist state-building and the exploitation of oil. Following the 1989 military coup executed by General Omar al-Bashir and ideologically backed by Dr Hassan al-Turabi's National Islamic Front (NIF), Sudan was transformed into an Islamist revolutionary state. By hosting transnational militant networks—including Osama bin Laden between 1991 and 1996—Khartoum triggered strict United States unilateral sanctions and multi-layered international condemnation. This culminated in UN Security Council Resolutions 1054 and 1070, which imposed stringent diplomatic and aviation sanctions under Chapter VII of the UN Charter following the state-linked assassination attempt on Egyptian President Hosni Mubarak in Addis Ababa.[18] These measures firmly established Sudan as a recognised threat to international peace and security.

Concurrently, the political economy of the war shifted dramatically through resource extraction. While Chevron ceased its operations in 1984 due to targeted SPLA military strikes, a transnational consortium led by Arakis Energy, the China National Petroleum Corporation (CNPC), Petronas of Malaysia, and the Oil and Natural Gas Corporation (ONGC) of India successfully developed the lucrative Heglig and Unity oilfields.[19] Commercial oil exports commenced in August 1999, infusing the Bashir regime with approximately $1 billion to $2 billion in annual petroleum rents. This revenue

[14] Charter of the United Nations, arts 1(2), 2(4), 55; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), common art 1; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), common art 1; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 20; Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) 2154 UNTS 3, art 4(b).

[15] UNGA Res 2625 (XXV) 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations' (24 October 1970).

[16] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute)

[17] Sudan People's Liberation Movement,*The SPLM/A Manifesto* (1983); see also John Garang, *The Vision of New Sudan* (SPLM Publication 1987).

[18] Greater Nile Petroleum Operating Company, *Shareholder Agreement: CNPC, Petronas, ONGC Videsh, and Sudapet* (Khartoum 1997).

[19]. Paul Collier and Anke Hoeffler, 'Greed and Grievance in Civil War' (2004) 56 Oxford Economic Papers 563; Hazem Beblawi and Giacomo Luciani (eds), *The Rentier State* (Croom Helm 1987); Michael L Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press 2012).

stream directly financed heavy military procurement, including Antonov tactical bombers and state-sanctioned proxy militias. This transformation perfectly illustrates the classic economic models of the 'resource curse' and the 'rentier state.' As theorised by Paul Collier and Anke Hoeffler, resource abundance drastically increases the duration of civil wars; it provides the sovereign centre with substantial financial windfalls to purchase political loyalty and sustain military campaigns without relying on domestic taxation. Consequently, Southern structural grievances deepened significantly as oil resources were systematically extracted from their ancestral lands without any equitable domestic compensation or local development.

As the Cold War context faded, transnational advocacy networks emerged as decisive actors. A powerful coalition composed of US evangelical organisations (such as Christian Solidarity International and Samaritan's Purse), the Congressional Black Caucus, and later the Save Darfur movement successfully pressured the Clinton and Bush administrations to act. This mobilisation resulted in the passage of the US Sudan Peace Act of 2002, which legally conditioned American financial assistance and diplomatic engagement on Khartoum's compliance with peace negotiations.[20] Under the auspices of the Intergovernmental Authority on Development (IGAD) and led by Kenyan General Lazaro Sumbeiywo, these pressures culminated in the Machakos Protocol of 2002.[21] This breakthrough accord established a clear foundational principle: while national unity should be prioritised by making it socio-politically attractive to the South through secular and democratic reforms, the people of South Sudan maintained an absolute right to an external self-determination referendum after a six-year interim period.

International Law Analysis: Consensual Secession, Treaty Interpretation, and State Succession

From an international law perspective, the Machakos Protocol marked a critical shift. Clause 2.2 explicitly stipulated that 'the people of South Sudan have the right to self-determination, inter alia, through an election to determine their future status.'[22] Through this clause, the sovereign Republic of the Sudan formally consented by treaty to convert what was an internal human rights claim into an internationally recognized right to external self-determination. The subsequent Comprehensive Peace Agreement (CPA) of 2005 consolidated this transition across six distinct legal protocols: the Machakos Protocol, the Power-Sharing Protocol, the Wealth-Sharing Protocol (guaranteeing a 50 per cent split of all southern oil revenues), the Abyei Protocol, the Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States, and the Framework on Security Arrangements.[23]

The CPA was not an ordinary domestic political pact; it operated as an internationalised treaty witnessed and guaranteed by the United Nations, the United States, the United Kingdom, Norway, Italy, the African Union, and IGAD. Under Article 3 of the Vienna Convention on the Law of Treaties (VCLT), international legal agreements concluded between states and non-state entities or other subjects of international law possess full legal validity.[24] This status was confirmed by the Permanent Court of Arbitration (PCA) in the *Abyei Arbitration*, where the tribunal treated the CPA as a binding framework of *lex specialis* between the Government of Sudan and the SPLM/A.[25]

Furthermore, the Wealth-Sharing Agreement conformed to Article 1(2) of the ICCPR and Article 21 of the African Charter on Human and Peoples' Rights (ACHPR), which protect a people's permanent sovereignty over their natural wealth and resources[26]. This international legal framework received explicit backing from the UN Security Council through Resolution 1590, which established the United Nations Mission in Sudan (UNMIS) under Chapter VII to oversee the implementation of the accords[27].

The ultimate legality of the resulting 2011 referendum stems directly from this consensual foundation. Operating under the South Sudan Referendum Act 2009 and the procedural thresholds established by the CPA, the vote registered a 97.58 per cent voter turnout, with 98.83 per cent voting decisively for secession.[28] This process fully satisfied the rigorous legal standards articulated by the Supreme Court of Canada in the seminal *Reference Re Secession of Quebec*, which requires

[20]Sudan Peace Act 2002, Pub L No 107-245, 116 Stat 1504 (US)

[21] *The Machakos Protocol* (Government of Sudan–SPLM/A, 20 July 2002).

[22] *The Machakos Protocol*, Chapter I, clause 2.2.

[23] *The Comprehensive Peace Agreement between the Government of the Republic of The Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army* (CPA, signed 9 January 2005).

[24] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 2, 3

[25] *Delimitation of the Abyei Area (Government of Sudan v Sudan People's Liberation Movement/Army)* (Final Award) (2009) 48 ILM 1252, PCA Case No 2008-07

[26] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1(2); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 21.

[27] UNSC Res 1590 (24 March 2005) UN Doc S/RES/1590, paras 1–3

[28]South Sudan Referendum Act 2009 (Sudan), arts 25–41; Southern Sudan Referendum Commission, *Final Report on the Southern Sudan Referendum* (Juba 2011)

both a clear question and a clear majority to legitimse a territorial separation.[29] Unlike the contested, unilateral declarations of independence seen in cases like Kosovo, South Sudan stands as an example of consensual, treaty-based secession. This process was entirely lawful under Common Article 1 of the international covenants and Article 20 of the ACHPR.[30] The African Union formally accepted the new state because the explicit consent of the parent state resolved any potential conflict with the principle of *uti possidetis juris* preserved under Article 4(b) of the AU Constitutive Act, closely mirroring the historical precedent set by Eritrea's separation from Ethiopia in 1993.[31]

Finally, the separation triggered complex issues of state succession. In accordance with Article 15 of the Vienna Convention on Succession of States in Respect of Treaties 1978 and the general principles of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts 1983, South Sudan succeeded to the territory defined by the colonial boundaries of 1 January 1956.[32] It also succeeded to all existing localised resource contracts within its territory. Under the 'clean slate' doctrine, South Sudan started free from historical national debt, which was retained by Khartoum in exchange for negotiated commercial oil transit fees, though technical disputes regarding debt apportionment persist.

3. Darfur 2003–2026: New Wars, Privatised Violence, Gold Markets and International Criminal Law

The crisis in Darfur demonstrates how 'New Wars' are driven by privatised violence and transnational commodity networks. At the same time, it illustrates how international law rejects unilateral secession while upholding strict international criminal accountability.

International Relations Analysis: The Commercialisation of Violence and Global Commodity Supply Chains

The armed conflict in Darfur erupted in 2003 when two main rebel groups—the Justice and Equality Movement (JEM) and the Sudan Liberation Army (SLA)—launched a coordinated assault against the El Fasher military airbase.[33] These movements rebelled against their systematic exclusion from the power- and wealth-sharing negotiations of the CPA. Despite Darfurian citizens serving extensively in past military campaigns and facing identical patterns of economic marginalisation by the riverain centre, Khartoum completely marginalised the region from the peace architecture. The underlying structural inequities were thoroughly documented in JEM's underground political text, *The Black Book: Imbalance of Power and Wealth in Sudan*.[34] In response, the Bashir regime launched a counter-insurgency campaign by proxy. Rather than deploying the formal military alone, Khartoum armed and financed Baggara Arab camel-pastoralist groups—led by figures such as Musa Hilal and Mohamed Hamdan Dagalo (popularly known as Hemedti)—transforming them into the feared *Janjaweed* militias. This outsourcing of violence fits Alex de Waal's 'political marketplace' framework and Mary Kaldor's 'New Wars' model.[35] To minimise direct financial costs and retain plausible deniability, the state outsourced its campaign to proxy actors, granting them local licenses to plunder. The resulting violence led to the systematic burning of thousands of indigenous villages, the deaths of an estimated 200,000 to 400,000 civilians, the displacement of over 2.7 million people, and widespread, systematic conflict-related sexual violence[36].

By 2012, the conflict's underlying war economy shifted due to the discovery of major artisanal gold deposits at the Jebel Amir mines in North Darfur.[37] Producing between 30 and 40 tonnes of gold annually, these mining sites were violently seized by Hemedti's family-owned conglomerate, the Al-Junaid company. This gold extraction network bypassed formal state channels, smuggling the mineral wealth through Chad and the Central African Republic directly to global markets in Dubai. Gold effectively replaced oil as the primary resource rent for elite survival after the loss of southern oil fields in 2011.

To formalise this arrangement, the Bashir regime passed the Rapid Support Forces Act, which legally integrated these militias into the formal state apparatus—initially under the National Intelligence and Security Service (NISS), and subsequently as an independent command directly subordinate to President Bashir. This statutory formalisation provided

[29] *Reference Re Secession of Quebec* [1998] 2 SCR 217, para 87

[30] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* [2010] ICJ Rep 141, paras 82–83.

[31] African Union Peace and Security Council (AU PSC), *Communiqué on the Independence of South Sudan and Territorial Integrity* (2011) AU Doc PSC/PR/COMM.(CCLXXXV).

[32] Julie Flint and Alex de Waal, *Darfur: A New History of a Long War* (2nd edn, Zed Books 2008).

[33] Julie Flint and Alex de Waal, *Darfur: A New History of a Long War* (2nd edn, Zed Books 2008).

[34] Justice and Equality Movement, *The Black Book: Imbalance of Power and Wealth in Sudan* (Part I 2000, Part II 2002).

[35] Alex de Waal, *The Real Politics of the Horn of Africa: Money, War and the Business of Power* (Polity Press) 37UN Security Council, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (Geneva, 25 January 2005) UN Doc S/2005/60; Alex de Waal, 'Who Are the Darfurians? Land and Conflict in Sustainable Development' (2005) 21(3) Anthropology Today 12.
15); Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (3rd edn, Polity Press 2012).

[38] Rapid Support Forces Act 2013 (Sudan); Presidential Decree No 11/2013 (Formalisation of Border Intelligence Units).

[37] Rapid Support Forces Act 2013 (Sudan); Presidential Decree No 11/2013 (Formalisation of Border Intelligence Units).

Hemedti with official state cover while he accumulated massive, independent financial wealth. This economic independence allowed him to become the de facto Vice-President of the Transitional Sovereign Council following the 2019 ouster of Bashir, and ultimately enabled the RSF to launch its direct military challenge against the SAF. This highly lucrative gold trade quickly drew in global value chains and foreign actors. The United Kingdom and international monitoring bodies note that the United Arab Emirates (UAE) operates as the primary global hub for African artisanal gold imports. This trade frequently lacks sufficient provenance tracking, which violates the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals* and the *UN Guiding Principles on Business and Human Rights*.[38] Furthermore, the Russian private military company, the Wagner Group, operated extensively within Darfur's gold mining sectors from 2017 to 2023. Wagner provided advanced combat training and air-defence systems to the RSF in direct exchange for lucrative mining concessions, as documented by successive UN Panel of Experts reports.[39]

Table 1: Comparative Framework of the Resource War Transition

Phase	Dominant Resource	Primary Extraction Model	Transnational Financial Hubs	Key Armed Beneficiaries
1999–2011	Petroleum (Oil)	State-owned fields & foreign joint ventures [1]	Khartoum, Beijing, Kuala Lumpur [1]	SAF Elite & Central State Machinery [1]
2012–2026	Artisanal Gold [1]	Violent capture & private corporations [1]	Dubai (UAE), N'Djamena, Bangui [1]	RSF / Janjaweed (Al-Junaid Co.) [1]

Finally, the Darfur crisis highlights the operational limits of the 'Responsibility to Protect' (R2P) doctrine. Although the UN Security Council passed Resolutions 1556 and 1564 demanding that Khartoum disarm the Janjaweed under threat of economic measures, the state actively resisted international intervention.[40] Security Council Resolution 1706 attempted to deploy a robust UN peacekeeping force, but was blocked by Khartoum's absolute assertions of state sovereignty. Eventually, Resolution 1769 established the African Union-United Nations Hybrid Operation in Darfur (UNAMID)[41]. However, deploying under a weak compromise mandate from 2007 to 2020, the mission remained structurally unable to protect civilians effectively, showing how traditional peace operations often struggle when confronting active, highly commercialised war economies.

International Law Analysis: Rejection of Secession and Institutionalisation of Criminal Accountability

From an international law standpoint, the legal claims of Darfurian rebel movements to territorial separation or secession have been consistently rejected by the international community. Unlike the historical trajectory of South Sudan, the armed factions in Darfur entirely lacked a treaty-based, consensual referendum clause. In both the landmark African Union Peace and Security Council (AU PSC) Communiqué of 2004 and UN Security Council Resolution 1556, the international community explicitly and unequivocally reaffirmed its absolute commitment to the sovereignty, unity, and territorial integrity of the Republic of the Sudan.[42] This legal boundary aligns with the International Court of Justice (ICJ) in its seminal *Kosovo* Advisory Opinion, which noted in paragraph 79 that while international law contains no abstract prohibition against declarations of independence, it does not automatically confer a right to external self-determination or statehood[43]. The doctrine of remedial secession remains exceptionally restrictive, requiring a threshold of extreme, systematic state oppression combined with the total exclusion and denial of internal self-determination. Although severe oppression undoubtedly existed in Darfur, both the African Union and the United Nations deliberately chose to prioritize the mechanisms of international criminal justice over the validation of a secessionist claim.

The decision by the United Nations Security Council to refer the situation in Darfur to the International Criminal Court (ICC) via Resolution 1593 marked a historic turning point in international law.[44] Operating under this Chapter VII mandate, the ICC Pre-Trial Chambers issued landmark arrest warrants for Ahmad Harun (Minister of State for the Interior), Ali Kushayb (Janjaweed militia leader), Abdel Raheem Muhammad Hussein (Minister of Defence), and sitting

[38] Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (3rd edn, OECD Publishing 2016) Step 2; UN Human Rights Council, *Guiding Principles on Business and Human Rights* (16 June 2011) UN Doc A/HRC/17/31, Principle 7.

[39] UN Security Council Panel of Experts on the Sudan, *Report of the Panel of Experts Established Pursuant to Resolution 1591 (2005)* (UN Doc S/2023/48, 30 January 2023); UN Doc S/2024/65 (15 January 2024).

[40] UNSC Res 1556 (30 July 2004) UN Doc S/RES/1556, para 6; UNSC Res 1564 (18 September 2004) UN Doc S/RES/1564, para 7. 47. African Union Peace and Security Council (AU PSC), *Communiqué on the Situation in Darfur* (2004) AU Doc PSC/PR/Comm.(XIII); UNSC Res 1556 (30 July 2004) UN Doc S/RES/1556.

[42] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* ICJ Rep 141, para 79.

[43] UNSC Res 1593 (31 March 2005) UN Doc S/RES/1593.

[44] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* ICJ Rep 141, para 79.

President Omar al-Bashir.[45] The material counts contained within these warrants encompass charges of genocide, crimes against humanity, and war crimes. Specifically, the genocide charges encompass the intentional killing, causing of serious bodily or mental harm, and the deliberate infliction of conditions of life calculated to bring about the physical destruction of the targeted Fur, Masalit, and Zaghawa socio-ethnic groups. The accompanying charges of crimes against humanity under Article 7 of the Rome Statute include murder, extermination, forcible transfer of population, torture, rape, and systematic persecution, alongside war crimes under Article 8(2)(c) and (e), which explicitly prohibit violence to life, intentional attacks against civilians, and pillage in non-international armed conflicts.

Evaluating the legal standard for genocidal intent (*dolus specialis*), the international framework relies on the precedent established in *Prosecutor v Akayesu* by the International Criminal Tribunal for Rwanda (ICTR), which defined the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, allowing such intent to be legally inferred from a systematic pattern of targeted atrocities.[46] Notably, while the UN International Commission of Inquiry on Darfur in 2005 documented widespread crimes against humanity and war crimes, it concluded that the strict threshold of state-sponsored genocidal intent was not definitively proven as a matter of central government policy.[47][70] Conversely, the ICC Pre-Trial Chamber determined that there were reasonable grounds to believe that such genocidal intent existed, thereby confirming the warrants against Bashir.[48]

The unlawful acts perpetrated by the Janjaweed and the subsequently mutated RSF engage the international legal doctrine of state responsibility. These acts are directly attributable to the Sudanese state under Article 4 of the International Law Commission (ILC) Articles on State Responsibility, given that the militia forces were formally integrated as a state organ through the passage of the 2013 legislative amendments.[49]Furthermore, even prior to formal statutory integration, their operational acts were attributable to the state under ILC Articles 8 and 11, which govern conduct executed under the direct instructions, direction, or effective control of a state, or where the state subsequently acknowledges and adopts the conduct as its own. This attribution is reinforced by the public declarations, systematic praise, and political adoption of the Janjaweed forces by President Omar al-Bashir. Under Article I of the Genocide Convention and the strict jurisprudence established in *Bosnia and Herzegovina v Serbia and Montenegro*, a state is held responsible for a failure to prevent genocide if it fails to take all reasonable measures within its political and military power to deter the atrocities[50].

Moreover, the systematic pillage of local gold mines and commercial looting executed by the RSF across Darfur, and later within Khartoum between 2023 and 2026, constitutes a direct violation of Article 8(2)(e)(v) of the Rome Statute and Article 28 of the Hague Regulations 1907, both of which strictly prohibit pillage during armed conflicts[51].This extractive war economy directly violates the international sanctions architecture. Successive UN Panel of Experts reports, including document S/2024/65, have thoroughly verified these violations of the international arms embargo alongside systemic gold smuggling networks to the UAE, undermining the enforcement mandates of UN Security Council Resolution 2620.[52]

4. South Sudan After 2011: Neopatrimonialism, Resource Curse, State Succession and Continuity of Obligations

The attainment of sovereign independence did not automatically produce domestic political stability; instead, the newly formed state of South Sudan rapidly replicated the identical structural pathologies of the Sudanese centre. This trajectory illustrates the intersection of *neopatrimonial* political decay and the complex international legal frameworks of state succession.

International Relations (IR) Analysis: *Neopatrimonialism* and the Collapse into Civil War

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[45]*Prosecutor v Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman ("Kushayb")* (Warrant of Arrest) ICC-02/05-01/07 (27 April 2007); *Prosecutor v Abdel Raheem Muhammad Hussein* (Warrant of Arrest) ICC-02/05-01/12 (1 March 2012); *Prosecutor v Omar Hassan Ahmad Al-Bashir* (Warrant of Arrest) ICC-02/05-01/09 (4 March 2009 and 12 July 2010) *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) paras 498–522

[46] UNSC Res 1593 (31 March 2005) UN Doc S/RES/1593

[47]UN Security Council, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (Geneva, 25 January 2005) UN Doc S/2005/60, paras 640–642

[48]*Prosecutor v Omar Hassan Ahmad Al-Bashir* (Decision on the Prosecution's Application for a Warrant of Arrest) ICC-02/05-01/09 (4 March 2009)

[49]International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) GA Res 56/83, arts 4, 8, 11.

[50] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, art I; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* ICJ Rep 43, para 430.

[51]Rome Statute, art 8(2)(e)(v); Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (Hague Regulations), art 28.

[52] UN Security Council Panel of Experts on the Sudan, *Report of the Panel of Experts Established Pursuant to Resolution 1591 (2005)* (UN Doc S/2024/65, 15 January 2024); UNSC Res 2620 (15 February 2022) UN Doc S/RES/2620.

In academic, diplomatic, and political analysis regarding international partnerships, South Sudan's trajectory stands as a warning. On 9 July 2011, South Sudan formally became the world's newest sovereign state, supported by international goodwill and approximately $4 billion in foreign development assistance.[53]However, the ruling Sudan People's Liberation Movement (SPLM) struggled to transform from an armed guerrilla coalition into a functioning, institutionalised political party. The SPLM operated primarily as an unstable military alliance of Dinka, Nuer, and Equatorian commanders, held together almost exclusively by their common war against Khartoum. Following the sudden death of Dr John Garang de Mabior in a 2005 helicopter crash, Salva Kiir Mayardit (a Dinka) assumed control of the executive, gradually centralising power and marginalising alternative socio-ethnic groups.[54] This structural decay was accelerated by a total dependence on petroleum rents, which accounted for approximately 97 per cent of the national budget, with the essential export pipeline running entirely through the territory of northern Sudan. When Khartoum charged a high $36 per barrel transit fee following secession, Juba responded by shutting down all oil production in 2012, triggering an immediate fiscal collapse.

In this economic vacuum, a predatory 'political marketplace' rapidly re-emerged. President Kiir sought to purchase political loyalty by expanding the national army from 100,000 to over 240,000 personnel, a process marred by the creation of extensive 'ghost soldiers' and the distribution of oil rents to loyal military commanders. The depth of this systemic corruption was exposed by President Kiir himself in an official 2012 public correspondence, which stated that over $4 billion in public funds had been missing or stolen by ruling elites.[55] This trajectory fits the classic 'rentier state' and 'resource curse' paradigms theorised by Hazem Beblawi, Giacomo Luciani, and Michael Ross: abundant resource rents reduce the state's structural need for domestic taxation, thereby eroding political accountability, hollowing out institutional checks, and incentivising patronage over democratic governance. This institutional rot culminated in the outbreak of full-scale civil war in December 2013. President Kiir dismissed Vice-President Riek Machar (a Nuer) in July 2013 and subsequently attempted the forced disarmament of Nuer members within the Presidential Guard. Armed fighting erupted in Juba on 15 December 2013, with the Dinka-dominated Presidential Guard targeting Nuer civilians, which triggered swift military retaliation from Machar's newly formed SPLM-In Opposition (SPLM-IO).

While the conflict quickly took on an ethnic dynamic—pitting Dinka factions against Nuer communities—it was fundamentally driven by the structural collapse of the domestic political marketplace when oil revenues plummeted during the 2014 global price crash. The resulting civil war caused the deaths of approximately 400,000 people, displaced over 4 million citizens, and was characterized by grave human rights violations from both factions, including the systematic recruitment of child soldiers, conflict-related sexual violence, and scorched-earth military operations.

Subsequent international mediation produced the 2015 Agreement on the Resolution of the Conflict in South Sudan (ARCSS) and the 2018 Revitalised ARCSS (R-ARCSS).[56] These agreements attempted to institutionalise a top-down power-sharing architecture, incorporating a 35 per cent gender quota for women, five parallel Vice-Presidential positions, transitional security arrangements, a commitment to establish an African Union Hybrid Court, a Truth Commission, and a Compensation and Reparation Authority. However, structural implementation remained stalled. President Kiir consistently delayed the training and graduation of the Necessary Unified Forces (NUF), Machar was placed under effective house arrest in Juba, and the National Security Service (NSS) retained its coercive control. With the transitional framework extended to 2026 and national elections repeatedly postponed, South Sudan demonstrates the structural failure of the standard liberal peace building paradigm.

International Law Analysis: Statehood, the Clean Slate Doctrine, and Human Rights Continuity

From an international law perspective, South Sudan successfully achieved the objective legal criteria of statehood. It fulfilled the Montevideo Convention standards, secured formal admission to the United Nations via Security Council Resolution 1999, obtained membership in the African Union, and received formal diplomatic recognition from over 130 states[57]. The legal parameters of its state succession are governed primarily by the Vienna Convention on Succession of States in Respect of Treaties 1978. Under Articles 11 and 17, a newly independent state enters the international arena with a 'clean slate' regarding previous political treaties, with strict exceptions maintained for established territorial boundary treaties and universal human rights instruments, which attach directly to the territory[58]. Accordingly, South

[53] Transitional Constitution of the Republic of South Sudan 2011, art 1(1).

[54] UNSC Res 1999 (13 July 2011) UN Doc S/RES/1999; UNGA Res 65/308 'Admission of the Republic of South Sudan to membership in the United Nations' (14 July 2011)

[55] President Salva Kiir Mayardit, 'Official Letter to Current and Former Government Officials on Missing Public Re 62.Hazem Beblawi and Giacomo Luciani (eds), *The Rentier State* (Croom Helm 1987); Michael L Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press 2012).nts' (Juba, 3 May 2012).

[56]*Agreement on the Resolution of the Conflict in South Sudan 2015* (ARCSS, signed 17 August 2015); *Revised Revitalised Agreement on the Resolution of the Conflict in South Sudan 2018* (R-ARCSS, signed 12 September 2018) Chapters I–VII.

[57] Montevideo Convention, art 1.

[58] Vienna Convention on Succession of States in Respect of Treaties (adopted 23 August 1978, entered into force 6 November 1996) 1946 UNTS 3, arts 11, 17

Sudan succeeded to and formalised its accession to the 1949 Geneva Conventions on 18 July 2012, ratified the African Charter on Human and Peoples' Rights in 2013, and acceded to both the ICCPR and the ICESCR in 2015.[59][83] Consequently, Common Article 3 of the Geneva Conventions and Additional Protocol II applied to its internal armed conflict from its inception.

Regarding the continuity of human rights obligations, the African Commission on Human and Peoples' Rights in *Sudan Human Rights Organisation v Sudan* firmly established that indiscriminate military bombardments and the targeting of civilian infrastructure constitute a clear violation of the right to life.[60] Furthermore, the UN Commission on Human Rights in South Sudan, through its successive investigative reports spanning from 2018 to 2025, has documented comprehensive evidence of war crimes, including murder under Article 8(2)(c)(i), the unlawful recruitment of child soldiers under Article 8(2)(e)(vii), and systematic rape under Article 8(2)(e)(vi)[61]. These atrocities engage the doctrine of command responsibility under Article 28 of the Rome Statute, establishing that military commanders like Kiir and Machar can be held criminally responsible if they knew, or should have known, that forces under their effective control were committing crimes and failed to take all necessary measures to prevent or repress them.[62]

A key institutional pillar of the peace agreements was the mandate under Chapter V, Article 3 of the ARCSS to establish a Hybrid Court for South Sudan, to be set up by the African Union Commission with explicit jurisdiction over genocide, crimes against humanity, war crimes, and serious violations of South Sudanese domestic law.[63] Despite formal approval from the AU PSC, the court's establishment has been actively blocked by political resistance from Juba, representing a violation of the principle of *pacta sunt servanda* under Article 26 of the VCLT, given that the ARCSS operates as an internationally witnessed, legally binding instrument[64].

Under the principle of complementarity in Article 17 of the Rome Statute, the ICC could potentially assert jurisdiction if domestic authorities remain genuinely unwilling or unable to prosecute.[65] However, because South Sudan has not yet acceded to the Rome Statute, such jurisdiction would require an explicit ad hoc declaration under Article 12(3) or a direct UN Security Council referral.

Finally, the succession of petroleum infrastructure and economic assets engages Article 15 of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts alongside established UNCTAD principles.[66] The systemic diversion of public revenues violates Article 26 of the UN Convention against Corruption (UNCAC) and Article 21 of the African Charter regarding the right of peoples to freely dispose of their natural wealth[67]. Any uncompensated expropriation or nationalisation of existing foreign petroleum concessions would constitute a violation of international investment law and applicable Bilateral Investment Treaties (BITs).

5. Conclusion: Beyond Secession — Federalism, Transitional Justice and the Future of the Sudanese State

This paper has drawn together International Relations (IR) theories and International Law (IL) regimes to argue that South Sudan's 2011 secession was a *sui generis* lawful remedy that cannot serve as an open precedent for endless African balkanisation, and that Sudan's 2023–2026 de facto partition is profoundly unlawful and must be reversed through federal consociationalism and international criminal accountability.

The Theoretical and Historical Continuum of Sudanese State Failure

Sudan's systemic crisis from 1955 to 2026 demonstrates a single, unbroken continuum of state failure. This failure is deeply rooted in colonial administrative separation, post-colonial Arab-Islamist centralization, and a monetised political marketplace. Structurally, defensive realism explains the persistent security dilemmas that forced the riverain centre to repeatedly arm peripheral militias against one another to maintain dominance. Constructivism clarifies how exclusionary state-enforced identity matrices hardened peripheral counter-identities, locking the state into a perpetual ‘war of

[59]International Committee of the Red Cross, 'Accession and Depositary Notification for the Republic of South Sudan to the 1949 Geneva Conventions' (18 July 2012); African Union, 'Ratification List: African Charter on Human and Peoples' Rights' (Juba 2013).
[60] *Sudan Human Rights Organisation v Sudan* (2009) AHRLR 153, African Commission on Human and Peoples' Rights Comm Nos 279/03-296/05
[61] UN Human Rights Council, *Report of the Commission on Human Rights in South Sudan* (5 March 2019) UN Doc A/HRC/40/69; UN Doc A/HRC/58/76 (31 January 2025).
[62] Rome Statute, arts 8(2)(c)(i), 8(2)(e)(vi)–(vii), 28
[63]ARCSS, Chapter V, Article 3.
[64]VCLT, art 26.
[65]Rome Statute, art 17.
[66]Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (adopted 8 April 1983, not yet in force) UN Doc A/CONF.117/14, art 15.
[67] United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (UNCAC), arts 26, 52.

visions.'[6892] Concurrently, the political economy of the rentier state explains how resource-driven revenues freed the ruling elite from reliance on domestic taxation, funding a violent patronage network. Finally, regional security complex theory accounts for how easily these domestic fractures became internationalised by proxy intervention.[69]

Tragically, South Sudan replicated this exact centre-periphery pathology internally. After successfully seceding from Khartoum's domination, the Sudan People's Liberation Movement (SPLM) elite failed to transition from a guerrilla army to a democratic political entity. Instead, a Dinka-dominated military faction monopolised power, marginalising Nuer and Equatorian communities. This structural decay directly reproduces Robert Jackson and Carl Rosberg's paradigms of highly personalized rule, alongside Michael Bratton's model of neopatrimonial political decay.[70] This internal structural collapse culminated in the December 2013 civil war, which caused approximately 400,000 deaths and highlighted the limits of top-down elite pacts in the Horn of Africa.

The Legal Boundaries of Self-Determination vs Unilateral Warlordism

Against these structural forces, international law provides vital normative limits. The right to self-determination cannot be interpreted as an unconditioned legal license for unilateral secession. Articles 1(2) and 55 of the United Nations Charter, alongside Common Article 1 of the International Covenant on Civil and Political Rights (ICCPR), must be systematically read in harmony with the principle of territorial integrity under Article 2(4) of the UN Charter[71]. As established by UN General Assembly Resolution 2625 (the Declaration on Friendly Relations), the legal shield of territorial integrity remains sacrosanct for any sovereign state that possesses a government representing the whole people distributed over the territory without distinction[72].

Furthermore, the principle of *uti possidetis juris*—affirmed by the International Court of Justice (ICJ) in the *Frontier Dispute (Burkina Faso/Mali)* case and explicitly enshrined in Article 4(b) of the African Union Constitutive Act—establishes a strong legal presumption in favour of stable post-colonial boundaries[73].Under contemporary international law, external secession is recognized as lawful in only three exceptional scenarios:

- (a) classic decolonisation under General Assembly Resolution 1514 (XV),
- (b) consensual secession executed via an explicit bilateral treaty agreement, such as the dissolution of Czechoslovakia in 1993, and
- (c) arguably as an extreme remedy of last resort—remedial secession—where a distinct group faces severe oppression and a total denial of its right to internal self-determination, as articulated in the obiter dicta of the Supreme Court of Canada's *Quebec Reference* and the ICJ's *Kosovo* Advisory Opinion.[74]

Applying these parameters, South Sudan fully satisfied condition (b) regarding consensual secession. The parent state explicitly consented to the transition within Article 2 of the Machakos Protocol and the comprehensive frameworks of the CPA 2005.[75] This process was internationally witnessed, registered with the UN, and implemented via a statutory referendum that met the legal requirements of a clear question and a clear majority. Consequently, its formal admission to the international community via UN Security Council Resolution 1999 and General Assembly Resolution 65/308 was entirely lawful[76]. It can also be argued that South Sudan met the criteria for remedial secession given the preceding half-century of conflict, which resulted in over two million deaths and systematic structural marginalisation. Its recognition was therefore declaratory of an established, consensual legal statehood under the Montevideo Convention.[77] In stark contrast, the contemporary claims of Darfurian rebel factions and the Rapid Support Forces' (RSF) 2025 'Government of Peace and Unity' in Nyala fail every applicable criterion. This entity possesses no legal consent from the parent state, lacks any treaty-based referendum mechanism, and operates with no international mandate or supervision. Its existence directly violates the principle of *uti possidetis juris*.

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[68] Francis M Deng, *War of Visions: Conflict of Identities in the Sudan* (Brookings Institution Press 2003). Press 1995); Douglas H Johnson, *The Root Causes of Sudan's Civil Wars* (Indiana University

[69] Alex de Waal, *The Real Politics of the Horn of Africa: Money, War and the Business of Power* (Polity Press 2015); Barry Buzan and Ole Wæver, *Regions and Powers: The Structure of International Security* (Cambridge University Press 2003).

[70]Robert H Jackson and Carl G Rosberg, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (University of California Press 1982).

[71]Charter of the United Nations, arts 1(2), 2(4), 55; ICCPR, common art 1

UNGA Res 2625 (XXV) 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States'[72]

[73] *Frontier Dispute (Burkina Faso/Republic of Mali) (Judgment)* ICJ Rep 554, paras 20–26; Constitutive Act of the African Union, art 4(b).

[74] UNGA Res 1514 (XV) 'Declaration on the granting of independence to colonial countries and peoples'; *Reference Re Secession of Quebec* 2 SCR 217, para 126; *Kosovo Advisory Opinion*, paras 79–84

[75]*The Machakos Protocol*, art 2; *The Comprehensive Peace Agreement*, 2005

[76] UNSC Res 1999 (13 July 2011); UNGA Res 65/308; AU PSC, *Communiqué on the Independence of South Sudan* (2011).

[77] Montevideo Convention, arts 1–3; *Deutsche Continental Gas-Gesellschaft v Polish State* (1929).

More fundamentally, its establishment by military means violates the *jus cogens* prohibition against the acquisition of territory through the threat or use of force, a foundational norm preserved under Article 2(4) of the UN Charter, Article 52 of the Vienna Convention on the Law of Treaties (VCLT), and reaffirmed by the ICJ in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* Advisory Opinion.[78] Under Article 41(2) of the ILC Articles on State Responsibility, states are bound by an absolute duty of non-recognition regarding any situation created through a serious breach of a peremptory norm of international law—a legal standard previously enforced through UN Security Council Resolution 541 against the Turkish Republic of Northern Cyprus.[79]

Accordingly, the AU PSC Communiqués of March 2024 and August 2025 explicitly rejected the RSF's parallel governance claims and strongly reaffirmed the territorial unity of Sudan.[80] As of September 2026, no sovereign state has extended formal diplomatic recognition to the Nyala administration, legally confirming its status as a non-state armed group bound by Common Article 3 of the Geneva Conventions and Additional Protocol II, rather than a lawful government.

This critical distinction enriches International Relations de facto state theory by separating empirical, territorial control from legal international legitimacy. As observed by Scott Pegg and Nina Caspersen, unrecognized de facto states can persist for decades without formal integration if they secure sufficient internal legitimacy or rely heavily on an external patron.[81] The RSF entity, however, entirely lacks domestic civilian legitimacy. It stands internationally accused of widespread ethnic cleansing and genocidal acts against the Masalit communities in West Darfur, systematic conflict-related sexual violence, and a deliberate starvation siege of El Fasher, all documented by the Yale Humanitarian Research Lab and the UN Panel of Experts.[82]

Its war economy is entirely dependent on transnational smuggling rings linked to the UAE, reducing it to a proxy force rather than an independent sovereign entity. It is highly unlikely to achieve empirical stability; instead, it is poised to fracture into a highly volatile warlord mosaic, particularly as rival factions like the SPLM-N al-Hilu and the SLM-Abdul Wahid retain control over distinct geographical strongholds in South Kordofan and Jebel Marra.

The Pillars of State Responsibility, Accountability, and Remedy

International criminal accountability constitutes the second pillar of any sustainable resolution. While a realist critique correctly observes that the ICC lacks an independent enforcement mechanism, international law retains substantial normative power to delegitimize criminal governance. The UN Security Council Resolution 1593 referral remains active for all core international crimes perpetrated within Darfur, and its scope extends across the whole of Sudan under the provisions of Resolution 2620[83]. The arrest warrants against Omar al-Bashir remain valid and unexecuted.[84] Transferring these individuals to The Hague would signal a decisive break with the culture of impunity that has long driven the Sudanese political marketplace.

Furthermore, the documentation of widespread starvation as a method of war in Darfur, Khartoum, and Kordofan enables the first practical application of Article 8(2)(e)(xix) of the Rome Statute for non-international armed conflicts.[85] This prosecution can directly target commanders responsible for the 18-month blockade of El Fasher and the deliberate obstruction of humanitarian relief operations, which violate Article 14 of Additional Protocol II and Customary International Humanitarian Law Rule 55.[86]

Concurrently, these violations engage the international law of state responsibility. Under Article 4 of the ILC Articles on State Responsibility, the military actions of the SAF are directly attributable to the state as an official organ, while the actions of the RSF during its formal integration from 2013 to 2023 are similarly attributable under Article 8 due to direct state instruction, direction, and control. Under Article 16, external states providing targeted military assistance,

[78] UNSC Res 169 (24 November 1961); UNSC Res 541 (18 November 1983); UNGA Res 2775 (XXVI); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* ICJ Rep 136, paras 87–88; VCLT, art 52.
[79] ILC Articles on State Responsibility, arts 4, 8, 10, 16, 41.
[80] AU PSC, *Communiqué on the Rejection of Parallel Governance Frameworks in the Republic of the Sudan* (21 March 2024) AU Doc PSC/AHG/COMM.1205; AU PSC *Communiqué* (15 August 2025).
[81] Scott Pegg, *International Society and the De Facto State* (Ashgate 1998); Nina Caspersen, *Unrecognized States: The Struggle for Sovereignty in the Modern International System* (Polity Press 2012).
[82] Yale Humanitarian Research Lab, *Satellite Verification of Systematic Destruction and Demography Changes in Darfur* (Special Report, 5 November 2025); UN Security Council Panel of Experts on the Sudan, *Report of the Panel of Experts Established Pursuant to Resolution 1591 (2005)* (UN Doc S/2024/65, 15 January 2024).
[83] UNSC Res 1593 (31 March 2005); UNSC Res 1591 (29 March 2005); UNSC Res 2620 (15 February 2022
[84] *Prosecutor v Omar Hassan Ahmad Al-Bashir* ICC-02/05-01/09; *Prosecutor v Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman ("Kushayb")* ICC-02/05-01/07
[85] Rome Statute, arts 6, 7, 8, 8(2)(e)(xix), 13(b), 17, 27, 28.
[86] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge University Press 2005) Rule 55; Additional Protocol II, art 14.

specialized drone technology, or arms flows while possessing knowledge of their ongoing deployment in war crimes bear direct legal complicity for an internationally wrongful act.

The legal precedent set by *Gambia v Myanmar* demonstrates that third-party states can invoke *erga omnes partes* standing to bring a formal enforcement action before the ICJ under Article IX of the Genocide Convention.[87] Consequently, Sudan possesses the clear legal capacity to institute formal proceedings against the United Arab Emirates for its documented complicity in the Masalit genocide, while remaining bound by Articles 6 and 7 of the Arms Trade Act to halt internal weapons flows used in the commission of atrocities.[88]

The third and final pillar is the structural remedy: the realization of internal self-determination through federal consociationalism, rather than further external secession. Comparative constitutional law provides valuable legal models. These include the decentralized federalism of Annex 4 of the Dayton Peace Accords in Bosnia and Herzegovina, the equitable wealth-sharing arrangements of Nigeria's federal character principle, and the procedural frameworks established within Sudan's own CPA 2005.[89] The *Quebec Reference* emphasized that internal self-determination through democratic representation, robust minority rights guarantees, and genuine regional devolution must always be preferred over territorial fragmentation. This internal remedy is supported by Article 25 of the ICCPR and Article 13 of the African Charter, which protect the right of citizens to participate freely in the government of their country.[90]It is further reinforced by the African Charter on Democracy, Elections and Governance, which strictly prohibits unconstitutional changes of government.[91] While the 2019 Constitutional Declaration attempted to establish a transition toward this model, the 2021 military coup directly violated Article 30 of the AU Constitutive Act, confirming that top-down peace architectures will consistently fail unless they are accompanied by a complete structural dismantling of the political marketplace.

To break this cycle of violence, the monetization of the state must be reversed. This requires strict international regulation of artisanal gold supply chains; the enforcement of rigorous due diligence standards under the OECD guidelines, targeted global sanctions against Al-Junaid and associated front companies, and strict anti-money laundering enforcement under the Financial Action Task Force (FATF). [92] Furthermore, international financial institutions must condition future debt relief explicitly upon the establishment of verifiable civilian control over national resource wealth.

In the final analysis, Sudan from 1955 to 2026 stands as a clear example where International Relations theories explain the underlying causes and persistence of conflict, but international law provides the objective criteria for legality and legitimacy. External secession in 2011 was a lawful, consensual remedy; the de facto partition of 2025–2026 is an unlawful manifestation of warlordism. The international community must firmly protect South Sudan's 2011 secession as an exceptional, *sui generis* historical event, decisively reject the RSF's parallel governance attempts, demand criminal accountability under the Rome Statute, and support a constitutional process toward federal democratic governance. Until these legal frameworks are fully enforced, Sudan will remain an arena where law is routinely displaced by the violence of the marketplace, yet where international law retains the unique power to delegitimise unlawful rulers and preserve the juridical state until effective, just governance is restored.

[87] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v Myanmar) (Provisional Measures)* ICJ Rep 3; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* ICJ Rep 43

[88] Arms Trade Treaty (adopted 2 April 2013, entered into force 24 December 2014) 3013 UNTS 269, arts 6(3), 7(1)(b).

[89] General Framework Agreement for Peace in Bosnia and Herzegovina (signed 14 December 1995) 35 ILM 75 [Dayton Accords,Annex 4 (Constitution of Bosnia and Herzegovina); Constitution of the Federal Democratic Republic of Ethiopia 1995, art 39; CPA 2005, 'Protocol on Wealth Sharing', arts 5–7.

[90] ICCPR, art 25; African Charter, arts 13, 19–24

[91] African Charter on Democracy, Elections and Governance (adopted 30 January 2007 entered into force 15 February 2012) art 23; Constitutive Act of the African Union, art 30

[92]Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (3rd edn, OECD Publishing 2016); UNCAC, arts 26, 52