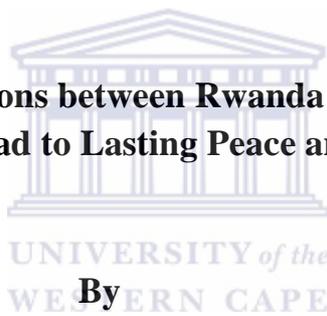


UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

A mini-thesis submitted in partial fulfillment of the requirement for the LLM degree at the Faculty of Law, University of the Western Cape

Renewing Diplomatic Relations between Rwanda and the Democratic Republic of Congo: The Road to Lasting Peace and Stability?



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DECLARATION

I declare that *Renewing Diplomatic Relations between Rwanda and the Democratic Republic of Congo: The Road to lasting Peace and Stability?* is my own work, that has not been submitted for any degree or examination in any other University. All the sources I have used or quoted have been indicated and acknowledged by complete references.

Bernard Dipo Toyambi

May 2011



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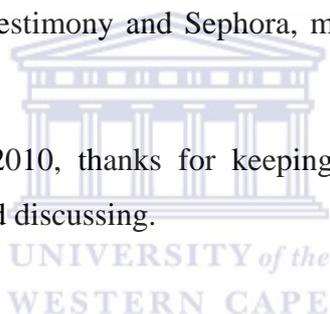
Thanks be to God, who always supported me during my study and for many blessing bestowed on me.

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Rwanda

Democratic Republic of Congo

United Nations

Peace

Security

Stability

Development

International Conference on Great Lakes region (ICGLR),

Conflict

International communities



LIST OF ABBREVIATIONS

AFDL	Alliance of Democratic Forces for the Liberation of Congo/Zaire
ADP	Alliance Democratique Populaire
ADF	Ugandan Allied Democratic Forces
DRC	Democratic Republic of Congo
DDRRR	Disarmament Demobilization Repatriation, Resettlement and Reintegration
CNDP	National Congress for the Defence of People
ICC	International Criminal Court
ICTY	International Criminal Tribunal for Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ITP/DRC	International Tribunal Penal for the Democratic Republic of Congo
ICRC	International Committee of the Red Cross
ICGLR	International Conference on the Great Lakes Region
ICJ	International Court of Justice
IDP	Internally Displaced Persons
FARDC	Forces Army of the Democratic Republic of Congo
FAR	Forces Army of Rwanda
FDLR	Force Democratic for the Liberation of Rwanda
MLC	Movement de Liberation du Congo
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilisation in the Democratic Republic of Congo
LRA	Lord's Resistance Army
SCUD	Unity Democracy and Change
SADC	Southern African Development Community

PRP	Partie dela Revolution Populaire
RPF	Rwandan Patriotic Force
RPA	Rwandan Patriotic Army
RCD	Congolese Rally for Democracy
ULK	Universite Libre de Kinshasa
UNITA	National Union for the Total Independence of Angola
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UPDF	Uganda Patriotic Defence Force
UPC	Union des Patriotes Congolais
USA	United Sates of American



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CHAPTER 1

Introduction

1. 1 Introduction

The Great Lakes Region has over the last fifteen years continued to be one the world's region that has mostly been affected by violent conflicts and wars.¹ The results of these have caused untold suffering, human rights abuses, destruction of infrastructure and the environment and have violated International Humanitarian Law. This continuous chaotic situation has also severely negatively affected the people of this region.² These wars have transformed borders into an area of conflict.

In the past, various efforts were made to restore peace and stability in the region, yet the interventions to restore peace have had limited success. The secret agreement between Rwanda President Paul Kagame and the Democratic Republic of Congo's President Joseph Kabila, led to the official entry of the Rwanda army into the Democratic Republic of Congo (DRC) territory, as a way to bring peace to the north and south Kivu provinces.³ The peace deal gives hope for an end to Africa's biggest war, but implementation of the agreement faces profound obstacles.⁴

In terms of the agreement Rwanda accepted that it would withdraw its support from the renegade General Nkunda's National Congress for the Defence of the People (CNDP) insurgency and simultaneously press it to accept integration into the national army, while the government of Kinshasa (DRC) agreed to a joint military strike on its territory with the Rwandan army against

¹Mealer, B *All things must fight to live, stories of war and deliverance in Congo* (2008) 9-10 (New York: Bloomsburg).

²International Conference on Great Lakes Region (IC/GLR) Regional Programme of Action for Peace and Security 4 Available at <<http://www.icgl.org>> [accessed 15 May 2010].

³ Congo: "Five Priorities for a peace building Strategy" (2009) Crisis Group Africa Report No 150.

⁴See <<http://www.worldpress.org/issues> Vol.49 no 10> [accessed 15 May 2010].

the successors of the 1994 genocidaires. It is an attempt to address a problem that has poisoned bilateral relations for 15 years.⁵

The celebration of Congo's 50th year of independence has restored diplomatic relations with the presence of the Rwanda and Uganda presidents in Kinshasa (DRC). During his address on 30 June 2010, the Congolese President says:

“My ambition is that the Democratic Republic of Congo becomes a tree of peace in the middle of Africa and a force of stabilization of the area of the Great Lakes, peace for Congo certainly, but for all countries which surround us. The efforts committed already will be continue with the objective of strengthening peace and consolidating the democracy, making effective decentralization especially to organize within the time the second general elections. In the long term to carry out the reform of the army, the policy force, the services of safety and justice, to maintain confidence and the peaceful cohabitation now restored with all the close countries, finally developing the co-operation and regional integration.”⁶

1.2 Background and rationale of the study

Insecurity, international human rights and humanitarian law violations in parts of the DRC, especially in the eastern provinces, continue to pose serious threats to political stability and development in the region. The Great Lakes Region is a geographical expression that encompasses a number of freshwater and their integral river basins in the heart of tropical Africa.⁷ Central Africa and East Africa were more familiar terms describing the regional states and their systems of interaction.⁸

In its fresh logical version, the Great Lakes Region retains its broad geographic reach, combining East and Central Africa into a complex network of political and economic interactions, with implications for local actors and beyond.⁹

The Africa Great Lakes Region was at the centre of a serious geopolitical decomposition in the 1990's with continental repercussions and was entangled in different wars and conflicts that

⁵ Congo: “Five Priorities for a peace building Strategy” (2009) *Crisis Group Africa Report* No 150.

⁶ See <<http://www.digitalcongo.net/discour> du president J.Kabila le 30/6/2010> [accessed 5 July 2010].

⁷ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2008) 1-2 (London: Palgrave Macmillan).

⁸ Ibid.

⁹ Nzongolo, G *The Congo from Leopold to Kabila* (2002) 214-215 (London: Zed books).

ignored international limit.¹⁰ The acute destabilization of the region started on 1 October 1990 when Rwanda's Patriotic Front (RPF) attacked Rwanda from Uganda with Ugandan support.¹¹

After the collapse of the 1993 Arusha Peace Accord and following the genocide and massive war crimes and crime against humanity, the RPF won a military victory and took power in July 1994. More than one million people died and more than two million fled the country, mainly to the DRC and Tanzania.¹²

After only eight months the process of democratic transition had ended in disaster in Burundi. The country embarked on a decade long civil war and thousands of people were killed.¹³ Burundi refugees inundated the Congolese Kivu provinces. In a perverse cycle, the instability of its neighbours exposed the DRC, just as the DRC's instability was a menace to its neighbours. The present major conflict and instability in the Great Lakes Region has resulted in the decay of states and instrument of regulation in the DRC. Rwanda has been at the heart of the region's instability.¹⁴

The new Rwanda government led by the RPF which took power in July 1994 invaded the neighbouring DRC in 1996 and 1998, when the Rwandan civil war continued extra-territorially.¹⁵ Uganda also followed Rwanda and invaded the DRC, accusing the DRC's ex-president Mobutu of giving refuge to the rebel group to prepare attacks on Rwanda.¹⁶ In late 1996, Congolese rebels, backed by Rwandan and Ugandan troops, seized control of the eastern of the DRC of exterminate the *Hutu* militia.¹⁷ And once they had established a foothold in the east, Laurent Kabila was put in office.

In August 1998 Rwanda and Uganda again invaded the DRC with the support of Burundi, which Kabila showed a firm determination with the support of SADC troops (Zimbabwe, Angola,

¹⁰ Stefaan, M and Reyntjens, F *The Political economy of the Great Lakes Region in Africa* (2006)14(London: Lynne Rienner publisher).

¹¹ Louis, JC and Steven, L"spiegel, the international relation of region". Policy 2, No 4.

¹² Reyntjens, F *The Great African war: Congo and Regional geopolitics* (2009) 2 (Cambridge: Cambridge University Press.

¹³ Ibid.

¹⁴ Nzongolo, G *The Congo from Leopold to Kabila* (2002) 214 (London: Zed books).

¹⁵ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2008) 3 (London: Palgrave Macmillan).

¹⁶ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2008) 3 (London: Palgrave Macmillan).

¹⁷ Mealer, B *All things must fight to live, stories of war and deliverance in Congo* (2008) 9 (New York: Bloomsburg).

Namibia, Chad, and Burundi rebels)¹⁸ the Rwanda and Uganda occupied the eastern of DRC shared with the Congolese rebel groups Rally for Congolese Democracy (RCD) and Movement for the Liberation of Congo (MLC). The mercurial allegiances of Rwanda, Uganda and rebel faction groups caused even greater turmoil and massive atrocities in the eastern part of the DRC.

The insecurity in the region has resulted in massive violation of International Humanitarian Law (IHL) and human rights by Rwandan, Ugandan and rebels troops in the east of the DRC. Rwanda and Uganda were allies when they invaded the east of DRC in 1996 and again in 1998, but in 1999 their relations had soured and they rapidly developed a profound hostility, dramatically demonstrated when their armies clashed on several occasions in Kisangani (DRC).¹⁹

War and armed conflicts have dominated the international media coverage of Africa because of the high incidence of political violence, human rights abuse and the multiple frequencies of wars and armed conflicts.²⁰ Insecurity and human rights abuses in the Great Lakes Region remain a serious concern, despite improved diplomatic co-operation between the DRC and Rwanda. After 15 years of tension and conflicts different agreements have led to significant improvements in border security in the region.²¹

In July 1999 at a summit in Lusaka, Zambia, the leaders of Uganda, Rwanda, the DRC, Angola, Zimbabwe, and Namibia, signed a peace agreement. The Pretoria Agreement in 2002 and several other agreements which led to significant improvement in border security in the region and was called for a cessation of hostility, an inter-Congolese dialogue, withdrawal of foreign forces, and disarmament of the negative forces, armies and groups responsible for the 1994 Rwanda genocide.²²

The parties have implemented most of the agreements except the demobilization of the negative forces in the DRC, a major source of diplomatic tension between the DRC and Rwanda. Frequent efforts to deal with these issues have not succeeded because the Congolese government

¹⁸ Prunier, G *Africa's world war: Congo, the Rwanda genocide, and the making of a continental catastrophe* (2008) 9 (New York: Oxford University Press).

¹⁹ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2008) 32 (London: Palgrave Macmillan).

²⁰ Francis, DJ *Peace and conflicts in Africa* (2008) 7 (London: Zed books).

²¹ <<http://www.crs.org.Report>> for congress March, 22, 2005 [accessed 14 May 2010].

²² <<http://www.crs.org.Report>> for congress March, 22, 2005 [accessed 14 May 2010].

has not been forceful in its efforts to disarm the negative forces with the support of United Nations Organization Mission (MONUC) in the DRC.²³

Although diverse efforts were made in the past to bring an end to these wars and violent conflicts in the region, some of them was successful others less so. It became more and more imperative to embark on a comprehensive and concerted effort for the creation of a sustained peace and security framework in the region.²⁴

Fully acknowledging these efforts, the heads of state and governments of the eleven members of the International Conference on the Great Lakes Region (ICGLR) expressed their confidence in the restoration of inter-state and intrastate relations based on trust, renaissance of collaboration and integration, with the structure of a regional and comprehensive vision for the promotion of sustainable peace, security, democracy and development.²⁵

The Regional Programme of Action for Peace, Security and Development with the support of the Protocol on Non-Aggression and Mutual Defence among the states seeks to extend such an agenda in the region.

As has been highlighted before, insecurity in the region remains a serious problem, divergence improved diplomatic co-operation between Rwanda and the DRC, the renewing military and diplomatic collaboration can be the step forward to restore peace, Security and development in Great Lakes Region but it is not enough to convey peace to the rest of the region exceptional in Kivus.

The joint military action between Rwanda and the DRC did not produce considerable results against the Rwanda *Hutu* rebels. The great hopes have been put on in the implementation by Rwanda and the DRC of the Regional Programme of Action for Peace, Security and Development adopted by the ICGLR and the application of the Protocol on Non- Aggression and Mutual Defence among the state members.²⁶

²³ For more on MONUC's mandate see <<http://www.MONUCorg>> [accessed 15 May 2010].

²⁴ IC/GLR.Regional Programme of Action for Peace and security 4 available at <<http://www.icgl.org>>[accessed 14 May 2010]

²⁵ See Dar es Salaam Declaration (DD) 20, November 2004, para, 13.

²⁶ See Dar- es- salaam Declaration, 20 November 2004 available at <<http://www.icgl.org>> [accessed 14 May 2010].

The Regional Programmes describe the objectives, policy institutional method, and priority need in order to create, reinforce and carry on peace and security in the region. Progress in one country typically is not possible without stability and progress in its neighbouring countries. It is also clear that regional peace and eventually economic development are highly unlikely without external assistance.²⁷

1.3 Conceptual framework

This study focuses on the Great Lakes Region, with the emphasis on the renewed diplomatic and military co-operation between Rwanda and the Democratic Republic of Congo. Since 1996 to date, the eastern part of Congo turned from a peace area to a conflict region. The deal struck by Rwanda and the DRC for renewing diplomatic relations is an important step forward to bring peace and stability in the region. This can be achieved if the eastern part of the DRC and the Great Lakes Region as whole are to be stabilized which will bring an end to massive International Humanitarian and Human Rights Law violations. Rwanda and the DRC government will need to display great courage and commitment if they are to save their population from further retribution.

1.4 Objective and research problem

The major question that will be addressed in this study is, after many years of diplomatic tension between the DRC and Rwanda, the region has had more war and armed conflicts than any other region on the continent, has the renewed military and diplomatic co-operation between them demonstrated significant steps forward in the security borders of the region?

The study addresses this question in a broader context that requires dealing with the following issues: the new turn in the DRC and Rwanda diplomatic co-operation contributes to a more peaceful, stability in the Great Lakes Region? After 15 years of conflicts and International Human Rights and Humanitarian Law violations in the region, can this be the step forward for the stability and development of the region?

²⁷ Ibid.

These questions need specific answers. What is the motive of Rwanda and the DRC to bring peace and stability to the Great Lakes Region? How the renewing diplomatic relation between the DRC and Rwanda benefit for the whole region? What would be the appropriate strategy for promoting peace and security? What are the role and strategy of the United Nations (UN) and international community in restoring peace and stability in the region?

The overall objective of the study is to ascertain whether Rwanda and the DRC can agree on a durable lasting peaceful and implement regional programmes that consolidate diplomatic relations. Normalization of relations between Rwanda and the DRC is essential if the eastern Congo and the Great Lakes Region as a whole are to be stabilized. Diplomatic rapprochement can build capacity for the realization of security, generating border economic zones would led to a prosper Great Lakes Region because of potential natural resources available in the region with the support of the UN and international community.

1.5 Methodology

There exists no social methodology which is obligatory, said Professor Madeleine Grawitz.²⁸ The methodology depends on the topic before research and investigator.²⁹ The methodology of this study will be mainly analytic and descriptive.

1.6 Limitation of the study

This study is undertaken in South Africa due to various constraints. The study will be limited to a case study of the conflicts between the DRC and Rwanda, and their renewed diplomatic and military co-operation. It would have also a look on different countries involved in the conflict. It is believed that the selected countries (states) constitute the base of conflict, war, atrocities and instability in the Great Lakes Region.

1.7 Literature review

The materials used shall include case law, constitutions, textbooks, journal articles, newspaper reports, the internet and other relevant literature sources. This approach will highlight the origin

²⁸Grawitz (M), *Methodes des sciences sociale* (1984) 2 (Paris: Dalloz Press).

²⁹ Ibid.

and the causes of the conflicts between Rwanda and the DRC. Books and articles have been written on the Great Lakes Region and its Regional Programme of Action for Peace and Security adopted by the ICGLR (International Conference on the Great Lakes Region). But none have been written about or have made mention of the application and impact of the new diplomatic rapprochement between Rwanda and the DRC in the region. This is what this mini-thesis seeks to do.

1.8 Chapter outline

This mini-thesis is divided into 6 chapters. Chapter 1 will be an introduction to the study. Here the background, rationale, and objective of the study, the conceptual framework, and research question, methodology and literature review will be discussed.

In Chapter 2, I will question and analyze the meaning of peace, security, stability, conflict and poverty from a human rights perspective.

In Chapter 3, the causes and consequences of the conflict between Rwanda and the DRC will be examined. Chapter 4 will explore the renewing diplomatic co-operation between Rwanda and the DRC. There will also be a brief look at the role of the UN, international community, and other regional institutions and efforts made to bring peace in the region.

Chapter 5 will be examining the violations of International Humanitarian Law during armed conflict in the DRC and its applicability.

The last chapter will contain conclusions drawn from the study and will make suitable recommendations.

CHAPTER 2

Meaning of Peace, Security, Conflict and Poverty

2.1 Introduction

In general all human beings desire security, stability, peace and development in the world, particularly in the region in which they live. However, it is not always very clear what people understand as peace, security, and stability, and how these conditions can be attained and preserved in society.³⁰ This chapter intends to explore the meaning of peace, security, poverty and conflict.

2.2 Peace

The first point to be made here is that peace is a universal concept. Every society desires it and none can exist without it.³¹ In this analysis, peace will be examined from two different perspectives: peace as a universal concept and peace in the African tradition.

2.2.1 Peace as a universal concept

The question to be asked is - what is peace and under what circumstances does the political will exist for peace and stability? There is little accord on the answer. We can distinguish at least three different meanings or types of peace. Peace is regarded as the simple absence of war; peace as functional and economic interaction, which is also referred to as transactional peace; and lastly peace is often seen as a social condition in which accommodation rather than force mediates change in a short integration or in perpetual peace.³²

A cold peace and the absence of war may be achieved by a no threats system. Ranabir has distinguished two systems of peace practice, Hegemony and Deterrence. Hegemony is rarely an exclusively corrective system.³³ Deterrence is the threat of force to prevent revolting actions by another hegemony, and deterrence may achieve a superficial peace in which a hegemony can use

³⁰ Francis, DJ *Peace and conflict in Africa* (2008) 32-33 (London: Zed Books).

³¹ Ibid.

³² Ranabir, B *Peace Studies: an introduction to the concept, scope, and term* (2004) 32-33 (London: New Delhi).

³³ Ibid.

the threat of punishment to stop others using force and thus maintain a minimalist peace.³⁴ A deterrent also can practise a minimalist form of peacemaking by threatening to exact costs well beyond the gain an opponent may hope to make from an attack.³⁵

Christians and Jews consider peace as a divine greeting. For example, the salutation “shalom” is as popular among Christians and Jews as “A salaam aleikum” is among Muslims.³⁶ Both terms mean “peace be unto you”.³⁷ The most basic but popular understanding of peace is that it is the opposite of conflict or violence.

A major limitation of this understanding of the concept is that, it places exclusive emphasis on averting violence. It does not shed light on how to contend with psychological and structural violence, which defined as the “social and personal violence arising from unjust, repressive national or international political and social structures.”³⁸ But this kind of peace is technically referred to as “negative”, a concept introduced by Galtung in the editorial to the first issue of the *Journal of Peace Research*.³⁹ He defined negative peace as “absence of violence, absence of war, and positive peace as” the integration of human society.⁴⁰

Positive peace considers the prevention of violence as a restricted goal on the ground that it does not address the structural violence that bedevils the world or which supports a violence position.⁴¹ Peace is a type of relation between a political system and communities that is characterised by the absence of armed conflict.⁴² A peaceful society is one that does not make war with another community.

2.2.2 Peace in African tradition

In traditional African societies, peace is not a theoretical notion, but rather a down to earth and practical concept. In African traditional religion peace is conceived not in relation to conflict and

³⁴ Ranabir, S *Peace Studies: an introduction to the concept, scope, and term* (2004) 33 (London: New Delhi).

³⁵ Ibid.

³⁶ Francis, DJ *Peace and conflict in Africa* (2008) 33 (London: Zed Books).

³⁷ Ibid.

³⁸ Galtung, J “Social cosmology and peace Research “(1981) Vol 18 No 2 *Journal of peace research* 2.

³⁹ Ibid.

⁴⁰ Galtung, J “Social cosmology and peace Research “(1981) Vol 18 No 2 *Journal of peace research* 2.

⁴¹ Francis, DJ *Peace and conflict in Africa* (2008) 33 (London: Zed Books).

⁴² Levinson, D *Aggression and Conflict* (1994) 136 (California: Denver, Colorado Oxford).

war, but in relation to order, harmony and equilibrium.⁴³ It is a religious value in that the order, harmony and equilibrium in the universe and society are believed to be divinely established and the obligation to maintain them is religious.⁴⁴

2.2.2.1 Peace as fullness of life

The promotion and enhancement of life is the central principle of traditional African morality. The goal of all moral conduct is, therefore, the fullness of life.⁴⁵ Human life is considered full in Africa when it is marked by spiritual, material, and social blessings. Peace is an excellent relationship well lived, health, absence of force and divergence, being strong and prosperous.⁴⁶

Peace is the totality of wellbeing, fullness of life here and hereafter, what the Yomba call Alafia, the sum total of all that man may desire: an undisturbed harmonious life.⁴⁷ Any action that is capable of hindering another from living the fullness of life is considered a breach of peace.⁴⁸

2.2.2.2 Peace as the result of harmonious living

Harmony is a fundamental notion in traditional African religion and thought. In a person's life, harmony is found in the ability to reconcile one's desires with one's means to co-ordinate one's sentiments and their verbal expressions, as well as the ability to discharge one's religious and social duties.⁴⁹

In traditional African religion peace in the community cannot be separated from justice. Peter Sarpong underlines the context of "Ashanti culture": justice produces peace, there can be no peace without justice, peace is honourable, and peace can never be achieved when a person is disgraced or when you disgrace another person.⁵⁰ Peace must relate to one another on equal

⁴³ <<http://www.afrikaworld.net/afrel/goddiorah.htm> Africa peace> [accessed 07 July 2010].

⁴⁴ Ibid.

⁴⁵ Rweyemamu R. "Religion and Peace" (1984) Vol 38. *Studia missionalia* 382.

⁴⁶ Ibid.

⁴⁷ Awolalu, JS, "The Yoruba philosophy of life, in presence Africaine"(1970) 21 .Available at <<http://www.afrikaworld.net.afrel>> [accessed 7 July 2010] .

⁴⁸ <<http://www.afrikaworld.net/afrel/goddiorah.htm> Africa peace> [accessed 7 July 2010].

⁴⁹ Ibid.

⁵⁰ Sarpong PK "Africa Traditional Religion and Peace" (1989) Vol 38 *Studia missionalia*. 358.

terms. On the theme of peace one sees very clearly the very close relationship existing between religion and morality in Africa.⁵¹

Immorality or bad behaviour disturbs peace in the community. It makes the ancestors angry, provokes the divinities and may even annoy God.⁵² This explains why “one of the main means of restoring peace in society is to find out what has gone wrong spiritually through special rituals morale to restore the state of equilibrium.”⁵³ War was habitually not required for its own sake.

2.2.2.3 Peace as a gift of God

Since human beings are aware of their limitations in attaining and maintaining peace between people in their societies and also aware of the fact that God is the source of universal order and harmony, they regularly turn to Him to ask for peace.⁵⁴ African tradition equally believes that true peace is a gift of God.⁵⁵ One of the main purposes of sacrifice is expiation. In offering expiation sacrifices, human beings are asking God and the other spiritual beings to intervene and help restore the peace that has been violated.⁵⁶

Like in every other aspect of the religious life of Africans, the divinities and the ancestors are very close collaborators of God in the administration of the universe, especially of human affairs.⁵⁷

2.2.2.4 Peace as a pre-condition for progress

If justice is the pre-condition for peace, then peace is the requirement for progress. Africans notwithstanding their creed barely ever talk of progress without founding it on peace.

The Yoruba expresses this in very simple and straight terms: “I want to build a home; I want to have children; without peace, these things are impossible.”⁵⁸

⁵¹ Rweyemamu R. “Religion and Peace” (1984) Vol 38 *Studia missionalia* 381.

⁵² Ibid.

⁵³ Sarpong, PK “African Traditional Religion and Peace” (1989) Vol 38 *Studia missionalia* 359.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Sarpong, PK “African Traditional Religion and Peace” (1989) Vol 38 *Studia missionalia*. 360.

⁵⁷ Ibid.

When an individual or the community has peace within, the terrain is prepared for yet more peace and this brings the individual or the community closer to fullness of life.⁵⁹

2.3 Security

The problem addressed in this section concerns human security or, this can also call it, human stability. For a better understanding of this issue, the mini-thesis will focus on the first step taken by the Africa Great Lakes Region towards promoting increased human stability and the prevention of armed conflict in the region. This study also focuses on the steps that must be taken in order to realise the objectives of development and durable stability.

Security can be defined as the guarantee of safety. One might further define the guarantee of safety as “the political arrangements” that make war less likely, which provide for negotiations between states than belligerence and which aim to preserve peace as the normal condition among states.⁶⁰

The term security has sometimes assumed a sinister implication in the common sense of national security. National security can refer to safety, the possibility of the absence of war and the possibility of negotiations rather than belligerence.⁶¹ However, it can also refer to the maintenance of peace as the standard condition for some people within society but not for others belonging to the same nation.⁶²

National security as a term has also come to indicate all the purposes of defence, including preparations for belligerence, pre-emptive strikes and even any presumed vital interest; as a result, policies of national security may precipitate insecurity rather than security by being the exclusive tools of those in power.⁶³

⁵⁸ Awolalu, JS “the Yoruba philosophy of live in presence Africanine” (1970) Vol 8 *The African Book Record* 21-22 Available at <<http://www.africaworld.net.afret>> [accessed 7 July 2010].

⁵⁹ Awolalu, JS “the Yoruba philosophy of live in presence Africanine” (1970) 21-22.

⁶⁰ <<http://www.iss.co.za/pubs/books/UNESCO/Maxted.html> Human Stability and Conflict in the Horn of Africa> [accessed 16 July 2010].

⁶¹ Ibid.

⁶² <<http://www.iss.co.za/pubs/books/unesco/maxted.html> Human stability and conflict in horn of Africa> [accessed 19 July 2010].

⁶³ Ibid.

2.4 Conflict

Conflict constitutes a major threat to the African Great Lakes Region's development in terms of loss of human life, destruction of property, displacement of people sometimes across international borders, and diversion of resources meant for promoting sustainable development into arms purchases and funding of expensive peacekeeping support operations.⁶⁴

The mainstreaming of conflict analysis in the day to day practices of a large number of organizations operating in pre-conflict, conflict and post-conflict environments is a remarkable achievement that will potentially have significant consequences in respect of the prevention, management and resolution of violent conflict as well as the efficacy of assistance.⁶⁵

A conflict can be internal to individuals. Conflict as a concept can help explain many aspects of social life, such as, social disagreement, conflicts of interests and fights between individuals, groups, or organizations.⁶⁶ In terms of political context, conflict can refer to wars, revolutions or other struggles which may involve the use force, as in the terms armed conflict.⁶⁷

In this context the terms war and armed conflict will be examined.

War is a behaviour pattern exhibited by many primate species,⁶⁸ including humans, and also found in many ant species.⁶⁹ The primary feature of this behaviour pattern is a certain state of organized violent conflict that is engaged in between two or more separate social entities.⁷⁰

In the book *On War*, Prussian military general and theoretician Carl Von Clausewitz, refers to war as the "continuation of political intercourse, carried on with other means."⁷¹ War is an interaction in which two or more opposing forces have a struggle of wills.⁷²

⁶⁴ Francis DJ *Peace and conflict in Africa* (2008) 46 (London: Zed Books).

⁶⁵ Francis, DJ *Peace and conflict in Africa* (2008) 32-33 (London: Zed Books).

⁶⁶ Ibid.

⁶⁷ <http://www.pcr.uu.se/database/definition_all.htm#inten> [accessed 19 July 2010]

⁶⁸ See O' Connel, Sanjida (2004-01-07). "Apes of war ... are it in our genes? The daily Telegraph. London. <<http://www.telegraph.co.uk/science-news/3317461/Apes-war-is-it-in-our-genes.html>. Analysis of chimpanzee war behavior> [accessed 19 July 2010].

⁶⁹ See "Warrior Ants: The Enduring Threat of the Small War and the Landmine"

1996.<http://www.papers.ss.m.com/sol3/papers.cfm?abstract_id=935783. Scholarly comparisons between human and ant wars [accessed 19 July 2010].

⁷⁰ Ibid.

A civil war is a war between factions of citizens of one country (such as in the English civil war), or else a dispute between two nations that were created out of one formerly united country.⁷³ Armed Conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle related deaths in one calendar year.⁷⁴ The armed conflict can be international or non-international.

International armed conflict usually refers to an inter-state conflict. The ICRC Commentary on the Four Geneva Conventions states that “[a]ny difference arising between two States and leading to the intervention of members of armed forces is an armed conflict which is the meaning of Common Article 2 of the 1949 Geneva Conventions, even if one the Parties denied the existence of a state of war.”⁷⁵

A non-international armed conflict exists when there is “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”⁷⁶

2.5 Poverty

The meaning and concept of poverty have changed over the centuries. The definition of poverty in terms of material deprivation is confirmed by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) as insufficient income to buy minimum goods and services⁷⁷ and which defines poverty as the state of being extremely poor. It defines the term “poor” as lacking sufficient money to live at a standard considered comfortable or normal.⁷⁸

⁷¹Von Clausewitz, Carl *On War* (2006)77- 87(Gutenberg Books) Available at <<http://www.gutenberg.org./books>.[accessed 19 September 2010]

⁷²Ibid

⁷³See Fearon, J”Iraq’s Civil war” in *Foreign Affairs*, March/April 2007. For further discussion on civil war classification, see the section definition.

⁷⁴ See <http://www.pcr.uu.se/database/definition_all.htm#intrn>[accessed 16 July 2010].

⁷⁵ ICRC Commentary on the Four Geneva Convention of 1949, 20-21.

⁷⁶ See *Tadic* case, No.ITCY-94-1-AR72 paragraph 70.

⁷⁷Committee on Economic, Social, and Cultural Rights: Poverty and the International Covenant on Economic, Social, and Cultural Rights’ Statement adopted by the Committee on 4 May 2001,E/C.12/2001/10, 10 May 2001 Para 8.

⁷⁸ Committee on Economic, Social, and Cultural Rights: Poverty and the International Covenant on Economic, Social, and Cultural Rights’ Statement adopted by the Committee on 4 May 2001,E/C.12/2001/10, 10 May 2001 Para 8.

Poverty is today defined in terms of the absence of basic freedoms or capabilities.⁷⁹ In analyzing social justice, there is a strong case for judging individual advantage in terms of the capabilities that a person has, that is, the substantive freedoms he or she enjoys to lead the kind of life he or she has reason to value.⁸⁰ In this perspective, poverty must be seen as the deprivation of basic capabilities rather than merely as income, which is the standard principle for identifying poverty.⁸¹

The Office of the High Commission for Human Right (OHCHR) made clear the meaning of poverty from a human rights perspective when it defined poverty as the denial of a person's rights to a range of basic capabilities, such as, the capability to be adequately nourished, to live in good health, and to take part in decision making processes in the social and cultural life of a community.⁸² In the language of rights, one may say that a person living in poverty is one for whom a number of human rights remain unfulfilled, such as, the rights to food, health, political participation and so on.⁸³

In this regard, not all rights will qualify as basic rights for the purposes of the definition of poverty. Whatever the precise definition used, poor people share several key attributes, which are both a result and a cause of poverty.⁸⁴ These attributes include:

- (a) Inability to secure basic needs (shelter, food, health);
- (b) Lack of income (or assets that can provide income);
- (c) Social exclusion (inability to participate in the political process);
- (d) Lack of opportunities to improve one's condition; and
- (e) Vulnerability (e.g. natural disaster, socio-political instability, market/ price risks).

⁷⁹ An approach made popular by Sen, A. for instance, *Development as Freedom* (2010).

⁸⁰ *Ibid.*

⁸¹ An approach made popular by Sen, A. for instance, *Development as Freedom* (2010).

⁸² <<http://www.nric.net/poverty/publ/>>iascp.pdf /Property Rights, Collective action and poverty, the role of > [accessed 5 August 2010].

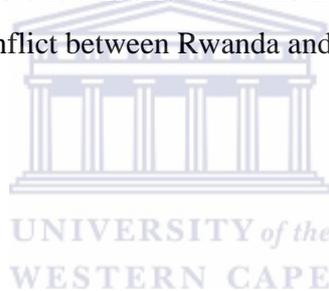
⁸³ OHCHR Principles and Guidelines for a Human Rights and Approach to Poverty Reduction Strategies available at <www.ohchr.org> [accessed 5 August 2010].

⁸⁴ <www.nric.net/poverty/publ/> iascp.pdf /Property Rights, Collective action and poverty, the role of > [accessed 5 August 2010].

2.6 Conclusion

This chapter has explored peace as a general theory and three notions of peace were also discussed, namely peace as the mere absence of war, peace as a social condition, and peace as functional and economic interaction. In traditional African religion, peace is a fullness of life led by the goal of moral conduct. Peace is also seen as the effect of harmonious living, which is characterized by the existence of close affiliations between religion and integrity. In African tradition peace is considered as a gift of God and as necessity for development.

The term security was examined as a state of feeling secure. No one can agree to reside in an insecure area or a state dominated by war, armed conflict and poverty. War and armed conflict thus were, and continue to be, a main root of poverty in the world, particularly in African societies. On the basis of this theoretical framework this mini-thesis will be investigating the causes and consequences of the conflict between Rwanda and the DRC in the next chapter.



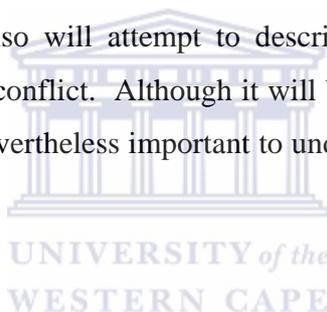
CHAPTER 3

The causes and consequences of conflict between Rwanda and the DRC

3.1 Introduction

Chapter 3 seeks to indentify the causes of the fifteen-year conflict between Rwanda and the DRC and its consequences. One cannot discuss the ongoing conflict without accounting for the fact that the conflict directly embraces the entire Great Lakes Region.

The overall intention of this chapter will be mainly to examine the impact of the conflict in the Great Lakes Region due to the implacability of Rwanda and the DRC and role played during and after the conflict. This chapter also will attempt to describe some guidelines to provide an understanding of the origin of the conflict. Although it will be difficult for this study to give all the reasons for the conflict, it is nevertheless important to understand the events which embraced the whole region.



3.2 Causes of the conflict

The eastern and southern parts of the DRC have historically been an integral part of the Great Lakes Region as regions that have been more associated with provincial and local leaders rather than being governed by an official central administration.⁸⁵ The serious geo-political breakdown of the region started in October 1990 with continental consequence and was involved in different wars and armed conflicts that ignored international limits.⁸⁶

The rebel force, composed primarily of ethnic *Tutsi*, blamed the government for failing to democratise and resolve the problems of some 500,000 *Tutsi* refugees living in a Diaspora around the world.⁸⁷ The conflict dragged on for almost two years until a cease-fire accord was

⁸⁵ Adie, C *Politics in Africa: A new Beginning?* (2003) 157 (Wodsworth; Thomson Learning, Belmont CA).

⁸⁶ Ibid.

⁸⁷ Niemann, M "War Making and State Making in Central Africa" (2007) Vol 53 No 3 *Africa today* 20-40.

signed on 12 July 1992 in Arusha, Tanzania, fixing a timetable for an end to the conflict, and for political dialogue leading to a peace accord and power sharing.⁸⁸

On 6 April 1994 the airplane carrying President Habyarimana and the President of Burundi was shot down as it prepared to land at the capital Kigali. As though the shooting down of the airplane was a signal, military and militia groups began rounding up and killing all *Tutsis* and political moderates, regardless of their ethnic background.⁸⁹

The RPF rebel groups stationed in Kigali under the Arusha Accord began their attack immediately after the shooting down of the presidential plane. The militia fought their way out of Kigali and joined up with RPF units in the north and the RPF then restarted its invasion, and civil war raged concurrently with the genocide for two months.⁹⁰ French forces landed in Goma in June 1994 on a humanitarian mission under authorisation of Mobutu's regime. They were deployed throughout southwest Rwanda in an area they called *Zone Turquoise*, quelling the genocide and stopping the fighting in that area.⁹¹

The Rwanda government army was conquered by the RPF forces and fled across the border to the DRC, followed by more than two million refugees who fled to the DRC, Tanzania, and Burundi. The RPF forces took the capital Kigali in July 1994, and control the country devastated by the armed conflict and genocide.⁹²

Due to economic factors, ex-President Mobutu had failed to provide his country with even the most basic of infrastructure. Among other things, his government was incapable of providing most of the basic needs for the avoidance of an invasion, loss of territory, crime prevention and the ability for peaceful resolution and security.⁹³

The entire Great Lakes Region became inundated with a surplus of small arms and military hardware left over from the Cold War era, allowing increasing political conflict to engender

⁸⁸ Niemann, M "War Making and State Making in Central Africa" (2007) Vol 53 No 3 *Africa today* 20-40.

⁸⁹ Dobson, S "Conflict in the Great Lakes Region" (2009) INTR3064 *Africa on a Global Stage* 1-4.

⁹⁰ Niemann, M "War Making and State Making in Central Africa" (2007) Vol 53 No 3 *Africa today* 20-40.

⁹¹ Adie, C *Politics in Africa: A new Beginning?* (2003) 157 (Wadsworth: Thomson Learning, Belmont CA).

⁹² Ibid.

⁹³ Ibid.

various armed rebel groups.⁹⁴ In 1991 at the National Congolese Sovereign Conference, Mobutu encouraged Congolese citizens from north and south Kivu to expel Rwandans and Ugandans back the border, and to garner Congolese support he consequently rescinded their Congolese citizenship.⁹⁵

Under Mobutu's regime in 1990 ethnic tensions raged through the country as a direct result of increasing political confusion in Rwanda and Burundi. With the influx of *Hutu* refugees, what had been a local conflict quickly became a nationwide war. President Mobutu regime was tied to that of the *Hutu* refugees who constituted an obstacle to the strengthening of the *Tutsi*-dominated regime in Rwanda.⁹⁶

The tension increased with the political divisions of colonialism which was push ahead in the earliest part of the twentieth century and which gave rise to an outbreak of conflict in its most severe form.⁹⁷ The *Banyarwanda*, the original inhabitants of the mountainous regions of Burundi and Rwanda, were mostly dispersed throughout Uganda and the DRC well before colonisation.⁹⁸

Colonial political divisions and ethnic categorisation forged unequal political rights and in stratification of citizenship in an area which had become the four separate countries of the DRC, Burundi, Rwanda and Uganda, ruled by three separated European power.⁹⁹ Mobutu's rise to power in the DRC saw irregular and variable changes in his citizenship policies. After losing citizenship rights granted to them in 1972, Rwandans and Burundians living in the DRC were felt marginalized and turned to the rising RPF for support.¹⁰⁰

In 1994, there were over two million refugees living in camps in the eastern part of the DRC/Zaire, as a result of the political confusion experienced in Rwanda and Burundi in the previous decades, and many refugees at that time were given Congolese citizenship by ex

⁹⁴ Moffett, L "Ending the cycle of violence in the Congo, is peace possible in the Heart of Darkness? (2009) *Journal of Peace, Conflict and Development* 4.

⁹⁵ Niemann, M "War Making and State Making in Central Africa" (2007) Vol 53 No 3 *Africa today* 20-40.

⁹⁶ Dobson, S" Conflict in the Great Lakes Region" (2009) 2 INTR3064 *Africa on a Global Stage*.

⁹⁷ Adie, C *Politics in Africa: A new Beginning* (2003) 157 (Wadsworth: Thomson Learning, Belmont CA).

⁹⁸ Adie, C *Politics in Africa: A new Beginning* (2003) 159(Wadsworth: Thomson Learning, Belmont CA).

⁹⁹ Niemann, M "War Making and State Making in Central Africa" (2007) Vol 53 No 3 *Africa today*20-40.

¹⁰⁰ *Ibid*.

President Mobutu,¹⁰¹ coinciding with enormous economic problems in the DRC thus putting additional stress on limited state resources.

The refugee camps were controlled by the Rwandan genocide perpetrators, the *Interahamwe*, who enjoyed support from the Mobutu government and who started launching attacks on Rwanda and the Congolese *Banyamulenge* in South Kivu, giving rise to the conflict in the region.¹⁰² After taking power in Rwanda, the RPF set two goals to be achieved: the extermination of the *Hutu* refugees and the exclusion of Mobutu from control of the DRC.¹⁰³

The calculation was simple. It was thought that with the presence of two armies on Congolese territory (the former Rwandan Armed Forces that had moved into the, DRC and the Congolese Armed Forces themselves), Mobutu would side in the case of war with Museveni's Uganda and Kagame's Rwanda.¹⁰⁴

The removal of the two armies became a main concern for the international community which had adopted Rwanda's policy of preventing genocide in the DRC. The internationalisation of the war in Kivu became a reality when Rwanda, Uganda, Burundi and their allies, with the assistance of the international community, intervened directly in the DRC's politics and internal affairs.¹⁰⁵

Legitimately, their actions were undertaken within the structure of a three party commission, consisting of the DRC, Rwanda and United Nations High Commissioner for Refugees (UNHCR). In reality, a plethora of humanitarian organisations were involved. All these actors failed in their responsibilities, principally because *Tutsi* leaders and their factions rejected the idea of the *Hutu* refugees returning to Rwanda. Rwanda's new president, Paul Kagame, preferred a policy of internal and external oppression that would last for more than six years.¹⁰⁶

¹⁰¹ Adie, C *Politics in Africa: A new Beginning* (2003) 159 (Wadsworth: Thomson Learning, Belmont CA).

¹⁰² Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2006) 203-204 (London: Palgrave Macmillan).

¹⁰³ Ibid

¹⁰⁴ Mangu, A "Conflict in the Democratic Republic of Congo and the Protection of Rights under the African Charter" A.B (2003) Vol 3 *African Human Rights Law Journal* 235.

¹⁰⁵ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2006) 204 (London: Palgrave Macmillan).

¹⁰⁶ Ibid.

Most of the Rwandan *Hutu* refugees, who returned home freely or forcibly, were killed by the new leaders and civilian *Tutsis*. However, the strategy that President Paul Kagame engaged towards the DRC after taking power in 1994 went far beyond revenge for the 1994 genocide and the obstruction of the *Hutu* refugees return to Rwanda.¹⁰⁷

He was also intent on keeping most of the RPF's combatants out of Rwanda in order to secure his own power and to cover up the plundering of the DRC's natural resources.¹⁰⁸

Following the Rwandan genocide in 1994, more than a million refugees streamed into the refugees camps of south and north Kivus, which rapidly became controlled by *Hutu* refugees (*Interahamwe*) who enjoyed protection from President Mobutu.¹⁰⁹

It was from these Rwandan refugee camps that the *Interahamwe* rearmed and launched attacks on Rwanda and the Congolese *Banyamulenge* in South Kivu, giving rise to the conflict in the region.¹¹⁰

After getting international support to prevent attacks made on them (*Tutsis*) by the *Interahamwe* and Mobutu's government, the RPF counter-attacked, and by September 1996 the Great Lakes Region conflict had erupted.¹¹¹

In 1996, all these entangled interests culminated in a joint attack on the DRC by the armies of Uganda, Burundi and Rwanda in a bid to demolish the *Hutu* refugee camps and eliminate the refugees, and also to remove Mobutu after 32 years in power.

The Alliance of Democratic Forces for the Liberation of Congo (AFDL) led by Laurent Desire Kabila joined forces with the RPF, pledging support for Rwanda's border security in return for their support for the revolt against Mobutu.¹¹²

¹⁰⁷ Dunn, *KC Identity, Space and the Political Economy of conflict in Central Africa: The Geopolitical Economy of Resource Wars* (2005) 244 (London: le Billion edition).

¹⁰⁸ Some of them were Ugandan demobilized soldiers that Museveni had sent into the war in Rwanda in 1990. Kagame following his example by redeploying them alongside the Rwandan soldiers into the war in the DRC in 1996.

¹⁰⁹ Dunn, *KC Identity, Space and the Political Economy of conflict in Central Africa: The Geopolitical Economy of Resource War* (2005) 243 (London: Le Billion edition).

¹¹⁰ *Ibid.*

¹¹¹ Dunn, *KC Identity, Space and the Political Economy of conflict in Central Africa: The Geopolitical Economy of Resource Wars*. (2005) 244 (London: le Billon edition).

Kabila gained ground on his march west from his base in South Kivu and gained many anti-Mobutu supporters from Rwanda, Burundi, Uganda and Angola and even some logistic support from the US.¹¹³

The agreement creating the new movement (AFDL) was supposed to have been signed in *Lemera* in South Kivu on 1 October 1996. The signatories were the representative of four different groups: Laurent Kabila (*Partie de la Revolution Populaire PRP*). Deogratia Bugera (*Alliance Democratique Populaire ADP*). Anselme Masasu Nindaka (*Mouvement Revulitionaire pour la Liberation du Zaire*). Andres Kisasa Ngandu (*Conseil National de Resistance pour la Democratation*).¹¹⁴

Laurent Desire Kabila was the choice to lead the movement because he was a true Congolese, originally from Katanga province and one of Patrice Lumumba's disciples.

On 17 May 1997, Laurent Desire Kabila seized power in Kinshasa/DRC by proclaiming himself the new President of the country to the disappointment of Rwanda and Uganda, who would have preferred a *Tutsi* of the DRC or a more dependent man to assume power in Kinshasa.¹¹⁵ Anyhow, the objectives of the war carried under the AFDL's umbrella and known as the *Tutsi* or first *Banyamulenge* rebellion were accomplished.¹¹⁶ After only fifteen months, the relation between DRC, Rwanda and Uganda breakdown.

Kabila ended military co-operation with Uganda and Rwanda by fearing Congolese alienation, but attempted to expel all troops from the DRC. The new war was launched in August 1998 by another new rebel group called Congolese Rally for Democracy (RCD) with the support of Rwanda, Uganda and Burundi.¹¹⁷ The objective of this second war was to remove Kabila from power and to control the provinces of Kivus, a process that has continued to poison the relations between the two countries until today.

¹¹² Moffett, L "Ending the Cycle of Violence in the Congo: Is Peace in the Heart of Darkness? 4 (2009) *Journal of Peace, Conflict and Development*. Available at <<http://www.peacestudiesjournal.org.uk>>.

¹¹³ *Ibid*.

¹¹⁴ Prunier, G *From the Genocide to Continental War: The Congolese Conflict and the crisis of Contemporary Africa*. (2009) 113 (London: Hurst & Company).

¹¹⁵ RTNC, Discour dela prise du pouvoir par le President Kabila depuis Lubumbashi.17 Mai 1997.

¹¹⁶ Niemann, M "War Making in Central Africa" (2007) Vol.53 No 3 *Africa today* 20-40.

¹¹⁷ Prunier, G *From the Genocide to Continental War: The Congolese Conflict and the crisis of Contemporary Africa* (2009) 113 (London: Hurst & Company).

3.3 Rwanda centre of the region's instability

Although Rwanda has been at the centre of the region's instability since 1994 after the genocide, it invaded the DRC in 1996 by supporting rebel groups with troop and ammunitions.¹¹⁸ In 1998, Rwanda again invaded the DRC after a breakdown in the deal with President Laurent Desire Kabila.

3.3.1 Rwanda's first incursion in to the DRC

The first Rwanda invasion of the DRC occurred in 1996 can be seen as the direct result of the failures of international intervention in Rwanda during and after the genocide when millions of *Hutu* refugees fled across the border to escape the advance of the RPF.¹¹⁹

In response to continuing ethnic violence and attacks Rwanda and Uganda backed the rebel group, the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL) led by Laurent Kabila, in the hope of improving their own security by removing anti-Uganda rebels and the remnants of the genocide of the *Interahamwe/ex-FAR*, as well as securing economic resources in the eastern parts of the DRC.¹²⁰

The objectives of Rwanda's first invasion of the DRC, conducted under the AFDL's umbrella and known as the *Tutsi* or First *Banyamulenge* Rebellion was to destroy the *Hutu* refugee camps, eliminate the refugees and remove Mobutu from power.¹²¹ After seven months of war between AFDL and its allies Rwanda, Uganda and Burundi, against Mobutu's regime, the objectives achieved when Kabila's AFDL seized power in Kinshasa on 17 May 1997 and became the third President of the DRC/Zaire.

Rwanda, after placing Laurent Kabila into power, began to dictate the actions in the DRC. The head of the army of the DRC, James Kabarebe was an officer of the RPF who was in charge of the operation during Rwanda invasion and is now the defence minister of Rwanda. It became

¹¹⁸ Prunier, G *From the Genocide to Continental War: The Congolese Conflict and the crisis of Contemporary Africa* (2009) 112-113 (London: Hurst & Company).

¹¹⁹ Dunn, KC *Identity, Space and the Political Economy of conflict in Central Africa: The Geopolitical Economy of Resource Wars* (2005) 255 (London: le Billion edition).

¹²⁰ Moffett, L "Ending the Cycle of Violence in the Congo: Is Peace Possible in the Heart of Darkness?" (2009) 4 *Journal of Peace, Conflict and Development*. Available at <<http://www.peacestudiesjournal.org.uk>>.

¹²¹ *Ibid.*

apparent within weeks of Kabila's inauguration that his assurances of increased security against *Interahamwe* attacks and the promise of territorial security zones were hollow.¹²²

Moreover, after disagreement between Kabila and his allies Rwanda and Uganda, Kabila ended the military co-operation, fearing Congolese disaffection but assayed to expel all troops from his country. In August 1998 Kabila dismissed the head of Army James Kabarebe and expelled all the Rwandan soldiers from the DRC.

Within weeks Kabila's government underwent revenge attacks in a land war in the DRC, supported by the Rwandan refugees living there, and underpinned by claims that Kabila did honour engagements made between two countries. The new wave of war was launched by Uganda and Rwanda known as the War of Correction and the objective being to remove Kabila from power by the so-called Congolese Rally for Democracy (RCD).¹²³

Under attack from Uganda and Rwanda in Congolese territory, Kabila appealed to the South African Development Community (SADC)¹²⁴ for the support required to preserve his capital Kinshasa and embroiled the region in the biggest war.

3.3.2 The second Rwanda incursion in to the DRC

The second war in the DRC was caused by Rwanda and Uganda after the break in the military and political co-operation with the Kabila government. According to Rwanda and Uganda, President Laurent Kabila proved no different than his predecessor Mobutu, and continued to incite ethnic tensions in the east of the country.¹²⁵

Rwanda and Uganda wanted to ensure their own security by replacing Kabila with a more favourable ally and removing the rebel threat but they also sought to benefit from economic resources widely available in the two Kivu provinces.¹²⁶ So began the second DRC war, with

¹²²Dunn, KC *Identity, Space and the Political Economy of the Conflict in Central Africa* (2005) 255 (London: Billon).

¹²³Bucyalimwe, SM *Kivu and Ituri in the Congo war* (2005) 208 (London: Palgrave Macmillan).

¹²⁴Dobson, S "Conflict in the Great Lakes Region" (2009) *Africa on a Global Stage* 6 Available at <<http://www.allafrica.com>> [accessed 12 August 2010].

¹²⁵Moffet, L'Ending the Cycle of Violence in the Congo: Is Peace Possible in the heart of Darkness? (2009) 4. *Journal of Peace, Conflict and Development*. Available at <<http://www.peacestudiesjournal.org.uk>>.

¹²⁶Ibid.

Rwanda and Uganda backing the rebel groups, the RCD and the Movement for the Liberation of Congo (MLC) led by the former Congolese vice President Jean Pierre Bemba Gombo.

What is the rationale for Rwanda's and Uganda's second invasion of the DRC? The fight was the result of two causes. First, there was an internal conflict about the distribution of positions between different factions of the AFDL in particular between the *Banyamulenge*, supported by Rwanda and Uganda and the Kabila group emphasising broader Congolese interests.¹²⁷ Secondly, mutual doubts emerged between the new government in Kinshasa and its former supporters because of Rwanda's suspicion that Kabila was backing the *Interahamwe* and recruiting them into the new army.¹²⁸

Kabila's side was afraid that Rwanda could engineer a *coup* against his government as they had done against Mobutu, in favour of a *Banyamulenge* leadership. Uganda also was unhappy with Kabila's warm relations with the Sudan government because of Sudanese support of rebels in northern and western Uganda. Kabila had initially granted key positions to the *Banyamulenge* in his government and accorded relative freedom to Uganda and Rwanda to patrol their borders within the DRC but he invited the anger of antagonists who accused him of obeisance to Rwanda, Uganda, and of appeasing the *Banyamulenge*.¹²⁹

3.3.3 Rwanda, Uganda and rebel groups strategies

The RCD, after the set thing up the movement, was confronted with a serious problem of leadership in the composition of its staff members. The Executive Committee, the Political Council, and the army were dominated by the *Tutsi Banyamulenge* rather than the Congolese citizen.¹³⁰

This multi-ethnic composition did hide one reality: the *Banyamulenge* controlled everything in the movement, because they either held the chair or the deputy presidency as well as lower ranking strategic positions of the group.¹³¹

¹²⁷ Mwesiga, B *Congo in the Great Lakes Conflict* (2006) 62 (London: Lynne Rienner Publishers).

¹²⁸ Ibid.

¹²⁹ Weiss, H "War and Peace in the Democratic Republic of Congo" *American Diplomacy* 5 No.3 (Summer 2000).

¹³⁰ Mwesiga, B *Congo in the Great Lakes Conflict* 61-62 (London: Lynne Rienner Publishers).

¹³¹ Ibid.

The *Tutsi* domination caused dissatisfaction among the Congolese. As a matter of fact, when Rwanda and Uganda determined to break ties and operate separately the RCD also divided. The Congolese in the RCD followed their “masters”, and joined the pro-Rwanda RCD, called RCD/Goma, and another side called RCD/Kisangani¹³².

The reason for the separation between Rwanda and Uganda was due to President Kagame of Rwanda’s preference for a military solution to remove Kabila from power and to denigrate the support of the Congolese citizens.¹³³ On one occasion, he said the following at a public meeting: “We are not in the DRC because we are loved by the Congolese people.”¹³⁴

The Ugandan President did not agree with the Kagame initiative; he preferred an approach that would rather assist him to get the popular support of the Congolese population. In other words, he required a rebel group without Rwandan participation.¹³⁵

That is the reason why he sponsored the creation of the new rebel group called the Movement for the Liberation of Congo (MLC) led by Jean Pierre Bemba, who is now facing war crimes at the ICC for abuses by his troops in the Central African Republic. The movement became the rival of the different factions of the RCD supported by Rwanda.¹³⁶

The split between Uganda and Rwanda took place in 1999 at Kisangani, sparked off by a competition for resources between the two allies. In addition to strategic differences in the conducting of the war in the DRC,¹³⁶ the reason for the division between Rwanda and Uganda is due to the control of the rich natural resource province of Kivus. During 2002, Uganda exported three times the amount of gold it produced and still from the Kivu provinces, and Rwanda did not appreciate it.¹³⁷

¹³²These conflicting perceptions persisted until the end of November 2004, ‘Troupes Rwandaises en DRC: l’Ouganda met en avant les accords existants’, Agence France Presse, Kampala, le 30 November 2004.

¹³³ Bucyalimwe, *SM Kivu and Ituri in the Congo War* (2005) 208-209 (London: Palgrave Macmillan).

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ International Crisis Group Africa Report No. 14 Uganda and Rwanda, Friends or Enemies. 4 May 2000. Available at <<http://www.crisisgroup.org/home/index.cfm?id=1646>> [accessed 12 August 2010].

¹³⁷ Dunn, *KC Identity, Space and the Political Economy of the Conflict in Central Africa* (2005) 256 (London: Billon).

After those countries interests in regional security quickly turned to economic profits, Kabila began marketing his country's resources to external defence, further fuelling an economic war focused on Congolese resources.¹³⁸

Following the split between Kigali and Kampala in January 1999, the pro-Uganda faction of the RCD established its headquarters in Kisangani, the capital of the eastern province and it became the rival of the other faction, the RCD/Goma.¹³⁹ The difference between the two rival movements of the rebellion lay somewhere else: in the RCD/Goma the movement was controlled by the *Tutsi Banyamulenge* from management to the basic ranks while the RCD/Kisangani was headed by Congolese people.¹⁴⁰

The truth of the position of the DRC is that since 1998, after the second Rwanda invasion, it has been divided into a variety of different zones, under different political dispensations, and with different military situations. Separated from the government controlled areas, there were more than four main rebel zones, listed here in order of decreasing territorial importance¹⁴¹:

1. The Congolese Rally for Democracy (RCD/Goma) controlled the largest area, extending from north Katanga to north Kivu with chunks of Maniema, Eastern Kasai, and Province Orientale;
2. The Movement for the Liberation of Congo (MLC) controlled the second largest area, covering most of Equateur province and the western part of Province Orientale;
3. The Congolese Rally for Democracy/Movement for the Liberation (RCD/ML) controlled most of the area composed of Province Orientale;
4. The Congolese Rally for Democracy/National (RCD/N) controlled a small portion of the former province of Upper DRC; and
5. The Congolese Rally for Democracy Kisangani (RCD/K) controlled Bunia.

¹³⁸ Dunn, *KC Identity, Space and the Political Economy of the Conflict in Central Africa* (2005) 256 (London: Billon).

¹³⁹ The first fights between Rwandan and Ugandan troops in Kisangani June 1999 (APA, No 883, 15 May 2003, 8) and the transfer of the RCD/Kisangani head office to Bunia. From then on, Bunia in Eastern province was for Uganda what Goma in Kivu had been for Rwanda since November 1996.

¹⁴⁰ Prunier, *G The Economic Dimensions of Conflict in Region* (2006) 106-107 (London: Lynne Rienner Publishers).

¹⁴¹ *Ibid.*

The important issue in the division of the political spoils in the eastern province of the DRC was the division of North Kivu into two parts: Lubero and Beni were excluded from the authority in Goma and incorporated into the Ugandan sphere of control. Rwanda maintained its control over the other four territories of Northern Kivu (Masisi, Rutshiru, Nyiragongo and Walikale) alongside Southern Kivu, Maniema, Northern Katanga Provinces and a considerable part of Kasai. This shows the extent to which the RCD war resulted in the de facto division of the country, and the position of Uganda and Rwanda in the east of the DRC.¹⁴²

The result of the RDC war was not only a destruction of the unity of the country, but also the division of the Kivus provinces into different ethnic groups. After disputes and heavy fighting on many occasions in 1999 and 2000, the Rwandan Patriotic Army (RPA) ousted the Ugandan troops from the town of Kisangani, which remained a Rwanda stronghold, and Ugandan President Museveni helped also some *Tutsi Banyamulenge* to join the MLC movement, the case of Mustapha Mukiza (a former member of the RPA).¹⁴³

The aims of the rebel movements were to remove Laurent Kabila from power and establish a new regime in the DRC. Kabila, to preserve his power, had appealed for support from the SADC to stop Uganda and Rwanda progress in Kinshasa, which was Kigali's objective.

3.3.4 SADC involvement in the DRC War

In this section some questions need to be answered: Why did SADC agree to send troops to the DRC? What was the motivation of the intervention?

After the Uganda, Rwanda RCD rebel invasion, the Kabila government approached the SADC organ on Politics, Defence and Security at its Victoria Falls Summit of 7-8 August 1998 seeking assistance, under Article 59(3) of the SADC Protocol.¹⁴⁴ A SADC committee of foreign ministers from Namibia, Tanzania, Zambia, and Zimbabwe launched investigations and established clear evidence of a foreign invasion.¹⁴⁵ On the basis of that finding, the SADC's

¹⁴² Bucyalimwe, *SM Kivu and Ituri in the Congo War* (2005) 213 (London: Palgrave Macmillan).

¹⁴³ *Identity, Space and the Political Economy of the Conflict in Central Africa* (2005) 256 (London: Billon).

¹⁴⁴ Moffet, 'Ending the Cycle of Violence in the Congo: Is Peace Possible in the heart of Darkness?' (2009) 4. *Journal of Peace, Conflict and Development* Available at <<http://www.peacestudiesjournal.org.uk>>

¹⁴⁵ *Ibid.*

Interstate Defence and Security Committee met in Harare on 18 August and authorised an intervention by SADC countries to take part in the hostilities in the DRC.¹⁴⁶

This was the first time in Africa that countries in the region had agreed to deploy troops for an intervention mission in a conflict in the region. Angola, Namibia, and Zimbabwe then deployed troops in support of Kabila's regime in the DRC. Sudan and Chad also send troops in accordance with bilateral agreements with the DRC.¹⁴⁷

The intervention of the SADC played a vital role in containing and stabilising what had the potential to grow into an unstable regional armed conflict. The SADC mission also succeeded in defending the DRC's sovereignty and territory as well as maintaining relative stability until the MONUC.¹⁴⁸ Following considerable procrastination by the United Nations (UN) Security Council, a decision was reached to deploy UN Peacekeeping (MONUC) in the DRC in 2000.¹⁴⁹

The intervention of the SADC in the DRC was also seen as an example of a regional initiative by members who sought to reverse the security threat by collective efforts in line with UN Secretary General Boutros Boutros Grail's Agenda for Peace.¹⁵⁰

Angola's intention in supporting Kabila lay in avenging Mobutu's ongoing support for the Angolan rebel group UNITA, a long-time Angolan anti-government aggressor. Angola was afraid that if Kabila lost Kinshasa, UNITA would return to the DRC.¹⁵¹ Angolan intervention was mainly in the province of Bas Congo to secure its border with the DRC. Following the 1998 war, the DRC was divided into three warring areas: Kinshasa, involving the DRC, Namibia,

¹⁴⁶See Ambassador Gift Punungwe, "The SADC Organ on Political, Defense and Security," in M. Baregu (Ed), *Crisis in the Democratic Republic of Congo* (Harare: APES Books, 1999).

¹⁴⁷Prunier, G *From the Genocide to Continental War: The Congolese Conflict and the crisis of Contemporary Africa*. (2009)112-113 (London: Hurst & Company).

¹⁴⁸Mwesiga, B *Congo in the Great Lakes Conflict* (2006) 63 (London: Lynne Rienner Publishers).

¹⁴⁹In February 2000, the UN Security Council reluctantly authorized a force strength of only 5,537 military personnel, including observers, but by mid- 2002 only just more than 3,800 had been deployed. See, <<http://www.iss.co.za/pubs/papers>>"A 90 day Plan to bring Peace to the DRC? By Mark Malan and Henri Bosh off An analysis of the Pretoria Agreement of 30 June 2002.

¹⁵⁰ UN, an Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. Report of the Secretary General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992,A/47/277- S/24111, 17 June 1992.

¹⁵¹ Dunn, KC. *Identity, Space and the Political Economy of the Conflict in Central Africa* (2005) 256-257 (London: Billon).

Angola, Chad, and Zimbabwe against Uganda and Rwanda; the South Kivu involving the DRC and Rwanda and North Kivu involving rebel movements and Uganda.¹⁵²

There is no doubt that the conflict in Great Lakes Region began because different countries required border security, state protection and access to land, all within more and more unstable military and political environments.¹⁵³ Unpredictable alliances and political infringements fed a situation which was to erupt into further conflict, giving rise to an ongoing situation marked by economic conflict and resource competition on the pretext of border security concerns.¹⁵⁴

3.3.6 Justification of the States involved in the conflicts

The DRC was the scene of “Africa’s First World War” which is the first conflict in Africa involving nine countries. Why were those countries involved in the conflict? Braekman Colette gives us some guidelines:¹⁵⁵



3.3.6.1 Angola

Angola, rich and with an experienced army, has given assistance to Kinshasa for simple reasons: to implement the solidarity agreements between the SADC countries and, in particular, to prevent UNITA from establishing a detachment base in the DRC. With a watchful eye on their security and their borders, the Angolans would not be willing to tolerate RCD movements and Rwandans pushing forward to Lubumbashi or Mbuji-Mayi provinces because, in their view, this could restore the opposition Angolan army started by Jonas Savimbi to power.

In fact they suspect Kigali of having served as a centre for deliveries of weapons and of collaborating with UNITA in military matters by supporting RCD in the field.

¹⁵² Dunn, KC, *Identity, Space and the Political Economy of Conflict in Central Africa* (2005) 245(London: Billon).

¹⁵³ Dobson, S conflict in Great Lakes Region (2009) Africa on Global Stage 6.

¹⁵⁴ Ibid.

¹⁵⁵ Braechman, C *La premiere guerre Africaine in Le Soir*, Brussels, 20January 2001; Origine in French, unofficial translation.

3.3.6.2 Burundi

The Burundi government admits to the presence of his army in the DRC but limits its activities after the first invasion, which had to do with security, to the shores of Lake Tanganyika, on the South Kivu border: it operates on the other side of the border to track down *Hutu* rebels who are part of Kabila's military machine.¹⁵⁶

3.3.6.3 Chad

The Chadian army also admits its presence in the DRC to support Kabila's regime, but after a few months of participation in the hostilities, the Chad Government withdrew its army.

3.3.6.4 Namibia

Namibia maintains 2,500 men in the DRC as part of its involvement under the SADC agreements. Its objective was to show its unity with Angola and Zimbabwe, rather than to support the Kabila regime itself.¹⁵⁷

3.3.6.5 Rwanda

The Rwanda regime justifies the presence of its army in the DRC; Kigali has consistently referred to its security needs, and the need for tracking down the *Hutu* perpetrators of genocide. In point of fact, it is being motivated by other compulsions: its aspiration to exploit the resources in eastern DRC, a dream of territorial growth and, in any case, the desire to install a friendly if not submissive government in Kinshasa.¹⁵⁸

Rwanda was also supporting RCD rebel groups. In addition, Rwandans feel deceived by their former ally; they are angry at him for having allowed *Tutsi* to be hunted in August 1998, with many of them being killed in Kinshasa, Lubumbashi and other places.¹⁵⁹

¹⁵⁶ Braechman, C *La premiere guerre Africaine* in *Le Soir*, Brussels, 20 January 2001; Origine in French, unofficial translation.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Sassoli, M and Bouvier AA *How does law protect in war?* Vol II Second Edition (2006) 2137 (Geneva: ICRC).

3.3.6.6 Uganda

Like Kagame, President Museveni of Uganda feels that he was betrayed by his ally Kabila, whom he had assisted to put in power. As a matter of fact, Kabila had opposed the Ugandan army's systematic exploitation of the natural resources in the north-east of the country and did not plan to submit to the recommendation about political governance forced on him by Museveni, who was behaving like the self-proclaimed king of the region.¹⁶⁰

3.3.6.7 Zimbabwe

Zimbabwe was the most able of Kabila's allies, maintaining a force of 12,000 men in the DRC, but it is not the most determinative element. Destabilized by internal disputes and by the economic crisis resulting from poor management as well as by the fact that international creditors are penalising his country because of its involvement in the DRC war, President Mugabe was trying to pull out.¹⁶¹

Nevertheless, having moved into the DRC in order to defend the Kabila regime and, even more importantly, the DRC territorial integrity and the sovereignty of Kinshasa, Zimbabwe cannot simply let go of a country in which it has invested a great deal; it is, therefore committed to continuing its assistance.¹⁶²

3.3.7 Peace Agreements and Major Ceasefires

The Great Lakes Region conflict has been characterised by continuing attempts by global and regional actors to negotiate cease-fires and durable peace with diverging points of accomplishment.¹⁶³ Political issues have given way to economic interests, which has led to rebel movements avoiding negotiating an arrangement with the Kabila government because they cannot convincingly commit to challengers from replacing them and Kabila openly turned fragile

¹⁶⁰ Braechman, C *La premiere guerre Africaine in Le Soir*, Brussels, 20 January 2001; Origine in French, unofficial translation.

¹⁶¹ Sassoli, M and Bouvier AA *How does law protect in war?* Vol II Second Edition (2006) 2137 (Geneva: ICRC).

¹⁶² *Ibid.*

¹⁶³ Dunn, KC *Identity, Space and the Political Economy of Conflict in Central Africa* (2005) 253(London: billon).

peace agreements to his advantage by re-arming and organizing his army during the negotiation process, with little intention of adhering to it.¹⁶⁴

3.3.7.1 Lusaka Peace Agreement (1999)

The peace process was also one of the SADC's missions. After sending troops to support Kabila, an emergency summit had taken place in Pretoria on 23 August 1998 and which confirmed the SADC's recognition of the sovereignty of the DRC.¹⁶⁵ It also mandated the chair, President Nelson Mandela, to arrange a cease-fire in consultation with the Africa Union (AU). On 3 September 1999 the SADC unanimously supported the military intervention in the DRC.¹⁶⁶

Supervised by the AU, the first peace talks took place in Windhoek, Namibia, in January 1999. In April 1999, the UN Security Council passed Resolution 1234 demanding the removal of uninvited forces, without clarifying the steps to be taken in case of failure to comply, the Resolution 1279 in November 1999 establishing MONUC.¹⁶⁷

The Lusaka Peace Accord was eventually signed in July 1999¹⁶⁸ in two stages. The first was between the state parties: Angola, the DRC, Namibia, Rwanda, Uganda and Zimbabwe. The second stage concerned obtaining the signatures of different rebel movements (MLC, RCD/Kisangani, and RCD/Goma).¹⁶⁹

The Lusaka Agreement established some provisions, including the immediate cessation of hostilities and military disengagement within 24 hours; the cessation of violence against civilians and facilitation of humanitarian assistance; and the establishment of a Joint Military Commission (JMC) composed of the belligerent parties to investigate cease-fire violations, work out mechanisms to disarm identified militias, and monitor the withdrawal of foreign troops according to an established calendar.¹⁷⁰

¹⁶⁴ Dunn, KC *Identity, Space and the Political Economy of Conflict in Central Africa* (2005) 253(London: billon).

¹⁶⁵ Mwesiga, B *Congo in the Great Lakes Conflict* (2006) 63-64 (London: Lynne Rienner Publishers).

¹⁶⁶ *Ibid.*

¹⁶⁷ <http://www.monuc.org/mission_of_monuc_in_the_DRC> [accessed 12 May 2010].

¹⁶⁸ Cliffe, L *African renaissance* in T. Zack, W, Frost, D and Thomson, A (eds) (2005) 47, *Africa in Crisis*, (London: Pluto Press).

¹⁶⁹ See Lusaka Peace Agreement.

¹⁷⁰ Mwesiga, B *Congo in the Great Lakes Conflict* (2006) 64-65 (London: Lynne Rienner Publishers).

The deployment of a UN force tasked with disarming armed groups (the Ugandan Allied Democratic Forces [ADF], the LRA, the West Nile Bank Front, the Uganda National Rescue Front [UNRF], the former Uganda national army, ex-FAR [the former Rwanda army], *Interahamwe*, the Burundi Force for the Defence of Democracy, and UNITA); collecting weapons from civilians; providing humanitarian assistance and protection to the displaced persons and refugees; and the initiation of a Congolese national dialogue intended to lead to a new political dispensation in the DRC.¹⁷¹

It was to be seen more as an unsuccessful cease-fire rather than a peace accord, and fighting continued in the absence of any demilitarisation and disarmament. The implementation of the Lusaka Agreement proved even more difficult than its negotiation.¹⁷² The conditions in the field remained mainly unchanged until 16 January 2001, when the assassination of Laurent Desire Kabila by one of his bodyguards brought his son, Joseph Kabila Kabange, to power.

3.3.7.2 Assassination of Laurent Desire Kabila

The assassination of President Kabila was a big surprise for African leaders in general and the Congolese population particularly. On that day, 16 January 2001, I was an LLB Student at the University *Libre* of Kinshasa (ULK). We had a class with one of Kabila ministers in charge of the interior, Professor Mulumba Katchy. After one hour of the lecture he received a call and directly stopped the lecture and sent us home without informing us what was going on. After leaving the University we heard on the news that President Kabila was shot and transferred to Zimbabwe for treatment.

According to some verifiable sources, around midday Kabila was sitting in one of the offices of the Presidential Palace in Kinshasa, looking at papers and chatting with Social Affairs Counsellor Emile Mota when one of his bodyguards, Rashidi Kasereka, walked up to him as if to

¹⁷¹ See Lusaka Agreement July 1999.

¹⁷² Dalay, P" Challenges to Peace: Conflict Resolution in the Great Lakes region of Africa *Third world Quarterly*, Vol 27 No 2, 312.

whisper something in his ear. Instead, he pulled out an automatic pistol and fired two or three bullets (the various accounts do not agree) at point blank range into the President.¹⁷³

There was a lot of shooting which seemed to have come from the courtyard, where elements of the President's bodyguard were exchanging fire with a small group of armed men. The murderer ran out of the room. Almost immediately Presidential Aide Colonel Eddy Kapene shot him¹⁷⁴ later the radio then announced that the President had been shot and wounded in an assassination attempt. The same day in the evening, after Kabila had been dead for several hours, he was transported to Harare/Zimbabwe for medical assistance.¹⁷⁵

Around 6 p.m Colonel Eddy Kapend told everybody on the national radio and television (RTNC) to stay at home, asked the armed forces to remain calm and disciplined, and announced that all borders were closed.¹⁷⁶ But he did not admit the President's death. The Belgium Foreign Ministry, which had its own sources of information in Kinshasa, at 8 p.m announced the death of President Kabila.¹⁷⁷

Meanwhile, Kabila's staff called the whole diplomatic corps accredited in the capital to the *Cite de l'Organisation de l'Unites Africaine*, where they were told that Joseph Kabila, the President's son, was to be head of the interim government for the time being.¹⁷⁸

On 18 January 2001, the government spokesman, Mr. Dominique Sakombi Inongo, announced officially the death of President Kabila declared that Kabila had died from his wounds and announced also 30 days of official mourning.¹⁷⁹

¹⁷³ See *Qui a tu es Kabila?* Available at <http://www.congonline.com/jed/Rapports/2001/Rapport-Deces-LDK0305200_04.htm> [accessed 23 February 2011].

¹⁷⁴ Prunier, G *From Genocide to Continental War: The Congolese conflicts and the crisis of contemporary Africa* (2009) 250 (London: Hurst & Company).

¹⁷⁵ Ibid.

¹⁷⁶ See *Qui a tu es Kabila?* Available at <http://www.congonline.com/jed/Rapports/2001/Rapport-Deces-LDK0305200_04.htm> [accessed 23 February 2011].

¹⁷⁷ La chaine Info (Paris), in BBC/SWB, 16 January 2001.

¹⁷⁸ RTNC/Kinshasa, in BBC/SWB, 17 January 2001.

¹⁷⁹ RTNC/Kinshasa, in BBC/SWB, 18 January 2001.

3.3.7.3 Pretoria Agreement (July 2002)

After the assassination of his father, Joseph Kabila stressed the need for faster progress in the peace process activities. The Pretoria Agreement was signed on 30 July 2002, between the DRC, Rwanda and Uganda. The Accord approved that Rwanda and Uganda withdraw their troops from the eastern parts of the country in return for the DRC initiating the dismantling of the *Interahamwe* operations into DRC territory.¹⁸⁰ The DRC government also reached an accord with the rebel groups interested in the armed conflict.¹⁸¹

The negotiations were held at Sun City, South Africa, and the Accord was signed on 17 December 2002. It provided for a 24 month transitional period with democratic elections at the end of it. Kabila was recognized as President with four vice-presidents from the government, MLC, RCD and the opposition.¹⁸² The Agreement failed to address policies of army integration of rebel movements, rendering attempts at disarmament unviable, and also failed to account for the established economic plunder of the DRC resources upon which all parties had become so dependent.¹⁸³

3.3.7.3 Luanda Agreement (September 2002)

The DRC government, after signing the Pretoria principle Agreement, agreed with Uganda and Rwanda in Luanda (Angola) and signed on 6 September 2002 an Agreement in terms of which Rwanda and Uganda would withdraw its troops.¹⁸⁴ However, Ugandan economic exploitation of Congolese resources continued. Ahead of leaving the DRC, Uganda sent UPDF personnel to make certain that economic resources flowed directly into Uganda.¹⁸⁵ Following its presence in the

¹⁸⁰ Reyntjens, F *Democratic Republic of Congo: Political Transition and Beyond* (2007) 307-318 Vol 106 No 423 African Affairs. Available at <<http://www.proquest.umi.com.ezyproxy.flinders.edu.au/pqdweb?index=PQD&rat=309&TS=1243298117587CLIENTid=20831&CFT=1>> [accessed 16 August 2010].

¹⁸¹ Ibid.

¹⁸² See Pretoria Agreement.

¹⁸³ International Crisis Group, *Conflict in the Congo: The Current Situation*. Available at <<http://www.crisisgroup.org>> [accessed 16 August 2010].

¹⁸⁴ Mwesiga, B *Congo in the Great Lakes Conflict* (2006) 67 (London: Lynne Rienner Publishers).

¹⁸⁵ See Dobson, S "conflict in Great Lakes Region" (2009) *Africa on Global Stage* 10.

DRC, for the first time, in 2002, Uganda recorded an export of three times the quantity of gold that it has produced in the past.¹⁸⁶

After the Sun City Agreement and the establishment of a transitional government by the different Congolese protagonists in the conflict, the DRC had its first democratic election in 2006 since the 1960 date when the country had been granted independence from Belgium and Joseph Kabila was elected President.¹⁸⁷ This had made little progress to removing the causes of conflict in the eastern part of the DRC. Following the election the country was not stabilized and armed conflict and human rights and humanitarian law violation still was continued in the Kivus provinces by a new rebel group supported again by Rwandan President Paul Kagame and led by one Congolese *Tutsi* leader General Nkunda Batuarhe's National Congress for the Defence of People (CNDP).

3.3.8 The Role of the International Community or External Actors

What is the role played by UN and international community to restore peace and stability in the region? Although, UN and international community has played a big role in restoring peace and stability in the Great Lakes Region and particularly in the eastern part of the DRC.

The 1999 Lusaka Agreement which represented a watershed in the evolution of peace and security in the Great Lakes Region, served as the road to lasting peace. It rapidly became apparent, however, that among other shortcomings, the Agreement had largely frozen armies in their respective positions but had failed to stop the conflict in the region and in particular in the eastern provinces of the DRC. This also includes the eruption of warfare between the allies Uganda, and Rwanda and rebel movements in east of the DRC (Kisangani).¹⁸⁸

As mentioned before, the Congolese conflict changed on 16 January 2001, with the elimination of the DRC President Laurent Kabila and assumption of power by his son Joseph Kabila Kabange. Joseph Kabila, differing from his father, has reached out to and was sheltered by all three members of the *troika*, policymakers of which praised his commitment to implementing the

¹⁸⁶ See Dunn, *KC Identity, Space and the Political Economy of Conflict in Central Africa* (2005) 256-257(London: billon).

¹⁸⁷ See Dunn, *KC Identity, Space and the Political Economy of Conflict in Central Africa* (2005) 256-257(London: billon).

¹⁸⁸ Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2006) 173 (London: Palgrave Macmillan).

Lusaka Agreement.¹⁸⁹ Kabila met with the three international community leaders when he made his first official visit to Washington, Paris and Brussels.

President Joseph Kabila participated in the Franco-African Summit held in Paris and was well received by President Chirac in February 2003; he met again with the Belgium foreign minister Louis Michel, and the Belgium king Albert II; and has met also with US President George Bush in October 2003.¹⁹⁰ Belgium, France, South Africa (under President Mbeki's regime) and the US have played a big role in the peace process in the Great Lakes Region.¹⁹¹

The union of interest among France, Belgium and the United States of America in promoting and building peace in the Great Lakes Region especially is the result of Kabila's assumption of power after his father's assassination on 16 January 2001.¹⁹² This intervention has contributed to an international campaign to ease the diplomatic impasse in the Lusaka Agreement that existed from 1999 to 2001.

South Africa also played a big role in the DRC conflict since the first invasion by Rwanda, Uganda and the rebel different movements. South Africa entered the peacemaking in the Great Lakes Region through its revered president, Nelson Mandela. President Mandela¹⁹³ officially entered peacemaking dispute in February 1997. He facilitated the negotiation between Kabila and ex President Mobutu. South Africa was more visible during Mbeki's presidency.

President Mbeki brought a new system and approach to the Great Lakes Region peacemaking efforts. After succeeding President Mandela to power, Mbeki hinted at a most important departure in foreign policy when he announced that South Africa stood ready to contribute troops to a peacekeeping mission in the DRC.¹⁹⁴ This was different from the Mandela government's reluctance to commit to peacekeeping. On 17 December 2002 in Pretoria (South Africa) and

¹⁸⁹ Braechman, C *les nouveaux predateurs. Politique des puissances en Afrique Centrale* (2003) 136-142 (Paris:Fayard).

¹⁹⁰ See <<http://www.worldpress.org/issues> Vol.49 no 10> [accessed 15 May 2010].

¹⁹¹ Sunday Times (Johannesburd), 22 November 1998.

¹⁹² Khadiagala, GM *Security Dynamic in Africa's Great Lakes Region* (2006) 173 (London: Palgrave Macmillan).

¹⁹³ See Landsberg, C "South Africa in 's policy in the Congo war" (2002) Available at <<http://www.books.google.co.za>>.

¹⁹⁴ See Sunday Times (South Africa) 22 December 2002.

under Mbeki's facilitation and mediation, the Congolese parties reached a final and comprehensive agreement on a transitional regime in the DRC.¹⁹⁵

Following the Pretoria Agreement, South Africa's policy strategy in the DRC has been the establishment of the transitional government because of many obstacles in the implementation of the Accord between the Congolese parties.¹⁹⁶ After the installation of the transitional government, South Africa went forward with another strategy by incorporating the DRC on its list of countries with which to establish bilateral co-operation, and the two countries concluded a number of important agreements.¹⁹⁷

The UN has played a significant role in the DRC conflict. Just a few months after the outbreak of hostilities in the DRC, the UN Security Council adopted its first Resolution on the conflict and was automatically involved in the Great Lakes Region conflict. Under the chairmanship of Kamel Mojane, the UN Security Council established MONUC in February 2000.¹⁹⁸ The UN Security Council visited Kinshasa, Kigali, Kampala, Lusaka and Harare in May 2000. The mission sought the withdrawal of Rwandan and Uganda troops from the DRC and urged Laurent Kabila to co-operate with the MONUC's deployment in areas of conflict.¹⁹⁹

In May 2003, Kofi Annan called for an increase in MONUC's forces to 10,800 after the first deployment and recommended an intensification of the UN's mandate to facilitate the mission to provide more efficient conflict resolution efforts and to afford better political support to the transitional government of the DRC.²⁰⁰ The case of MONUC will be examined with more detail in the next chapter.

¹⁹⁵ Sunday Times (Johannesburg), 22 November 1998.

¹⁹⁶ Ibid.

¹⁹⁷ 'The DRC: Presidents Mbeki, Kabila Sign Co-operation Pact,' Available at <[http://www.irinnews.org/report.asp?ReportID=42969&SelectRegion=Great_Lakes & sele>](http://www.irinnews.org/report.asp?ReportID=42969&SelectRegion=Great_Lakes&select=defence_matters;health;economic_cooperation;protection_and_promotion_of_investment;co-operation_in_public_administration_and_diplomatic_consultation).(defence matters; health; economic cooperation; protection and promotion of investment; co-operation in public administration and diplomatic consultation).

¹⁹⁸ Malone, DM *The UN Security Council: From the Cold War to the 21 st Century* (2004) 514 (Boulder: Lynne Rienner).

¹⁹⁹ United Nations, Third Report of the Secretary General on the United Nations Organization Mission in the DRC, S/2000/566 (2000) 1-2 (New York).

²⁰⁰ United Nations, Second Special Report of the Secretary General on the United Nations Organization Mission in the DRC, S/2004/251 (2004) 7-8 (New York).

3.4 Conclusion

This chapter has explored the causes and consequences of conflict between the DRC and Rwanda. The recent conflict has poisoned the diplomatic co-operation between both countries for more than 15 years and involved nine foreign states. The armed conflict in the DRC was also characterised by massive violations of International Human Rights and Humanitarian Law.

The next chapter will examine the renewing of diplomatic relation between Rwanda and the DRC.



CHAPTER 4

Renewing Diplomatic Relations between Rwanda and the DRC

4.1 Introduction

Insecurity and human rights abuses in the eastern DRC remain serious concerns, despite improved diplomatic relations between the DRC and Rwanda after 15 years of tension. Many agreements led to a significant improvement in border security in the Great Lakes Region.

In this chapter, the study will describe the origin of the road to lasting peace, and the renewed diplomatic co-operation after the Congolese had confirmed the new elected President in 2006, following the dispute of General Nkunda's CNDP with the Congolese government.

Diplomats and analysts see the accord thrashed out at a two week conference in Goma under intense pressure from President Kabila's Western allies as the best chance in years of pacifying the eastern part of the DRC. The Goma deal establishes a cease-fire and offers an amnesty for the rebels and militias, including *Tutsi* guerrillas loyal to renegade General Nkunda who have battled government troops in recent months in north Kivu province.²⁰¹

Excluded from the deal are Nkunda's sworn enemies, namely Rwandan *Hutu* rebels of the Democratic Forces for the Liberation of Rwanda (FDLR) who also operates in the region. Failure to eliminate the FDLR rebels will keep alive the justification for Nkunda maintaining his own armed rebellion.²⁰²

Rwanda was incriminated by the Congolese government for supporting the new rebel movement CNDP headed by the Congolese General Nkunda, and, on the other hand, the DRC also was accused by Rwanda for backing FDLR. Following violent fighting during 2008 between the Congolese armed forces, called *Forces armees de la Republique Democratique du Congo* (FARDC), and CNDP supported by Rwanda army forces.²⁰³ President Joseph Kabila and Paul

²⁰¹ Reuters, 24 January 2008.

²⁰² *Ibid.*

²⁰³ International Crisis Group "working to prevent conflict worldwide" (2009) *Crisis Group Africa Report* No 150.

Kagame found themselves under firm national and international pressure to put an end to the 15 years of diplomatic conflict between the two countries.²⁰⁴

The escalation of the north Kivu conflict of August- November 2008 was the direct result of the collapse of the Nairobi and Goma peace agreements.²⁰⁵ The Goma Conference and Nairobi Communiqué led to a momentary decline in the conflict between CNDP and the Congolese army forces and were considered as a new structure for stabilising and restoring diplomatic co-operation between the DRC and Rwanda.²⁰⁶

The intensification of the crisis led rapidly to repeated exchanges of accusations between Kinshasa and Kigali, illustrating the collapse of the Nairobi Accord process. Rwanda's regime again denied accusation that it was giving any support to Nkunda's insurgency, and President Kagame on 6 September 2008 told the Belgium daily *Le Soir* that Laurent Nkunda was right to have taken up arms against Kinshasa because the Congolese government under Joseph Kabila gave greater priority to military action to resolve the conflict in Kivus.²⁰⁷

Following Rwandan President Kagame's interview with Belgium daily news *Le Soir*, on October 2008 the DRC government accused Rwanda of not only supporting Nkunda's CNDP forces in the Kivus but also reinforcing its own military positions along the border at *Bunagala* and

²⁰⁴ Ibid.

²⁰⁵ The Nairobi Communiqué of 9 November 2007 was at the time the most advanced declaration of intent that Rwanda and the DRC achieved regarding a common approach to FDLR disarmament and normalization of the relations. Besides reiteration of the necessity to respect each other's sovereignty, abstain from any act that could be perceived as hostile and establish stricter controls at their common border, its main innovations were, at the political level, Kigali's recognition that the CNDP was a security threat for the DRC and a commitment by Rwanda not support Nkunda's insurrection. Simultaneously, the Congolese government committed to prepare, with MONUC's support, a detailed plan for disarming the ex-FAR/ Interahamwe by 1 December 2007. The Goma Conference on Peace, Security and Development for North and South Kivu was designed to find a way out of the simmering crisis and a alternative to the military campaigns launched by the government in 2007 that failed miserably to end the Nkunda insurgency. The 21 January 2008 agreement provided for general ceasefire disengagement and demilitarized buffer zones. All armed groups committed to participate in the military integration process, and the Congolese government committed to present a draft amnesty law to the parliament covering political crimes committed since June 2003.

²⁰⁶ International Crisis Group' working to prevent conflict worldwide' (2009) Africa Report No 150.

²⁰⁷ *La guerre du Kivu: feu vert de Kagame a Nkunda* Available at <http://www.digitalcongo.net/article/53534>>9 October 2008 [accessed 25 August 2010].

Kibumba.²⁰⁸ President Kabila had personally declared that President Kagame was directly responsible for the atrocities committed in eastern DRC.²⁰⁹

This particularly situation was convenient for the CNDP, and the cease-fire remained stable from October 2008 until the end of that year. The FDLR movement refused also to be disarmed by the MONUC or the Congolese government, and the tension between Rwanda and the DRC increased towards the end of 2008.²¹⁰ The Rwanda government has been accused of supplying aid and children soldiers to the CNDP and has previously denied these allegations.²¹¹

The DRC's regime has been accused of working with the FDLR movement to fight against CNDP and President Kabila categorically denied the accusation, and refuses to negotiate with the CNDP leader General Nkunda, who has threatened to attack Congolese positions.²¹²

4.2 Intervention of the International Community

After the controversial declaration by Rwanda and the DRC and following human rights violations, sexual abuse and rape in the two Kivus and Ituri, the international community recognized the necessity of lasting peace in the region.²¹³ Thus it was that on 3 November 2008 the former Nigerian President, Olesgun Obasanjo, was appointed as the UN Secretary General special Envoy for the Great Lakes Region.²¹⁴ After that, Obasanjo travelled through whole the region attempting a permanent cessation of hostilities between rebel group and countries involved in the conflict.

The UN Special Envoy Obasanjo met with Angolan President Eduardo do Santos in November 2008, which led Angola to state officially that it would not send troops to the DRC excluding under SADC demand despite an earlier declaration by the deputy foreign minister that troops

²⁰⁸ *La guerre du Kivu: feu vert de Kagame a Nkunda* Available at "<http://www.digitalcongo.net/article/53534>>9 October 2008 [accessed 25 August 2010].

²⁰⁹ "Kabila accuse directement President Kagame face aux elecubrations de Nkunda batware" Available at "<http://www.digitalcongo.net.6>> October 2008 [accessed 25 August 2010].

²¹⁰ Congo: "Five Priorities for a Peace building Strategy" *Crisis Group Africa Report* No 150.

²¹¹ *Ibid.*

²¹² *Ibid.*

²¹³ International Crisis Group "working to prevent conflict worldwide" (2009) *Africa Report* No 150.

²¹⁴ *Ibid.*

were on their way.²¹⁵ After a SADC meeting in Sandston (South African) on 9 November, South African and Angolan would send troops in to the DRC on a peacekeepers mission and not to participate in hostilities in support of the Congolese army in the field.²¹⁶

Following the Angolan talks with Eduardo, Obasanjo met Kabila in Kinshasa, Kagame in Kigali and Nkunda. Nkunda recognised Obasanjo as the official mediator, and they agreed on the implementation of an immediate cessation of hostilities.²¹⁷

4.3 The road to lasting peace and security

If you want peace, you must prepare for peace.²¹⁸ If the DRC and Rwanda want peace, they must agree on the kind of peace they want and how to achieve it for the interest of two countries. Agreement after agreement in the region ends with the important recommendation that Rwanda and the DRC must come up the political will for peace and stabilisation of the region.

A series of secret bilateral talks were entered into between the Rwanda and Congolese governments without much international participation. The foreign ministers of both countries announced a joint plan for a military attack against the rebel FDLR, and the DRC government agreed to open talks with the CNDP under Obasanjo's and Great Lakes Special Envoy Mkapa's mediation.²¹⁹ Presidents Kagame and Kabila expressed satisfaction with their own talks, which they called the solution to achieve stability in the Great Lakes Region.²²⁰ What is the motive of Rwanda and the DRC to restore peace in the region?

Although, the secret agreement between Rwanda President Kagame and Congolese President Kabila was the result of strong diplomatic pressure on the Rwandan government from the Dutch and Swedish governments.²²¹ As a matter of fact, when the UN Experts released Report S/2009/253 which exposed previous Rwandan involvement in the DRC armed conflict, both

²¹⁵ "SADC to send military experts in DRC", Agencia de Informacao de Mozambique, 11 November 2008.

²¹⁶ Ibid.

²¹⁷ Congo: "Five Priorities for a Peace building Strategy" *Crisis Group Africa Report No 150*.

²¹⁸ Ranabir.B *Peace Studies: an introduction to the concept, scope, and term* (2004) 38 (London: New Delhi).

²¹⁹ Ibid.

²²⁰ Congo: "Five Priorities for a Peace building Strategy" (2009) *Crisis Group Africa Report No 150*.

²²¹ Sweden stops general budget support to Rwanda. Africa Press Organization December 17, 2008 Available at <<http://www.appablog.worldpress.com/2008/12/17/sweden-stop-budget-support-to-rwanda>> [accessed 1 September 2010].

countries openly decided to hold back their financial support to Rwanda as a pressuring policy to get the Rwandan army out of the DRC territory.²²²

This was confirmed by Gunilla Carlsson, the Swedish Minister for International Development Co-operation, when he said in a press release that “Sweden is taking the UN report very seriously and has stopped the payment of budget support to Rwanda government.”²²³ After that Kigali was again in difficulty, following the Beijing protest over Nkunda’s accusations regarding the beneficiaries of the economic contracts signed between the DRC and China.²²⁴

The objective of secret talks between Rwanda and the DRC was to reduce tension and open diplomatic relations. The direct dialogue between the two enemies was encouraged by the international community and led to the preparation of a joint military action to disarm the FDLR by force if they refused to give up.

On 5 December 2008 the foreign ministers sanctioned the plan at a public ceremony in Goma. However, the text and details of the accord remained top secret and MONUC was not associated to the negotiations.²²⁵ The rapprochement between Rwanda and the DRC was only made possible by a secret political pact under which Kabila and Kagame agreed to end the crisis with the possibility of neutralising their respective enemies and allies, Nkunda’s CNDP and the FDLR rebel movement based long time in eastern part of the DRC.²²⁶

The deal also prevents the integration of CNDP group into the Congolese army forces (FARDC). The courage of Presidents Kabila and Kagame to bring Rwanda and the DRC closer represented a political move that raised new hopes for regional stability. The implementation of the secret bilateral talks did not take long, by the 4 January 2009. The first result ensured when one of the military staff of CNDP, the General Bosco Ntaganda, declared in public that General Nkunda

²²² “Fourth special Report of the Secretary General on the United Nations Organisation Mission in the DRC” 21 November 2008, S/2008/728, p.2.

²²³ Sweden stops general budget support to Rwanda. *Africa Press Organization*. December 17, 2008. Available at <<http://www.appablog.worldpress.com/2008/12/17/sweden-stop-budget-support-to-rwanda>> [accessed 1 September 2010].

²²⁴ Laurent Nkunda *Declaration politique du CNDP*, 1 October 2008; DR Congo attacks China to boost political kudos: analysts” *Agence France Presse*, 19 November 2008.

²²⁵ Fourth special Report of the Secretary General on the United Nations Organisation Mission in the DRC 21 November 2008, S/2008/728, p.2.

²²⁶ *Ibid.*

had been dismissed as CNDP leader, and said that he planned to help the two countries concretise the bilateral engagement.²²⁷

After being removed as CNDP leader, Nkunda tried to oppose his dismissal. However, on 16 January 2009, his era as chief of the movement ended following a surprise press conference in Goma by the Congolese government. In the presence of a Rwanda delegation, General Bosco announced that he joined FARDC and was wearing its uniform to fight the FDLR.²²⁸ On 22 January 2009 Nkunda was arrested by General James Kabarebe and has been under house arrest in Rwanda until today.²²⁹

Before Nkunda's arrest on 20 January 2009, the Rwandan army started to deploy in the DRC territory, especially in North Kivu as part of the agreement of joint military operations. Officially 2,100 Rwandan military observers were to stay 20 days, according to the deal.²³⁰

4.4 Joint military operation (Rwanda and the DRC)

One of the secret deals between Kabila and Kagame was the neutralization of the rebel group (FDLR). The mixed military operation by two countries was called *Umoja Wetu* in Swahili (our unity) and through operation *Umoja Wetu*, the FDLR avoided the direct confrontation with its long-term ally (FARDC) and preferred to disperse in the Kivus forests.²³¹

The rebel group FDLR was not totally destroyed but was only momentarily destabilized during the operation in North Kivu, and was still visible and efficient in South Kivu.²³² According to the official statement of the operation by both countries they recognized the difficulty during the operation *Umoja Wetu*.²³³ "The campaign show that Rwanda and the DRC can construct a

²²⁷ Fourth special Report of the Secretary General on the United Nations Organisation Mission in the DRC', 21 November 2008, S/2008/728, p.2.

²²⁸ "DRC rebels oust General Nkunda", BBC News, 5 January 2009.

²²⁹ <<http://www.rnanews.com/regional/1043-ex-general-laurent-nkunda-underhouse-arrest>>. [accessed 12 November 2010].

²³⁰ MONUC estimates there were in fact between 4,000 and 5,000. See "Twenty Seven report of the Secretary General of the MONUC", 27 March 2009, S/2009/160.

²³¹ Bahati, J Policy Analyst "Evaluating Peace and Stability in the DRC and U.S. Policy in the Great Lakes Region. (2009) *Africa Faith and Justice Network* 13.

²³² Congo: "Five Priorities for a Peace building Strategy" (2009) *Crisis Group Africa Report* No 150.

²³³ Bahati, J Policy Analyst "Evaluating Peace and Stability in the DRC and U.S. Policy in the Great Lakes Region. (2009) *Africa Faith and Justice Network* 13.

common future in peace and with respect to the sovereignty of each other”, Congolese Defence Minister Charles Mwando said.²³⁴

Rwandan Defence Minister General Marcel Gatsingi also assured the huge Goma gathering that the Rwandan Defence Forces would remain steadfast in efforts to help eradicate any menace to peace and stability in the sub region.²³⁵

After the joint operation, the Rwandan Defence Forces pulled out of the DRC. Just a few months after the operation, the FDLR had re-grouped and organized in the forests, and are back on track attacking Congolese civilians and committing massive atrocities. This situation led to a second operation against FDLR by FARDC and MONUC, called *Kimia II* (second peace).²³⁶

Kimia II ended on 31 December 2009 under heavy criticism for causing civilian suffering and for failure to neutralize the FDLR total in eastern part of the DRC. MONUC was also criticized for not assuring civilians protection from human rights violations committed during the operation by the two parties to the conflict.²³⁷

In January 2010 *Amani Leo* (peace today), a third military operation was launched by FARDC, still with MONUC logistical support, intending to wipe out FDLR rebels within 3 months. *Amani Leo* puts strong emphasis on protection of the civilian population, jointly with the MONUC support linked to the FARDC’s respect for human rights.²³⁸

4.5 Consequence of Umoja Wetu and Kimia II operation

The repercussions of the two military operations against the FDLR resulted in uncontrolled International Human Rights and Humanitarian Law violations in the eastern province of Kivu. Before the launch of operations *Umoja Wetu* and *Kimia II*, the FDLR members lived in numerous towns and villages spread across north and south Kivu intermixed with Congolese

²³⁴“RDF Return *Umoja Wetu* operation ends with success” Available at < <http://www.minaffet.gov.rw/index.pfm> > [accessed 18 September 2010].

²³⁵ Ibid.

²³⁶ Congo: “Five Priorities for a Peace building Strategy” (2009) *Crisis Group Africa Report No 150*.

²³⁷ Ibid.

²³⁸ <<http://www.radiokapi.net>> operation *Amani Leo* [accessed 25 August 2010].

civilians.²³⁹ According to the International Rescue Committee, an estimated 5, 4 million people died between 1998-2008, most from preventable diseases as a result of the collapse infrastructure, lack of food security, displacement, and detraction of the health care systems.²⁴⁰

According to many witnesses in the areas of the operations, the FDLR is principally responsible for atrocities committed during and after *Umoja Wetu* and *Kimia II*.²⁴¹ In late January 2009, FDLR forces deliberately killed at least 701 civilians. Many were hacked to death by machete or hoe, some were burned to death in their homes, and more than half of the victims were women and children.²⁴²

Another witness interviewed by Human Rights Watch told how civilians tried to flee as the Rwandan and Congolese coalition forces engaged in the operation; the FDLR attacked them killed dozens with gunfire, rocket propelled grenades, and machete.²⁴³ “As I ran, I saw bodies everywhere” said one person. They had all been killed by the FDLR.²⁴⁴

After killing and raping civilians, the FDLR also abducted as hostages at least 46 residents and took them to their military camps, apparently intending to use them as “human shields” against the impending attacks. A witness said that when the coalition forces attacked Kibua village on January 27, the trapped civilians tried to flee, but the FDLR hacked many to death while others died in the crossfire.²⁴⁵

One person at Kibua who had been abducted by the FDLR told Human Rights Watch that he saw FDLR combatants killed at least 11 people, including a pregnant woman, whose womb was still open. Another saw an FDLR combatant beat a 10 year old girl to death against a brick wall.²⁴⁶

²³⁹ Bahati, J Policy Analyst “Evaluating Peace and Stability in the DRC and U.S Policy in the Great Lakes Region (2009) *Africa Faith and Justice Network* 13-14.

²⁴⁰ UN Group Experts Final report November 21, 2008.

²⁴¹ Human Rights Watch 23 field missions in North and South Kivus between January and October 2009. Available at <<http://www.hrw.org>> [accessed 12 April 2010].

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Human Rights Watch Interview with displaced from Kivu, 6 February 2009. Available at <http://www.hrw.org/report/drc/remove_FDLR_from_the_eastern_of_the_DRC>. [accessed on 12 April 2010].

²⁴⁵ Ibid.

²⁴⁶ Human Rights Watch 23 field missions in North and Kivu between January and October 2009. Available at <<http://www.hrw.org>>. [accessed 12 April 2010].

4.6 Improvement of bilateral co-operation between Rwanda and the DRC

Following the military operations between two countries, things moved in a good direction, improving the bilateral co-operation. Just one day after the secret deal between Kabila and Kagame UN Secretary General Ban ki-Moon welcomed the first official bilateral meeting since the DRC and Rwanda discontinued diplomatic co-operation in 1996. The Secretary General commends both leaders commitment to promote peace and stability in the Great Lakes Region, and their efforts to jointly address the destabilizing and threatening presence in the DRC of the FDLR, who continues to carry out widespread killing and rapes of Congolese civilians in Kivus.²⁴⁷

The statement continued, stating that “the Secretary General is encouraged by the pledge made by the two Presidents to consolidate the renewal of their relationship through future meetings in both Kigali and Kinshasa”. The statement also said and the normalization of relations between the DRC and Rwanda will contribute to the wellbeing of the people of both countries.²⁴⁸

Since the secret agreement between Kigali and Kinshasa the Accord has led to the opening of diplomatic relations between both countries, and to progress in border security. In fact, the military approach to neutralize the FDLR led to modest achievements against the Rwandan rebellion, including an increase in the rate of disarmament of the FDLR.²⁴⁹ The DRC government appointed Norbert Nkulu Kilobo Mitumba as new Ambassador in Kigali, and Rwanda also has appointed Amandin Rugira as Rwanda ambassador to the DRC.

The British Ambassador to Kigali said that “the improved relationship between the two countries open a new opportunity, not just for co-operation against the negative forces, but also for enhanced economic, business and people to people links to the benefits of the whole Great Lakes

²⁴⁷ <<http://www.UN.org/news/press/docs/2009/sgsm/205doc.htm>> [accessed 18 September 2010]

²⁴⁸ Ibid.

²⁴⁹ Congo: “Five Priorities for a Peace building Strategy” *Crisis Group Africa Report* No 150.

Region”.²⁵⁰ The representative of the ICGL, Ambassador Libenata Mulamba emphasised that the renewed commitment between DRC and Rwanda will ensure the stability in the region.²⁵¹

The relationship was also consolidated by the presence of President Kagame at the celebrations to mark the 50th anniversary of the DRC. Before Kagame left Kinshasa he held private talks where they discussed bilateral and regional matters including intensification of co-operation in different economic sectors. President Kagame speaking to the press in Kinshasa congratulated the population of the DRC and said that he was pleased to have been invited to the Independence Day celebrations.²⁵² President Kabila also was invited in Kigali for the 48th celebration of Rwanda’s independence from Belgium.

According to the MONUC’s Disarmament, Demobilization, Repatriation, Resettlement and Reintegration (DDRRR) section for ex-combatants, 12,468 Rwandan civilians and former fighters were repatriated to Rwanda from the DRC until 25 August 2009.²⁵³ The report confirmed that among the fighters, 23 were from the FDLR rebel group and 2 from the ex-politico-military CNDP, and all the dependants were all associated with the FDLR.²⁵⁴

Following the DDRRR operation, the evolution of co-operation was also observed in security border by the opening of the taxes slashes and trade between two countries is now booming. Today the Congolese trader crosses the border in the Risizi area to buy tariff-free food products including vegetables, and fruits, and the Rwandan population also crossed the DRC border every day.²⁵⁵ One Congolese said that “today we are united, a Congolese can go to Rwanda and a Rwandan can go to Congo”.²⁵⁶

²⁵⁰“Diplomats react to the DRC and Rwanda naming of Envoys” Available at <<http://www.allAfrica.com/stories/200907080401.html>> [accessed 18 September 19, 2010].

²⁵¹ Ibid.

²⁵²“Kagame meets Kabila and Kinshasa” at <<http://www.allAfrica.com/stories/201007020025.html>>[accessed 18 September 2010].

²⁵³ DDRRR: *Le nombre des repatriés rwandais est passé à 12,468 ex-combatants et civils*. Radio Okapi August 26, 2009 Available at <<http://www.radiookapi.net/index.php?i=53&a=24438>> [accessed 18 September 2010].

²⁵⁴ DDRRR: *Le nombre des repatriés rwandais est passé à 12,468 ex-combatants et civils*. Radio Okapi August 26, 2009 Available at <<http://www.radiookapi.net/index.php?i=53&a=24438>> [accessed 18 September 2010].

²⁵⁵ Rwanda News Agency” Rwanda-DRC=Business booms as guns fall silent (special report) Available <<http://www.rnanews.com/regional/3618-Rwanda.>>[accessed 18 September 2010].

²⁵⁶ Rwanda News Agency” Rwanda-DRC=Business booms as guns fall silent (special report) Available <<http://www.rnanews.com/regional/3618-Rwanda.>>[accessed 18 September 2010].

According to the Rwanda Revenue Authority (RRA) formal transactions between the DRC and Rwanda since the renewed diplomatic co-operation has increased the trade volume. Imports and exports were at close to Rwf 12 billion and close to Rwf 10 billion in 2008 and 2009, respectively.²⁵⁷ The information also reveals that Rwanda's formal transactions with the DRC presented a positive trade balance where close to Rwf 8.5 billion was obtained from the DRC against close to Rwf 4 billion spent on imports in 2008.²⁵⁸ However, it is believed that a good number of the products that are traded are illegal.²⁵⁹

President Kagame, during a visit to the Rwanda Western province, urged his compatriot of the region to professionally exploit what he described as huge trade potential between his country and neighbouring DRC. This improved trade is why traders repeatedly ask for regional stability as a precondition.²⁶⁰

A forthcoming UN Report claims that the Rwanda army and the rebel groups committed crimes in the DRC that could be classified as the crime of genocide if proven, according to report first published by the French newspaper *Le monde*.²⁶¹

If the Report confirmed the implacability of the Rwanda army, could this obstruct the new diplomatic relations with the DRC?

4.7 MONUC: Overview in the DRC

The MONUC started in August 1999, when the UN Security Council authorized the deployment of 90 United Nations military liaison personnel to the DRC, and in November, Resolution 1279 was adopted and affirmed that the previously would constitute the UN mission in the DRC.²⁶² In 2000, Resolution 1291 authorized the MONUC to carry out a number of important tasks, including the implementation of the ceasefire agreement, verification of disengagement and deployment of forces, and support for humanitarian work and human rights monitoring. Under

²⁵⁷ Rwanda News Agency "Rwanda-DRC=Business booms as guns fall silent (special report) Available <<http://www.rnanews.com/regional/3618-Rwanda.>>[accessed 18 September 2010].

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Rwanda News Agency Rwanda-DRC=Business booms as guns fall silent (special report) Available <<http://www.rnanews.com/regional/3618-Rwanda.>>[accessed 18 September 2010].

²⁶¹ <<http://www.lemonde.fr/Africa.26/8/2010.>> [accessed 18 September 2010].

²⁶² <[http://www.monuc.org/mission of monuc in the DRC.](http://www.monuc.org/mission%20of%20monuc%20in%20the%20DRC.)>

Chapter VII, this Resolution also provided for the MONUC, to protect its staff members, facilities, and civilians against looming threats of physical aggression.²⁶³

The number of MONUC personnel was increased by Resolution 1565 in 2004, with deployment to the eastern provinces of the DRC to protect civilians, collect arms, as called for in Resolution 1493.²⁶⁴ This was authorized to assist the DRC transitional government to provide protection and disarm combatants and repatriate them to their home countries. Next, the UN Security Council adopted Resolution 1906 in December 2009, authorizing the MONUC's mandate until the end of May 2010.

After the demand from Kinshasa asking for the removal of the MONUC from the DRC, a Security Council delegation visited the DRC government. The MONUC is one of the strongest and largest peacekeeping forces in the world with an estimated 21,000 peacekeepers. But in response to demands of Kabila's regime, the UN Security Council on 28 May 2010 adopted Resolution 1925 that authorized a withdrawal of 2,000 peacekeepers.²⁶⁵ The name and mission of the MONUC was changed to the Organization Stabilization Mission in the DRC (MONUSCO) with extension of mandate until 30 June 2011.²⁶⁶

4.8 Conclusion

The renewal of diplomatic relation between the DRC and Rwanda was explored in this chapter. This showed the significant progress and improvement of diplomatic co-operation with an increased in a little stability in the east of the DRC by the support and intervention of the MONUC. However the military intervention between the Rwanda army force and the DRC's army did not end atrocities in the region. The FDLR and others rebels group are still committing violence against the population until today.

In the next chapter, the violations of International Humanitarian Law during the armed conflict in the DRC and the law applicable in this armed conflict will be analysed.

²⁶³ <http://www.monuc.org/mission_of_monuc_in_the_DRC> [accessed 15 May 2010].

²⁶⁴ Ibid.

²⁶⁵ UN Security Council Resolution 1925'the situation in the DRC Available at <<http://www.UN.org/SRES/1925/doc>>. [accessed 18 September 2010].

²⁶⁶ UN Security Council Resolution 1925'the situation in the DRC Available at <<http://www.UN.org/SRES/1925/doc>>. [accessed 18 September 2010].

CHAPTER 5

Violations of International Humanitarian Law during the armed conflict in the DRC

5.1 Introduction

This chapter deals with the character of the multitude of armed conflicts in the DRC since 1996, the majority of which have created massive violations of International Human Rights and International Humanitarian Law (IHL). The mini-thesis will examine the question of the violations of IHL by the belligerents, categorisation of the conflicts, and the applicability of IHL to the armed conflicts in the DRC.

5.2 Violations of International Humanitarian Law (IHL)

Civilians are no longer just victims of war today in the world. Sex is no defence, nor is age; indeed women, children, and the elderly are often at greatest risk. That is a strange, terrible state of affairs in the year after we commemorated the 50th anniversary of the Universal Declaration of Human Rights. These are the words of the United Nations' High Commissioner for Refugees, Mary Robinson.²⁶⁷

The spread of violence and the massive and continuing violations of IHL throughout the DRC cause immense suffering among the civilian population. In particular, acts of genocide, the practice of ethnic cleansing, widespread murder, hostage taking, torture and rape, all violate IHL.²⁶⁸

Although women in the DRC encounter violence in all forms, sexual violence has become the defining characteristic of the country's disorder. Extreme levels of sexual violence, perpetrated by foreign non-state armed groups, state security forces and UN peacekeepers persist in the east

²⁶⁷ Report on OCHA/ISS Humanitarian Policy Workshop. The protection of civilians in armed conflict: Humanitarian Challenges in Southern Africa (2002) Pretoria, South Africa.

²⁶⁸ Roberts, A and Guelff, R *Documents on the laws of war* Third Edition (2000) 485 (New York: Oxford University Press).

of the country where the armed conflict is continuing.²⁶⁹ Since 1996 when Rwanda and Uganda invaded the DRC, there have been massive violations of International Human Rights and IHL.

According to the MONUC, there were an estimated 14,000 rape cases in 2006. UNICEF and its partners recorded 12,226 victims of sexual violence in the Kivus from January to August 2007.²⁷⁰

5.2.1 Attacks on the civilian population

The armed conflict in the Great Lakes Region has violated the principle of IHL by attacking civilian population during the conflict. The law of the war prohibited any attack against civilian population during international and non-international armed conflict. The civilian population and individual civilians shall enjoy general protection during armed conflict.²⁷¹

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operation only against military objectives.²⁷²

During the fighting between Rwandan and Ugandan troops in Kisangani at least 200 Congolese civilians were massacred in cold blood on 14 and 15 May 2002. The bombing of Zongo by the Congolese forces killed 120; in Libenge, 200 killed, Goma between 30 and 65 and Uvira 3 people were killed; and the atrocities perpetrated by Chadian soldiers in Bunga and Gemena.²⁷³ In addition, the bombing by Zimbabwe troops of villages occupied by the rebels killed many of the civilians.²⁷⁴

Facing an escalating insurgency from early 1997, in the northwest in particular, the Rwandan Patriotic Army killed tens of thousands of civilians. According to Amnesty International, at least 6000 people, mainly unarmed civilians, were killed between January and August 1997 by the

²⁶⁹ See < <http://www.un.org/apps/sg/sgstats.as?nid=3350> > [accessed 28 September 2010].

²⁷⁰ See Humanitarian Action plan for the DRC, December 2007.

²⁷¹ Roberts, A and Guelff, R *Documents on the laws of war* Third Edition (2000) 490 (New York: Oxford University Press).

²⁷² Kalshoven, F and Zegveld, L *Constraints on the waging of war* (2001) 97 (Geneva: ICRC).

²⁷³ Sassoli, M and Bouvier AA *How does law protect in war?* Vol II Second Edition (2006) 2142-2143 (Geneva: ICRC).

²⁷⁴ *Ibid.*

RPA. However the real number of civilians killed was undoubtedly much higher, according to the Report.²⁷⁵

The new UN Mapping Report accuses Rwandan and Ugandan troops of committing large scale war crimes and crimes against humanity. The Report concludes that genocide might have been committed during the Rwanda's presence in the DRC (1993-2003), but the Rwandan Government denies and rejects the Report.²⁷⁶ According to the UN Mapping Report, children are the victims of some crimes, such as, the recruitment and use of child soldiers in the hostilities.²⁷⁷

The UN Mapping Report confirmed that at least 30,000 children were recruited or used by the armed forces or rebel groups during the armed conflict in DRC territory. In addition, these children were subjected to indescribable violence, including, murder, rape, torture, cruel, inhuman and degrading treatment, forced displacements and the destruction of their villages; and they were deprived of all their rights as human being and children.²⁷⁸

The DRC has ratified a number of International Human Rights and Humanitarian treaties explicitly prohibiting child recruitment and the use of children by armed forces or rebel groups.²⁷⁹

During the *Hutu* massacres of 1996 and 1997 "Alliance of Democratic Force for the Liberation of Congo (AFDL) and Army Patriotic Rwandans (APR)" troops allegedly killed men, women and children indiscriminately, some with hammer blows to the head.²⁸⁰ From 1998 during the campaigns against the civilian population, elements of the armed branch of the RCD, the ANC and the Rwanda Army reportedly attacked groups of primarily women and children and killed or mutilated them in North Kivu.²⁸¹

²⁷⁵ Amnesty International, Rwanda. Ending the Silence. (London, 25 September 1997).

²⁷⁶ <<http://www.english.aljazeera.net/news/africa/2010/10/2010101132151710397.html>> [accessed 2 October 2010].

²⁷⁷ See UN Mapping Report <[http://www.ohchr.org/en/countries/AfricaRegion/Pages/RDCProjet Mapping.asp](http://www.ohchr.org/en/countries/AfricaRegion/Pages/RDCProjet%20Mapping.asp).

²⁷⁸ Ibid.

²⁷⁹ <<http://www.rights-to-education.org/country-node/330/contry-convention>> [accessed 19 August 2010]

²⁸⁰ See UN Mapping Report <[http://www.ohchr.org/en/countries/AfricaRegion/Pages/RDCProjet Mapping.asp](http://www.ohchr.org/en/countries/AfricaRegion/Pages/RDCProjet%20Mapping.asp).

²⁸¹ Ibid.

Women and children in churches (Maniema/DRC) were attacked and huts and houses with civilians, including children, locked within them were also set on fire.²⁸²

The civilian population was also the victim of atrocities during the joint military operation between Rwanda and the DRC. Human Rights Watch recorded that 1400 civilians were killed between January to September 2009 by the FDLR combatants or criminal FARDC units.²⁸³

The Report also confirmed 7500 rapes, 9000 burned houses, and 900000 new Internally Displaced Persons (IDP) were reported in the two Kivus due to the military offensive.²⁸⁴ On 24 September 2010, the UN released a preliminary Report that revealed that at least 300 civilians were raped by rebel groups between 30 July and 2 August 2010 in the 13 affected villages of Walikale region in North Kivu.²⁸⁵

5.2.2 War crimes, crimes against humanity and genocide

The UN Mapping Report describes the serious incidents of multiple violations of human rights and IHL during armed conflict in the DRC.

5.2.2.1 War crimes

The term “war crime” refers to serious IHL violations committed on a civilian population or enemy combatants during an international or internal armed conflict, for which the perpetrators may be held criminally accountable on an individual basis.²⁸⁶ These crimes are derived primarily from the Geneva Conventions of 12 August 1949, Additional Protocols I and II of 1977, and the Hague Conventions of 1899 and 1907.

War crimes can be also found in the 1998 Rome Statute of the International Criminal Court (ICC), particularly in Article 8.²⁸⁷

²⁸² UN Mapping report 659.

²⁸³ Human Rights Watch report “Conflict in DRC” <<http://www.urw.org>> [accessed 18 September 2010].

²⁸⁴ Ibid.

²⁸⁵ See <[http://www.news.xinhuanet.com/english2010/world/09/24/c_13527713.htm\(235](http://www.news.xinhuanet.com/english2010/world/09/24/c_13527713.htm(235) >women, 52 girls, 13 men and 3 Boys were raped) [accessed 18 September].

²⁸⁶ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law* Vol.I (2005) 568-659 9ICRC: Cambridge).

²⁸⁷ Article 8 of the 1998 Rome Statute of the International Criminal Court.

The Statute of ICC defines war crimes as, “serious violations of the laws and customs applicable in international armed conflict and in internal armed conflict.”²⁸⁸ The Statutes of the ICTR and the ICTY and of the Special Court for Sierra Leone provide jurisdiction over “serious breaches” violations of IHL.²⁸⁹ In the *Dalalic* case, Article 3 of the ICTY Statute listing the violation of the laws of war over which the Tribunal has jurisdiction, the Appeals Chamber used this expression “law and customs of war” included all laws and customs of war in addition to those listed in the Article 1 of the Statute.²⁹⁰

According to the UN Mapping Report prohibited acts were committed during the armed conflict in the DRC, such as murder, rape, intentional attacks on the civilian population, pillage and the arbitrary destruction of civilian goods.²⁹¹ The huge majority of these acts were committed against protected persons, as defined in the Geneva Conventions, primarily people who did not take part in the hostilities, such as civilians and combatants *hors de combat*.²⁹²

According to the Statute of the ICC, committing sexual slavery, rape, enforced prostitution and others form of sexual violence also constituting a grave breach of the IHL constitutes a war crimes in international and non-international armed conflicts.²⁹³ Furthermore, in the *Kunarac* case, the Tribunal considered that there might be other factors “which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.”²⁹⁴

The ICTR in the *Akayesu* case held that “rape is a form of aggression” and that “the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.”²⁹⁵ The ICTR defined rape as “a physical invasion of a sexual nature, committed on a

²⁸⁸ Article 8 of the 1998 Rome Statute of the International Criminal Court.

²⁸⁹ See Article 1 of the ICTY Statute, Article 1 of the ICTR Statute and Article 1 of the Special court for Sierra Leone Statute.

²⁹⁰ See *Prosecutor v Dalalic* case No. 95-5/18-PT.

²⁹¹ See UN Mapping Report.

²⁹² Kalshoven, F and Liesbeth, Z *Constraints on the waging of war* (2001) 102 (ICRC: Geneva).

²⁹³ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law Vol.I* (2005) 324 (ICRC: Cambridge).

²⁹⁴ *Prosecutor v Kunarac* case judgment ICTY IT 15.96-23-T.

²⁹⁵ See Case ICTR, *The prosecutor v. Jean-Paul Akayesu*.

person under circumstances which are coercive.”²⁹⁶ Rape was also classified as war crime by the ICTR in the case of *Akayesu*.²⁹⁷

The UN Mapping Report also notes that the huge majority of the cruel incidents listed are the result of armed conflict, and if proven in a judicial process, point to the commission of war crimes as serious breaches of IHL.²⁹⁸ During the conflict in the eastern part of the DRC, Mai-Mai and other persons were arrested during the military operations and transported to Rwanda and Uganda, where they usually disappeared without a trace.²⁹⁹

These acts have been qualified as deportation. The *Nuremberg* Charter had included act of “deportation to slave labour or for any other purpose of civilian population of or in occupied territory as a war crime.”³⁰⁰

5.2.2.2 Crimes against humanity

Crimes against humanity are codified in Article 7(1) of the Rome Statute of the ICC. The notion encompasses crimes, such as, murder, extermination, rape, persecution, and all other inhuman acts of a similar character intentionally causing great suffering, or injury to body or to mental or physical health, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.³⁰¹

The UN Mapping Report says that most of the attacks committed during the armed conflict in the DRC were directed against non-combatant civilians principally women and children. According to the Report, the vast majority of the acts of violence perpetrated during 1993-2003, which formed part of various waves of reprisals and campaigns of persecution of *Hutu* refugees and Congolese population, were in general terms all transported into a series of widespread and

²⁹⁶ See *Prosecutor v. Jean-Paul Akayesu*.

²⁹⁷ *Ibid.*

²⁹⁸ See UN Mapping Report.

²⁹⁹ Sassoli, M and Bouvier, AA *How does law protect in War?* Vol.II (2006) 2143 (ICRC: Geneva).

³⁰⁰ See Article 6 of International Military Tribunal Charter (*Nuremberg*).

³⁰¹ See Article 7 of the 1998 Rome Statute of the International Criminal Court.

systematic attacks against the civilian population and, therefore, could be classified as crimes against humanity by a competent court.³⁰²

In the *Tadic* case, the Appeals Chamber established the principle that civilians are protected during non-international armed conflicts.³⁰³ The armed conflict in the east of the DRC was characterised by grave breaches of Additional Protocol I and II which constitute war crimes and crime against humanity. In the *Kunarac* case, the ICTY classified a crime against humanity; an attack directed against any civilian population that must have five elements:

1. The must be an attack;
2. The acts of the perpetrator must be part of the attack;
3. The attack must be “directed against any civilian population”;
4. The attack must be widespread and systematic;
5. The perpetrator must know the wider context in which his acts occur and know that his acts are part of the attack.

The crimes of sexual violence in the Statute of the ICC are prohibited when committed against “any person”, not only women.³⁰⁴ The crimes of sexual violence can also be committed against a man. *Zoran* and *Mirjan* were accused by the ICTY for crime against humanity and violation of the laws or custom of war for killing civilian during the armed conflict.³⁰⁵

5.2.2.3 Genocide

Article 6 of the 1998 Rome Statute defines “genocide” as acts committed with the intent to destroy, in whole or in part a national, ethnic, racial or religious group as such, killing member of the group; causing serious bodily or mental harm to members of the group.³⁰⁶ The term

³⁰² See DRC UN Mapping Report 493-499.

³⁰³ See *Tadic* case, Appeal decision.

³⁰⁴ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law* Vol.I (2005) 327 (ICRC: Cambridge).

³⁰⁵ See *Prosecutor v Zoran Kuoreskis and Mirjan* IT 95-16.

³⁰⁶ See Article 6 of 1998 of the Rome Statute for the ICC.

“genocide” was also formulated in 1948, in the Article 2 of the Convention on the Prevention of Punishment of the Crime of Genocide.³⁰⁷

The UN Mapping Report notes that the question of whether the numerous acts of violence committed against the *Hutus* (refugees and others) constitute crimes of genocide has not attracted a significant degree of comment and to date remains doubtful.³⁰⁸ The Report repeatedly stresses that this question can only be decided by a court decision on the basis of evidence beyond all reasonable doubts.³⁰⁹

How an attack against civilian population can be classified as genocide? In the cases of *Akayesu* and *Musema* held that rape and sexual violence could constitute genocide when the specific conditions were fulfilled.³¹⁰ In the *Jevetic* case, the Trial and the Appeal Chamber agreed that the crime of genocide requires a very specific form of intent that will distinguishes genocide from other offences such as crimes against humanity.³¹¹

The dimension of the crimes committed against the *Hutu* ethnic group and Congolese population during the armed conflict in the DRC, which implicated tens of thousands of victims, is illustrated in the Report.³¹² The Report states: “extensive use of edged weapons (primarily hammer) and the apparently systematic nature of the massacres of survivors after the camps had been taken suggest that many deaths cannot be attributed to the hazards of war or seen as equating to collateral damages.”³¹³ These acts can be qualified as genocide if proved by a competent court.

The crime of genocide was also recognized by ICTY in the case of *Krstic*, when he was found guilty in the circumstance of killing of approximately 7000 male residents of Bosnia town of Srebrenica during the armed conflict.³¹⁴

³⁰⁷ Roberts, A and Guelff, R *Documents on the laws of war* Third Edition (2000) 670 (New York: Oxford University Press).

³⁰⁸ UN Mapping report.

³⁰⁹ *Ibid.*

³¹⁰ See *Akayesu* case Judgment and *Musema* case.

³¹¹ See *Prosecutor v Julicic* case No IT-95-10.

³¹² See UN Mapping Report.

³¹³ *Ibid.*

³¹⁴ See *Prosecutor v Krstic* case No, IT-98-33.

5.3 Categorisation of the Conflict

The conflict in the DRC is considered as an internal armed conflict with the participation of foreign armed forces. Diverse facts make it necessary to reconsider this opinion. Foreign armed forces, including those who responded to the request by President Laurent Kabila to intervene in accordance with Article 51 of the Charter of the United Nations and those described by the Security Council as “uninvited countries”, have exchanged prisoners in accordance with the provisions of the Third Geneva Convention of 1949.³¹⁵

During the armed conflict in the region prisoners have been visited and exchanged in territories of the “uninvited” countries; there have been clashes typical of any war between foreign national forces in the territory of the DRC.³¹⁶ Furthermore uninvited State forces have signed the Lusaka, Pretoria and Angola Agreements which explicitly refers to the character of the conflicts and prisoners of war.³¹⁷

In this case there is a mixture of internal conflicts (RCD, MLC against the Congolese Government and FDLR against Congolese forces) and international conflict, such as, the conflict between the Rwandan and Ugandan forces in the territory of the DRC and clashes between FARDC Rwanda and Uganda forces.

5.4 Application of International Humanitarian Law to the Armed Conflict in the DRC

IHL as a branch of public international law has been codified in international treaties for a long time. The Four Geneva Conventions of 1949, the Hague Conventions of 1899 and 1907, and the two Additional Protocols of 1977 are the principal treaties concerned with international or non-international armed conflict. While the Hague Conventions have passed into customary international law, the Geneva Conventions have achieved almost universal acceptance and are probably binding on a larger number of states than any other treaties.³¹⁸

³¹⁵ Sassoli, M and Bouvier, AA *How does law protect in War?* Vol.II (2006) 2138-2139 (ICRC: Geneva).

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Babiker, MA *Application of International Humanitarian and Human Rights Law to the Armed Conflict of the Sudan* (2007) 30 (Intersentia: Antwerp-Oxford).

On 24 February 1961, the DRC acceded to the four Geneva Conventions of 1949.³¹⁹ The DRC also acceded to Additional Protocol I of 1977 on 3 June 1982 and Additional Protocol II on 12 December 2002.³²⁰ On 18 April 1961 the country acceded to the Hague Convention and the Hague Protocol. The DRC further acceded to the ICC Rome Statute on 11 April 2003.³²¹

5.5 Legal Qualification of Armed Conflict in the DRC

IHL as a branch of public international law refers to two different types of armed conflict: international armed conflict and internal armed conflict (conflict of a non-international character). An international conflict normally refers to an inter-state conflict and is defined as: “declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”³²²

Any difference arising between States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the parties denies the existence of a state of war.³²³ It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.³²⁴ Why is the definition of an internal armed conflict? Common Article 3 of 12 August 1949 does not provide any definition of what constitutes an internal armed conflict or non-international armed conflict.

An armed conflict of a non-international character exists when there is protracted armed violence between government forces and organised armed groups, or between such groups within a State.³²⁵ This definition was affirmed by the ICTY during the *Tadic* case.³²⁶ Consequently, it is

³¹⁹ Roberts, A and Guelff, R *Documents on the laws of war* Third Edition (2000) 498 (New York: Oxford University Press).

³²⁰ *Ibid.*

³²¹ See Henckaerts M “Rulac paper on the qualification of conflict under international humanitarian law” Available at <http://www.adh-geneva.ch/RULA/pdf_state/Rules-customary-law.pdf> [accessed 20 October 2010].

³²² See Common Article 2 of the 1949 Geneva Conventions.

³²³ ICRC Commentary on the Four Geneva Conventions of 1949 20-21. Available at <http://www.adh-geneva.ch/.../qualification_of_armed_conflict.php> [accessed 20 October 2010].

³²⁴ *Ibid.*

³²⁵ ICRC Commentary on the Four Geneva Conventions of 1949 20-21. Available at <http://www.adh-geneva.ch/.../qualification_of_armed_conflict.php> [accessed 20 October 2010].

³²⁶ See *Prosecutor v Tadic* case, No. IT-94-1AR72.para 70.

the ICTY's view that for there to be an internal armed conflict, non-state armed groups must carry out protracted hostilities and that these groups must be organised.³²⁷

In the *Akayesu* case, the ICTR Trial Chamber qualified the armed conflict in Rwanda as a non-international armed conflict. The Chamber found that an internal armed conflict existed in the case of "protracted armed violence between the government authorities and organised armed groups or between such groups within a state."³²⁸ This was based on the ICTY appeals Chamber's definition of non-international armed conflict in the *Tadic* case.

The Trial Chamber concluded that an internal armed conflict can be distinguished from an internal unrest by its strength and its level of organisation.³²⁹

In the case of the DRC, the conflict has been characterised as an internal armed conflict and the question of which IHL should be applicable in this situation needs a clarification. Only Common Article 3 and Additional Protocol II apply to non-international armed conflict. These are relevant to the DRC (a State Party to these instruments), in which the government is fighting against different non-state armed conflict movements.

The threshold for the application of Additional Protocol II is more important than that of Common Article 3, but given the efficient control of territory by certain non-state armed movements and their level of organisation, it is believed that in several situations this threshold has been reached.³³⁰

Regarding the case of conflict in the DRC, questions have arisen over which rules apply, as between Common Article 3 and Additional Protocol II to the Geneva Convention, as such provisions will not apply except when an armed conflict has been identified as non-international armed conflict. The current conflict in the DRC confirms the applicability of Common Article 3 to the Geneva Convention and Additional Protocol II of 1977.

³²⁷ See *Prosecutor v Tadic* case, No. IT-94-1AR72, para 70.

³²⁸ See *Prosecutor v Akayesu* Judgment Para 619.

³²⁹ *Ibid* Para 625.

³³⁰ See Henckaerts M "Rulac paper on the qualification of conflict under international humanitarian law" Available at <http://www.adh-geneva.ch/RULA/pdf_state/Rules-customaty-law.pdf> [accessed 20 October 2010].

5.6 Application of Common Article 3 to the 1949 Geneva Convention

Common Article 3 to the Geneva Convention provides that in the situation of internal armed conflict in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply as a minimum certain humanitarian standards at any time and any place whatsoever under the following provisions:

“1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction based on race, colour, religion, or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture;
- (b) Taking of hostages;
- (c) Outrage upon personal dignity, in particular, humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

2. The wounded and sick shall be collected and cared for.

A neutral humanitarian body, such as the International Red Cross and Crescent, may provide its services to the parties to the conflict.

The parties in the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties in the conflict.”³³¹

Common Article 3 has a number of strengths. It is the most firmly established source of international law on non-international armed conflict and constitutes the foundation of IHL applicable in the DRC situation. It is regarded as a humanitarian convention in miniature or a

³³¹ Common Article 3 to the 1949 Geneva Convention.

“convention within the convention” because it embodies the general principles of the Geneva Conventions.³³²

The majority of the many armed conflicts taking place in the DRC can be characterised as internal and decreasing with the Common Article 3 threshold. The applicability of Common Article 3 requires that the insurgents must possess organised groups acting within a determinate territory and an authority responsible for their acts, and that the de jure government must be forced to have chosen the military solution against such groups.³³³

The entire DRC rebel groups were a well organised army acting under a responsible military command. Those groups’ forces have secured considerable DRC territory under their control (east and north of the country)

In consequence, Common Article 3 has application to the situation of armed conflict in the DRC for the following reasons. The fact the DRC government used military forces is a primary sign that diverse armed conflicts exist in the DRC territory. Impairment of the normal functioning of the State machinery over extended periods of time also suggests that such a situation may be regulated by Common Article 3.³³⁴

During international and internal armed conflict, common Article 1 of the Geneva Convention highlight that the “High Contracting Parties undertake to respect and ensure respect for the Convention in all circumstances”.³³⁵ The regulation that IHL must be respected even if the adversary does not do so is laid down in many military manuals, which are applicable in non-international armed conflict.³³⁶ The practical utility of respecting the IHL as explain by some military manuals that it encourages respect by the others state (adversary), however they do not mean that respect is subject to reciprocity.³³⁷

³³² Kalshoven, F *Constraints on the Waging of the War* (1999) 59 (Geneva: ICRC).

³³³ Pictet, J *Commentary on Four Geneva Convention* 1, 49.

³³⁴ Armed Conflict linked to Disintegration of State Structures. ICRC Preparatory Document for the First Periodical Meeting on IHL. (1998) (ICRC: Geneva) 19-23.

³³⁵ Geneva Convention, common Article 1.

³³⁶ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law* Vol.I (2005) 499 (ICRC: Cambridge).

³³⁷ *Ibid.*

The ICTY, in its review of the indictment in the *Martić* case and in its judgment in the *Kupreskić* case, stated that “it was a general principle of law that legal obligations of a humanitarian nature could not be dependent on reciprocity”.³³⁸

5.7 Application of Additional Protocol II of 1977

The DRC acceded to Additional Protocols II on 12 December 2002. Additional Protocol II provides interpretative guidance, which will assist in applying the law to the case of internal armed conflict in the DRC.

The scope of application Additional Protocol II stated in its Article 1 as follows:

“1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Additional Protocol to the Geneva Conventions of 12 August 1949.

And relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in territory of a High Contracting Party between its armed forces and dissidents armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situation of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not armed conflict”.³³⁹

The ICRC in its commentary on the article helps us to determine if Additional Protocol II can be applied in the case of the DRC conflict. The ICRC notes that: “the Additional Protocol II only applies to conflict of a certain degree of intensity and does not have exactly the same field of application as common Article 3, which applies in all situations of internal armed conflict.”³⁴⁰

In the case of the DRC, Additional Protocol II is applicable. This Protocol prohibits attacks on the civilian population and individual civilians as well as objects indispensable for the survival of

³³⁸ ICTY *Martić case, Review of the Indictment* and *Kupreskić case, Judgment*.

³³⁹ See Article 1 of 1977 Additional Protocol II.

³⁴⁰ See ICRC Commentary 1977 Additional Protocols to the Geneva Conventions of 1949, 1350-1352.

the civilian population.³⁴¹ The conflict in the DRC has violated Articles 4, 13, 14 and 17 of Additional Protocol II of 1977.

Article 4(2) states the following: “Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

- (a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Slavery and the slave trade in all their forms;
- (g) Pillage;
- (h) Threats to commit any of the foregoing acts”.

In the case of the DRC conflict, Additional Protocol II is totally applicable. The UN Mapping Report on the DRC armed conflict identifies countries, that could be held responsible for serious violations of human rights and International Humanitarian Law committed by their national armies during the period under consideration in the DRC, and in particular Uganda, Rwanda, Burundi and Angola.³⁴²

It also notes that further investigation could result in determination of the extent to which other countries, and possibly foreign companies, carried some responsibility. Furthermore, it notes, “foreign countries that bear state responsibility for serious violations of human rights and of

³⁴¹ Sassoli, M and Bouvier, AA *How does law protect in War?* Vol.II (2006) (above) 734 (Geneva: ICRC).

³⁴² See UN Mapping report.

International Humanitarian Law also have the obligation to pay reparations to the state on whose territory these acts were committed and harm suffered.”³⁴³

Under Additional Protocol I and II attack against civilians are prohibited. The High Contracting undertakes to respect and to ensure respect for the conventions in all circumstances, even when the behaviour of the other party might be considered wrongful.³⁴⁴ These acts violated the general principle of IHL.

5.8 Enforcement of International Humanitarian Law

The Geneva Conventions and their Additional Protocols are the principal treaties governing aid to, and protection of civilians during international or internal armed conflict.

5.8.1 Responsibility

Who can be bound by the law of non-international armed conflict? Common Article 3 to the Geneva Conventions and Additional Protocol II bind the States party to those treaties. This obligation of the states includes a responsibility for all those who can be considered as agents of those states.³⁴⁵

However, the law of internal armed conflict binds not only the states parties but also the non-governmental movements to such a conflict through national legislation. Formerly the state is bound by IHL, those rules either become part of its internal law or must be put into effect through implementing legislation.³⁴⁶

The precise range of persons who are addresses of IHL on internal armed conflicts has been discussed in the jurisprudence of the two ad hoc International Criminal Tribunals.³⁴⁷ Positively, not only members of armed forces or rebel groups, but also others mandated to support the war effort of one party to the conflict are bound by IHL as well as all public officials as far as the

³⁴³ See UN Mapping report.

³⁴⁴ Sassoli, M and Bouvier, AA *How does law protect in War?* Vol.II (2006)(1883 (Geneva: ICRC)

³⁴⁵ Sassoli, M and Bouvier, AA *How does law protect in War?* Vol.I (2006) 266 (Geneva: ICRC)

³⁴⁶ Ibid.

³⁴⁷ See Case ICTR, *The prosecutor v. Jean-Paul Akayesu*.

governmental side is disturbed will conform with the law of armed conflict during their functions.

5.8.2 The International Criminal Court (ICC)

The principle of individual accountability for violations committed during internal conflicts has been repeatedly addressed by the UN bodies as violations of IHL could endanger international peace and security.³⁴⁸

The prosecution of war crimes is required by IHL and may be done independently of the existence of the International Criminal Court (ICC). As far as non-international armed conflicts are concerned, the ICC Statute represents spectacular progress in terms of IHL because it contains a detailed list of war crimes in those situations, and confirms once and for all that the concept of war crimes also applies to internal armed conflict.³⁴⁹

Individual criminal responsibility for war crimes committed in internal armed conflict has been clearly included in the ICC and others treaties.³⁵⁰ The principle of individual responsibility for crimes is a long standard rule of customary International Law already recognised in the lieber code and the oxford manual of IHL.³⁵¹ In the case of *Juvenal Kaje*, the ICTR accused him of failing to exercise his authority to prevent or stop the killing of *Tutsis* in his *commune* and for sitting up roadblocks.³⁵²

The violation of the law of IHL must require, under customary or conventional law, the individual criminal responsibility of the person breaching the law.³⁵³ This approach has been constantly taken by the ICTY and ICTR In the case law concerning serious violations of IHL other than grave breaches of the Geneva Conventions.³⁵⁴ The list covers serious violations of

³⁴⁸ Sassoli, M and Bouvier, AA *How does law protect in war?* Vol.I (2006) 321 (Geneva: ICRC).

³⁴⁹ *Ibid.*

³⁵⁰ See Article 8 and 25 of the Statute of the ICC.

³⁵¹ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law* Vol.I (2005) 551 (ICRC: Cambridge).

³⁵² See *Prosecutor v Juvenal Kaje Liyeli* judgment ICTR-98-44A-5.

³⁵³ See *Prosecutor v Tadic case Interlocutory Appeal*.

³⁵⁴ See *Bla'ski case* Judgment IT 95-14-A, *Musema case Judgment* ICTR96-12, *Rutaganda case judgement* ICTR 96-3-T and *Kunarac case judgment* ICTY IT 15.96-23-T.

Common Article 3 of the Geneva Conventions,³⁵⁵ as well as a large number of other violations, including crimes committed on the battlefield.³⁵⁶

During the armed conflict, the parties involved, have obligation to respect and ensure respect for IHL. Commanders have important responsibility in the system of ensuring respect for IHL and human rights law. Commanders are responsible for providing instruction in IHL to the armed forces under their command; they must give orders and instructions which ensure respect of IHL and they are criminally responsible for war crimes committed in accordance with their orders, as well as for war crimes committed by their subordinates which they failed to prevent under an obligation to do so.³⁵⁷

The ICC has jurisdiction over crimes committed in “armed conflicts that take place in the territory of a state when there is protracted armed conflict between governmental authority and organized armed groups or between such groups”,³⁵⁸ which is different to the ICTY which has authority with regard to any person who has committed one of the crimes listed in its Statute on the territory of the former Yugoslavia since 1991.³⁵⁹

It, therefore, remains authorised to deal with the crimes that were committed, and are still being committed in Kosovo. By contrast, the ICTR is authorised only to deal with crimes committed during 1994 in Rwanda or by a Rwandan citizen only.³⁶⁰

According to the *Milan* case, no circumstance would legitimise an attack against civilians even if it were a response proportionate to a parallel violation perpetrated by the other party.³⁶¹ The former Congolese vice-president is accused and facing trial in ICC for failing as a commander of

³⁵⁵ Article 8 (2) (c) of the ICC Statute.

³⁵⁶ Ibid.

³⁵⁷ See *Karadzic and Martić case Review of the Indictment*. See also *Akayesu case Judgment*.

³⁵⁸ Perna, L “The formation of the treaty law of non-international armed conflict” (2006) 155 (Boston: Martinus Nijhoff Publishers).

³⁵⁹ Sassoli, M and Bouvier, AA *How does law protect in war?* Vol. I (2006) 322 (Geneva: ICRC).

³⁶⁰ Henckaerts, JM and Doswald, LB *Customary International Humanitarian Law* Vol.I (2005) 335 (ICRC: Cambridge).

³⁶¹ See *Prosecutor v Milan Martić case No.IT-95-11*.

chief of the MLC to prevent his troops from war crime and crime against humanity during armed conflict in Central African Republic.³⁶²

5.9 Case regarding violation of IHL in the Territory of the DRC

In 2005 Uganda was found guilty by the International Court of Justice (ICJ) for violations of human rights and IHL during its occupation of territory of the DRC. During this period of extensive ethnic and military conflict in the Great Lakes Region, sometimes known as the Second Congo War, Ugandan and Rwandan army forces invaded portions of the DRC.³⁶³

The DRC Government laid a charge against the Ugandan and Rwanda Governments for exploitation of its natural resources, IHL violation and other massive human rights abuses.

After the investigation, the court found Uganda guilty of serious violations of International Human Rights and IHL. The court affirmed that there was credible evidence that the Ugandan army had committed great atrocities in the DRC, including, torture, killings, widespread bombings, and destruction of civilian targets. It also appears clear that the army incited ethnic conflict in certain regions, and set up training camps for child soldiers.³⁶⁴

There was convincing evidence that in camp many Ugandan soldiers trained child soldiers for the UPDF, and that the failure to protect children from recruitment into the army occurred in areas which were under control.³⁶⁵ A Report confirmed the deportation of recruited Congolese children from the Beni, Butembo and Bunia areas to Uganda.³⁶⁶

These acts committed by Uganda and the UPDF were in obvious violation of the obligations under the Hague Regulation of 1907, especially Articles 25,27 and 28, as well as of Articles 43, 46 and 47 with regard to obligations of an occupying power.

³⁶² See ICC case the *Prosecutor v Jean Pierre Bemba* ICC-01/05-01/08.

³⁶³ See the Fifth Report of the Secretary General on MONUC (doc.S/2000/1156 of 6 December 2000, para. 75).

³⁶⁴ See <<http://www.icj-cij.org/docket/files/116/10455.pdf>> [accessed 1 October 2010].

³⁶⁵ See the Fifth Report of the Secretary General on MONUC (doc.S/2000/1156 of 6 December 2000, para. 75).

³⁶⁶ See the Eleventh Report of the Secretary General of MONUC (doc.S/2002/621 of 5 June 2002, para. 47).

5.10 Conclusion

Chapter 5 has explored the violations of International Human Rights Law and IHL during the internal armed conflict in the DRC. Massive atrocities have been prominent in the conflict in the Great Lakes Region due to widespread attacks on the civilian population in violation of the laws of war. The Human Rights Office of the High Commissioner on 1 October 2010 published its Report on the conflict in the DRC, which Report qualified the atrocities committed in the DRC from 1993-2003 as crimes against humanity and genocide.

The Report states that it is important that a full judicial investigation takes place in order to shed light on the reported incidents during the period 1996-1997. Only such an investigation and judicial determination would resolve whether these incidents amount to crimes of genocide committed in the DRC by Rwandan soldiers.

There were also questions about the applicability of International Humanitarian Law and the classification of the conflict. This mini-thesis classified the conflict as an internal armed conflict with the internationalisation of conflict by the involvement of the foreign states during the armed conflict. As regards the application of IHL, Additional Protocol II of 1977 and Common Article 3 of the Geneva Conventions of 12 August 1949 have been declared applicable to the internal armed conflict that occurred in the DRC.

The condemnation of Uganda by the ICJ was examined in the light of violations of the IHL and Human Rights Law during the invasion of the DRC territory on two occasions. The next chapter will conclude the study and give some recommendations.

CHAPTER 6

Conclusion and Recommendations

6.1 Introduction

The last chapter of this mini-thesis will contain a brief outline of the research and will also give recommendations for durable peace and stabilisation of the eastern provinces of the DRC and the whole Great Lakes Region.

6.2 Conclusion

The armed conflict in the Great Lakes Region and in particularly the eastern part of the DRC is the primary cause of poverty and massive violation of international human rights and humanitarian law from 1996 until today. The study has explored the meaning of peace, security and poverty. Peace was examined in two different ways.

Peace as a universal concept and peace in African tradition. In the first perspective, peace was regarded as the simple absence of war that is a hegemonic of deterrent peace, also as functional and economic interaction or transactional peace.

In the second perspective, peace in African tradition is a moral value since good conduct is required of human beings if the order harmony and equilibrium is to be maintained.³⁶⁷ According to African tradition, peace is conceived in different way not only in the view of armed conflict, but in relation to order, equilibrium and humanity into community.

That is why peace is considered as fullness of life, a result of harmonious cohabitation, a gift of God and as precondition for progress and prosperity. The term security, conflict and poverty were examined. The study perceived conflict as opposition of peace and value. Armed conflicts thus were and continue to be a main source of poverty and instability in eastern DRC. Armed conflict in the Kivu provinces has been characterised by the serious breaches of international human rights and humanitarian law violation.

³⁶⁷ <<http://www.afrikaworld.net/afrel/godiorati.htm.africapeace>>[accessed 7 July 2010].

The causes and consequences of conflict between Rwanda and the DRC were analysed and it was stated that the *Hutu* refugees in the DRC was the main point of dispute between both countries. Ex-President Mobutu was accused of allowing and supporting the genocidal *Hutu* regime in Rwanda by given them refuge in the northern and southern Kivu provinces after they fled from Rwanda. But Uganda and Rwanda feared the re-organisation of *Hutu* refugees and decided to end Mobutu's regime and backed the rebel group AFDL led by Laurent Desire Kabila. Their objective was to secure their borders with the DRC by removing anti-Uganda rebels (LRA) and *Interahamwe* (ex-Far) as well as securing economic resources in the east of the DRC.

Rwanda and Uganda invaded the DRC twice. The overall aim was to destroy the *Hutu* refugee camps and eliminate the refugees physically. On 17 May 1997, Kabila's AFDL with his allies from Rwanda and Uganda seized the control of power in Kinshasa. It was considered that the new Kinshasa regime did not agree with Rwanda and Uganda. Ex-president Kabila was accused by his allies of not respecting the engagement of increased security against *Interahamwe militia* attacks.

Kabila however accused Rwanda and Uganda of stealing DRC natural resources and interfering in the internal affairs of the DRC. Under these circumstances, Kabila ended the military and diplomatic co-operation with Uganda and Rwanda. After the collapse of the co-operation, Rwanda and Uganda invaded the DRC again. To safeguard his capital Kinshasa, Kabila appealed to the SADC for the support.

The two wars in the DRC were characterised by massive violation of International Human Rights and Humanitarian Law. The study classified the armed conflict in the DRC as an internal armed conflict which was also internationalised by the intervention of SADC countries. In addition, the fighting between Rwandan and Ugandan forces in the town of Kisangani between SADC countries and Ugandan and Rwandan armed forces made the conflict more internationalised.

In case of international armed conflict, if a state intervenes with its armed forces on the side of another state, it is generally agreed that this does not change the qualification of the conflict.³⁶⁸

³⁶⁸ See ICRC Commentary 1977 Additional Protocols to the Geneva Conventions of 1949, 1350-1354.

An armed conflict confined geographically to the territory of a single state can, however, be qualified as international if a state intervenes with its armed forces on the side of rebels fighting against government forces.³⁶⁹

It is unclear whether external armed force intervention in an armed conflict which would otherwise be an internal conflict generates the internationalisation of the entire conflict or only the conflict between one or more states. Although the observation is that there are two different types of conflict taking place at the same time (international armed conflict and non-international armed conflict).³⁷⁰

In case of the legal applicability of IHL, the Additional Protocol II of 1977 and Common Article 3 of the Geneva Convention of 12 August 1949 have been declared applicable in the case of non-international armed conflicts that occurred in the DRC. International Human Rights and Humanitarian Law violation in the east of the DRC were a serious concern, dispute improved military and diplomatic relation between Rwanda and the DRC for more than 15 years.

After sustained pressure from the international community, Rwanda's President, Paul Kagame and the DRC's Kabila agreed to end the conflict by signing a peace agreement. The agreement allowed Rwanda force to enter in the DRC territory to fight against the FDLR with the support of Congolese armed forces. The operation was called *Kimia I, II* and *Amani Wutu*. The objective was to reduce tension and open a diplomatic relation between both countries. The research argued that the renewal of diplomatic co-operation between Rwanda and the DRC will contribute to a more peaceful and lasting stability in the region.

This will promote agreement with others countries in the region, and will have positive impact on the political stability of the whole region. What is important here is that the durable normalisation of relations between Rwanda and the DRC is essential if the eastern parts of the DRC are to be stabilized. The renewed diplomatic relation between Rwanda and the DRC has contributed to lasting peaceful, stability in the region and in the east of the DRC.

³⁶⁹ See ICRC Commentary 1977 Additional Protocols to the Geneva Conventions of 1949, 1350-1354.

³⁷⁰ *Nicaragua v United States of America*, ICJ Report 1986, Para 114.

6.3 Recommendations

To avoid further atrocities in the region, the study recommends as follows:

6.3.1 The DRC Government

The DRC regime has the obligation to secure and protect its population against any human rights abuses, by improving the ability of national judicial institutions to hold accountable all Congolese soldiers and civilians involved in violent sexual crimes such as rape. The government should also provide significant funds for the reintegration of ex-Mobutu soldiers and rebel movements through professional trainings and programs on human rights protection and humanitarian law.

The DRC government should plan a strategic joint military operation between FARDC and MONUSCO to fight against the FDLR without involving the Rwandan armed forces. This should be aimed at disarming the FDLR combatants who refused voluntary disarmament and repatriation. The government should also ameliorate the suffering of soldiers by increasing extra pay to soldiers involved in operation against the FDLR.

All Congolese soldiers operating from the east provinces should be transferred to other provinces and troops should be sent from Kinshasa to secure the population in the Kivus. Congolese military forces based in eastern DRC should be used to secure the border with Uganda and Rwanda.

The DRC government should allow the ICC prosecutor and his team to investigate and try all Congolese perpetrators of grave breaches of International Human Rights and IHL. Furthermore, the government should continue to arrest and prosecute soldiers who have committed atrocities in Kivu and Orientale provinces as the case of 9 Congolese army officers jailed by military court for rape in the village of Baraka (Kivu).³⁷¹ The DRC government should arrest and extradite General Bosco Ntaganda to the ICC to face war crime trial. It is also recommended that all victims of sexual abuses and armed conflicts should be compensated by the DRC government.

³⁷¹ <<http://www.france24.com>> [accessed 22 February 2011].

The government should also continue to reinforce diplomatic relation with Rwanda and Uganda by respecting the Mutual Pact on Non Aggression amongst the ICGLR member states.

The DRC government should organise a national debate on the issue of national reconciliation and justice to look into the atrocities committed since the first war of liberation led by ex-President Mzee Laurent Desire Kabila until today and find a solution to healing the wounds of 15 years of armed conflict in the country. It is further recommended that the national reconciliation commission should not give amnesty to the perpetrators of war crimes, crimes against humanity and human rights abuses. The truth must be revealed and the perpetrators must be prosecuted.

6.3.2 Rwanda Government

The government of Rwanda should reinforce commitment to respect the Mutual Pact on Non Aggression between ICGLR member states particularly the DRC. The Rwandese government should extradite General Laurent Nkunda to the DRC to face war crimes and crimes against humanity trials. Further, a national debate should be held on the issue of justice and reconciliation with the main purpose of creating a national consent for establishment of a truth, justice and reconciliation commission between *Tutsis* and *Hutus*. The idea must be similar to the South African Truth and Reconciliation Commission. This can bring an end to accusation of harbouring genocide ideology amongst the population.

The Rwandese government should start direct negotiation with the FDLR movement which will allow them to return pacifically to Rwanda to enable the eastern provinces of the DRC to be stabilized. If Rwanda still refuses to hold talks with FDLR, the eastern parts of the DRC will remain places of instability. Rwanda should continue to improve diplomatic relation with the DRC.

6.3.3 The United National and the International Community

The UN must establish an ad hoc International Criminal Tribunal for the DRC (ICT/DRC) to investigate and prosecute all the perpetrators of massive atrocities committed in the country in violation of International Human Rights and Humanitarian Law during the armed conflict. This will facilitate the arrest and prosecution of Congolese officers and others states members involved in the armed conflict particularly Rwanda and Uganda as suggested by the UN

Mapping Report released in October 2010. An ad hoc tribunal will be better suited due to the fact, the ongoing conflict started in 1996.

The international community and the UN should coordinate legal action against the FDLR political leaders around the world including those countries and companies supporting the movement through fundraising and supply of arms and ammunitions used in perpetrating attacks against civilians in the DRC.

The international community should continue to put more pressure on Rwanda and the DRC in their commitment to improve and respect the peace process in the whole region and in particular the eastern provinces of Kivu.

The UN and the international community have the possibility and ability to change the political dynamic of the DRC and Rwanda by adopting productive and strong strategies. The MONUSCO (ex-MONUC) should remain in the DRC to improve security of population in the east of the country. Its mandates should be renewed every year until the FDLR and LRA rebels stop the massacre of innocent civilians in the region. MONUSCO should supervise the November 2011 general elections in DRC and the election must be democratic, transparency and independent to avoid what happened recently in the Ivory Coast.

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