



The role of international organisations in the post-conflict period in the  
Democratic Republic of Congo

By

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## ABSTRACT

This mini-dissertation examines the role of the United Nations, the African Union and the three relevant sub-regional organizations namely the Southern African Development Community (SADC), the Economic Community of Central African States (ECCAS) and the International Conference on the Great Lakes Region (ICGLR) in the post-conflict period in the Democratic Republic of Congo (DRC). These organizations played a threefold role based on the monitoring, intervention and assistance regarding the reconciliation and reconstruction process.

To some extent, their strategies contributed to activate the reconstruction and the reconciliation process after nearly a decade of instability caused by the war in the country. However, in spite of the combined efforts of these actors, the conflict persists and continues to take innocent human lives, leaving the survivors affected by hostilities and violations of human rights that they have experienced.

The study sets out the political situation in the DRC during the conflict, then analyzes the resurgence of the conflict beyond the ceasefire and later explores the role played by each actor relatively to its mandate after the free and democratic elections of 2006, which mark the starting point of the reconstruction and reconciliation process. In analyzing these interventions, the study refers to the protocols, objectives and results of each organization.

From this perspective, the study argues that each conflict has its realities and does not necessarily comply with the standard solution (negotiations and military interventions). As for the DRC, this approach has not provided the expected solutions. The nature of the conflict, the history of the DRC and the Congolese people is new to the different organizations and impacts considerably on the way they perceive and deal with the situation.

The study found that each of the international organizations is mandated, in one way or another, to deal with issues such as those rose in the DRC post-conflict period namely rapes, outrageous criminality. Yet, none of the organizations reached the results envisaged by its statute. Taking the best from each other, these organizations need complementarity when addressing the reconstruction and reconciliation in the DRC post-conflict period.

Therefore, these multiple agents fit together to address the challenges in the DRC post-conflict period. The study also emphasizes that initiation of tolerance showed through civilian reconciliation constitutes a prerequisite to any possible and durable peace in the country.

## LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
AFDL	<i>Alliance des Forces Démocratiques pour la Libération</i>
APRM	African Peer Review Mechanism
ASF	African Stand-by Force
AU	African Union
AUPSC	African Union Peace and Security Council
CNDP	National Congress for Peoples' Defense
CONADER	<i>Commission Nationale pour la Démobilisation et la Réinsertion</i>
COPAX	Council for Peace and Security in Central Africa
DDR	Demobilization, Demilitarization and Reintegration
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States
FARDC	<i>Forces Armées de la République Démocratique du Congo</i>
FDLR	Democratic Forces for the Liberation of Rwanda
FOMAC	Multinational Force of Central Africa
FPLC	<i>Forces Patriotiques pour la Libération du Congo</i>
FRP	<i>Force de Résistance Patriotique</i>
GLR	Great Lakes Region
HSGIC	Heads of State and Government Implementation Committee
ICC	International Criminal Court
ICGLR	International Conference of the Great Lakes Region
ICJ	International Court of Justice
ISS	Institute for Security Studies

LPA	Lagos Plan of Action
LRA	Lord's Resistance Army
MARAC	Early Warning Mechanism
MLC	<i>Mouvement de Libération du Congo</i>
MONUC	<i>Mission de l'Organisation des Nations Unies au Congo</i>
MSC	Military Staff Committee
NEPAD	New Partnership for Africa's Development
OAU	Organization of African Unity
OCHA	Office for Co-ordination of Humanitarian Affairs
OHCHR	Office of High Commissioner for Human Rights
OPDS	Organ on Politics Defense and Security
PSC	Peace and Security Council
RCD	<i>Rassemblement Congolais pour la Démocratie</i>
SADC	Southern African Development Community
SALW	Small Arms and Light Weapons
SSR	Security Sector Reform29601054
UN	United Nations
UNDP	United Nations Development Programme
UNJHRO	United Nations Joint Human Rights' Office
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Funds
UNPSC	United Nations Peace and Security Council
UNSC	United Nations Security Council
UPDF	Uganda Peoples' Defense Forces
UPR	Universal Periodic Review

## CHAPTER I: Introduction

### 1. Background

The conflict that left over four million people dead in the Republic Democratic of Congo (DRC) has been described as “the African first World War”.<sup>1</sup> Its first phase started in 1996 when Laurent Kabila, leading the *Alliance des Forces Démocratiques pour la Libération du Zaïre* (AFDL), came into view, when he overthrew the dying president Mobutu and proclaimed himself president of the DRC.<sup>2</sup> Armed groups from Rwanda and Uganda supported Kabila in this military campaign.

In July 1998, following Kabila’s order to leave the country, the Rwandans and Ugandans went back to their home dissatisfied. Rwandans initiated a new military rebellion under the *Rassemblement Congolais pour la Démocratie* (RCD) and returned to invade the DRC later the same year.<sup>3</sup> The establishment of RCD marked the beginning of the second phase of the conflict.

A year later, meeting in Lusaka, the belligerents agreed on 10 July 1999 to an immediate ceasefire, to withdraw all foreign troops from the DRC and to organize an Inter-Congolese Dialogue.<sup>4</sup> Nevertheless, the situation did not improve. Rather, it got worse. On 16 January 2001, Kabila died, assassinated by his bodyguard. His son Joseph Kabila took over and decided to observe the Lusaka agreements. In 2003, he completed the ceasefire in the DRC and formed the transitional government that led to the organization of free and democratic elections.

In the aftermath of each conflict, peacekeeping and reconstruction emerged as urgent issues. In dealing with these issues, the new government had to focus on the control of the territorial integrity to avoid further conflict. In the post-conflict period in the DRC, specifically the period following the 2006 elections up to 2009 when we started this study, these trends require special techniques given the particular nature of the arising challenges. Contrary to the idea that the elections would bring positive development, Congolese and the people of the entire world are witnessing continuous fighting in the Kivus (the eastern part of the DRC, bordering with Rwanda and Burundi).

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<sup>1</sup>E Mobeck ‘Security Sector Reform and the UN Mission in the DRC: Protecting civilians in the east’ (2009) 16.2 *International Peacekeeping* 273

<sup>2</sup>Marks, J ‘The pitfalls of action and inaction: civilian protection in MONUC’s peacekeeping operations’ (2007) 16 *African Security Review* 68

<sup>3</sup>Following the 1994 Rwanda Genocide, the Rwandan refugees in eastern DRC backed Kabila in its campaign to power. After gained the presidency, Congolese people resisted to the majority of Rwandan people in the DRC Government. As he needed Congolese’s support, Kabila ordered them to leave the country, read more in n above two.

<sup>4</sup>The Lusaka Peace Agreement took place in Zambia and regrouped Angola, the DRC, Rwanda, Namibia, Uganda and Zimbabwe. For further reading, see J Cilliers ‘Peace keeping in DRC: MONUC and the road to peace’ (2001) 66 *Monograph Institute of Security Studies*

This situation attracted the attention of the different organizations in which the DRC participates as member. International organizations are established to deal with such situations. Besides the United Nations (UN), the DRC is member of the African Union (AU), the International Conference on the Great Lakes Region (ICGLR), the Southern African Development Community (SADC), and the Economic Community of Central African States (ECCAS). Each of these organizations assisted the DRC in accordance with its statute and objectives.

In this respect, the United Nations Mission in the DRC (MONUC) has, since the beginning of the conflict, contributed actively to ceasefire and to the maintenance of peace and security. Established in 1999, following the Lusaka agreements, its initial task was to monitor the peace process. Later, taking account the political change in the DRC, its mission has undergone many modifications. That is why, on 11 June 2007, the President of the United Nations Security Council (UNSC) reaffirmed “the commitment of the Council to discuss with the Congolese authorities the ways and means of defusing current tensions and engaging in a plan for the long-term stabilization of the eastern part of the country, particularly in the Kivus and Ituri regions”.<sup>5</sup>

The African Union (AU), previously the Organization of African Unity (OAU), was the first international organization to react against the atrocities caused by the conflict in the DRC in 1996. It was in Nairobi where member states met at a regional summit dedicated to the situation in the eastern DRC.<sup>6</sup> In the post-conflict reconstruction and reconciliation process, the AU is supporting the amelioration of the security situation in eastern DRC as well as “the continuing efforts to consolidate peace in the country and to strengthen relations between the DRC and Rwanda”.<sup>7</sup> The Assembly reiterates its appeal to the international community to continue supporting Burundi and DRC in their process of post-conflict reconstruction and peace building.<sup>8</sup>

The sub-regional organizations came up with some suggestions in accordance with their mandate. In this respect, the SADC meeting in Sandton in South Africa at the extra-ordinary summit noticed that the security situation in the DRC affected the peace and stability in the SADC’s region and GLR.<sup>9</sup> In addition, it certified and reinforced the resolutions of the ICGLR that took place on 7 November 2008.<sup>10</sup> Among other resolutions the ICGLR summit recommended the immediate ceasefire by all the armed men and militia in North Kivu: “The ICGLR would not stand by and witness incessant and destructive acts of violence by any armed groups against innocent people of DRC; if and when necessary the ICGLR will send peacemaking forces into the Kivu Province of the DRC.”<sup>11</sup>

<sup>5</sup> Letter dated 11 June 2007 from the President of the Security Council addressed to the Secretary-General available at <http://www.un.depts/dpko/mission/monuc.org/mandate.html>, accessed on 8 May 2009

<sup>6</sup> MI de Heredia ‘The space for Congolese self-determination between absences and presences of the AU and the UN’ (2009) 3 *African Journal of Political Science and International Relations* 006

<sup>7</sup> ‘The fourteenth Ordinary Session of the AU Assembly in Addis Ababa’, 31 January–2 February 2010, see it at <http://www.Africa-union.org>. 7

<sup>8</sup> n 7 above, 7

<sup>9</sup> ‘Communiqué, extra-ordinary summit of the SADC heads of state and government’, Sandton, RSA 2008 2

<sup>10</sup> In 9 above 2

<sup>11</sup> Communiqué in 9 above 3

In the same way, SADC Heads of State and Government, meeting in Sandton two days later, evaluated particularly the political and security situation in DRC and Zimbabwe.<sup>12</sup> The SADC pursued in the same way and decided to provide immediately assistance to the Armed Forces of the DRC. It reported as follows: “The SADC would not stand by and witness incessant and destructive acts of violence by any armed groups against innocent people of DRC, if and when necessary SADC will, within the Nairobi framework, send peacekeeping force into Kivu Province of the DRC.”<sup>13</sup>

For its part, the ECCAS relied on the Extraordinary Summits held in the DRC on 16 and 17 August 2001. Foreign ministers from 10 Central African states met to “discuss security in their war-torn region even thought that Rwanda declined to attend.”<sup>14</sup>

Despite peacekeepers’ efforts in restoring peace in the DRC, the fighting in the eastern part has not stopped. It has changed in nature and it is getting more and more offensive. Million of innocent civilians remain traumatized by the atrocities. In reality, victims are suffering individually. Among them, women and children constitute the most affected category given the gross violations of their fundamental rights.<sup>15</sup>

Indeed, “reconciliation is a vague concept and hardly achievable”.<sup>16</sup> Political approaches have proved, in the DRC that they are not efficacy ways of dealing with each circumstance. There is a need to revise or add to mechanisms applied in order to envisage long-term solutions.

## **2. Research questions**

Against this background, this dissertation analyses the following questions:

- Why is the fighting in the eastern DRC continuing in spite of the Lusaka agreements?
- To what extent have the strategies adopted by the UN, the AU and the relevant sub-regional bodies been successful to monitor and assist the reconstruction and reconciliation process in the post-conflict period in the DRC?
- If these strategies have failed, what measures can the UN, the AU and the three relevant sub-regional organizations adopt to improve their role in the reconstruction and reconciliation process in post-conflict period in the DRC?

## **3. Methodology**

<sup>12</sup>n 9 above 3

<sup>13</sup>n 9 above 4

<sup>14</sup>The profile of the ECCAS’, download from <http://www.ceeac.org> accessed on 8 May 2009

<sup>15</sup>About 4 million of people were killed, half of them children and two million internally displaced persons, see MONUC’s report of 27 February 2007 ‘Budget and contribution’ available at <http://www.monuc.org> accessed on 8 May 2009

<sup>16</sup>E Zorbas ‘Reconciliation in post-genocide Rwanda’ (2004 ) 1 *African Journal of Legal Studies* 29-52

This dissertation will be conducted essentially in the library through desktop research. It will focus on issues related to the research questions posed above. For this purpose, the study will be employing qualitative methods of analysis. It will examine primary sources such as charters, treaties, policies, frameworks, summits, reports of the UN and the AU concerning the post-conflict period in the DRC. The aim of the analysis of these documents is to identify the measures that each of the organizations under scrutiny settled to deal with the situation.

The secondary sources consist of the use of articles and books with special reference to the DRC. Accordingly, studies published essentially by the Institute for Security Studies (ISS) will represent the main references. In addition, the study will adopt a critical approach to analyze the application of the measures planned by international organizations to address the violation of human rights after the elections in the Kivus.

#### **4. Significance of study**

The study aims to emphasize the integration of multidisciplinary mechanisms as tools to monitor the post-conflict reconstruction in the DRC. In addition, consider the reconciliation as a major prerequisite to any alternative reconstruction. The current available approaches of the UN, AU and relevant sub-regional organizations in addressing the DRC post-conflict period have not reached the objectives assigned by their mission. The political factors have dominated the debates surrounding the DRC dilemma. Consequently, the situation worsens every day.

Therefore, the dissertation seeks to justify the need of changing strategies in addressing the post-conflict reconstruction and reconciliation process in DRC. In this process, it intends to discover why the fighting in eastern DRC is continuing in spite the Lusaka Agreements. Further, the study is assessing the extent to which the strategies of the UN, the AU and the relevant sub-regional organizations failed to reach the objectives they planned in addressing the post-conflict period in the DRC. Further, the study researches a best way drawn from what the actors succeeded to do.

#### **5. Structure**

Chapter one presents the research questions, the methodology adopted to lead this research and the literature review.

Chapter two will look at the measures put in place by UN to address the reconstruction and reconciliation in the post-conflict violence in eastern DRC. Principally, it will focus on the mandate of MONUC.

Chapter three will analyze the contribution of the AU in the reconstruction and reconciliation process. It will examine the role played by the AU Peace and Security Council, the AU Assembly, the African Commission on Human and Peoples' Rights and NEPAD in the DRC reconstruction and reconciliation process.

Chapter four will highlight the measures adopted by the sub-regional organizations, namely the SADC, ICGLR and ECCAS, in addressing the same issue.

Chapter five will conclude assessing the role of each of these organizations: the UN, the AU, the ICGLR, the SADC and ECCAS. In addition, it will contrast their respective roles, with the aim of drawing some suggestions.

## 6. Literature review

Reconciliation and post-conflict reconstruction constitute contentious trends in this twenty-first century. The literature on the DRC is controversial regarding the particular nature of the case. In this dissertation, the choice of reference was done relatively to the research questions. In this respect, this dissertation presents the literature according to categories.

The first group refers to official documents of different organizations in which DRC acts as member. It looks at the UN with special focus on MONUC, the Security Council (SC), the Human Rights Council (HRC) and the AU. In addition, it includes reports of SADC, ICGLR and ECCAS on the DRC.

Many reports of the SC on the DRC refer to the evolution and extension of MONUC. Every three months the SC extends the mission relatively to the situation. In the resolution 1736 of 22 December 2006, the SC “authorized an increase in the military strength up to 916 personnel to allow the continued deployment of the infantry battalion”.<sup>17</sup> In its extension made on 18 September 2009, the Secretary General (SG) affirmed that armed groups namely FDLR and the Lord’s Resistance Army (LRA) continued to attack civilians in the Kivus and Orientale province.<sup>18</sup> In addition, the implementation of the Security Sector Reform and the rule of law are developing very slowly.<sup>19</sup> Equally, the HRC, acting in conformity with the mandate assigned to it by the General Assembly in its resolution 60/251 of 15 March 2006, follows the state of human rights in the DRC.

Beside the Constitutive Act and the Protocol relating to the establishment of Peace and Security Council, the literature on AU is especially expressed by its regional links (SADC, ICGLR and ECCAS). Regarding SADC and ICGLR this thesis refers to the extra-ordinary summit held in South Africa on 09 November 2008. The measures adopted are already reported above. However, ECCAS has poorly featured in this context due to its lack of financial and logistical resources.<sup>20</sup>

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<sup>17</sup> ‘S/2007/156: Twenty-third report of the Secretary General of the UNSC on MONUC’ 20 March 2007, available at <http://www.un/depts/dpko/mission/monuc.org/mandate.html> accessed on 8 May 2010

<sup>18</sup> S/2009/472 Twenty ninth report of the SG on MONUC 18 September 2009 available at <http://www.un/depts/dpko/mission/monuc.org/mandate.html> accessed on 8 May 2010 1

<sup>19</sup> In n above 2

<sup>20</sup> C Macaulay & T Karbo ‘Assessing the ability of the ECCAS to protect human security in Central Africa’ 155 *Monograph* ISS 151-164

The second category regroups various sources with special reference to the DRC's dilemma. This group presents: "The DRC beyond the elections" wrote by Krampf. He attests that [t]he 2006 democratic elections in the DRC were a considerable achievement but the real causes of conflict remained.<sup>21</sup> He pursues that "the elections should not be seen as the final chapter in peace process but rather as the first step in solving the evils that plague the DRC".<sup>22</sup>

In his article "The North Kivu security predicament after the 2006 Congolese elections", Boas argues that "[w]e can comprehend the North Kivu dilemma by associating the current conflict to the full history of this part of Congo".<sup>23</sup> Further, Thakur analyses the character of the militias currently based in the Kivus.<sup>24</sup> She admits that "[t]he Congolese government still encounters various challenges in disarming and demobilizing the militias in the Kivus".<sup>25</sup>

The third category looks at work on peacekeeping, post-conflict reconstruction and reconciliation in general. In this regard, Coyne, in "The institutional prerequisites for post-conflict reconstruction", attributes the success of post-conflict reconstruction to self-dependence at the political, economic and social level. He pursues that relying in external interventions efforts have a lower probability of success.<sup>26</sup>

Ramcharan highlights the UN as the unique organ that facilitates countries of the entire world to share their experiences through great debates.<sup>27</sup> Conversely, Grimberg questioned if UN peacekeepers could do the job.<sup>28</sup> He argues that "the war and peace are not the only problems of the common humanity; economic and social development, overpopulation, environmental degradation and non-military threats to security go to the heart of our very existence".<sup>29</sup>

## 6. Definition of relevant terms

The study is focused on reconstruction and reconciliation during the post-conflict period in the DRC. In doing so, it looks at the role played by the UN, the AU and the relevant sub-regional organizations during that time. For a better understanding of the reader, the terms frequently employed are defined below. These definitions should be understood in the context and the purposes of this study.

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<sup>21</sup> D Kampf 'The Democratic Republic of Congo : Beyond the elections' (2007)16.1 *African Security Review* 109 22

<sup>22</sup> D Kampf in n 21 above 22

<sup>23</sup> M Boas 'just another day-the north Kivu security predicament after the 2006 Congolese elections' (2008) 53 *African Security* 57

<sup>24</sup> M Thakur 'Demilitarizing militias in the Kivus (eastern DRC)' (2008) 17.1 *African Security Review* 62

<sup>25</sup> M Thakur in n 24 above 62

<sup>26</sup> CJ Coyne 'The institutional prerequisite for post-conflict reconstruction' (2005) 18 *The Review for Australian Economics* 325-342

<sup>27</sup> B Ramcharan 'The UN a human rights in the 21twentieth-first century' in G Afredsson et al (eds) (2001) *International human rights monitoring mechanisms* Martinus Nijhoff

<sup>28</sup> J Grimberg 'Can UN peacekeepers do the job?' in D Bourantonis & M Evriviades (eds) (1996) *UN for the 21st century: peace, security and development* The Hague: Kluwer Law International

<sup>29</sup> J in n28 above

Post-conflict period constitutes the period following the immediate aftermath of a conflict. In this study, the period refers to the post-elections time of the DRC. It goes from November 2006 up to 2009.

Reconstruction is “the long term process of rebuilding the political, security, social and economic dimensions of a society emerging from conflict by addressing the root causes of the conflict”.<sup>30</sup> It means here that Congolese have started collecting the leftovers of each department after the war and used it as a foundation to build a new DRC free and peaceful.

Reconciliation refers to the rebuilding of a relationship altered by conflict. In this study, it refers to Congolese people who have to start over a new relationship with all its neighbors without considering the past and its impact on the present.

Civilians are “persons not involved in the armed services or the police force”.<sup>31</sup> Civilian refer to all inhabitants of the DRC who are not in the army or police forces.

Peacekeeping: “Any deployment of military forces for security purposes under UN authority”.<sup>32</sup> Peacekeeping can similarly be any “field mission, usually involving military, police and civilian personnel, deployed with the consent of the belligerent parties, to monitor and facilitate the implementation of ceasefire, separation of forces or other peace agreements”.<sup>33</sup> It is used here to explain the continuing presence of international organizations’ agents in the country.

Monitoring process: This refers to the procedures adopted to supervise the reconciliation and reconstruction process. Specifically, it shows how International Organizations and sub-regional organizations operate in the DRC.

International Organizations: These are supra national organizations which have the capacity to facilitate the resolution of different matters at national level. In this dissertation, the term refers especially to UN and AU.

Sub regional organizations: For the purpose of this study, it refers to African regional bodies in which DRC participates as member. The study focuses on SADC, ECCAS and ICGLR.

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<sup>30</sup> African Post-conflict Reconstruction Policy Framework; NEPAD Secretariat June 2005

<sup>31</sup> J, Pearsall et al (eds) (1999) 10 ‘The Concise Oxford Dictionary’ New York: Oxford University Press

<sup>32</sup> M Malan (ed) ‘Whiter peacekeeping in Africa’ (1999) 36 *Monograph ISS*

<sup>33</sup> African Post-Conflict Reconstruction Policy Framework on governance, peace and security programme, NEPAD 2005 p5

## CHAPTER II: The role of the UN in the post-conflict period in the DRC

### 1. Introduction to the role of the UN in post-conflict period in the DRC

This chapter examines the substantial contribution of the United Nations (UN) to the reconstruction and reconciliation in the post-conflict period in the DRC. In this respect, it poses the following question: To what extent have the strategies adopted by the United Nations Mission in the DRC (MONUC), the UN's main presence in the DRC, been significant to the reconstruction and reconciliation process in the DRC post-conflict?

In general, the conflict left behind a situation of enormous chaos. Specifically, the loss in innocent human lives is continuing to affect Congolese and their daily life. The collapse of state institutions remained one of the major triggers at the roots of that conflict.<sup>34</sup> It was obvious that after the elections, preventing further conflict necessitated rebuilding them. For this task, professional involvement qualified to restore to strength the fragile situation. The most effective contribution came from MONUC. That is why it is important to pass in review its role in DRC since its creation before answering the question asked above.

MONUC's first operation in the DRC goes back to 1999 when the UN officers came to "ensure that countries involved in the war complied with the Lusaka Ceasefire Agreements."<sup>35</sup> During this first phase, MONUC was essentially an observer mission. Due to the political instability in the DRC, the mission has gone through amendments in response to the existing demands.

Immediately after the Lusaka agreements, MONUC's mandate was expanded by Resolution 1291 (2000) which aimed to supervise the completion of the Ceasefire Agreements and meanwhile investigate on its violations.<sup>36</sup> In addition, it aimed to "facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers".<sup>37</sup> This expansion constituted the second phase of MONUC's intervention in the DRC.

The third phase of MONUC's intervention refers to the total withdrawal of foreign groups from the DRC territory under the Disarmament, Demobilization and Reintegration system (DDR). In his report S/2001/970, the SG specified that the objective of this new task was "to create an environment, especially in the eastern DRC, which would encourage the combatants and their families to take a step towards a better life without weapons".<sup>38</sup> Practically, MONUC envisaged

<sup>34</sup> J Marks in n 2 above 68

<sup>35</sup> Lusaka agreements were signed to ceasefire and maintenance of peace in the DRC see refer to 4 above for further reading

<sup>36</sup> Resolution 1291 of 24 February 2000 of the Security Council available at <http://daccess-ods.un.org/access.nsf/2>

<sup>37</sup> In n 36 above 2

<sup>38</sup> Ninth report of the SG of the UNSC on MONUC, available at <http://www.africaaction.org/resources/ejournal.php> 13

“establishing temporary reception centre where combatants could surrender their weapons to be destroyed by MONUC in situ”.<sup>39</sup> However, MONUC encountered difficulties in dealing with the armed groups operating in eastern DRC. As they did not sign the Lusaka Agreements, they were not ready to surrender and reintegrate.

At the end of June 2002, following the inter-Congolese Dialogue, the general situation improved with the withdrawal of Rwanda, Uganda and Angola troops from the DRC territory.<sup>40</sup> At this stage, the maintenance of the mission had cost MONUC \$200 million. Notwithstanding, the eastern part continued to worry peacekeepers as well as victims.

By 2004, MONUC increased its personnel in order to keep its strength for the new mandate. Its mandate consisted mainly in protecting civilians, humanitarian personnel, UN personnel, to discourage violence using force if necessary and to allow UN personnel to operate freely, particularly in the eastern part of the DRC.<sup>41</sup> This new mandate led to the fourth phase of MONUC, which concentrated on the transition and the organization of the elections as reported in resolution 1621 of the SC.<sup>42</sup>

On the days following the 2006 elections in the DRC, the atrocities committed during the conflict started presenting effects, which threatened the precarious peace. Public institutions were malfunctioning and all sectors, at all levels, were negatively changed. MONUC amended its strategies in order to assist the new Government address the chaos left by the war. Nevertheless, the complexity of the conflict made the mission the “longest, largest and most expensive ever peacekeeping mission of the UN.”<sup>43</sup>

At the national level, the new Government engaged to address these issues but the lack of training of its members and potential infrastructure does not facilitate it doing the job properly. It is understandable that people, who experienced bad governance and its derived hostilities within a collapse state during thirty-two years of dictatorial regime and over ten years of civil war, rely on international interventions to overcome its difficulties in implementing a secure environment for all.

Hence, international relations become more functional and more requested. No people had experienced this need as much as the Congolese people are doing presently. At this stage, the supranational actors, namely the UN and the AU, known for their commitment since their creation

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<sup>39</sup> In n 38 above 13

<sup>40</sup> A Nicoll (ed), ‘Instability in North Kivu’ (2007)13 *The International Institute for Strategic Studies 2*

<sup>41</sup> Resolution 1565 of the SG on first October 2004 available at <http://daccess-ods.un.org/access.nsf/get> accessed on 8 May 2009

<sup>42</sup> Resolution 1621 of 2005 available at <http://www.un/depts/dpk/mission/monuc.org/mmandate.html> accessed on 8 May 2009

<sup>43</sup> ‘Conflict and development: Peace building and post-conflict reconstruction’ (2005-06) 113 6<sup>th</sup> report of house of commons international development committee

engaged towards countering these issues. The UN Charter, in its Chapter VII, empowers them to intervene wherever there is a crisis.<sup>44</sup>

Since the beginning of the war, the UN has integrated MONUC in a manner that it combines the work of all its agencies in the DRC.<sup>45</sup> That is why its mandate is redefined gradually in conformity of the development of the DRC situation. Concerning the post-conflict period, the Secretary General of the UN Peace and Security Council reported that MONUC's new task should focus on the following pillars:

“Assist the Government of the DRC in (a) building a stable security environment, (b) consolidating democracy, (c) planning security sector reform and participating in its early stages, (d) protecting human rights and strengthening the rule of law, (e) contribute actively, if requested to do so by the Government, to the coordination of international assistance”.<sup>46</sup>

These pillars represent the leading key to the rebuilding of a new DRC. Nevertheless, the main concern should be focused on planning security sector reform, protecting human rights and strengthening the rule of law because they figured as the main causes of the conflict. In this respect, the SG reported, “security and respect for the rule of law are key preconditions for progresses”.<sup>47</sup>

As a multidimensional mission, MONUC had, up to 2007, five international peace agreements concerning the DRC. The mission went through different amendments before reaching the elections, which marked conventionally the end of the conflict and the beginning of a new political era in the DRC's history.

Therefore, exploring UN's role in the post-conflict in the DRC, this chapter will concentrate essentially on the reconstruction process. Practically it will look at the MONUC's intervention in completing the rule of law, the security sector and the human rights challenges. Each point will constitute a section of the chapter.

## 2. The UN and the rule of law in the post-conflict period in the DRC

The UN defined the rule of law as “a principle of governance in which all persons, entities and institutions, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence

<sup>44</sup> Article 52: ‘The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council’

<sup>45</sup> N Dahrendorf: The case of the DRC (2007) *MONUC and the relevance of coherent mandates* 4

<sup>46</sup> Twenty-third report of SG of 20 March 2007 on MONUC available at [http://www.un\(depts/dpko/mission/monuc.org/mmandate.html](http://www.un(depts/dpko/mission/monuc.org/mmandate.html)) accessed on 8 May 2009 10

<sup>47</sup> n 46 above 7

to the principles of supremacy of law, equality before the law fairness in the application of the law, separation of powers...<sup>48</sup>

Within the UN system, rule of law activities are addressed by various agencies. Each agency treats matters relating to a particular subject. In this context, the UN Development Program (UNDP) is contributing as the DDR leading agency.<sup>49</sup> The UN High Commissioner for Refugees (UNHCR) focuses on issues regarding refugees and Internally Displaced Persons. The Security Sector Reform (SSR) concentrates on security affairs. However, in the DRC post-conflict dilemma, the UN's concern is especially focusing on political section and human rights issues through MONUC. Hence, the mission would require working in coordination with the new Government, assisting it with practical advice on enforcement of democracy and the control of the entire territory.

Despite the mission's commitment, Dahrendorf indicated that "[t]he DRC security forces and its institutions are seriously deficient in adhering to the rule of law".<sup>50</sup> According to MONUC, the situation in the eastern part is the major cause of the noncompliance. Carvalho pursues that "[t]here is need to ensure that democratic institutions work efficiently with local governments and civilians' participation."<sup>51</sup> This inefficiency of democratic institutions at national and regional levels raises challenges, which delay the government's capacity to control over the entire country.<sup>52</sup>

MONUC also faces difficulties when addressing its task in the judicial sector, given the fact that much of the existing legislation in the DRC has not been updated since the first Republic and are often inapplicable.<sup>53</sup> Feller points out that "[t]he justice sector lacks the managing skills, the autonomy and the aptitude to prosecute as well as to implement judgments."<sup>54</sup> MONUC assisted the High Judicial Council in the creation of a national class of magistrates referring to the results of a mutual mission held earlier in the year.<sup>55</sup> Still, the standard level required to advance the administration of justice has not been reached.

In addition, MONUC is working with the national officials in creating a new profile of Tribunal of Peace that will increase the development of judicial infrastructure and the curricula of all its personnel.<sup>56</sup> Nevertheless, the financial possibilities of the country do not facilitate the engagement of the mission in finding adequate solutions for detainees and prisons.<sup>57</sup> Among the

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<sup>48</sup> S/2004/616 'The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies': Report of the SG of the UNSC 23/08/2004, available at: <http://www.un.org>, Accessed on 23 Feb. 2009

<sup>49</sup> N Dahrendorf, in n 45 above 5

<sup>50</sup> In n 45 above 1

<sup>51</sup> G Carvalho 'MONUC and post-electoral challenges in the DRC' (2007) 4 *Conflict Trends*, on line at <http://www.accord.org> accessed on 8 May 2009

<sup>52</sup> G Carvalho in n 51 above

<sup>53</sup> N Dahrendorf in n 45 above

<sup>54</sup> E Feller 'Giving peace a chance: displacement and rule of law during peace building' (2009) 28 *Refugee Survey Quarterly* available at <http://www.oxfordjournals.org> accessed on 8 May 2009

<sup>55</sup> Feller in n 54 above 9

<sup>56</sup> In n 54 above 9

<sup>57</sup> Twenty-seven report of the Secretary General on MONUC of 27 March 2009, S/2009/160, p18, available at <http://www.un/depts/dpko/mission/monuc.org/mandate.html>

inefficient resources, the peoples are traumatized and divided ethnically. The judicial system faces a general climate of impunity, corruption and limitation in some areas of the country.

The rule of law, as defined by the UN, is not yet functional in the DRC post-conflict period. The national Government has not the control of the entire territory. Chiefs commander of armed groups in eastern DRC ignore the law in action in the country. MONUC assisted the judicial system to recover from its deficiency caused by the war. Still, the improvement is only emerging slowly.

### **3. The UN and the Security Sector Reform (SSR) in the post-conflict period in the DRC**

“The Security Sector Reform (SSR) is an essential cornerstone of governance and the future stability of the DRC”.<sup>58</sup> Security is a vague term, which implies different aspects namely the reestablishment of states institutions, the unification and control of army and the control of the territorial integrity.<sup>59</sup> As defined, the security sector meets the objectives similar to the rule of law. In this regard, Annan argued that “[t]he security sector should be subject to the same standards of efficiency, equity and accountability as any other [public] service”.<sup>60</sup> In the same way, the Presidential statement of 21 February 2007 (S/PRST/2007/3) recognized the needs to consider national SSR as priorities within UN operational mandates.<sup>61</sup>

Following this statement, a Working Group involving all international actors with SSR as central to their activities was formed as a platform aimed to coordinate, discuss and implement the SSR MONUC strategy.<sup>62</sup> The UN resolution 1794 of 2007 concerning the DRC’s situation urged the Government of the DRC to end violence and bring the perpetrators and their commanders to justice. In addition, it requested MONUC to focus its strength at preventing, protecting and responding to sexual violence even through training the Congolese security forces.<sup>63</sup>

By January 2008, the SG Report on Security, Peace and Development, referring to the Resolution S/RES/1756 (2007) on the Situation concerning the DRC, outlined the activities of the SSR Working Group.<sup>64</sup> Further, the Resolution 1856 (2008) on the situation concerning the DRC

<sup>58</sup> Dahrendorf n 45 above 4

<sup>59</sup> In n 45 above 4

<sup>60</sup> K Annan ‘Peace and development, one struggle, two fronts’ Address of the United Nations Secretary General to World Bank Staff 19 October 1999 Available at <http://www.un.org> 5

<sup>61</sup> Concept Note and Plan of Action Security Sector Reform (SSR) and Sexual Violence of 18 March 2009: it constitutes one of the four components of MONUC strategy on sexual violence, available at <http://www.un.org>

<sup>62</sup> In n 61 above 2

<sup>63</sup> In n 61 above 2

<sup>64</sup> the Resolution S/RES/1756 (2007) mandate focused on the following subjects:

“(a)Provide in the short term basic training, including in the area of human rights, international humanitarian law, child protection and the prevention of gender based violence, to various members and units of the FARDC integrated brigades deployed in the eastern part of the Democratic Republic of the Congo

(b), continue to develop the capacities of the Congolese national police and related law enforcement agencies in accordance with internationally recognized standards and norms on human rights, proportionate use of force and criminal justice, including the prevention, investigation and prosecution of cases of gender-based violence,

(c) Advise the Government in strengthening the capacity of the judicial and correctional systems, including the military justice system;

extends MONUC's mandate until December 2009 and recommended MONUC to provide military training on human rights, specifically on the prevention of sexual violence to FARDC integrated brigades in eastern DRC. It also requested MONUC, in coordination with the international community, to support the Government of the DRC in the planning of the SSR process.<sup>65</sup> Following these resolutions, MONUC is intervening in the three distinct constituents of the SSR mentioned below namely police, army and justice.

### **3.1. *The UN's involvement in the Congolese's police and the army***

MONUC emerges as the most qualified to build a stable security environment for all habitants of the DRC because of its long time experience in this field. In this respect, its primary task consisted in maintaining and sustaining the peace process. The unification of the army should complete the Disarmament, Demobilization and Reintegration (DDR) initiated during the conflict, but in reality, the process is far from being completed.

From January 2007, MONUC coordinated the demilitarization and reintegration of foreign groups while Congolese groups went through the DDR process guided by *la Commission Nationale pour la Demobilisation et la Réinsertion* (CONADER), financed by the World Bank.<sup>66</sup> 14 100 soldiers were repatriated by MONUC during this process.<sup>67</sup> The DDR of Congolese groups did not last longer due to the World Bank's discontinuity to support the programme. In March, some 600 combatants surrendered themselves for DDR following the joint operation of FARDC and MONUC, against the three remaining Ituri armed groups.<sup>68</sup> By September 2007, 921 were demobilized as result of the third phase of the DDR.<sup>69</sup>

At this point, two major issues spoiled the process in the following days. The first concerned the government's refusal to collaborate with some arms groups; the second referred to the armed groups' refusal to surrender into the national army.<sup>70</sup> This situation shows that there is no complete integration of the FARDC, and more importantly no differences in the sharing of functions between police and army.

MONUC committed to continue developing the capacity of the national police in accordance with international human rights and criminal justice norms. In its twenty-third report,

(d) Contribute to the efforts of the international community to assist the Government in the initial planning process of the reform of the security sector. “

integral report available at <http://www.un/depts/dpko/mission/monuc.org/mandate.html>

<sup>65</sup> In n above 64, p2

<sup>66</sup> N Dahrendorf in n 45 above p10

<sup>67</sup> In n 66 above 5

<sup>68</sup> In n 66 above5

<sup>69</sup> G de Carvalho in 51 above 44

<sup>70</sup> In n 51 above 44

the SG attested that the mission would provide “policy advice, technical assistance and training in coordination with other international partners.”<sup>71</sup>

During the round table held in Kinshasa on 25 February 2008, the Security Sector Reform decided to reform the Armed Forces and the national Congolese police. There is no significant development of police capacity in the post-conflict period in the DRC. The armed groups advanced it with breakdown of unexpected fighting all the time. At this point, Terrie argued that, “[t]he fundamental problem of MONUC is that it lacked a doctrinal based campaign plan that clearly identified the role and task of its military forces in achieving the wider objectives of the mission”.<sup>72</sup>

The national army is slower in responding to the attacks of armed forces and militias in the eastern DRC. The inefficacy of immediate response is due to the insufficient wages, equipments and inadequate training. Genugten stated as follows: “Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force”.<sup>73</sup>

In fact, the UN has renewed MONUC’s mandate several times by way of resolution for better intervening in the proliferation of illegal arms in the DRC.<sup>74</sup> Yet, it has not managed to control the entry and the distribution of arms. Following the agreement between the Congo and Rwanda on the withdrawal of Rwandan military from the DRC on 23 March of 2009, MONUC initiated operation Kimia II with the aim to prevent Rwandans and Ugandans reoccupying their former places.<sup>75</sup> By end of April, approximately 10.000 Rwandans returned to their country.<sup>76</sup> The mission has consequently addressed the issue of foreign occupations recognized among the major causes at the root of the conflicts.

However, the overall situation in eastern DRC remained unstable because of an increase of attacks by national armed groups against civilians. These attacks led to fresh displacement of population in the area. Without a real administration of these issues, how can MONUC succeed helping the DRC Government in imposing the same treatment to its entire people? Added to this, the size of the DRC and the lack of adequate infrastructure and financial resources do not enable MONUC to fulfill its mandate in terms of securing the country and its people. Accordingly, no donor has shown devotion to lead the reform of the armed fares, in spite of contributions of military equipment made by different African’s countries.<sup>77</sup>

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<sup>71</sup> Twenty-third report of the SG, in n 46 above 11

<sup>72</sup> J Terrie ‘The use of force in UN peacekeeping: The experience of MONUC’ (2009) 18 *African Security Review* 28

<sup>73</sup> W van Genugten *UN Peacekeeping in Africa and good Governance: Challenges and prospects*, PER (2)

<sup>74</sup> N Alusala ‘Arms and disarmament DRC’s unending story’ (2007) 129 *Armed conflict and disarmament* 50 According to him the UNSC has made 8 resolutions between 2003-2006 relating to arms supply

<sup>75</sup> Report of the Security Council mission to the African Union; Rwanda and the DRC; and Liberia of 11 June 2009, available at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html>, p7

<sup>76</sup> In n 75 above 8

<sup>77</sup> In n 45 above 11

Another issue at the core of MONUC mandate is the identification of belligerents in the Kivus. It is almost impossible to distinguish an eastern Congolese from a Burundian, Ugandan and worst Rwandan. These neighboring people look alike given the fact that, they are interconnected by cohabitation and marriage during centuries of their existence in the area.<sup>78</sup> They are themselves capable to establish the difference between them because they know each other better.

Formerly, due to the geological and historical issue of border imposition by the colonists, Congolese, Ugandan and Rwandan in the east were experiencing the cross-border ethnic living system. Nevertheless, they were living peacefully and never considered it as an issue that could lead to such war. Recently, with all the disorder in the Kivus, they are claiming ethnic, land rights and citizenship. In this confusion of ethnic correlation, the respect and adherence to the judicial system becomes hard to achieve. The discovery of important natural resources on that part of the country does not either facilitates the mission; rather it becomes a major concern of the DRC peace. Rebel leaders help themselves freely with mineral to finance the war and escape the disarmament process.

### **3.2. *The UN's involvement with the Congolese judicial system***

“Efforts to address the justice system and to strengthen the democratic oversight of the security sector have been less effective in the reconstruction process in the DRC”.<sup>79</sup> MONUC’s mandate focuses especially on integrating the police and the army forces.

In the report presented to MONUC, the Group of Experts stated the following “urgent intervention against all forms of illegal natural resource exploitation is required.”<sup>80</sup> In addition, it added that “[t]he existing law of the DRC, particularly the regulations governing natural resources and their orderly exploitation, must be used as a baseline for a new sanctions regime”.<sup>81</sup> The reason of this interdiction was to destabilize armed groups financially as they were using money issued from the trade of minerals to finance the war.

Besides the mineral trade, MONUC focused its investigations on disputes over local elections in Bas-Congo (West DRC).<sup>82</sup> The Africa Research Bulletin reported that the mission had to look over the residents of four of the towns hardly affected by the fighting.<sup>83</sup> The death of 134

<sup>78</sup> The Congolese constitution of 1964 granted nationality to all persons having to some point one of his ancestors as member of a tribe established on the Congo territory before 1908. This give right to all people of neighbor’s countries who came with missionary to install in the DRC before that date, to claim for Congolese’s nationality when needed. For further reading see M Boas in n 23 above 57

<sup>79</sup> In n 45 above 3

<sup>80</sup> Report of the Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the DRC S/2007/68 p1 available at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html> accessed on 8May 2009

<sup>81</sup> In n 80 above

<sup>82</sup> The conflict opposed a politico-religious movement, Bundu Dia Kongo and the Congolese security forces over the results of the local elections. According to the SG, most of peoples who were killed were civilians. For further information, see twenty-third report of SG on MONUC, S/2007/156 available at [www.monuc.org](http://www.monuc.org) accessed on 8 May 2009

<sup>83</sup> DRC: Clashes in the West, in *Africa Research Bulletin*, Blackwell Publishing Ltd, February 2007

people drove the UNSG and the UNSC to deplore the violence and called the new government to work in correlation with the opposition to bring the perpetrators to justice.

Further, in the eastern part, the mission organized and coordinated humanitarian affairs in South Kivu. In Kibumba (30 km near Goma), MONUC intervened with applicable solution to stop the incidents of conflict between the Democratic Forces for the Liberation of Rwanda (FDLR) present in the DRC and the Rwandan forces.<sup>84</sup>

The November 2007 agreement between Kigali and Kinshasa launched the process towards a sustainable peace. Practically, Kigali had to stop backing Nkunda and MONUC joint to FARDC had to deal with the FDLR.<sup>85</sup> In reality, it did not help much to change the situation because in 2008 they reported another re-insurgence of fighting in east.<sup>86</sup> There are constant armed groups who ignore the call of the government and MONUC commitment to maintain the law in eastern area. “It is, therefore, imperative that all armed groups return to the implementation of existing political agreements and that all stakeholders work together to address the root causes of conflict in that troubled region.”<sup>87</sup>

#### **4. The UN and the human rights challenges in the post-conflict period in the DRC**

Apart from the rule of law and the Security Sector Reform, the DRC is experiencing another crisis related to human rights. Following the conflict, hundreds of civilians have left their home to seek asylum in neighboring countries; others remained internally displaced and many others have lost their lives. From August 1998 to April 2007, an estimate number of 5.4 million deaths of which 4.6 million occurred in the east alone.<sup>88</sup> Adding to these deaths, “the people in the east continue to endure horrific attacks, including murder, widespread rape, and the forced recruitment and use of child soldiers.”<sup>89</sup> Congolese children, especially in the kivus, lose their childhoods to hostility and terror. Fighters from all sides, recruit them to serve as soldiers in their groups. For the past decade, they are growing up not knowing what peace really means.

International judicial organs, journalists, humanitarian agencies and supra-national organizations are, since the start, present in the DRC trying their best, with propositions to counteract this situation. International organizations’ duty to intervene in countries in conflict is justified by the responsibility to protect (R2P) as enshrined in the UN Charter and other various

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<sup>84</sup> In n 80 above 4

<sup>85</sup> M Boas in n 23 above 63

<sup>86</sup> Refer to unexpected eruptions of violence around Rumangobo and Ruggeri near Goma (eastern DRC) on 28 August 2008. See fourth special report of the Secretary General on MONUC, S/2008/728 available at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html>

<sup>87</sup> In n 36 above19

<sup>88</sup> International Rescue Committee (2008) Mortality in the DRC : An Ongoing Crisis

<sup>89</sup> C Rakisits Child soldiers in the east of DRC 3

conventions.<sup>90</sup> As explained in the introduction, MONUC peacekeepers are operating in the DRC since the beginning of the conflict in earlier 1999. The promotion and protection of human rights was part of MONUC's original mandate.

In the post-conflict period, the mission was entrusted with the right to step forward using force to protect civilians. Pursuing the resolution 1756 of 15 May 2007, MONUC was endorsed with 18,352 personnel soldiers and a budget of \$ 1,166.72 million from July 1, 2007 to June 30, 2008 for a better performance of the additional charge.<sup>91</sup>

Like for the rule of law, different UN agencies are involved in the human rights section helping the mission in addressing the issues. Beside the Office of High Commissioner for Human Rights (OHCHR), there is the Office for the Co-ordination of the Humanitarian Affairs (OCHA), the United Nations Children's Fund (UNICEF) and UNDP.<sup>92</sup> The Universal Periodic Review (UPR) constitutes a main mechanism at the Human Rights Council service regarding the condition of human rights in member states. MONUC itself has divisions that related to human rights, which include Child Protection, humanitarian, Civilian Police and Military Observers.<sup>93</sup>

The OHCHR has been operating in the DRC since 1998. In 2006, it unified with the Human Rights Division of MONUC to form a joint agency named United Nations Joint Human Rights Office (UNJHRO).<sup>94</sup> Since that period, UNJHRO is dealing with issues related to human rights. In the post-conflict period, UNJHRO is coordinating activities to combat human rights violations and contribute to improve "the capacity of MONUC to protect civilians and to establish a victims and witnesses' protection network".<sup>95</sup>

Nevertheless, the co-ordination of these different actors on when and who is qualified to intervene on appropriate issue create major challenges to deal with. In spite of its multiple agencies, in the twenty-nine report of 18 September 2009 to the SC, the SG raised concerns about the deterioration of humanitarian conditions in eastern DRC. Armed persons in uniform are raping, killing and extorting civilians. Humanitarian workers reported being unsecured when conducting their mission.<sup>96</sup> In Kivu alone, an estimated 1,7million people are remaining internally displaced.<sup>97</sup> The Humanitarian Action Plan mid-year report evaluated the urgent needs of Congolese to \$946

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<sup>90</sup> J Sarkin 'The role of the UN, the AU and sub-regional organizations in dealing with Africa's human rights problems' (2009) 53 *Journal of African Law* 9

<sup>91</sup> Letter of the president of the UN Security Council addressed to the Secretary General on 11 June 2007, annex 4, available at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html>

<sup>92</sup> R Ricci, Human rights challenges in the DRC: A view from MONUC's human rights section *Challenges of peace implementation* 97

<sup>93</sup> In n 45 above

<sup>94</sup> The HR Council, UPR A/HRC/WG.6/6/COD/2 of 18/09/ 2009 on the DRC, available at <http://www.ohchr.org>, p 4 accessed on 14 July 2010

<sup>95</sup> In n 94 above 4

<sup>96</sup> Twenty-ninth report of the SG, of 18 September 2009, on MONUC, available at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html>

<sup>97</sup> In n 45 above 6

million.<sup>98</sup> Sexual violence is at high level in eastern area. Despite the combined efforts, the number of victims are raising up daily in the country.

#### **4.1 The Universal Periodic Review and the DRC**

As a substantial achievement of the UN, the Universal Periodic Review (UPR) pursues the enhancement of the human rights condition in every member state. The UN General Assembly, in its resolution 60/251 of 15 March 2006, created the Human Rights Council and established the UPR.<sup>99</sup> The first UPR occurred a year after its creation in a Working Group established in accordance with Human Rights Council resolution 5/1 of 18 June 2007. The UPR proceeds by re-examination of the human rights reports of all members. In this respect, it evaluates States' human rights records and deals with human rights violations wherever they arise.

The 192 UN member states meet once every four years to review the human rights situation in their countries. During the process, the country on the agenda gets an opportunity to review the situation in its territory and announce what measures it has taken to improve the human rights condition and to surmount challenges it might be facing.<sup>100</sup> In addition, this country answers questions of its colleagues and considers their recommendations. The review occurs during a meeting of the UPR Working Group through debate between the state under review and other UN member states.

In spite of this, the UPR evaluates if the state under review observes the human rights obligations accordingly to the UN Charter, the Universal Declaration of Human Rights, applicable international humanitarian law and other human rights instruments to which the state is party.<sup>101</sup>

The Working Group held the first review of the DRC at the seventh meeting on 3 December 2009 during its sixth session held from 30 November to 11 December.<sup>102</sup> Before this presentation, the OHCHR compiled information concerning the state of the human rights in the DRC.<sup>103</sup> This report stipulated that until 1 June "the DRC did not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights."<sup>104</sup>

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<sup>98</sup> In n 45 above 7

<sup>99</sup> The UN General Assembly, resolution 60/251, available at <http://www.ohchr.org.up.za>, (accessed on 14 July 2010)

<sup>100</sup> See basic facts of OHCHR about UPR, November 2008 ,available at <http://www.ohchr.org.up.za>, (accessed on 14 July 2010)

<sup>101</sup> Basic facts in 100 above

<sup>102</sup> UNHRC A/HRC/13/8, Report of the Working Group on the UPR of the DRC, 4 January 2010, available at <http://www.ohchr.org.up.za>, (accessed on 14 July 2010)

<sup>103</sup> UNHRC A/HRC/WG.6/6/COD/2, Compilation prepared by the OHCHR, UPR on the DRC, 18 September 2009, available at <http://www.ohchr.org.up.za>, (accessed on 14 July 2010)

<sup>104</sup> UNHRC A/HRC/WG.6/6/COD/2, in above 102 p2

The group reported the extensive violations of human rights and international law since the resurgence of conflict between FARDC against CNDP, FDLR against Mayi-Mayi in North Kivu and LRA against FARDC in province Orientale. They referred to the reports of the SG on abductions, forced recruitment of children, mass killing, and rapes (1,100 monthly). They also confirmed that members of armed groups, FARDC and PNC, continue to commit most of the crimes. Despite efforts devoted to the case, children are still present in FARDC and there is continuous recruitment in the other armed groups.

The 2006 Constitution of the DRC devotes more than 60 of the 229 articles to human rights, including civil and political rights, economic, social and cultural rights, collective rights and the rights of specific groups. The DRC announced that it had installed the High Council of the Judiciary as provided for in article 152 of the Constitution on 5 August 2008. “The High Council of the Judiciary aims to play a crucial role in strengthening the independence of the country’s justice system. To this end, it nominates judges; decide on promotions, retirements, revocations, resignations and the reinstatement of magistrates”.<sup>105</sup> It also signaled the establishment of the “*Entité de liaison des Droits de l’homme*”, a mechanism pursuing the causes of human rights violations and propositions for appropriate solutions, on 12 August 2009.<sup>106</sup> In addition, the DRC requested the international community, particularly the United Nations Human Rights Integrated Office in its country, to assist its government with technical practices in the building its human rights capacity in almost all areas.<sup>107</sup>

On 7 December 2009, at its 11th meeting, the Working Group adopted the report on the DRC.<sup>108</sup> The Human Rights Council’s Universal Periodic Review Working Group observed that the DRC government had made progress in protecting and promoting human rights.<sup>109</sup> Recognizing its difficulties, the DRC’s Government undertook to deal with the issues. However, delegations recommended that the DRC established concrete policies to overcome the challenges in each department of all human rights.

The UPR work in the DRC linked with the objectives of MONUC in that they are both pursuing the improvement of the human rights throughout a secure and peaceful environment. In many occasions, the UPR referred to the SG when reporting to the HRC. Encouragement, suggestions and remarks are well directed and welcomed by the DRC government, but the situation improves slowly. After two years of the signing of the acts of engagement (the latest peace agreements in the DRC), sexual abuses remain the top of human rights and humanitarian activists’ concerns. Indeed, the DRC has not yet reached the required level to deal with such issues. This organization can assist him with practically techniques that could bring changes.

<sup>105</sup> A/HRC/WG.6/6/COD/1, national report of the DRC to HRC on 3/09/ 2009 available at <http://www.ohchr.org.up.za>, (accessed on 14 July 2010)

<sup>106</sup> National report of the DRC in 105 above

<sup>107</sup> In n 105 above p22

<sup>108</sup> UNHRC A/HRC/13/8, in n 102 above

<sup>109</sup> UNHRC/HRC/13/8, in n 102 above

The UPR played a considerable role in matter related to human rights. In the DRC, it gives further pressure on the national Government to improve the human rights conditions. By exposing its irregularities regarding the protection of human rights in its territory, the UPR assists the DRC fulfill its obligations on the national and international levels.

#### ***4.2. International judicial organs in the post-conflict period in the DRC***

Although they are not enclosed in the MONUC's mandate, the International Criminal Court (ICC) and the International Court of Justice (ICJ) have been watching the conduct of belligerents acting on the DRC territory. Their contribution regarding the reconstruction and the reconciliation process of the country linked to some extent with the MONUC's work. For the purpose of this study, the paragraphs below will explore these organs' interventions in the DRC.

##### ***4.2.1. The International Court of Justice in the post-conflict period in the DRC***

Established since 1947 as the incarnation of the Permanent Court of Justice, the International Court of Justice (ICJ) represents the principal judicial organ of the UN. According to its Statute, the ICJ deals with states' responsibility for human rights atrocities, war crimes, aggression and crimes against humanity committed generally under international law.<sup>110</sup> All UN member states, parties to the Statute of the Court, recognized the compulsory jurisdiction of the Court in all legal disputes stated in article 36(2) of the ICJ.<sup>111</sup>

The Court has the duty to resolve disputes (contentious cases) submitted to it by states on one hand and the other hand to suggest solutions (advisory proceedings) on legal matters referred to it by UN organs and specialized agencies.<sup>112</sup> In this respect, the DRC reported its situation for the first time to the ICJ on 23 June 1999. On its request, it claimed that the invasion of his territory by Burundi, Uganda and Rwanda's troops, was causing a violation of the United Nations Charter and of the Charter of the Organization of African Unity (OAU).

Besides, the DRC adhered to the ICJ since 8 February 1989 without any restriction.<sup>113</sup> Uganda recognized it long ago at its independence in 1962 with the condition of reciprocity.<sup>114</sup> Nevertheless, Rwanda and Burundi "had neither accepted the compulsory jurisdiction in all cases, nor acceded to a treaty providing for jurisdiction in specified circumstances."<sup>115</sup> Therefore, the case against them was limited concerning these provisions.

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<sup>110</sup> How the court works download from the internet, at <http://www.up.ac> (Accessed on 14 July 2010)

<sup>111</sup> A Zimmermann, C Tomuschat, K Oellers-Frahm (2006) *The statute of the ICJ a commentary* New York: Oxford University Press 589

<sup>112</sup> How the court works in n 110 above

<sup>113</sup> *Requête introductive d'instance à la Cour Internationale de Justice de la Haye contre la République du Rwanda* of 28 May 2002 available at <http://www.ohchr.org>

<sup>114</sup> A Mollel, *A Human Rights approach to conflict prevention, management and resolution in the Africa's GLR: a focus on the DRC conflict*, Academic dissertation from the University of Joensuu, Faculty of Law, Economics and Business Administration

<sup>115</sup> A Mollel, in n 114 above

However, according to Article 36(1) of the Statute of the Court the DRC estimated that his case against these two countries should be admitted because Rwanda had ratified many international conventions and treaties related to this case.<sup>116</sup> From this perspective, the DRC reminded the Republic of Rwanda that it is bound by Article 55 of the UN Charter, which recommends member states to facilitate the universal respect of human rights and freedom for all without any discrimination of race, gender or religion.<sup>117</sup> To this end, the member states should entertain pacific and friendly relations based on the principle of equity of peoples and their sovereignty.

In addition, Article 2(4) of the UN Charter imposes the following obligations: “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>118</sup> In its applications, the DRC argued that the invasion of Congolese territory by Burundian, Ugandan and Rwandan troops on 2 August 1998 violated, contrary to Article 2(4) of the UN Charter, its sovereignty, international human rights and constituted a threat to peace and security in Central Africa in general and in the Great Lakes Region in particular.<sup>119</sup> The respondent states (Rwanda, Burundi) objected the jurisdiction of the Court and incidentally the admissibility of their cases. Based on this limitation, the DRC withdrew the case against them, but resubmitted it against Uganda in 2002.

On 19 December 2005, the Court held the judgment on the armed activities of Uganda in the DRC.<sup>120</sup> It concluded that the Republic of Uganda through its armed forces “violated the principles of non-use of force in international relations and of non-intervention; that it violated its obligations under international human rights law and international humanitarian law; and that it violated other obligations owed to the DRC.”<sup>121</sup> The Court also concluded as follows: “The DRC violated obligations owed to Uganda under the Vienna Convention on Diplomatic Relations of 1961”.<sup>122</sup>

The Court ordered Uganda to pay reparations to the DRC but did not specify how and what should constitute those reparations. Executing its function the ICJ played a judicial role that contributed to the reconstruction of peace between Uganda and the DRC even if it was precarious. Its role of mediator between Uganda and the DRC remains crucial as it initiated reconciliation between the two countries.

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<sup>116</sup> Article 36 (1) stipulates that the Court has jurisdiction over "matters specifically provided for in the UN Charter or in treaties and conventions in force"

<sup>117</sup> Article 55(c) of the UN Charter

<sup>118</sup> United Nations Charter, article 2(4)

<sup>119</sup> See *Requête* in 113 above , also A Mollel in 114 above

<sup>120</sup> *Armed Activities on the Territory of the Congo (DRC v. Uganda), Judgment, I.C.J. Reports 2005* see it at <http://www.icj-cij.org> 168

<sup>121</sup> Case, armed activities on the territory of the DRC (DRC v. UGANDA) judgment of 19 December 2005 available at <http://www.icj-cij.org> 280

<sup>122</sup> in n 121 above 282

However, as a high organ supervising international justice, the Court did not resolve in particular the DRC's concern regarding the armed activities of Uganda on its territory because beyond its judgment in 2005, the Uganda Peoples' Defense Force (UPDF) and the Lord's Resistance Army (LRA) continued to commit atrocities in Ituri. In addition, leaving aside the jurisdictional reason brought up by Burundi and Rwanda, the Court could refer to any treaties or conventions appropriated to stop these countries continuing with their armed activities on the DRC territory causing massive human rights violations.

#### ***4.2.2. The International Criminal Court in the post-conflict period in the DRC***

Following the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court (ICC), UN member states adopted the Rome Statute of the ICC on 17 July 1998.<sup>123</sup> After entering into force on 1 July 2002, the Rome Statute entrusted the Court in its Article 5, “with the power to investigate and prosecute those who commit genocide, crimes against humanity, war crimes and crime of aggression.”<sup>124</sup> With this mandate, its jurisdiction is broadly and applied on human individuals.

Established as a permanent body, the ICC is guided by three principles. Firstly, the principle of complementarity recommends that the Court examine only cases national courts are incapable to conduct themselves.<sup>125</sup> In addition, relatively to its Article 12(2)(a) and (b) the ICC may intervene only if the crime occurred in a state that is a party to the Rome Statute or in which the suspect is a national of a state that is party to the Rome Statute.<sup>126</sup> Secondly, the Court is conducted by the principle of selection of crimes, which “deals only with the most crimes of concern to the international community as a whole”.<sup>127</sup> Thirdly, the Court should remain within the norms of customary international law.<sup>128</sup>

The ICC is not a UN organ. On the contrary, it is an independent jurisdiction which does not necessarily report to any other authority. However, with its complementarity character the Court entertains a relationship with other institutions exercising similar functions. The relationship between the ICC and the UN is particular because it draws its foundation into the Statute.<sup>129</sup> In this respect, Article 13(b) of the Rome Statute stipulates that the Security Council, acting under the Chapter VII, may refer a situation to the Court.<sup>130</sup> In October 2004, the Court signed with the UN

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<sup>123</sup> MH Arsanjani, & WM Riesman 'The Rome Statute of the ICC' 93 *The American Journal of International Law*

<sup>124</sup> See Article 5 of the Rome Statute of the ICC, 1

<sup>125</sup> T Savage, In quest of sustainable justice: Transitional justice and human security in the DRC ( 2006) *ISS Paper 8*

<sup>126</sup> See Article 12(2)(a),(b), in n124 above 5

<sup>127</sup> MH Arsanjani, in 123 above

<sup>128</sup> Arsanjani in n 123 above

<sup>129</sup> M du Plessis & A Louw "The investigation and prosecution of 'core international crimes' and the role of the ICC in Africa", Report from a symposium on 2–4 August 2006, Cape Town: ISS

<sup>130</sup> Article 13( b) of the Rome Statute, in n 124 above 5

the Negotiated Relationship Agreement, which represented “a legal foundation for cooperation between the two organizations within their respective mandates.”<sup>131</sup>

The Court acquired its jurisdiction over the DRC territory from the beginning as the country ratified the Rome Statute on 11 April 2002.<sup>132</sup> In September 2003, the Court’s Prosecutor announced that the DRC was its first priority.<sup>133</sup> Nevertheless, he took several months to commence with the investigations. The objective of the ICC in the DRC was to arrest the militia and rebel group leaders who continued to commit crimes beyond the ceasefire and related agreements and to contribute preventing such crimes to reoccur. In this context, “the United Nations has indicated that there were nine parties to the war, which used child soldiers or committed war crimes against children”.<sup>134</sup>

The Court is fashioned to complement and no to substitute to national justice systems. Indeed, State parties to the Rome Statute remained the first responsible to prosecute violations of their laws and the crimes committed on their territories. Accordingly, national courts of the DRC attempted to prosecute the perpetrators brought before them prior to contact the ICC. Lubanga was in custody for nearly a year in the *centre pénitentiaire et de rééducation de Kinshasa* before the DRC authorities surrendered him to the ICC.<sup>135</sup> Besides this case, the judicial system of the DRC had investigated many others cases. For instance, on 28 July 2007 in Bunia, the Kisangani military Court condemned FARDC Major Komboko of FARDC training camp of Rwampara in first instance to 10 years in prison.<sup>136</sup> He was accused of raping a 12-year-old daughter of another FARDC officer on 28 April 2007.

A further example is the following: “On 18 June 2007, 17 soldiers were convicted for looting, failure to observe military regulations and squandering of ammunitions”.<sup>137</sup> As the Military Prosecutor considered that the available evidence did not suffice to secure a conviction for rape, the Court ordered the perpetrators and the state to compensate the victims with a total of US\$ 98,000.

On 3 June 2009, the military tribunal of Kisangani condemned five Mayi-Mayi militiamen who raped 135 women in July 2007 in Lieke Lesole, Opala territory, Oriental Province, for crimes against humanity, including violent rape.<sup>138</sup> “The convicted militiamen were ordered to pay US\$

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<sup>131</sup> ICC, *Manuel for ratification and implementation of the Rome Statute* (2008) 3 Canada: University of British Columbia Vancouver 2

<sup>132</sup> WA Schabas ‘First prosecutions at the ICC’ (2006)27 *Human Rights Law Journal* 32

<sup>133</sup> Report of the Prosecutor to the Second Assembly of States Parties to the Rome Statute of the ICC on 3 September 2003 29

<sup>134</sup> SD Roper & LA Barria ‘State co-operation and ICC bargaining influence in the arrest and the surrender of suspect’(2008) 21

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<sup>135</sup> WA Schabas, in n 132 above 34

<sup>136</sup> Report (A/HRC/7/6/Add.4) of the Special Reporter on violence against women, its causes and consequences, to the HRC, 28 February 2008, available at <http://www.ohchr.org> accessed on 14 July 2010

<sup>137</sup> Report A/HRC/7/6/add4 in n136 above

<sup>138</sup> Report A/HRC/13/64 of 28/1/2010 on the situation of HR and the activities of his office in the DRC to the GA, see it at <http://www.ohchr.org>

2,500 in damages for each victim of violence and US\$ 10,000 in damages for each victim of rape".<sup>139</sup> The tribunal also sentenced them to between 30 years and life in prison.

On 27 July 2009, *la cour militaire opérationnelle* of North Kivu (Rutshuru) sentenced Colonel Kipanga to life imprisonment and Major Lusungu to 10 years' imprisonment, on charges of crimes against humanity.<sup>140</sup> The Court also ordered the two officers to pay, jointly with the Government, damages to the victims of rape. However, Colonel Kipanga escaped from detention and later rejoined the FARDC regardless of the charges against him.

On 11 September 2009, the *tribunal militaire de garnison* of Bunia, sentenced a FARDC soldier of the 132nd battalion to life imprisonment for rape and murder.<sup>141</sup> After that, he was also expelled from the FARDC.

Despite, these isolate cases, the national justice system of the DRC is not capable to handle the human rights violations cases that reach it. Thus, the MONUC Human Rights Division in South Kivu reported to the military and civilian justice authorities that on the 287 cases of sexual violence during the period 2005-2007, only 64 cases have been examined and consequently 58 convicted.<sup>142</sup> The lack of resources affects dramatically the military justice system though it has jurisdiction over most of the cases involving gross human rights violations.<sup>143</sup> Due to its inefficiency to investigate and prosecute most of the responsible of crimes committed on its territory, the DRC turned to international community for assistance.

The big challenge faced is that those who are supposed to conduct the investigations and prosecutions of crimes are involved in the expansion of those crimes. Besides, the local militaries, MONUC's agents were reported to rape women and even girls under age.<sup>144</sup>

That is why, in March 2004, President Kabilo referred the DRC's situation to the ICC. The ICC is carrying out so far five cases in which the perpetrators are accused of committing crimes against humanity and war crimes on the DRC territory. After investigations, two years later the DRC has referred to it, the Court arrested Thomas Lubanga Dyilo a Congolese militia leader in Ituri province. He first appeared before the Pre-trial Chamber I on 20 March 2006 with three charges of war crimes on his count notably recruiting children under the age of 15 into armed groups and forcing them to commit hostilities such as raping women, killing and extorting civilians.<sup>145</sup>

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<sup>139</sup> Report of the UNHCHR in n 138 above

<sup>140</sup> Report in n 138 above

<sup>141</sup> In n138 above

<sup>142</sup> Report in n 136 above

<sup>143</sup> In n 134 above

<sup>144</sup> S Whitman 'Women and Peace-building in the DRC: An assessment of their role in the Inter-Congolese Dialogue' (2006) 6.1 *African Journal on Conflict Resolutions* 29-48

<sup>145</sup> Public document no ICC-01/04-01/06-1363 on the situation in the DRC on the case of *The Prosecutor v. Thomas Lubanga* 30 May 2008, p5

Starting on 29 January 2009, his trial was supposed to end with the judgment of 8 July 2010.<sup>146</sup> Considering the fact that the prosecutor failed to comply with the Court's order on revealing the identity of intermediaries, on 15 July, the judge decided to release Lubanga on the ground that its rights to a fair trial were violated.<sup>147</sup> On 8 October 2010, on Appeals Chamber, the prosecutor divulged the names requested by the Court and led by this fact the continuity of the trial.<sup>148</sup> Currently, the case is on the stage of submission of evidence by the prosecutor.

On 17 October 2007, the DRC authorities surrendered Germain Katanga, leader of the *Force de Résistance Patriotique* (FRP) in Ituri, to the ICC making by this fact the Court's second DRC case.<sup>149</sup> He appeared for the first time before the Pre Trial-Chamber I on 20 October 2007 with three counts of crimes against humanity and six counts of war crimes recorded against him.<sup>150</sup>

An additional arrest of Mathieu Ngudjolo Chui occurred on 6 February 2008. Ngudjolo appeared on the Pre Trial-Chamber I on 11 February 2008. He was accused of the same allegations of recruiting child soldiers under the age of 15.<sup>151</sup>

Although they were arrested separately, Germain Katanga and Mathieu Ngudjolo were prosecuted jointly. During the hearing of 10 March 2008, the judge decided to join the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*. The judge estimated that “[t]he alleged crimes committed by both of them were related and occurred during the same time on the same place.”<sup>152</sup> Their joint trial started on 24 November 2009 and is currently pending.

During the same year, on 3 July 2008 Jean-Pierre Bemba was transferred to the Court by Belgian authorities after been arrested on 24 May 2008.<sup>153</sup> He was presumed acting as military and commander-in-chief of the *Mouvement de Libération du Congo* (MLC). Bemba is accused respectively of two counts on crime against humanity (murder, rape) and three counts on war crimes (murder, rape, pillaging) committed on the territory of the Central African Republic during the period approximately 26 October 2002 to 15 March 2003.<sup>154</sup> The opening of its trial was scheduled on 22 November 2010. Although JP Bemba is a national of the DRC, the charges recorded against him are alleged been committed on the Central African Republic (West neighbor country of the DRC). By this fact, it is quite difficult to link them with the atrocities perpetrated in the post-conflict period on the DRC territory.

<sup>146</sup>In n above 145

<sup>147</sup>Trial Chamber on the case ICC-01/04-01/06 *The Prosecutor v T Lubanga*, 15 July 2010

<sup>148</sup>ICC-CPI-20101001-MA73 decision of the Appeals Chamber on the case *The Prosecutor v T Lubanga*, 8 October 2010

<sup>149</sup>SD Roper & LA Barria in n 134 above 470

<sup>150</sup>ICC-04-01/04-02/06 Trial case: *The Prosecutor v G Katanga*, 1 October 2007

<sup>151</sup>In n 150 above

<sup>152</sup>ICC-01/04-01/07 Public decision on the join of the cases *The Prosecutor v G Katanga* and *The Prosecutor v MN Chui*, 10 March 2008

<sup>153</sup>ICC-01/05-01/08 of 29 June: *The Prosecutor v. Jean-Pierre Bemba*

<sup>154</sup>ICC-01/05/08 in n above 153

After the arrest of Laurent Nkunda (CNDP) on 22 January 2009, the atrocities in eastern DRC have decreased considerably. The disarmament and integration of CNDP elements into national army accelerated. The initiation of the joint military operation (Rwanda and DRC) *Umoja wetu* against AFDL approached the two countries and their will to combat the remaining atrocities. Recently, on 11 October 2010, French authorities arrested Callixte Mbarushimana, the executive secretary of the FDRL.<sup>155</sup> The ICC requested its arrest for the crimes against humanity and war crimes committed in 2009 in the Kivus.<sup>156</sup>

By arresting these armed conflict leaders, the ICC is contributing to the improvement of the political situation and consequently the human rights protection in eastern DRC. However, humanitarian needs and human rights violations continue to create victims on that part of the country every day. The human rights situation will improve even more if the ICC continues to tackle the remaining armed conflict leaders because they are expanding the chain of atrocities.

## 5. Conclusion to chapter two

In general, the strategies adopted by the UN addressed significantly the reconstruction and reconciliation process in the post-conflict period in the DRC. Since its creation, MONUC has contributed the most in the DRC. Its role has three respective folds: monitoring, intervention and assistance. At the beginning, the MONUC aimed to observe the implementation of the Lusaka agreements. During its second and third phases, MONUC's mandate was modified and adapted to the evolution of the political situation of the DRC. In this context, the mission intervened with military elements to neutralize the belligerents and conducted peacefully the elections. In the post-conflict period in the DRC, MONUC is assisting the new government to reconstruct practically all sectors destroyed by the war. Concerning the reconstruction, the mission' role was manifested actively in the three followed departments: the re-establishment of the rule of law, the SSR and the improvement of the human rights.

To enforce the rule of law, the mission assisted the national Government with practical advice to implement democracy and the control of the entire territory. Regarding the SSR, MONUC succeeded to repatriate 14 100-foreigner soldiers from the DRC in terms of the DDR process. It also assists the improvement of judicial system and all its personnel. The investigation and prosecution of the cases brought before the national courts all relied on the technical and logistical support of MONUC. In the eastern DRC, MONUC fought the illegal exploitation of natural resources by the armed groups and contributed in the arrest of some perpetrators.

At this stage, the ICJ and the ICC supplemented the mission considerably. The ICJ showed its support by the verdict against Uganda in 2005. The Court disciplined the two countries (DRC, Uganda) and sent a preventive message to the international community on the respect of the

<sup>155</sup> OA Maunganidze 'International Crime in Africa Program' ISS Pretoria download from internet at <http://www.up.za>

<sup>156</sup> In n above 155

sovereignty and the territorial integrity of other members under Article 2(4) of UN Charter. The same message goes from the ICC, which trialed more than five armed groups' leaders causing massive human rights violations in the DRC.

Beside the rule of law and the security sector, the UN played a leading role in the improvement of human rights in the DRC. MONUC assisted victims of human rights violations with foods, medications, habitations and meanwhile supervised the arrest of perpetrators of crimes. The UPR, for its part, reviewing the human rights conditions, recommended to the Government to "take all necessary measures to improve implementation of the human rights provisions of the Constitution into the laws enacted thereof".<sup>157</sup>

Concerning the issue of reconciliation, MONUC initiated the operation Kimia II that aimed at the consolidation of relationship between nationals of Rwanda and the DRC.

In spite of MONUC's effort, the eastern part of the country is in continuous conflict. The above issues present MONUC's weaknesses and explain its failure to multiple tentative in the maintenance of security and the effective rule of law. As the largest and best-known peacekeeping in the DRC, MONUC has not taken any adequate measure to follow up the applicability of its resolution to stop illegal exploitation of mineral resources in order to guarantee good governance on the entire territory of the DRC. The main issue arose is that the MONUC's activists are not familiar with the environment in which they are acting in the DRC. These activists should understand the community and the people they are willing to assist and know the geography of the region they are working in.<sup>158</sup> This task is difficult because, most of international humanitarian people intervening in the DRC do not speak the same language with those who they are willing to protect.

Indeed, as Tshiswaka observed, it is difficult to classify the achievements and failures of such mission in a vast and complex country like the DRC.<sup>159</sup> The overview intervention of MONUC in the DRC shows that the mission has applied the standard prescription for collapsing states namely: constitution, elections, economic liberalization, and security reforms. Considering the chaos in eastern part of the country, these measures have not either addressed the causes of the conflict neither reestablish peace. The reasons of this failure as exposed above regroup the vast size of the country, the mismanagement of natural mineral resources and most important considerable immaturity of Congolese due to the catastrophic political situation during a vast period of its history. This disastrous past has generated an uncontrollable fear to resist to torture and claim their rights.

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<sup>157</sup> UNHCR report in 102 above, see the Greece recommendation on page13

<sup>158</sup> R Ricci 'human rights challenges in the DRC: a view from MONUC's human rights section' *Challenges of Peace Implementations* 97

<sup>159</sup> H Tshiswaka, 'MONUC: a case for improvement' *Open Society for Southern Africa*

## CHAPTER III: The role of the OAU/AU in the post-election period in the DRC

### 1. Introduction to the role of the OAU/AU in the DRC

This chapter analyses the contribution of the OAU/AU to the post-conflict reconstruction in the DRC. In this regard, it seeks answers to the question why the fighting is continuing in the eastern DRC in spite of the Lusaka agreements. Practically, it looks at the role played by the African Union General Heads of State and Government, the AU Peace and Security Council (PSC), the African Commission on Human and Peoples' Rights (ACHPR), and the New Partnership for Africa's Development (NEPAD) in particular its African Peer Review Mechanism (APRM).

Emerging from the OAU in 2002, the AU represents for the African countries an important organization of support during conflict supervision. The Constitutive Act of the AU constituted a substantial achievement for member states in that it disposed to attain the objective of its predecessor OAU Charter namely “the creation of a United States of Africa in the long run”.<sup>160</sup>

Compared to its predecessor, the Organization of African Unity, the AU is more creative and expanded in its principles. Among these ones, it gives “the responsibility to the Union to intervene in case of serious circumstances such as genocide and human rights abuse in a member state”.<sup>161</sup> With this vision, the AU is promoting and defending common African interests in international environment with a particularity on Africa’s development, unity, and solidarity, protection of human rights, security and peace all over the continent.<sup>162</sup>

Like the UN, the African Union has multiple bodies that contribute to address the duty related to conflicts and human rights abuses throughout the continent. Aside the PSC, there is the Military Staff Committee (MSC), NEPAD, the ACHPR and the sub-regional organizations.<sup>163</sup> The MSC regroups qualified officers who have a consultative role for the PSC concerning military and security issues.<sup>164</sup> The APRM mechanism in observing the rule of law aims to observe periodic reviews of members, guidelines and practices, which confirm development made towards achieving mutually settled goals.<sup>165</sup>

The DRC’s conflict has created significant challenges to the African Union. It emerged as an assessment of its aptitude to prevent, control and resolve conflicts in the continent. In this context, Nowrojee noted: “The AU’s ability to respond effectively to the many remaining post-

<sup>160</sup> Strategic plan of the AUC: Vision and mission of the AU (2004)<sup>1</sup> available at <http://www.african-union.org> accessed on 29 July 2010 p22

<sup>161</sup> See article4(h) of the Constitutive Act available at <http://www.african-union.org>

<sup>162</sup> K Bogland, R Egnell & M Lagerström ‘The AU-A study focus on conflict management’ (2008) 2475 FOI, Swedish Defense Research Agency p14

<sup>163</sup> J Sarkin in n 90 above 20

<sup>164</sup> K Bogland in n 162 above p25

<sup>165</sup> B Nowrojee Africa on its own: Regional Intervention and Human Rights (2004)Human Rights Watch Report 1-15

conflict problems in the DRC might be the most challenging test of its commitment to taking a more proactive, continent-wide role”.<sup>166</sup>

In the same way, Landsberg states that “[t]he major task of the AU is to assist Africa meet the challenges of this Twenty-first Century, by making a link between peace, security, governance, democracy and development.”<sup>167</sup> In the meeting held in September 2005 in Durban, South Africa, the members identified the key actors, their experiences and lessons learned in the field of post-conflict reconstruction and development.<sup>168</sup>

Concerning the DRC’s dilemma, the AU then the OAU, first appeared in 1996 when it organized a regional summit in Nairobi reacting to the silence of the UNSC on the case.<sup>169</sup> Its second intervention occurred in 2003 when it supervised the Sun City Accords under the mediation of South Africa.<sup>170</sup> In 2004, the AU together with the UN, deployed observers along borders between Rwanda and DRC in rapport with the joint mechanism agreed upon the two countries.<sup>171</sup>

On 10 January 2005, the AUPSC meeting in Libreville recommended to disarm urgently all armed groups and militia operating in the DRC.<sup>172</sup> The summit agreed that South Africa, Angola, Algeria, Gabon, Uganda, Senegal and Tanzania, leading by Nigeria, form a committee to evaluate the situation in DRC.<sup>173</sup> Following this summit, the AU requested its member states to contribute with 6,000 troops at least to deploy in eastern DRC for forcibly disarm Rwandan rebels based there.<sup>174</sup>

During the period after the elections of 2006 in the DRC, its organs, notably the AUGA, PSC, ACHPR and NEPAD, are manifesting the AU’s involvement in the case. The following sections examine their interventions in the post-conflict period.

## **2. The African Union Assembly in the post-conflict period in the DRC**

The Assembly constitutes “the supreme organ of the AU, which consists of Heads of State and Government or their representatives”<sup>175</sup> In its quality of the highest organ of the Union, the Assembly plays the directing role. In this respect, it “monitors the implementation of policies of the Union as well as ensures compliance by all member states”.<sup>176</sup> In addition, the Assembly “gives

<sup>166</sup> B Nowrojee in above 165

<sup>167</sup> C Landsberg ‘The Emerging African Continental Union and the Drive for Political Development’ *Open Society Initiative for Southern Africa* 51-57

<sup>168</sup> T Murithi, ‘The AU/ NEPAD post-conflict reconstruction policy: an analysis’ (2007) 3 *Conflict Trends*

<sup>169</sup> T, Murithi. ‘Towards a symbiotic partnership: The UN peace building Commission and the evolving African Union/NEPAD Post-Conflict Reconstruction Framework’ in A Adebayo & Scanlon H (eds) (2006) *A dialogue of deaf: Essays on Africa and the UN* Johannesburg: Jacana

<sup>170</sup> See it in S Koko The one plus four formula and transition in the DRC’(2007) 16.1 *African Security Review* 33-49

<sup>171</sup> 8th meeting of the Africa partnership forum, Berlin, 2007

<sup>172</sup> Report of the AU PSC, PSC/AHG/2/XXIII, 23rd meeting, Libreville, Gabon, 10-11 January 2005

<sup>173</sup> In n 172 above

<sup>174</sup> N Alusala, in n 74 above 39

<sup>175</sup> Article 6(1,2) of the Constitutive Act of the AU

<sup>176</sup> Article 9(1e) AU Constitutive Act

directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace”.<sup>177</sup>

Generally, the Assembly examines the situation of the continent as a whole. It receives report from the PSC and the Commission on specific cases related to conflict and peace. In this respect, the Assembly expressed its preoccupation over “the persistence of conflict and crisis situations on the continent despite the many efforts deployed thus far to resolve them”.<sup>178</sup>

In accordance with the UN Charter, the AU Assembly is limited to implement the provisions of Article 4(h) of the Constitutive Act. Indeed, the UN Charter prohibits the use of force in inter-state relations. Rather, it promotes the respect of territorial integrity and political independence.<sup>179</sup> On one hand, the UN Charter specifies that member states have the primary duty to assure protection of their peoples.<sup>180</sup> On the other hand, it gives the UNSC the power to authorize regional organizations to intervene in “situations that threaten international peace and security”.<sup>181</sup> It results from the confrontation of Article 4(h) of the Constitutive Act and Article 52 of the UN Charter to Articles 39 and 53 of the UN Charter, that the UN limits the AU Assembly and other organizations in the realization of their duties on the African context.

The problem lies on the understanding of when and how can the different organizations identify a crime as a threat to peace, a war crime, crime against humanity and genocide. In this context, Ekiyor argues that “one person’s responsibility to protect is another’s intervention into the affairs of sovereign states”.<sup>182</sup> Waiting for the UNSC to decide on the qualification of a crime relays the other organizations, as ready as they can be, to protect civilians and prevent atrocities. The DRC surely failed to protect its citizens during the armed conflicts. The organizations in which it acts as member are confronted to the ambiguity created by the different documents that created them. This explained, among other reasons, the retarded reaction of the UN and the low advance of the AU on the DRC situation.

The Assembly is committed to deal definitively with conflicts and violence in Africa by addressing its root causes and to push forward the agenda of conflict prevention, peacemaking, peacekeeping and post-conflict reconstruction.<sup>183</sup> That is why the Assembly requested the

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<sup>177</sup> Article 9(1g), AU Constitutive act

<sup>178</sup> Special session of the Assembly, SP/ASSEMBLY/PS/DECL.(1) on the elimination of conflicts in Africa and the promotion of sustainable peace, Tripoli 31 August 2009, available at <http://www.africa-union.org.up.za>

<sup>179</sup> Article 2(4) of the UN Charter

<sup>180</sup> The UN Charter promotes the responsibility to protect their populations as states’ first concern. See UNSC’s Resolution of 28 August 2006 available at <http://www.un.org>

<sup>181</sup> The UN SC is the recognized organ which determines the existence of a threat to the peace, or act of aggression See the Articles 39, 52 and 53 of the UN Charter

<sup>182</sup> T Ekiyor ‘Implementing the responsibility to protect doctrine in Africa’ (2007) 1 *Friedrich Ebert Stiftung* 2

<sup>183</sup> SP/ASSEMBLY/PS/DECL.(1), in n 178 above

Chairperson of the Commission to take all steps necessary to strengthen the Commission’s capacity in addressing the challenges of peace, security and stability on the continent.<sup>184</sup>

Equally, meeting in Addis Ababa in February 2009, the Heads of State and Government of the AU recalled the decision they made in collaboration with the SG of the UN and the Chairperson of the ICGLR on the Kivus in 2008. This decision requested the belligerents to allow humanitarian agents to assist the victims by ceasing fire and engaging in peace negotiations.<sup>185</sup> During the same summit, the AU Heads of State and Government recognized and congratulated the Secretary General of the UN as well as the GLR states’ leaders for their efforts during mediations throughout ensuring peace in eastern DRC.<sup>186</sup>

At its fourteenth ordinary session, the Assembly recognized “the improved security situation in eastern DRC and the continuing efforts to consolidate peace in the country and to strengthen relations between the DRC and Rwanda”.<sup>187</sup> It also recalled the international community to provide support required for post-conflict reconstruction and peace building in Burundi and DRC.<sup>188</sup> Meanwhile, the Assembly supported the AU Commission on the implementation of the appropriate decisions of the PSC and the Tripoli Plan of Action.

The AU Assembly thus, played a supervisor role in the DRC. In this respect, it examined and coordinated the mission of the AUPSC and the AU Commission.

### **3. The AU Peace and Security Council in the post-conflict in the DRC**

In the view of the AU, the PSC refers “to the medium to long-term process of rebuilding war-affected communities. This includes the process of rebuilding the political, security, social and economic dimensions of a society emerging from a conflict.”<sup>189</sup> Launched on the 25 May 2004, the AU entrusted this organ with five following instruments: A panel of wise, a Continental Early Warning System, an African Stand-by Force (ASF), a funding mechanism and a Post-conflict Reconstruction and Development Policy. However, the UN Security Council expects the AU PSC to operate under its authority within the international system.<sup>190</sup>

As the most important and active program of the AU, the AUPSC sector contributes considerably to the AU’s missions in supporting democratic practices, the rule of law, respect for

<sup>184</sup> SP/ASSEMBLY/PS/DECL.(1), in n 178 above

<sup>185</sup> JM, Kikwete, Statement at the twelfth summit of Heads of State and Government in Addis Ababa, 1 to 3 February 2009, available at <http://www.africa-union.org.up.za>

<sup>186</sup> JM Kikwete in n 185 above

<sup>187</sup> Fourteenth ordinary session of the Assembly of the UN, 31 January-2 February 2010, Addis Ababa

<sup>188</sup> In n 185 above 2

<sup>189</sup> T, Murithi in n 169 above

<sup>190</sup> T, in n 167 above

human rights and humanitarian law by promoting efforts, which aim to prevent conflicts.<sup>191</sup> In addition, it assumes the mediation in terms of partnership between the AU, the UN and the sub-regional organizations involved in the peace and security commission all over the continent.<sup>192</sup> Referring to Article 3(f) of the PSC Protocol, the Council has the duty to encourage democratic governance and the rule of law as part of its conflict prevention strategy.<sup>193</sup>

The provisions of article 3(b) and (c) of the AU Protocol relating to the establishment of PSC entrusts member states with the capacity to resolve their conflict by using peacemaking and peace building functions.<sup>194</sup> In addition, they should ‘promote and implement peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence’.<sup>195</sup>

Referring to the DRC’s case, on 10 January 2005, the AUPSC exposed the armed groups that threatened peace and security, as well as the transition process in the DRC at its 23<sup>rd</sup> meeting concerning the peace and security situation in the DRC.<sup>196</sup> Hence, it committed to disarm and neutralize the armed groups in the eastern part in order to keep peace and security in the entire country.

In the post-conflict reconstruction and reconciliation process, the AU issued a communiqué in which it “requested the Commission to dispatch a fact finding mission to DRC to examine problems of security related to the movements of pastoralists along the DRC border with the Central African Republic (CAR) and Sudan, with a view to making recommendations.”<sup>197</sup>

At its 138<sup>th</sup> meeting on 29 June 2008, the PSC urged the governments of the DRC and Rwanda to implement the *Goma Actes d’engagement* signed in January in Goma at the conference on peace, security and development in the Kivus. It also urged them to comply with the measures adopted during the summit held in November 2007.<sup>198</sup> During the same year, the AUPSC held two other meetings concerning the DRC and Burundi, in which the PSC requested the Chairperson of the Commission to respond appropriately to the AU contribution to the post-conflict reconstruction process in the DRC and Burundi.<sup>199</sup>

The first meeting refers to the PSC/PR/Comm. (CLV) of 31 October encouraging MONUC and requesting the GLR’s countries to continue supporting the peace and national reconciliation

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<sup>191</sup> Protocol relating to the Establishment of the AU PSC, article 3 (f) in C Heyns, & M Killander, (eds) (2007)*Compendium of key human rights documents of the AU Pretoria: PULP 7*

<sup>192</sup> J Sarkin, in 90 above

<sup>193</sup> The AU PSC Report no 9, April 2010, available at <http://www.issafrica.org>, p5

<sup>194</sup> Protocol relating to the establishment of the PSC of the AU, article 3 (b) in 189 above

<sup>195</sup> Article 3(b) and (c) in the AU Constitutive Act

<sup>196</sup> 23th meeting of 10 January 2005 on peace and security available <http://www.african-union.org>

<sup>197</sup> AU communiqué PSC/PR/Comm.(CXXIX)of 31 October 2007 on the DRC’s case, available at <http://www.issafrica.org>

<sup>198</sup> 138<sup>th</sup> meeting of the PSC of 29 June 2008 in Sharm EL-Sheikh, Egypt PSC/HSG/Communiqué (CXXXVIII)

<sup>199</sup> Communiqué, *Visit of Multidisciplinary Assessment Mission in the DRC and Burundi*, Addis Ababa, 21 January 2010

process in the DRC.<sup>200</sup> It also reiterated vigorously its concerns at the deteriorating security and humanitarian situation in North Kivu caused by the emergence of hostilities between the Armed Forces of the DRC (FARDC) and Laurent Nkunda's National Congress for the Defense of the People (CNDP) on 28 August 2008. In this regard, it strongly condemned the CNDP violations of the *Actes d'engagement*.<sup>201</sup> In the same perspective, the S G of the UN, the Chairman of the AU and the Chairman of the GLR organized a meeting of regional leaders in November in Nairobi to debate the security and conflict situation in Kivu province. "The summit called on both sides to cease fighting and to allow humanitarian assistance to reach the people, and engage in negotiations to find a lasting solution."<sup>202</sup>

The second meeting was the PSC/MIN/Comm.2 (CLXIII) of 22 December condemning the National Congress for the Defense of People (NCDP) declaration of 1 October. The declaration was rejecting the AMANI program and calling the Government of the DRC to deposit.<sup>203</sup> The PSC reported that the DRC should review the state of SSR and the grievances of local population in the Kivus.

In accordance with the AU framework on post-conflict reconstruction and development, member states meeting in Tripoli on 31 August 2009, pledging their support to the DRC and Burundi proclaimed 2010 as a year of peace and security.<sup>204</sup>

In its report of the 230<sup>th</sup> meeting, PSC/PR/COMM (CCXXX) held in Addis Ababa on 27 May 2010, the PSC appreciated the contribution made by the AU Commission to "the consultations on the adjustment of the mandate, functions and deployment of MONUC".<sup>205</sup> It also "recommended member states and international partners to provide all necessary support to Burundi and the DRC, in order to facilitate the process of post-conflict reconstruction and development, as well as post-conflict peace building in both countries."<sup>206</sup>

The African Union Peace and Security Council was fashioned to ensure the execution of the decisions of the AU. In this regard, it has since the beginning of the conflict been active in the DRC. Its main concern focused on the re-establishment of peace in the Kivus. It condemned vigorously the armed groups and called all belligerents to deposit their arms. However, it did not find appropriate solution concerning the rule of law, protection of human rights and humanitarian law for the situation in the eastern part. The rebuilding process as part of its mandate is not achieved in the security and social department. In the reconciliation process, the AUPSC played a police role

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<sup>200</sup> Communiqué PSC/PR/Com.(CLV) of the 155th Meeting of the PSC held on 31 October 2008 in Addis Ababa, concerning the Eastern DRC

<sup>201</sup> Communiqué in n 199 above p2

<sup>202</sup> JM Kikwete, in n 185 above

<sup>203</sup> The AU PSC Report no 3, October 2009, available at <http://www.issafrica.org> p2

<sup>204</sup> Communiqué in n 197 above

<sup>205</sup> The AUPSC 230<sup>th</sup> meeting, PSC/PR/COMM (CCXXX), Addis Ababa on 27 to 31 May 2010

<sup>206</sup> The AUPSC 230<sup>th</sup> meeting, in n 205 above

between Rwanda and the DRC making sure that they implement the *Actes d'Engagement* signed in Goma.

#### **4. The New Partnership for Africa's Development in the post-conflict period in the DRC**

The New Partnership for Africa's Development started in Abuja, Nigeria on 23 October 2001.<sup>207</sup> NEPAD constitutes a programme of action that the AU entrusts with the promotion of matters related to the post-conflict development. Regarding the post-conflict reconstruction, the objectives of NEPAD were settled since 2002 in Abuja at a meeting of the Heads of State and Government Implementation Committee (HSGIC). The HSGIC requested NEPAD to “support post-conflict reconstruction and development in all affected countries, including the rehabilitation of national infrastructure, the population as well as refugees and internally displaced persons, with a special focus on sustainable programs of disarmament, demobilization and rehabilitation”.<sup>208</sup>

In the same context, Nowrojee stated as follows: “nobody could argue that the need to strengthen regional institutions for conflict prevention, management, and resolution; for peacekeeping; for post conflict reconstruction; and for combating the illicit proliferation of small arms, light weapons and landmines are not urgent matters”.<sup>209</sup> As a development programme, NEPAD’s role is to “identify problems, pinpoint solutions and where needed, exert high-level political pressure to promote change”.<sup>210</sup>

Initially, NEPAD was an economic development programme, which committed to “support post-conflict reconstruction and the mobilization of resources for the AU peace fund”.<sup>211</sup> Currently, it integrated the socio-economic conditions of the populations, the improvement of governance, growth of cross-borders activities and the quality of inter-state dialogue.<sup>212</sup> In conducting its tasks, NEPAD is assisted by the African Peer Review Mechanism (APRM).

The APRM is a voluntary process during which African Union member states assess mechanism that reinforce and establish democratic governance in their countries.<sup>213</sup> The assessment, which takes place under the auspices of the AU and NEPAD, consists on the review of the governance system in member states.<sup>214</sup> During the review, the member states encourage good system and discourage bad practices. The APRM focuses on four areas namely democracy and political governance, economic governance, corporate governance and socio-economic

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<sup>207</sup> K Gottschalk & S Schmidt ‘The AU and the NEPAD: Strong Institutions for Weak States?’ (2004) 4 *International Politic Gesellschaft* 11

<sup>208</sup> African Post-Conflict Reconstruction Policy Framework, NEPAD Secretariat, June 2005

<sup>209</sup> B Nowrojee, in n 165 above

<sup>210</sup> M Killander ‘The African Peer Review Mechanism and Human Rights: The first reviews and the way forward’ (2008) 30 *Human Rights Quarterly*

<sup>211</sup> T Murithi in n 169 above

<sup>212</sup> M Langinvainio & JD Reyes ‘Building peace and security capacity in Africa’(2006) 4 *Crisis Management Initiative* p19

<sup>213</sup> K Matlosa ‘Democracy and conflict resolution in Africa: Challenges for post-conflict reconstruction’ *Conflicts Trends* 9

<sup>214</sup> M Killander, in n above 210 p1

development.<sup>215</sup> However, Mangu argues that “[t]he success of the review process is facing difficulties that need to be addressed urgently in order to encourage and reinforce democracy and good political governance”.<sup>216</sup> The DRC acceded to the APRM since 2003, but it has not yet initiated the review process.<sup>217</sup>

The New Partnership for Africa’s Development (NEPAD) installed a policy framework that aims among other objectives to “support post-conflict reconstruction and development in all affected countries, including the rehabilitation of national infrastructure, the population as well as refugees and internally displaced persons, with a special focus on sustainable programs of disarmament, demobilization and rehabilitation”<sup>218</sup>

In its quality of supporting post-conflict reconstruction, NEPAD is focused on economic development and does not essentially examine the political aspect. That explained the fact that in the DRC post-conflict period, NEPAD is engaged in the project of construction of Grand Inga Hydropower III.<sup>219</sup> This project fit on the third phase of a post-conflict reconstruction though that the DRC is still on its first stage. In addition, the DRC is not part of the review process that could permit the APRM and NEPAD to be operational in its territory regarding the human rights abuses.

## 5. The African Commission on Human and Peoples’ Rights and the post-conflict period in the DRC

Established under the Article 30 of the African Charter on Human and Peoples’ Rights on 2 November 1987, the African Commission on Human and Peoples’ Rights (ACHPR) represents the implementing arm of the African Union on matters related to Human and Peoples’ Rights.<sup>220</sup> Article 45 of the ACHPR explained widely its mandate, which consists on the promotion and protection of human and peoples’ rights by means of the review of periodic African states’ reports. In this respect, the African Court complements the Commission with the protective aspect of its mandate.<sup>221</sup> “[T]he Commission itself retains the promotional role and the examination of states reports”.<sup>222</sup> In terms of protection, the Commission considers complaints it receives from state parties on matter related to the violations of human rights and makes appropriate recommendations.<sup>223</sup>

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<sup>215</sup> K Gottschalk in n 207 above 14

<sup>216</sup> AM Mangu, Assessing the effectiveness of the APRM and its impact on the promotion of democracy and good political governance in AU member states (2007) 7 *African Human Rights Law Journal* 39

<sup>217</sup> D Liche ‘African Peer Review Mechanism: How to make the process a success in Zambia?’ (2009) 3/4 *Jesuit Centre for Theological Reflection* 6

<sup>218</sup> African Post-Conflict Reconstruction Policy Framework NEPAD Secretariat Governance, Peace and Security Program available at <http://www.nepad.org>, p12, 2005

<sup>219</sup> Murithi in n 169 above 6

<sup>220</sup> C Heyns & M Killander, in 191 above 29

<sup>221</sup> F Viljoen (2007) *Human rights law in Africa* New York: Oxford University Press 437

<sup>222</sup> Viljoen in n 221 above 437

<sup>223</sup> L Stone, The 38<sup>th</sup> ordinary session of the ACHPR of November 2005 in Banjoul (2006) *African Human Rights Law Journal*

The DRC has ratified the African Charter on Human and Peoples' Rights since 20 July 1987 but did not ratify its Protocol on the Establishment of an African Court on Human Peoples' Rights.<sup>224</sup> In 1998, the OAU adopted a Protocol to the ACPHR on the Establishment of an African Court on Human and Peoples' Rights to complement the African Commission in the protection and enforcement of human and peoples' rights. The Protocol entered into force on 25 January 2004. The Commission meets twice a year on ordinary session and occasionally on extra-ordinary session.<sup>225</sup> Each year, the Commission has the obligation to report to the Assembly a review of its activities.<sup>226</sup>

On 8 March 1999, the DRC presented a communication (227/99) against Burundi, Rwanda and Uganda to the African Commission. This communication remained, for the Commission, the first ever inter-state complaint that raised violations of human rights and attracted the intervention of international organizations during armed conflict.<sup>227</sup>

At its' thirtieth regular session in 2001, the Commission decided to arrange for a special session to discuss the armed aggression directed against the DRC and the human rights violations it was causing.<sup>228</sup> Unfortunately, that special session was never held. In 2002, the DRC submitted its first report in which it combined the second, third, fourth, fifth, sixth and seventh periodic reports together.<sup>229</sup> The Commission considered these reports at its 34th Session, held from sixth to 20 November 2003.<sup>230</sup> Its second periodic report, presented in 2007, combined the eighth, ninth and tenth reports scheduled for consideration at its fourth session in November 2010.

"The DRC based its communication on articles 2, 4, 6, 12, 16, 17, 19, 20, 21, 22, 23 and 49 of the African Charter on Human and Peoples' Rights".<sup>231</sup> In that communication the DRC alleged that the armed forces of Rwanda, Burundi and Uganda were committing massive violations of human rights on its territory. Indeed, the presence of armed groups in eastern DRC constitutes a threat not only to the restoration of peace but and especially to civilians' security as well as to human rights protection. The Ugandans, Rwandans and Burundians raped women and girls, killed, mutilated and massacred innocent civilians in the eastern provinces since 2 August 1998 when they invaded the DRC.<sup>232</sup> In addition, they are exploiting illegally natural resources of the country. In Bas-Congo province, they encircled the hydroelectric dam preventing Congolese to go through and

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<sup>224</sup> The DRC is not on the list of countries that ratify the Protocol. The list can be found in Heyns n189 above 357

<sup>225</sup> Rule 2 (1) of the Commission, see Heyns, in n 191 above p148

<sup>226</sup> Rule79 of the rules and procedures of ACHPR, also article 54 of the ACHPR, in n 191 above p38 and p160

<sup>227</sup> C Beyani 'Recent Developments in the African Human Rights System 2004-2006' (2007) 7 *Human Rights Law Review* 582-608

<sup>228</sup> HRC A/HRC/WG.6/6/COD/1 in n 105 above

<sup>229</sup> NL Lumu Initial report of the DRC to the African Commission on Human and Peoples Rights N/Ref.: 0056/ARDC-PTA/ANS/01/02 available at [www.african-union.org](http://www.african-union.org) accessed on 3 November (2010) 5

<sup>230</sup> Eighth, ninth and tenth periodic reports of the DRC to the African Commission on Human and Peoples' Rights (2007) available at [www.african-union.org](http://www.african-union.org) accessed on 3 November 2010 1

<sup>231</sup> *DRC v. Burundi, Rwanda and Uganda*, African Commission on Human and Peoples' Rights, Communication 227/99- 2006 p1-4

<sup>232</sup> In n 231 above2

causing in the process the death of millions innocent civilians due to the inefficiency of electricity supply in hospitals.<sup>233</sup>

“[T]he DRC claimed that the aggression constituted a violation to the principle of friendly relations between states, a violation to the provisions of the International Covenant on Civil and Political Rights, to the Geneva Conventions of 12 August 1949 and of the Additional Protocol on the Protection of Victims of International Armed Conflicts of 8 June 1977”.<sup>234</sup> Consequently, the complainant requested the Commission, among other suggestions, “[t]o condemn this aggression, to undertake an investigation based on the declarations of the accused countries and to indicate appropriate measures to punish the authors of the war crimes, crimes against humanity”.<sup>235</sup>

During its 27th ordinary session (27 April to 11 May 2000) held in Algiers, after hearing the oral submissions from the DRC, Rwanda and Uganda on the admissibility of the case, the Commission examined the case referring to the provisions of its Rules of Procedures.<sup>236</sup> “It concluded its examination by declaring the communication admissible and requested parties to deliver to it their arguments on the merits of the case”.<sup>237</sup>

Sure enough, the DRC had good reason to approach the Commission on the illegal occupation of its territory by the three countries. Considering that the belligerents were not able to deal amicably with this issue and consequently due to the absence of local remedies referred to in Article 50, the Commission observed that Article 52<sup>238</sup> could not either apply on the case. Therefore, the allegations advanced by the DRC required the intervention of International law, notably the Geneva Conventions, the Hague Convention, the UN Charter and the African Charter.

Ugandans and Rwandans recognized being present in the DRC protecting their self-security interests.<sup>239</sup> However, Rwanda estimated that the Commission should not admit the communication on the ground that the complainant did not follow correct procedures and that the Commission itself had not been consistent with its rules of procedures because the matters reported in the communication 227/99 were pending before competent authorities of the OAU, ECOSOC and the UNSC.<sup>240</sup> In addition, Rwanda accused the DRC of hosting groups hostile to Rwanda.

For its part, bringing up Article 51 of the UN Charter, the law concerning friendly relations and cooperation among states and others, Uganda contended the communication stating that it has

<sup>233</sup>In n 231 above 2

<sup>234</sup>In n 231 above 4

<sup>235</sup>In n 231 above 4-5

<sup>236</sup>In n 231 above 6

<sup>237</sup>In n 231 above 6

<sup>238</sup>Article 52 of the African Charter stipulates that the Commission shall prepare within a reasonable period a report to be sent to the States and the Assembly, after failing all trial for amicable solution. See the Banjoul Charter p 14 available at [www.african-union.org](http://www.african-union.org) accessed 1 September 2010

<sup>239</sup>In n231 above 2

<sup>240</sup>In n231 above 7

insufficient evidence.<sup>241</sup> It pursued that it has evidence of the DRC Government's involvement in its eastern provinces' conflict. In addition: "the allegations of human rights violations must be verified by an independent body or by a fact-finding commission."<sup>242</sup> Noting that the DRC accused it before other specialized authorities notably the UNSC, the ICJ, the OAU and the Lusaka initiative, it concluded that the DRC disregarded the credibility of these institutions and the Commission itself as divergent opinions may be reached.<sup>243</sup> Consequently, the Commission does not have a legal basis on which it can settle.<sup>244</sup> Burundi neither had reacted to the allegations of the DRC against it, nor responded to the submissions of the Commission allocated to it.

Combining all the documents together, the armed groups of Uganda and Rwanda could not escape the atrocities they have committed in the Kivus. The Commission found against the Uganda and Rwanda arguments on the responsibility for atrocities committed o the DRC that "their conduct was inconsistent with the standard expected from under the UN Declarations on friendly relations."<sup>245</sup> By besieging the hydroelectric in Bas-Congo province, the respondents violated the Hague convention in respect to the laws and customs of war in article 23.<sup>246</sup> The raping of women and girls as alleged by the complainant is prohibited in article 76 of the first protocol additional to the Geneva conventions of 1949.<sup>247</sup>

The Commission concluded that the respondent states in the territory of the DRC violated article 23 and many other of the African Charter.<sup>248</sup> The Commission also "urged the respondent states to abide by their obligations under the Charters of the UN, OAU and the UN Declaration on Principles of International Law concerning friendly relations and co-operation among states and other applicable international principles of law and withdraw its troops immediately from the complainant's territory".<sup>249</sup>

On 16 March 2005, considering that Uganda, Burundi and Rwanda did not observe its recommendations, the African Commission declared: "There is no other option than to make a forceful disarmament of the rebels". It also added that the AU was ready to send troops to carry out

<sup>241</sup> In n 231 above 7

<sup>242</sup> In n 231 above 8

<sup>243</sup> In n231 above 8

<sup>244</sup> In n231 above 8

<sup>245</sup> The UN declarations on friendly relations state that ...armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are in violation of international law...no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state or interfere in civil strife in another state. in n191 above, p191

<sup>246</sup> Article 23 provides that "besides the prohibitions provided by special conventions, it is especially prohibited...to destroy the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war". See it in n 167 above, p194

<sup>247</sup> "Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault." See article 76 of first protocol additional to the Geneva Conventions in n 191 above, p194

<sup>248</sup> Article 23 (2) stipulates that States to the present Charter shall ensure that: a, any individual enjoying the right of asylum under article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other state party to the present Charter; b, their territories shall not be used as bases for subversive or terrorist activities against the people of any other state party to the present Charter. See it in 238 above 7

<sup>249</sup> In n 191 above 196

the task. During its 38 ordinary session held in Banjul (21 November to 5 December 2005), the African Commission recalled the resolution 1592 of the UNSC and requested MONUC to execute its mandate relatively to the implementation of the DDR process of the armed groups and the protection of civilians.<sup>250</sup> It also requested the Government of the DRC to cooperate with the ICC and bring perpetrators of crimes committed on its territory to justice.<sup>251</sup>

Following its 40<sup>th</sup> ordinary session (15-29 November 2006), the Commission “called the Government of the DRC to ratify the Protocol to the African Charter on Human and Peoples’ Rights relative to the rights of women in Africa and to take all measures for the harmonization of its national laws with the Protocol”<sup>252</sup>.

At its 138<sup>th</sup> meeting held on 29 June 2008 the AUPSC, noting the report of the chairperson of the Commission on conflict and post-conflict situations in Africa requested it to continue to support the ongoing processes and mobilize the support of the international community to that effect.<sup>253</sup> To that end, the chairperson of the Commission undertook a visit to the DRC to get closer to the realities in order to implement its resolutions.

The African Commission is constantly aware of the DRC situation. Like the other organs, it is trying to come up with solutions, but challenges are still enormous.

## 6. Conclusion to chapter three

Like the UN, the AU’s role in the DRC post-conflict period has multiples tasks. In the beginning, the AU supervised the debates in a quest for solutions on the DRC. In this respect, the Assembly conducted most of the meetings. As from 2005, the AU perceived the need to proceed to a forceful disarmament of the rebels. At this stage, the PSC stepped forward by assisting the national Government reconstruct the security system in eastern DRC. In terms of reconciliation, the PSC conducted a meeting in which, Rwanda and the DRC decided to give peace at last a chance. To this end, they signed the *Actes d’engagement* and engaged to comply with them.

The African Commission played a significant role in the AU’s response to the DRC. Relatively to its mandate, the Commission remained close to the promotion and protection of innocent human rights in eastern DRC. It contributed to the reconstruction on the judicial aspect. Unlike the UN (ICJ), which examined only the involvement of Uganda in the DRC conflict, the Commission expanded its investigation on Rwanda. As a young institution conducting its first case, which is reputed to be complex, it found legal ground to condemn Uganda and Rwanda on the perpetration of the massive violations of human rights in the east of the DRC.

<sup>250</sup> R Murray & M Evans (Eds) *Documents of the African Commission on Human and Peoples’ Rights 1999-2007* (2009) 2 Oxford and Portland, Oregon: Hart 867

<sup>251</sup> R Murray in n250 above 867

<sup>252</sup> R in n 250 above 875

<sup>253</sup> Communiqué in the 138<sup>th</sup> meeting of the PSC (PSC/HSG/Comm. (CXXXVIII) of 29 June 2008 in Sharm el-Sheikh, Egypt

However, “[A]lthough the AU is capable of deploying military forces, it generally lacks the staying power and multi-dimensional capability of the UN”.<sup>254</sup> This statement becomes even accentuate in the DRC’s case considering its complexity. The fighting in the east DRC has multiple roots causes, which are implicating complex challenges. Confronting them suppose first going down on the field to understand the realities. Then searching for applicable measures and finally applying those measures.

The issue that encounters the AU succeed in the conducting of its operations in the DRC is that it lacks, like for all its operations elsewhere, the financial resources. The Union does not have in its possession sufficient resources, to conduct adequately its missions. It relies on donors’ support for most of its various peace operation missions. Conducting its tasks, the AU should possess a minimum of resources allocated to remunerate the activists on the field. Failing to honor that conduct them to jeopardize the work and expose them to temptation. Conducting its peace and security activities in the DRC like in other African member state, the AU is requested to solicit the prior approval of the UNSC.

An additional issue with the AU operation in the DRC is that there is a gap in the NEPAD role concerning the DRC post-conflict period. The Inga project that NEPAD undertakes does not help resolve the hostilities that are causing a loss of human lives in the eastern part. The reconstruction should start at the bottom granting people a safe environment that secures their lives.

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<sup>254</sup>C Deconinck ‘The future of peacekeeping in Africa’ (2006) *Finish Institute of International Affairs*

## CHAPTER IV: The role of relevant sub-regional organizations in the post-conflict period in the DRC

### 1. Introduction to the role of the sub-regional organizations in the DRC

This chapter highlights the contribution brought by the sub-regional organizations to the post-conflict reconstruction in the DRC. It intends answering the question why it is important to envisage civilian reconciliation as part of solution to the reconstruction process in the DRC. The chapter presents successively the intervention of SADC, ECCAS and ICGLR.

When the UN and AU peacekeepers focused their concern to the DRC, unintended consequences emerge in its neighboring countries. Indeed, the conflict in the DRC has destabilized all countries in its neighborhood. That is why these countries engaged in the struggle for peace in the DRC so that peace could reign in the entire region. Most of these countries are members of more than one sub-regional organization.

In time of crisis, like the one the DRC is going through, the organizations approach the issue according to their structures and objectives. Speaking of regional interconnections, the DRC is member of three different organizations named above. The following sections explore the support of these organizations to the DRC during its time of need.

The sub-regional organizations named Regional Economic Communities are to some extent the initiative of the AU, which recognized them under the provisions of the Abuja Treaty and the Constitutive Act.<sup>255</sup> The AU established them as ‘the building blocks towards achieving an African Economic Community’.<sup>256</sup> While on the beginning they were essentially economic the REC have extended their visions and embraced all-important domains. To this end, they come closer to the realities of the many challenges that escape to wider organizations such as African Union and United Nations.

Because they experience the similar challenges in their daily lives, member states of the RECs are in better position to understand the crisis that is going on in the DRC. Their contribution therefore should be based on the socio-environmental facts of the country.

In this respect, SADC committed, since 1998, to provide assistance to the armed forces of the DRC. Since the main challenges occurred in its region, ECCAS should engage more than the others in the re-establishment of peace even though that originally it aimed to achieve economic

<sup>255</sup> KS Masalila ‘Overview of initiatives to promote convergence in the context of regional integration, an African perspective’ 32 *Irving Fisher Committee Bulletin* available at <http://www.bis.org>.

<sup>256</sup> C De conning, in n 254 above

integration and regional cooperation. GLR fight the proliferation of Small Arms and Light Weapons (SALW) and disarmament and repatriation of all armed groups in the eastern DRC.

The framework of security, peace and development in the GLR were settled at the second ICGLR's conference held in Nairobi between 14 and 15 December 2006.<sup>257</sup> Angola, Burundi, the Central African Republic, the DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda, and Zambia were both part of the conference.

## 2. SADC and the post-conflict period in the DRC

The Southern Africa Development Community (SADC) exists since 1992. It owes its current aspect to its predecessor the Southern African Development Coordination Conference (SADCC) established in 1980.<sup>258</sup> At its creation, SADC aimed “to ensure that development and economic growth are achieved; the poverty alleviated”.<sup>259</sup> It also pursued “the enhancement of the standard and quality of life; support of the socially disadvantaged through regional integration; the evolution of common political values, systems and institutions; the promotion and defence of peace and security; and achieving the sustainable utilization of natural resources and effective protection of the environment”.<sup>260</sup> Besides common security, SADC sustains defence against external invasion in the region.

In this respect Article 5 of the SADC's Treaty stipulates that the SADC objectives are to promote and defend peace and security. The SADC Organ on Politics, Defence and Security is supervised on a troika basis at the level of summit and reports to the chairperson.<sup>261</sup> The DRC joined SADC since 1997. In the post-elections period in the DRC SADC is mainly focused on the promotion of peace and security.

SADC's first intervention in the DRC in August 1998 corresponded to the response of Angola, Zimbabwe and Namibia to the call for help of the late President Laurent Kabil of the DRC.<sup>262</sup> Following that call, the Organ on Politics, Defense and Security (OPDS), meeting in a summit, agreed on sending military aid to secure Kabil's government.<sup>263</sup> However, former President Mandela, then chairperson of SADC, disagreed and proposed a peaceful approach to resolve the DRC's crisis. His diplomatic approach, approved by Zambian president Frederick Chiluba's mediation efforts, led to the Lusaka ceasefire agreement in July 1999.

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<sup>257</sup> W Church & M Jowell 'Conflict circuit breakers in the Great Lakes Region of Africa' (2007) 16 *African Security Review* 19

<sup>258</sup> OC Ruppel 'Regional economic communities and human rights in east and southern Africa' in Bosl, A & Diesho, J (eds) (2009) *Human Rights in Africa* Windhoek: Macmillan 289

<sup>259</sup> OC Ruppel in n 258 above 289

<sup>260</sup> In n 258 above 289

<sup>261</sup> M Madakufamba 'SADC in the Twenty-first Century' *Open Society Initiative for Southern Africa*, p92

<sup>262</sup> J Sarkin in n89 above

<sup>263</sup> Sarkin in n 89 above

In Pretoria 2002, SADC appeared again with Thabo Mbeki, then president of SA supervising the peace accords between the former Governments of Kinshasa and Rwanda. Later, in the same year, under SADC's aegis he conducted the Sun City accord throughout the formation of 'one plus four' formula.<sup>264</sup> In the same perspective, the South African government allocated some R100 million to the peacekeeping efforts operating in the DRC.

Nevertheless, Angola, Namibia and Zimbabwe remaining attached to the OPDS's agreement and excluding the other SADC member states, created a front against Uganda, Rwanda and Burundi on their invasion of the DRC territory.<sup>265</sup>

This misunderstanding among SADC member states on the leadership led to its failure to react against the civil war that occurred in the DRC following an attempted coup in Bukavu in June 2004.<sup>266</sup> Further, it generated rumours that "South Africa had economic ambitious in the DRC and Rwanda".<sup>267</sup> The other countries were also criticized of pursuing personal interests in the DRC. Helping a friend in need was just a pretentious reason to exploit natural resources of the DRC.

In the post-conflict period, SADC heads of state and government met in an extra-ordinary summit on 9 November 2008 in Sandton South Africa.<sup>268</sup> The heads of states met to review particularly the DRC and Zimbabwe situation. In concluding the summit, the heads of states found that many peace and security agreements were not implemented because of the Laurent Nkunda problem. For that reason, "the extra-ordinary summit resolved that the SADC team of military Experts be deployed immediately to assess the situation in Eastern DRC."<sup>269</sup>

Of the sub-regional organizations in which the DRC acts as member, SADC is the most involved in security and peace operations. However, the DRC case shows that it lacks the mutual collaboration of both its member states. They are divided in block inside the organization. For that reason, it could not accomplish its mission. The fact that the implicated countries (Uganda and Rwanda) in the DRC' crisis are not SADC members is an impediment to the organization's ability to remedy to the situation.

### **3. ECCAS and the post-conflict period in the DRC**

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<sup>264</sup> S Koko 'The 'one-plus-four' formula and transition in the DRC' (2007)16 *African Security Review* the one plus four formula resulted in the formation of a government that had one president assisted by four prime ministers.

<sup>265</sup> C Mulaudzi,C The politics of regionalism (2006) 51 *Southern Africa Occasional*

<sup>266</sup> C Mulaudzi, in n265 above

<sup>267</sup> B Nowrojee, in n 165 above

<sup>268</sup> The summit was held in Sandton South Africa on 9 November 2008 ,available at <http://www.igad.org> or [www.issafrica.org](http://www.issafrica.org)

<sup>269</sup> In n 268 above 4

It was the DRC, then Zaire, which initiated the establishment of ECCAS in 1971, although it became operational years later following the signing of the Lagos Plan of Action (LPA) in 1983.<sup>270</sup> Originally, ECCAS aimed to reach economic integration and regional cooperation but the attempt did not succeed given the non-commitment of its states members. In 1992, the organization stopped its activities. Later, with its restoration in 1999, ECCAS endorsed the promotion of peace, security and stability.<sup>271</sup>

State parties to the Treaty establishing the ECCAS are guided by the principles of “sovereignty, equality, independence of all states, good neighborliness, non-interference in their internal affairs and non-use of force to settle disputes and the respect of the rule of law in their mutual relations”.<sup>272</sup> With these principles, the ECCAS pursues the promotion of peaceful relations, economic cooperation and social development between member states as well as the entire continent.<sup>273</sup> With the innovation, member states decided in 2000 to create the Council for Peace and Security in Central Africa (COPAX). They also set up the Defense and Security Commission (CDC), a Multinational Force of Central Africa (FOMAC) and an Early Warning Mechanism (MARAC).<sup>274</sup> However, most of these organs remain non-operational.

Besides the principles settled by the ECCAS’s Treaty, COPAX commits to “the respect of the supremacy of law; the inviolability of the borders inherited from colonization and the protection of human rights and freedoms.”<sup>275</sup> COPAX pursues the prevention, management and settlements if disputes among its member states.<sup>276</sup> To this end, it promotes, maintains and consolidates peace and security in the community.<sup>277</sup> In addition, COPAX aims “to reduce sources of tension and prevent the outbreak of armed conflicts”.<sup>278</sup> FOMAC is entrusted ‘to keep and restore peace and to apply sanctions provided for by the texts in force’.<sup>279</sup> This organ seconds COPAX with humanitarian assistance when a conflict constitutes a serious threat to peace and security in the sub-region or in case of internal conflict and conflict between member states.<sup>280</sup>

On July 2002, ECCAS and the Office of the United Nations High Commissioner for Human Rights signed an engagement relating to collaboration in the areas of human rights and

<sup>270</sup> CD Awoumou ‘ECCAS or CEMAC: which REC for Central Africa?’ in C Ayangafac (ed), *Political economy of regionalization in Central Africa* Pretoria: ISS

<sup>271</sup> In n 89 above 128

<sup>272</sup> Article 3 of the Treaty Establishing the ECCAS, in S Ebobrah & A Tanoh (eds) (2010) *Compendium of African sub-regional human rights documents* Pretoria: PULP 174

<sup>273</sup> Ebobrah & Tanoh in n 272 above, article 4(1) 174

<sup>274</sup> C Gavin, *Collaborative Regional Security and Mutual Defense: SADC in Comparative Perspective*, available at <http://dx.doi.org/10.1080/02589340802366950>, (2008) 9

<sup>275</sup> S Ebobrah & A Tanoh in n 272 above article 3(e, f, g ) of the Protocol relating to the COPAX 179

<sup>276</sup> Article 4(a) in n 272 above 179

<sup>277</sup> Article 4(b) in n 272 above 179

<sup>278</sup> Article 4(d) in n 272 above 179

<sup>279</sup> Article 24(b, c) in n 272 above 181

<sup>280</sup> Article 25(b, c, ii) in n 272 above181

democracy.<sup>281</sup> Following this engagement, ECCAS “was designated as focal point for NEPAD in Central Africa”.<sup>282</sup>

Because all belligerents in the DRC are members of the ECCAS, the organization should be more active in all tentative peace operations. Nevertheless, twenty-five years after its creation, ECCAS is still not effective; the problems that continue to undermine its existence remained the same. Macaulay and Karbo reported: “An assessment of the pre and post-election situation in the DRC show not only the absence of ECCAS as a viable security body, but also the confusion that can result from dual memberships (DRC is member of both sub-regional organizations, SADC and ECCAS)”.<sup>283</sup> Although ECCAS is a recognized REC, it does not actively participate in the peace-security field of the AU.<sup>284</sup>

The absence of ECCAS in the DRC is justified by the fact that most of its member states are characterized by poverty, corruption and incapability to react adequately in such situations. In addition, some of them were involved in the conflicts. This situation generated criticism of the mandate of ECCAS. Accordingly, Macaulay and Karbo asked if ECCAS had a structure appropriate for its tasks of peace operations.<sup>285</sup> They pursued that “[t]his organization should focus on its original mandate of economic duties and that it should give its resources to expand the AU’s security responsibilities”.<sup>286</sup> The role of ECCAS in conducting peace and security operation inside its region is encountered by the direct implication of its members in the creation of the situation of insecurity.

#### **4. The International Conference on the Great Lakes Region and the post-conflict period in the DRC**

The International Conference of the Great Lakes Region (ICGLR) brings together six African countries notably Burundi, the DRC, Kenya, Rwanda, Tanzania and Uganda. From the entire African continent, the conflict in the GLR has a long history. Starting during the colonialism around the 1960, the continuation proved presently the immaturity of the peoples who claimed independence earlier. Mpangala argues that “[t]he seeds of conflict were sown since the colonialism through three main aspects”.<sup>287</sup>

The three aspects regroup firstly the division of ethnicity, racialism, regionalism and religious tendencies. Secondly, artificial borders and thirdly, the colonist created division of labor

<sup>281</sup> CD Awoumou, in n 268 above 130

<sup>282</sup> In n 268 above 130

<sup>283</sup> C Macaulay & T Karbo ‘Up to task? Assessing the ability of the ECCAS to protect human security in central Africa’ 155 *Monograph* ISS 156

<sup>284</sup> M Langinvainio & JD Reyes ‘Building peace and security capabilities in Africa’ (2006) 4 *Crisis Management Initiative* 25

<sup>285</sup> C Macaulay & T Karbo in n283 above

<sup>286</sup> C Macaulay in n 283 above

<sup>287</sup> GP Mpangala ‘Origins of political conflict and peace building in the GLR’ 2004 unpublished p5

based on superiority and inferiority among peoples.<sup>288</sup> In this context, the DRC constituted the center of its economic interests. Beyond the independence, the colonist continues to control its interests through the leaders he influences the nomination. With the emergence of democracy, African citizens claim African solutions for African problems.

Almost all the African organizations have adopted common resistance treaties, which inevitably also include non-aggression clauses. On 19 and 20 November 2004 in Dar-es-Salaam, the first Summit of the International Conference adopted the Declaration on Peace, Security, Democracy and Development in the GLR. The Heads of State and Government present at the conference engaged “to transform the GLR into a space of sustainable peace and security...”<sup>289</sup> The priority of the peace and security was focused on the Eastern DRC.<sup>290</sup>

In December 2006, following the situation in the DRC, the 11 Heads of State and Government of the GLR met in a conference in Nairobi to sign a regional Pact on Peace, Security and Development in the GLR.<sup>291</sup> This pact pursued among others objectives “the disarmament of rebel groups and the commitment by governments to embrace the responsibility of protecting their populations from genocide, war crimes, ethnic cleansing, crimes against humanity and gross violations of human rights committed by or within a state”.<sup>292</sup> At this conference, member states recognized that regional conflict required regional solutions. In addition, they committed to develop a regional protocol that will address the illegal exploitation of the natural resources. Adopted on 30 November 2006, this Protocol “promotes in each member state the development of effective mechanisms to prevent, curb and eradicate the illegal exploitation of natural resources”.<sup>293</sup>

Following the hostilities of the 25 August 2008 in North Kivu (FARDC and CNDP), the chairperson of the GLR and the president of Kenya on 7 November, convened a meeting to review the situation in the DRC. The outcome of this meeting inspired the governments of the DRC, Rwanda and Uganda to work together to address the issue of the armed groups in eastern DRC. In this regard, CNDP announced, in January 2009, the change of its leadership, the end of hostilities by integrating into FARDC and the observance of the agreement made with the national Government.<sup>294</sup>

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<sup>288</sup> GP Mpangala in n 287 above

<sup>289</sup> Vision of the International Conference on the GLR in Ebobrah& Tanoh (eds), in n 272 above 94

<sup>290</sup> Report of the chairperson of the AUC on the international conference process on the GLR to the PSC, see 72<sup>nd</sup> meeting PSC/PR/2(LXXII), available at <http://www.africa-union.org.up.za>

<sup>291</sup> Report of the chairperson of the AUC on the international conference process on the GLR, 12th AU Summit, 29 January 2009 available at <http://www.africa-union.org.up.za>

<sup>292</sup> In n above 291

<sup>293</sup> Article 2 of the Protocol against the Illegal exploitation of Natural Resources, in n272 above 152

<sup>294</sup> Report S/2009/303 of the Security Council mission to the African Union; Rwanda, the DRC and Liberia on 11 June 2009 see it at <http://www.un/depts/dpko/mission/monuc.org/mmandate.html>

The GLR has a reputation of a long time conflict between its member states. Leaving aside this history aspect, the realities of ethnicity continue to spoil the devotion of belligerents in the DRC. Member states are bound by peace clauses they have signed in treaties. The constant violations of agreements are due to the interest of isolated individuals who appeared to be manipulated by the colonist as by the ancient time. Finding solutions suppose taking into account all aspects of roots causes in order to prevent resurgence in future. This is where the initiation of tolerance should be envisaged throughout any possible reconciliation.

## 5. Conclusion to chapter four

Regional organizations are preferable in the field of regional peace and security because they act fast as they are in the neighborhood. In addition, their familiarity of the environmental situation makes belligerents comfortable in managing dispute with a common mediator than a far stranger. Accordingly, Langinvainio and Reyes argue that advanced knowledge of history, culture, parties and dialect constitute major factors utile in the negotiations and resolution of conflicts.<sup>295</sup>

The complexity and weakness of regional intervention in the DRC case lies on the insufficiency of economic resources as well as historical factors. The relationship between the AU and the Regional Economic Communities (REC) lies on the principle that the AU builds its mandate on their capacities and experiences.<sup>296</sup> Sub-regional organizations pursue the following principle: ‘the closer the member states of an organization are to a conflict zone, the more they have a stake in terms of avoiding the atrocities entered their own territory and the inevitable flow of refugees.’<sup>297</sup>

However, some member states of these organizations, especially the neighboring countries, are directly accused of being responsible of the continuing of the conflict in the DRC. In this context, Westerkamp states: “establishing a basis of mutual trust and interdependence following such wars of regional scope creates enormous challenges, as is evident in the Great Lakes Region.”<sup>298</sup> In addition, the DRC created ambiguity because of its dual membership. The country has to decide where and how it can manage both its membership.

In addition, these organizations do not possess the capacity to resolve complex conflict, as is the case in the DRC. In this respect, Deconinck argued as follow: “Although the AU and some of regional economic communities are capable of deploying military forces, they generally lack the

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<sup>295</sup> M Langinvainio & JD Reyes in n 284 above

<sup>296</sup> Langinvainio in n 284 above

<sup>297</sup> In n 284 above 5

<sup>298</sup> M Westerkamp, M Feil & A Thompson ‘Regional Cooperation in the Great Lakes Region’ (2009) *Initiative For Peace building* available at <http://www.initiativeforpeacebuilding.eu>

staying power and multi-dimensional capability of the UN".<sup>299</sup> For this reason, regional interventions in African conflict are susceptible to fail.

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<sup>299</sup> C Deconing, In n 254 above

## CHAPTER V: General conclusion

The post-conflict period of the DRC, which should be dedicated to reconstruction and reconciliation, is characterized by the continuity of fighting, leading to massive violations of innocent civilians' human rights.

This mini-dissertation aimed to discover why the fighting is continuing in spite of the multiple agreements and ceasefires. To achieve this goal, the study examined the extent to which the mechanisms adopted by international organizations to address the post-conflict period in the DRC had been significant. In this respect, it looked at the role played by the UN, the AU, and the relevant sub-regional organizations (SADC, ECCAS and ICGLR) of which the DRC is a member state.

The investigation concerning the role played by international organizations intervening in the DRC post-conflict period showed that they approached the situation with reference to three different aspects namely observation, intervention and assistance. In doing so, they remained within the goals settled in their statute, protocol and additional documents. Nevertheless, ECCAS did not intervene efficiently like the others.

Analyzing the strategies applied by each organization in addressing the reconstruction and reconciliation in the post-conflict period in the DRC, the study found that the UN has been the most proactive and present in the DRC due to its logistical and financial capacity. The AU followed, but the lack of resources was the main reason that prevented the organization from reaching its pre-established objectives. The relevant sub-regional organizations, although closer to the realities on the ground, lacked the resources and the experience to make a very meaningful and lasting contribution.

Chapter two explored the role played by the UN through its agencies in the DRC post-conflict period. It identified that the UN operated in the areas of the rule of law, the security sector reform and human rights. From the beginning of the conflict, the UN created a special mission (MONUC) to deal with the DRC issue. MONUC was mandated especially to observe that the belligerents do not violate the Lusaka agreements. Giving the amplification of the conflict, the MONUC stepped forward intervening diplomatically by means of political negotiations. Later, it deployed military agents to stop the armed forces activities in the Kivus. However, instead of stopping, the conflict intensified.

At this stage of intensification, the ICJ, as supreme high court of the UN, issued a judgment against Uganda on its illegal occupation of the DRC territory. The Court urged Uganda to withdraw its troops from the DRC's territory although Uganda did not obey. The ICC supplemented the ICJ with the prosecution of the five chiefs of the biggest armed groups operating in the eastern DRC.

These arrests contribute to alert the others to surrender their arms to the national army as requested by the Government. However, reviewing the state of human rights in the DRC, the UPR expressed its concern on the continuity of atrocities in spite all tentative for regaining peace.

Against this background, I now answered the first question conducted by this research, namely, why the fighting in eastern DRC is continuing in spite of the Lusaka Agreements. The fighting in the eastern part is not stopping because of three major reasons. Firstly, the tragic history of the DRC is continuing to negatively influence the present. Indeed, it is crucial to understand that the scandalous poverty is a result of the past, which only Congolese who survived it can understand. International organizations such as the UN are confronted with a situation they do not fully comprehend. Secondly, the illegal traffic of small arms and natural resources of that part of the country has become a source of income to all belligerents. Ending the conflict will have a definite material effect on them. Thirdly, the state of the country emerging from a decade of war does not offer a secure environment for its people. The size and immense natural resources of the DRC are incompatible with its infrastructure. Most of the crimes are committed in the forest where peacekeepers and humanitarian agents do not have easy access to intervene.

Chapter three explored the contribution brought by the AU to the reconciliation and the reconstruction of the post-conflict period of the DRC. The AU Assembly coordinated all the interventions of the AUPSC, the ACHPR and NEPAD in the DRC. The ACHPR conducted the DRC's case (its first inter-state communication) accurately.

To answer research question two, namely, to what extent the strategies adopted by international organizations have been successful to monitor and assist the reconstruction and reconciliation process in the post-conflict period in the DRC, this study realized that the strategies adopted by international organizations to address the issues in the post-conflict period in the DRC have been significant to the extent that they brought belligerents to the same table to discuss the problem. This remained the biggest achievement throughout the reconciliation process. Equally, international organizations are assisting the national Government to accomplish its duties of establishing the rule of law on the entire territory as well as civilians victims of rapes and crimes of any kind occurred during the conflict and beyond it. However, outbreaks of conflict were still observed three years after the conventional end of the war (the 2006 elections).

Chapter four identified that the sub-regional organizations, as building blocks of the AU, are adequate to undertake regional mission related to human rights violations such as those that occurred in the DRC. They are familiar with the kind of issues the state is facing and they act fast because they are located closer. Yet, they do not possess the capacity and the power required to conduct these missions. In addition, member states are often directly implicated in the causes of the conflict. Their particular role has been the initiation of reconciliation that will bring a significant contribution to a lasting peace if understood by both belligerents.

Therefore, answering question three, namely what measures can international organizations (UN, AU, SADC, ECCAS and ICGLR) adopt to improve their role in the reconstruction and reconciliation process in the DRC post-conflict period, the study suggested that supra-national organizations acting in the DRC revise their mechanisms when addressing the issues if changes are to be expected. The solution consists of creating a rule that will serve as a common understanding and source of minimum standard to all belligerents.

In the DRC dilemma, the proposed solution to atrocities perpetrated in the eastern part, could be envisaged through reconciliation of leaders of armed groups, civilian innocent victims of the conflict, and National Armed Forces of the DRC. The *Actes d'Engagement* initiated earlier are worth being promoted because they support the peace process from both sides of the armed groups.

Sure enough, it will require a better understanding of the concept by both parties involved in the conflict. Disarmament and reintegration achieve nothing if not associated with an agreement to share with the enemy. After a decade of debates, practical propositions are required to accelerate effective implementation of peace. That is why collaboration between international and regional organizations must be considerate in order to boost up the process to a satisfactory dimension.

The social aspects of the DRC have not been much envisaged by the organizations involved in the reconstruction and reconciliation process. In reality, they constituted the cornerstone for a new beginning for the Congolese. Victims are suffering individually; common solution and national debates do not reach the needs of the vulnerable class. International actors should envisage addressing the challenges in the DRC simultaneously with those in its neighboring countries, as they are facing similar problems. They are fighting the DRC because they wish that this was the best way of solving their own problems.

In conclusion, this study shows that the role of international organizations has not been fully explored, but it is equally clear that without their collective involvement the situation would in all likelihood have been much worse today.

## Bibliography

African Post-Conflict Reconstruction Policy Framework, NEPAD Secretariat, June 2005

Alusala, N ‘Arms and disarmament DRC’s unending story’ in Alusala, N (2007) 129 *Armed conflict and disarmament* Pretoria: ISS 30-56

Annan, K *Peace and development – One struggle, two fronts*, Address of the United Nations Secretary General to World Bank Staff (19 October 1999)

Arsanjani, MH ‘The Rome Statute of the International Criminal Court’ (1999) 93.1 *The American Journal of International Law* 22-43

Awoumou, CD ‘ECCAS or CEMAC: which REC for Central Africa?’ in Ayangafac, C (ed) (2008) 1 *Political economy of regional in Central Africa* Pretoria: ISS

Beyani, C ‘Recent developments in the African human rights system’ 2004-2006 (2007) 7.3 *Human Rights Law Review* 582-608

Boas, M ‘Just another day the north Kivu security predicament after the 2006 Congolese elections’ (2008) 1 *African Security* 53-68

Bogland, K, Egnell, R & Lagerström, M ‘The AU-A study focusing on conflict management’ (2008) 2475 *FOI, Swedish Defence Research Agency* 1-52

Carvalho, G ‘MONUC and post-electoral challenges in the DRC’ (2007) 4 *Conflict Trends* 41-47

Cawthra, G ‘Collaborative regional security and mutual defense: SADC in Comparative perspective’ (2008) 35.2 *Politikon* 159-176

Church, W & Jowell, M ‘Conflict circuit breakers in the Great Lakes Region of Africa’ (2007) 16.1 *African Security Review* 18-32

Cilliers, J “Peacekeeping in DRC: MONUC and the road to peace” (2001) 66 *ISS Paper*

Clapam, C ‘The UN and peacekeeping’ in Malan M (ed) (1999) 36 *Whiter peacekeeping in Africa* Pretoria: ISS

Coyne, CJ ‘The institutional prerequisite for post-conflict reconstruction’ (2005) 18 *The Review of Australian Economics* 325-342

Deconing, C 'The future of peacekeeping in Africa' (2006) 14 *Finish Institute of International Affairs* 35-42

Ebobrah, S & Tanoh, A (2010) (eds) *Compendium of African sub-regional human rights documents* Pretoria: PULP

Ekiyor, T 'Implementing the responsibility to protect doctrine in Africa' (2007) 1 *Friedrich Ebert Stiftung* 1-7

Feller, E 'Giving peace a chance: displacement and rule of law during peace building' (2009) 28 *Refugee Survey Quarterly* 78-94

Genugten, W 'UN Peacekeeping in Africa and good governance: Challenges and prospects' (2008) 2 *PER* 1-48

Grimberg, J 'Can UN peacekeepers do the job?' in Bourantonis, D & Evriviades, M (eds) (1996) *UN for the 21st century* The Hague: kluwer law

Gottschalk, K & Schmidt, S 'The AU and the NEPAD: Strong institutions for weak states?' (2004) 4 *International Politic Gesellschaft* 138-158

Heredia, MI 'The space for Congolese self-determination between absences and presences of the AU and the UN' (2009) 3.1 *African Journal of Political Science and International Relations* 001-014

Heyns, C & Killander, M (2007) (eds) *Compendium of key human rights documents of the AU* Pretoria: PULP

ICC, *Manual for the Ratification and Implementation of the Rome Statute*, (2008) 3 Canada: University of British Columbia Vancouver

Kampf, D 'The Democratic Republic of Congo: Beyond the elections' (2007) 16.1 *African Security Review* 109-112

Killander, M 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41-75

Koko, S 'The one-plus-four' formula and transition in the DRC' (2007) 16.1 *African Security Review* 33-49

Landsberg, C, 'The Emerging African continental union and the drive for political development' *Open Society Initiative for Southern Africa* 51-57

Langinvainio, M & Reyes, JD ‘Building peace and security capabilities in Africa’ (2006) 4 *Crisis Management Initiative* 1-40

Liche, D ‘African Peer Review Mechanism: How to make the process a success in Zambia?’(2009) 3 *Jesuit Centre for Theological Reflections* 1-15

Macaulay, C & Karbo, T ‘Assessing the ability of the ECCAS to protect human security in Central Africa’ 155 *Monograph ISS* 151-164

Madakufamba, M ‘SADC in the twenty-first Century’ *Open Society Initiative for Southern Africa* 90-95

Mangu, AM ‘Assessing the effectiveness of the APRM and its impact on the promotion of democracy and good political governance in AU member states’ (2007) *African Human Rights Law Journal* 354-388

Marks, J ‘The pitfalls of action and inaction: civilian protection in MONUC’s peacekeeping operations’ (2007) 16.3 *African Security Review* 68-80

Masalila, KS ‘Overview of initiatives to promote convergence in the context of regional integration, an African Perspective’32 *Irving Fisher Committee Bulletin*

Mobekk, E ‘Security sector reform and the UN mission in the DRC: Protecting civilians in the east’ (2009) 16.2 *International Peacekeeping* 273-286

Moffett, L ‘Ending the Cycle of Violence in the Congo: Is peace possible in the heart of darkness?’(2009) 13 *Journal of Peace, Conflict and Development* 1-23

Mollel, A ‘*A Human rights approach to conflict prevention, management and resolution in the Africa’s GLR: A focus on the DRC conflict*, unpublished academic dissertation, University of Joensuu, 2010

Mulaudzi, C ‘The politics of regionalism in southern Africa’ (2006) 51 *Institute for Global Dialogue* 1-42

Mpangala, GP ‘Origins of political conflict and peace building in the GLR’ (2004) unpublished 1-23

Murithi, T ‘The AU/ NEPAD post-conflict reconstruction policy: an analysis’ (2007) 3 *Conflict Trends* 16-21

Murithi, T ‘Towards a symbiotic partnership: The UN peace building commission and the evolving African Union/NEPAD Post-conflict Reconstruction Framework’ in Adebayo, A & Scanlon, H (eds) (2006) *A dialogue of deaf: Essays on Africa and the United Nations* Johannesburg; Jacana 243-260

Murray, R & Evans, M (Eds) (2009) *2 Documents of the African Commission on human and peoples' rights 1999-2007* Oxford and Portland Oregon: Hart

Nicolli, A (ed) (2007) 13 ‘Instability in North Kivu’ *The International Institute for Strategic Studies* 1-2

Nowrojee, B ‘Africa on its own: Regional intervention and human rights’ (2004) *Human Rights Watch World Report* 1-15

Pahad, A ‘South Africa and preventive diplomacy’ in J, Cilliers & G, Mills (eds) *Peacekeeping in Africa* South Africa: the Institute of Defense Policy

Pearsall, J et al (eds) (1999) 10 *The concise oxford dictionary*: Oxford University Press

Ramcharan, B ‘The UN a human rights in the 21twenty-first century’ in Alfredsson, G et al (eds) (2001) *International human rights monitoring mechanisms* Boston: Martinus Nijhoff

Ricci, R ‘human rights challenges in the DRC: a view from MONUC’s human rights section’ *Challenges of Peace Implementations* 97-102

Roper, SD & Barria, LA ‘State co-operation and ICC bargaining influence in the arrest and the surrender of suspect’ (2008) 21 *Leiden Journal of International Law* 457-476

Ruppel, OC ‘Regional economic communities and human rights in east and southern Africa’ in Bosl, A & Diescho, J (eds) (2009) *Human Rights in Africa* Windhoek: Macmillan publishers

Sarkin, J ‘The role of the UN, the AU and sub-regional organizations in dealing with Africa’s human rights Problems’ (2009) 53.1 *Journal of African Law* 1-33

Savage, T ‘In quest of sustainable justice: Transitional justice and human security in the DRC’ (2006) 130 *ISS paper* 1-12

Scanlon, H (eds) (2006) *A dialogue of deaf: Essays on Africa and United Nations* Johannesburg; Jacana

Schabas, WA ‘First prosecutions at the ICC’ (2006) 27 *Human Rights Law Journal* 25-40

Terrie, J The use of force in UN peacekeeping: The experience of MONUC (2009) 18.1 *African Security Review* 22-34

Thakur, M ‘Demilitarizing militias in the Kivus (eastern DRC) (2008) 17.1 *African Security Review* 53-67

Tshiswaka, ‘H MONUC: a case for improvement’ *Open Society Initiative for Southern Africa* 45-50

Utete Arsen, J “African Security Analysis Programme” *ISS Paper*

Viljoen, F (2007) *Human rights law in Africa* New York: Oxford University Press

Westerkamp, M, Feil, M & Thompson, ‘A Regional cooperation in the Great Lakes Region’ (2009) *Initiative For Peace building* 1-46

Whitman, S ‘Women and peace-building in the DRC: An assessment of their role in the Inter-Congolese Dialogue’ (2006) 6.1 *African Journal on Conflict Resolutions* 29-48

Zimmermann, A, Tomuschat, C & Oellers-Frahm, K (2006) *The statute of the ICJ a commentary* New York: Oxford University Press

Zorbas, E ‘Reconciliation in post-genocide Rwanda’ (2004) 1 *African Journal of Legal Studies* 29-52

## Websites

- <http://www.un/depts/dpko/mission/monuc.org/mandate.html>
- <http://www.osisa.org>
- <http://www.un/depts/dpko/mission/monuc.org/mandate.html>
- <http://WWW.ICCLR.LAW.UBC.CA>
- <http://www.jstor.org/stable/2997954>
- [www.monuc.org](http://www.monuc.org)
- <http://www.un.org>
- <http://www.peacestudiesjournal.org.uk>
- <http://www.accord.org>
- <http://www.oxfordjournals.org>
- <http://daccess-ods.un.org/access.nsf/get>
- <http://www.africaaction.org/resources/ejournal.php>
- <http://daccess-ods.un.org/access.nsf>
- [www.iiss.org/stratcom](http://www.iiss.org/stratcom)
- <http://www.initiativeforpeacebuilding.eu>

<http://www.issafrica.org>  
<http://www.nepad.org>  
<http://www.african-union.org>  
<http://www.bis.org>  
<http://www.igad.org> or [www.issafrica.org](http://www.issafrica.org)  
<http://dx.doi.org/10.1080/02589340802366950>  
<http://www.ohchr.org.up.za>  
<http://www.bis.org>  
<http://www.africa-union.org.up.za>  
<http://www.initiativeforpeacebuilding.eu>  
<http://www.ccoyne.com>  
<http://www.academicjournals.org/AJPSIR>  
<http://dx.doi.org/10.1080/19362200802285807>  
<http://www.un/depts/dpko/mission/monuc.org>