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**M.A. INTERNATIONAL STUDIES**

**Humanitarian Intervention in African Conflicts in the Post Cold War Era: A  
critical study of the Democratic Republic of Congo Conflict (1998 - 2005)**

**SUBMITTED BY**

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award of the degree of Master of Arts in International Studies at the Institute  
of Diplomacy and International Studies of the University of Nairobi.**

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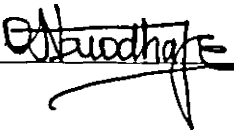
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This dissertation has been submitted with my approval as the University Supervisor

  
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ROBERT MUDIDA

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## LIST OF ABBREVIATIONS & ACRONYMS

ECOWAS-	Economic Community of West African States
IGAD-	Inter-Governmental Authority on Development
SADC-	Southern Africa Development Co-operation
DDRRR-	Disarmament, Demobilization, Repatriation, Resettlement and Reintegration
DDR-	Disarmament, Demobilization, Reintegration
DRC-	Democratic Republic of Congo
AU-	African Union
OAU-	Organization of African Unity
JMC-	Joint Military Commission
MONUC-	United Nations Mission in Congo
MDRP-	Multi-Country Demobilization and Reintegration Program
TPVM-	Third Party Verification Mechanism
JPC-	Joint Pacification Commission
UDPS-	Union pour la democratie et le progres social
TRC-	Truth and Reconciliation Commission
PSC-	Peace and Security Council
ICG-	International Crisis Group
ISS-	Institute for Security Studies
DPKO-	Department of Peacekeeping Operations
ACRI-	African Crisis Response Initiative
RCD-	Rassemblement Congolais pour la democratie

- RCD-ML      Rassemblement congolais pour la democratie- Mouvement de liberation ( also known as RCD- Kisangani).
- MLC-        Mouvement de liberation Congolais
- SSR-        Security Sector Reform
- FARC-      Forces armees de la Republique Democratique du Congo
- ICISS-     International Commission on Intervention and State Sovereignty
- ASF-        African Standby Force

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Jo' Abuodha  
University of Nairobi, 2005

## DEFINITION OF CONCEPTS

**Humanitarian intervention:** the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognised human rights.<sup>1</sup>

**State Sovereignty:** The supreme, absolute, and uncontrollable power by which any independent state is governed; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation.

**Cold War:** a term used after 1945 to describe not only the intense mutual hostility and suspicion that prevailed between the United States of America (USA) and Union of Soviet Socialist Republics (USSR), but also a fundamental clash of ideologies and interests that existed between them. It was essentially a bipolar conflict involving two great blocs that appeared to 'superimpose' their rivalry on the rest of the world<sup>2</sup>.

**Post Cold War World Order:** The period following the collapse of communism in 1989/90 in Eastern Europe marked by the break away of states formerly under USSR control and the subsequent emergence of USA as the sole super power.

**Conflict Systems:** This notion champions the belief that every conflict has intimate relationships regionally and what might first appear as an individualised conflict is in fact a part of wider conflict regionally. It postulates that conflicts do not have boundaries hence cannot be locked within state borders<sup>3</sup>

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<sup>1</sup>Murphy S, *Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press, Philadelphia, 1996.

<sup>2</sup>Williamson, D, *International Relations*, 1914-45, 1994 Hodder & Stoughton.

<sup>3</sup>Mwagiru M, The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management, Paper for International Resource Group Conference Mombasa, Kenya November 6 - 9, 1996 (Revised 1998) [www.ploughshares.ca/content/BUILD%20PEACE/MwagiruIRG96.html](http://www.ploughshares.ca/content/BUILD%20PEACE/MwagiruIRG96.html)



## ABSTRACT

This study examines the increasingly controversial doctrine of humanitarian intervention. It opens by exploring the historical origins of the doctrine, its justification and examines the current position of international law and international relations on the matter. The study then considers the use of humanitarian intervention as a tool for conflict management.

Anchoring on the DR Congo conflict, the study examines several humanitarian intervention efforts in this conflict and seeks to understand why despite the beehive of intervention activities, the conflict has continued to ravage DR Congo. In this regard the study examines the tense ethnic relationship particularly between the Hutu and Tutsi in the Great Lakes region and how this relationship impacts on the conflict. The study further examines the role played by illegal exploitation of Congolese minerals and regional rivalry in the continuance and escalation of the conflict.

Focusing on humanitarian intervention, the study puts forward an argument that humanitarian intervention is in dire need of redefinition to move it away from its traditional association with use of force and elevate it to include a continuum of activities aimed at bringing to an end gross humanitarian crises. In the context of

Africa, reform of humanitarian intervention approach is critical as the continent plays host to several conflicts which have yielded serious humanitarian crises.

## CHAPTER ONE

### 1.1.1 INTRODUCTION

The concept of humanitarian intervention although not of recent origin, the debate about it gained much ground towards the end of the 20<sup>th</sup> Century and presently constitute the bulk of international discourse on contemporary foreign policy. It has however remained controversial whenever it happens and whenever it fails to happen. Rwanda in 1994 laid bare the full horror of inaction while intervention in Kosovo in 1999 by NATO forces re-ignited the controversy over primacy of state sovereignty vis-à-vis human rights.

Whereas the question of legitimacy or otherwise of humanitarian intervention still remains unsettled, the basic lines of debate constantly being engaged at the UN headquarters in New York and capitals around the world have been clearly drawn. For some, the international community is not intervening enough; for others it is intervening too much too often. There are also those who question the effectiveness of intervention while others take issue with its legality, the process and its possible misuse. Further still there are those who view the concept of humanitarian intervention as the heralding of a new world order in which

human rights triumphs over state sovereignty. The smaller and weaker states see it as an excuse by big powers to ride roughshod over them.<sup>1</sup>

The growing international engagement in discourses over humanitarian intervention however ought to be looked at in the context of Cold War fallout. The collapse of Communism in Eastern Europe marked a significant reordering of international relations which somewhat saw the emergence of the United States of America as the epicentre of international system. This hegemonic position catapulted the US to a key decision-making position in most international affairs. The war against terror, anti-nuclear testing policy directed against newly industrialized states and the unilateral war against Iraq ostensibly to free that country of dictatorship and destroy Saddam Hussein's perceived stockpiles of weapons of mass destruction are some of the many examples which serve to illustrate the overarching role of the US in the post Cold War World Order.

In the African Continent however, the reordering brought with it escalation of conflicts that hitherto simmered during the Cold War era and emergence of new ones. The world has witnessed near-complete annihilation of communities,

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<sup>1</sup>International Commission on intervention and state sovereignty (ICISS) '*Responsibility to Protect*', December, 2001 p.9, (ICISS was an initiative by the Canadian Government with the approval of the UN General Assembly, charged with mandate of addressing the issues around humanitarian intervention).

acceleration in the number of internally displaced persons and upsurge in the number of refugees in camps dotted across the Continent.

In the Great Lakes region for instance, Rwanda underwent horrendous ethnic feud which led to the world-shaking genocide of April- June 1994, in which about 800,000 Tutsis, along with moderate Hutu politicians, were slaughtered by Hutu extremist militias known by the acronym the *Interahamwe* and members of the former Hutu-led national army. The Democratic Republic of Congo the current epicentre of the Great Lakes Conflict System is locked up in a war that has been dubbed "Africa's First World War," on account of the involvement of Uganda, Rwanda, Burundi, Zimbabwe, Namibia, Angola and Sudan on the side of different groups in the country, has to date claimed an estimated three million lives and depleted vast mineral resources there.<sup>2</sup> Although peace accords including the Lusaka Peace Accord of 1999 have been signed, bodies continue to pile up as the fighting between the Hema and Lendu people has continued in Bunia, the largest city in DRC's gold-rich eastern Ituri province where parties appear to be entangled in mutual assured killings and destruction. In neighbouring Uganda, the authorities are struggling to contain the atrocious rebellion of the cult guerrillas of the Joseph Kony-led Lord's Resistance Army (LRA), which is operating in the North from Sudan. In West Africa, Cote d'Ivoire, formerly seen as a haven of peace and economic stability in otherwise volatile

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<sup>2</sup> O'Kechukwu Emeh; 'Africa And the Crisis of Instability', *Vanguard* March 30, 2004  
[www.globalpolicy.org/nations/sovereign/failed/2004/0330crisis.htm](http://www.globalpolicy.org/nations/sovereign/failed/2004/0330crisis.htm)

West Africa is currently experiencing chaos and madness of the horrific civil war of the nature witnessed in Liberia, Sierra Leone and Guinea Bissau.

In spite of sporadic degeneration in interethnic relations in African states yielding serious humanitarian inventories outlined above, there appears to be a policy shift towards constructive disengagement in African affairs by the UN and Western Countries fronted by the US especially where they pose no threat to their strategic interests. The speed and commitment towards any response whether humanitarian or developmental, is therefore underpinned by their perception of the conflict and the geo-strategic position of the country concerned. The Rwanda Genocide of 1994 in this context remains a classical case of Western inaction to what has been described as 21<sup>st</sup> century rendition of the Jewish holocaust. General Romeo Dallaire the commander of a small U.N. peacekeeping force already in Rwanda when the genocide began told a conference in April, 2004 in Kigali marking the 10th anniversary of the slaughter that “ the international community didn't give one damn for Rwandans because Rwanda was a country of no strategic importance.”<sup>3</sup>

Mvemba Phezo Dizolele of Global Policy Forum argues that although the Charter of the United Nations mandates it to ensure world peace, its mission in

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<sup>3</sup> West 'guilty' over Rwanda genocide CNN Tuesday, April 6, 2004

DRC known by the French acronym of MONUC is an embodiment of failure and replete with contradictions that have characterized the organization worldwide in the last decade.<sup>4</sup> Virgil Hawkins further observes that the response of the UN Security Council to the “massive world war” in the DRC is characterised by an abundance of rhetoric and a deficit of concrete action. When it has acted, its actions have often been clearly inappropriate, with the token deployment of lightly armed peacekeepers into a volatile area of ongoing conflict. In choosing such an option, it has shown how little political will there is for serious engagement.<sup>5</sup>

Column Lynch of Global Policy Forum further contends that since Sept. 11, 2001, the UN Security Council's priorities have shifted to combating global terrorism and helping to rebuild countries invaded by the United States in its war against terror. This agenda, he argues has been pursued at the expense of other trouble spots, particularly in sub-Saharan Africa, where several nations, including Liberia, Ivory Coast and DRC, are facing some of their worst crises in years.<sup>6</sup>

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<sup>4</sup>Mvemba Phezo Dizolele *The UN in Congo: The Failure of a Peacekeeping Mission*, Global Policy Forum [www.globalpolicy.org/security/issues/kongidix.htm](http://www.globalpolicy.org/security/issues/kongidix.htm)

<sup>5</sup>Virgil Hawkins: History Repeating Itself; The DRC and the UN Security Council Institute for Security Studies [www.iss.org.za/pubs/ASR/12No4/EFHawkins.html](http://www.iss.org.za/pubs/ASR/12No4/EFHawkins.html)

<sup>6</sup>Colum Lynch; UN's Focus Diminishes Efforts on Africa's Troubles Global Policy Forum [www.globalpolicy.org/security/issues/congo](http://www.globalpolicy.org/security/issues/congo)

### 1.1.2 STATEMENT OF THE PROBLEM

Efforts to resolve the DRC conflict have not yielded much progress partly because humanitarian intervention in African crises by the UN and western countries in general has since the end of the Cold War been hinged more on the strategic considerations than protection or amelioration of suffering in the affected states. The United Nations under whose auspices the intervention ought to take place seems hapless in the face of rivalry among the key members of the Security Council. France who considers DRC as part of the francophone regards the strong presence and involvement of Anglo-Saxons led by the United States, as a threat to its influence in the region. Further, intervention by the international community in African conflicts has always been heavily influenced by their perception of the continent and its peoples. Their approach is heavily rooted on theories by western scholars who are wont to recommend traditional approaches to management of conflicts without analysing the peculiar circumstances of any given conflict.

At Continental level, regional and sub regional efforts under the auspices of the African Union (AU) to resolve the DRC conflict have not had any meaningful impact due to multiplicity of issues which have either not been addressed or inappropriately approached. Besides, member states of the AU appear held back by the OAU doctrine of non interference in internal affairs of member states. The



various mediation attempts undertaken by the African Union, the SADC, the international Francophone community and Libya, as well as a number of individual personalities, have all run into similar problems some of which include: the cease-fire, agreement over which parties should be acknowledged as belligerents, the withdrawal of foreign troops, direct rebel involvement in negotiations and the choice of a mediator. Each side has stalled on these issues or else manipulated them in order to block negotiations and play for time as they each believe in the possibility of a military victory, further regional rivalry coupled with outright plunder have been some of the major obstacles to the peace process.

The purpose of this study is therefore to critically analyse humanitarian intervention efforts in the DRC and to highlight the extent to which they have succeeded in ameliorating the crisis in that country. The reason for picking as DRC conflict as a case study is anchored on the fact that it is an ongoing conflict and the extent of humanitarian crisis which has been generated by the conflict is astounding and sporadic. The study will start by first discussing broadly, the concept of humanitarian intervention, what it entails and its implications in international law and thereafter applying those broad issues to the DRC war.

The study proceeds from the assumption that Africa is rapidly sliding into strategic desuetude in the post Cold War international order. It further presumes

that there can be no mono-theory or blueprint capable of solving African conflicts. The study further recognizes the centrality of the concepts of peace, democracy and stability in any attempt to 'save' Africa from the raging internecine wars. It however posits that these concepts must be rooted in African realities and socio-psychological set up.

In undertaking this study an attempt will be made at analysing various attempts at reaching a sustainable peace settlement of the DRC conflict from the time it broke out in 1998 to 2005. The study will highlight some of the assumptions of the various settlement efforts and mechanisms and make an analysis of their strengths and weaknesses. Syntheses of these efforts and mechanisms will be proposed as possible methods in managing this longstanding conflict.

#### **1.1.2 OBJECTIVE OF THE STUDY**

The study has a two pronged approach namely broad and specific:

- Broadly the study seeks to analyse the roles and contributions made by the UN and regional humanitarian intervention efforts in the management of the DRC conflict.
  
- Specifically the study will critically examine the strategies the UN and other international stakeholders have employed in the management of the

DRC conflict from its eruption in 1998 to date( 2005) and make an assessment of the efficacy or otherwise of these strategies.

- The study further intends to specifically sensitise policy makers both local and international on the need to derive a solution to the conflict from within DRC and the Great Lakes Region as this conflict is part of the wider Great Lakes Region Conflict System with its epicentre presently located in DRC.

### 1.1.3 LITERATURE REVIEW

The literature in this study is considered at two levels: broad and specific. At broad level a review will be done on literature dealing with the concept of humanitarian intervention, its origins, development and the debates. Writings on the origins and causes of the DRC conflict will be considered in order to lay a background to the understanding of the conflict. Theories and paradigms of conflict will be discussed briefly in order to lay a framework for conceptualising and operationalising the concept of humanitarian intervention. The second phase will concentrate on specific literature dealing with humanitarian intervention in the DRC.

Humanitarian intervention has traditionally been defined as an armed intervention in another state, without the agreement of that state, to address (the

threat of) humanitarian disaster, in particular caused by grave and large-scale violations of fundamental human rights.<sup>7</sup> Sean Murphy defines it as threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognised human rights<sup>8</sup>.

In terms of origin, Lepard Brian traces humanitarian intervention in its modern sense to the Gulf War of 1990 when the UN in precedent setting decision authorised a coalition of forces of member states, spearheaded by the US to use all necessary means to dislodge Iraqis from Kuwait. In the war's immediate aftermath, attempted revolts by Kurds in northern Iraq and Shi'ite Muslims in the south were cruelly repressed by Iraqi troops, driving hundreds of thousands of refugees across the border to neighbouring Iran and Turkey. Allied forces bowing to international pressure established safe havens for the Kurdish refugees in an operation dubbed "Operation Provide Comfort". This became the precursor for many humanitarian interventions in the 1990s.<sup>9</sup>

Underlying the humanitarian intervention debate is the delicate balance and tension laden relationship between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-

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<sup>7</sup> This definition was adopted by a NATO seminar in Scheveningen on the topic in November 1999 CSS Strategic Briefing Papers Volume 3; Part 1; June 2000 [www.vuw.ac.nz/css/docs/briefing\\_papers/Humani.html](http://www.vuw.ac.nz/css/docs/briefing_papers/Humani.html)

<sup>8</sup> Murphy, Sean D, *Humanitarian Intervention: The United Nations in an Evolving World Order*, 1996 University of Pennsylvania Press, Philadelphia.

<sup>9</sup> Lepard Brian: *Rethinking Humanitarian Intervention*, Pennsylvania State University Press. [www.psupress.org](http://www.psupress.org).

intervention, and self determination which are considered as essential precepts in the maintenance of international peace and security. These values are set out in the United Nations Charter as fundamental purposes of the United Nations.

Broadly speaking there are two schools of thought on the legality of humanitarian intervention. The first school of thought led by Donaldson<sup>10</sup> argue that from a deontological moral perspective it is the individual, and not the state, that lies at the centre of international law. States receive their legitimacy from the will of the people. Hence, sovereignty is not an inherent right of states but, rather, derives from individual rights. Thus, when sovereignty comes into conflict with human rights, the latter must prevail. Fernando Tesón<sup>11</sup> further contends that the rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. It is his view that the United Nation's purpose of promoting and protecting human rights found in article 1(3), and by reference in article 2(4) as a qualifying clause to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defence of fundamental human rights is therefore not a use of force inconsistent with the purposes of the United Nations. The underlying assumption in this context is that human rights constitute self-

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<sup>10</sup> Donaldson, Thomas, "Kant's Global Rationalism," 136-157 in *Traditions of International Ethics*, eds. Terry Nardin and David Mapel, 1989 Cambridge University Press, Cambridge.

<sup>11</sup> Tesón, Fernando, *Humanitarian Intervention: An Inquiry into Law and Morality*, 2nd ed., 1997 Transnational Publishers Inc., Irvington-on-Hudson, NY.

evident truth and a natural law which has primacy over any notion of state sovereignty or positive international law.

On the other hand, those who argue against the right of unilateral humanitarian intervention do so from a positivist perspective. These writers maintain that, based on the accepted rules of treaty interpretation - textual analysis and an examination of the *travaux préparatoires* of the Charter - Article 2(4) was meant to be a watertight prohibition against the use of force and that any customary right of unilateral intervention which may have existed was extinguished by the United Nations Charter.<sup>12</sup> In this context Peterson argues that while there are mechanisms within the Charter for the protection and enforcement of peace and international security (i.e., Article 2[4] and Chapter VII); there are no equivalent provisions or mechanisms in the Charter for the protection of human rights.<sup>13</sup>

The United Nations Security Council in response to humanitarian crises, has given a very liberal interpretation to article 39 and availed itself of the right to humanitarian intervention by adopting a series of resolutions which have progressively expanded the definition of "threat to international peace and security" under article 39 of the Charter to include cases of widespread deprivations of internationally recognised human rights. Intervention in such

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<sup>12</sup> Simma Bruno, Murphy Sean D., Chamey et. al

<sup>13</sup> Peterson, Fredrick, "The Façade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations" 1998 *Arizona Journal of International Comparative Law*

circumstances has been premised on the argument that sovereignty is conditional on respect for human rights.

Until recently however, many developing countries and their academics have been averse to the Western emphasis on the individual in current human rights doctrines. According to Simon Duke<sup>14</sup> several Asian and Islamic countries challenged the universality of human rights in the preparatory conference to the 1993 Vienna conference on Human Rights, charging that human rights more often than not reflect western ethical and moral standards. The Danish Institute Report notes that developing states often doubt the motivation behind humanitarian intervention and see traditional notions of sovereignty "as a defence against the dynamics of an unequal world."<sup>15</sup>

In terms of specific response to the DRC conflict, the available literature appears to accuse the UN and Western nations of either inaction or empty rhetoric. Virgil Hawkins<sup>16</sup> observes that despite its unfortunate status as the deadliest recorded conflict since the Second World War, and its disastrous implications for human and regional security, the DRC conflict is found on the periphery of the UN

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<sup>14</sup> Duke, Simon 1994, "The State and Human Rights: Sovereignty Versus Humanitarian Intervention," *International Relations* XII(2), 25-48.

<sup>15</sup> Danish Institute of International Affairs 1999, Humanitarian Intervention: Legal and Political Aspects, Submitted to the Minister of Foreign Affairs, Denmark, December 7 (called the "Danish Institute Report").

Online: [www.dupi.dk/htdocs/en11240.ssj](http://www.dupi.dk/htdocs/en11240.ssj)

<sup>16</sup> Hawkins Virgil, 'History Repeating Itself; The DRC and the UN Security Council', *Africa Security Review* Vol. 12 No. 4, 2003

Security Council's field of vision. According to *Hawkins*, convergence of national interests of the Security Council's most powerful members appears to upstage genuine humanitarian priorities obtaining in DRC. Monique Beadle<sup>17</sup> observes that although "peace accords" (in which few placed confidence) have been signed, fighting between the Hema and Lendu people has continued in Bunia, the largest city in DRC's gold-rich eastern Ituri province. She notes that despite the resultant humanitarian crisis, it merely yielded a belated emergency deployment of a relatively small contingent of French peacekeepers to the area by the UN. She notes that while its intentions are noble, the UN's current plans for peacekeeping operations are woefully insufficient to ensure lasting peace in the region. The UN Security Council is accused of failing to invoke its Chapter VII mandate and declare sanctions against countries that have been accused of fuelling the war in DRC.<sup>18</sup> Hawkins argues that the failure of the Council to take concrete measures to become seriously involved in resolution of DRC conflict is a reflection of apathy of the Council's powerful members towards a conflict that does not have a significant effect on their economic or political interests.<sup>19</sup>

To deepen an understanding of the causes of the DRC conflict it is important to review literature dealing with causal theories of conflict and of particular importance and relevance to this study are the Human Needs Theory (HNT),

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<sup>17</sup> Monique Beadle, The Institute for Global Engagement [www.globalengagement.org/issues/2003/07/congo.p.htm](http://www.globalengagement.org/issues/2003/07/congo.p.htm)

<sup>18</sup> Under article 41 of the UN Charter, the Security Council may instead of intervening militarily, apply economic sanctions against the offending state.

<sup>19</sup> *Supra* n19



and Conflict Resolution. The analysis of these paradigms is necessary in order to define the scope and variety of the conflict in order to put it in perspective.

HNT according to Burton<sup>20</sup> is anchored on the belief that human participants in conflict situations are compulsively struggling in their respective institutional environments and at social levels to satisfy primordial and universal needs such as security, identity, recognition and development. They strive to gain control of their environment that is necessary to ensure the satisfaction of these needs. By accepting the assumptions and hypotheses of HNT, Burton suggests that there is a need for a paradigm shift away from power politics and towards the reality of individual power. If individuals are prevented from this pursuit by the elites, other identity groups, institutions and other forms of authority, conflict will inevitably arise. In this regard Burton argues that the solution is for the groups entangled in conflict to work out their problems in an analytical way, supported by third parties who act as facilitators and not authorities. This process is described as Conflict Resolution. It entails termination of conflict by analytical means in order to get to the root of the problem. Conflict resolution as opposed to mere management or settlement points to an outcome that in view of the parties involved, is a permanent solution to the a problem. The significance of these theories in the context of the DRC conflict is that they legitimise and

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<sup>20</sup> John Burton, 'Conflict Resolution as a Political System', in Vamik Volkan et al (eds) *The Psychodynamics of International Relationships: Vol. II Unofficial Diplomacy at Work*. Lexington, MA, Lexington Books, 1991, p82-83

recognise current conflicts by the various interest groups in DRC and calls for their analysis and resolution if a lasting peace is to be realised.

A Review of theories of conflict however reveal a number of observations; first, there is a large volume of literature written about the nature and theory of conflict, especially with regard to warfare. Second, there is lack of consensus among both contemporary and historic views of human conflict. Third among the literature most relevant to political science theoreticians, there are several dichotomies that divide the search for a dominant paradigm.

Contributing to the debate over the nature of conflict, Dougherty and Pfaltzgraff<sup>21</sup> observe that social scientists are divided on the question whether social conflict should be regarded as something rational, constructive, and socially functional or something irrational, pathological, and socially dysfunctional.<sup>22</sup> They identify two opposing view points in this regard namely the classical approach and the behaviourist. The classical approach focuses on the macro level analysis. It is primarily concerned with analysis of the interaction of groups divided along different cleavages such as national, institutional, ethnic, class, ideological *et cetera*. The behaviourist on the other hand is concerned with micro-level analysis where the unit of measurement is the individual rather than

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<sup>21</sup> James E. Dougherty & L. Pfaltzgraff, *Contending Theories of International Relations*. New York, Harper & Row Publishers, 1981, p. 187

<sup>22</sup> William G. Cunningham, *Theoretical Framework for Conflict Resolution*, MA Thesis, University Auckland, 1988, <http://cain.ulst.ac.uk/conflict/cunningham.htm>

the group. According to this theory the unconscious is examined in order to understand the unstated motivational factors.<sup>23</sup>

Zartman<sup>24</sup> on the other hand argues that in understanding and dealing with violent conflicts, it is important to begin with a conceptualization of their causal ingredients as guide to a search for their solutions. In this regard he identifies Need as the basic component of internal conflicts and argues that denial of collective Need is a basic condition for conflict. Schelling<sup>25</sup> further notes that although conflict, competition, and cooperation are inherently interdependent, conflict occurs when competing group's goals, objectives, needs or values clash and aggression, although not necessarily violence is a result. Mwangi<sup>26</sup> argues as well that conflict results from incompatibility of goals of different parties about a particular thing. In this context he submits that in seeking to resolve any conflict it is not just enough to conceptualize its causal links. It is crucial to understand as well, who the actors are and their stakes in the conflict. He further contends that, it is important to disentangle the various levels of individual conflicts and to identify their different types of interfaces.<sup>27</sup> In this regard Mwangi introduces the notion of conflict systems. This notion champions the belief that every conflict has intimate relationships regionally and what might

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<sup>23</sup> *ibid* at page 5

<sup>24</sup> I William Zartman: 'Mediation in Ethnic Conflicts'; *Centre for Development Research (ZEF Bonn): Facing Ethnic Conflicts* (14<sup>th</sup>-16<sup>th</sup> December, 2000) [www.zef.de/download/ethnic\\_conflict.pdf](http://www.zef.de/download/ethnic_conflict.pdf)

<sup>25</sup> Thomas Schelling, *The Strategy of Conflict*. Cambridge, MA, Harvard University Press, 1960

<sup>26</sup> Makumi Mwangi, *Conflict: Theory Processes, and Institutions of Management*, Watermark Publications, Nairobi 2000

<sup>27</sup> Mwangi. M. 'The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practises', Paper prepared for the USAID project on Conflict Management in The Greater 1997

first appear as an individualised conflict is in fact a part of wider conflict regionally. Within this broad approach, the conceptual basis on which analysis and practical conflict management is embedded must be defined because lack of a sound conceptual basis in any type of conflict management is bound to flounder.<sup>28</sup> In this context the conflict in DRC ought to be looked at in terms of the wider Great Lakes Region conflict system which encompasses Uganda, Rwanda, Burundi, Angola, Chad, Sudan and to a small extent Kenya and Tanzania.

Guy Martin<sup>29</sup> on the other hand argues that an analysis of African conflicts require a historical perspective. According to him conflicts in Africa just like conflicts in any part of the world are part and parcel of the dynamics of society. There is a perennial struggle among individuals, families, clans, ethnic groups and nationals for the control over scarce natural, economic and political resources. Guy notes that while conflicts are a constant in African history, African conflicts should be viewed against specific historical context. Their nature and intensity is a result of a complex, dialectical relationship between internal societal factors and the structure of the external environment.

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<sup>28</sup> *ibid*

<sup>29</sup> Guy Martin, *Conflict Resolution in Africa*, School of Government, University of Western Cape, 129.194.252.80/catfiles/1178.pdf

In this regard, Mahmood Mamdani<sup>30</sup> and Jordan posits that if the roots of the conflict in the DRC are to be understood, one has to dig back into the Belgian colonial system of indirect rule. The system of indirect rule divided the country into two distinct legal systems, one civic and the other ethnic. The civic power was enforced by the central state (and provinces) through civil law, while native authorities supervised customary law and enforced ethnic power. In civic law, individuals were given rights, but it was only applicable to metropolitan populations who were seen to be racially different.

According to Paul Orogun,<sup>31</sup> however, internal and interstate conflicts in sub-Saharan countries of Angola, DRC, Liberia and Sierra Leone have been triggered, sustained and funded by the economic imperative of capturing and monopolising territorial control over lucrative mineral producing areas. In the case of DRC, its minerals and other natural resource wealth have been illegally exploited by the armies of Zimbabwe, Rwanda and Uganda during their involvement in the Congo war since 1998.

Trench & Paton<sup>32</sup> however perceive the DRC conflict from both regional and intercontinental dimensions. Regionally President Robert Mugabe of Zimbabwe appears to be involved in a prestige battle with former South African President

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<sup>30</sup> M Mamdani & A Jordan, 'Preliminary thoughts on the Congo crisis, Centre for African Studies, University of Cape Town, 1998; and M Mamdani, 'Naïve South Africa must not adopt missionary position, Weekly Mail & Guardian, 23-29 May 1997, [www.iss.org.za/Pubs/ASR/8No5/ConflictIntheCongo.html](http://www.iss.org.za/Pubs/ASR/8No5/ConflictIntheCongo.html)

<sup>31</sup> Paul Orogun, 'Blood diamonds and Africa's armed conflicts in the post cold war era, *World Affairs* Winter, 2004

<sup>32</sup> A Trench & C. Paton, 'Inside the Congo Conflict', *Starkey Times*, Johannesburg, 23 August, 1998

Nelson Mandela and the current President Thabo Mbeki. As the Chairperson of the Southern African Development Community's security organ ( since disbanded) Mugabe was thought to be in a pitched battle to wrench superiority in the region away from Mandela and Mbeki and entrench himself firmly on the international stage. At intercontinental level, the US since end of Cold War Era has been motivated by its fight against Islamic extremism. Uganda and Rwanda were Clinton administration's allies along with Eritrea and Ethiopia in an effort to combat the extremist regime in Sudan. Mobutu a former cold war ally was anathema because of his collaboration with Sudanese Government. France on the other hand interprets events in Central Africa in terms of threats to French-speaking world from Anglo-Saxons. It backed Mobutu and Rwanda's Habyarimana up to the eve of 1994 genocide. Its humanitarian intervention known as Operation Turquoise allowed many Hutus including the genocidiaries to escape from the predominantly Tutsi Rwandan Patriotic Front and take refuge in DRC.<sup>33</sup>

Although most scholars and international law practitioners appear to favour the concept of humanitarian intervention as demonstrated in the literature reviewed so far, there appears to be dearth of literature on non military humanitarian intervention. Literature in this area proceeds from the assumption that interventions will always be military. There appears to be little or no

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<sup>33</sup> Tom Turner, 'Congo War: Is the End in Sight?' *Foreign Policy in Focus*, [www.fpiif.org](http://www.fpiif.org)

contribution at all on non military intervention such use good offices, mediation, peace building, conflict prevention and other forms of conflict resolution mechanisms. Writings on these forms of conflict management treat them independently and not as part of the humanitarian intervention menu. Further, there seems to be scarcity of writings on African Humanitarian Intervention Initiatives, their successes, failures and teething problems. Further there appears to be a conceptual disconnect between humanitarian intervention and menu of activities that would qualify for intervention. It is therefore hoped that the study will significantly contribute to the literature in this area.

#### 1.1.4 JUSTIFICATION FOR THE STUDY

This study has both theoretical (academics) and policy relevance.

A study of African conflicts reveal that there is no mono-causal theory to conflicts hence in seeking to resolve them one requires to fully understand their multifaceted nature if any workable and sustainable solution is to be reached.

The DRC conflict, presents a classical example of a conflict that subtends its physical location and comprises of web-like causal theories.

The constructive disengagement policy by the UN and Western countries towards conflicts in Africa against a background of underdeveloped or nonexistent humanitarian intervention mechanisms in the Continent makes a study of this nature opportune.

African humanitarian intervention mechanisms to conflicts in her midst are still at their infancy considering that for a long time the OAU strictly adhered to the doctrine of sovereignty and non-interference in the internal affairs of member states. Lessons drawn from effective and sustainable resolution of the DRC conflict through home-grown humanitarian intervention mechanisms can be replicated elsewhere and also used in developing humanitarian intervention policies and mechanisms for the entire continent.

Currently there is a dearth of written material on the subject of humanitarian intervention in DRC. It is therefore hoped that the study will contribute to the better understanding of the Africa's role in formulating sustainable conflict resolution mechanisms. The findings of the study are expected to contribute to the academic quest for reassessment of the Africa's relevance in the new world order and create the urgency for devising her own policies for intervening in several humanitarian crises dotted all over the continent.

The renewed motivation and vision of African leaders through the recently launched African Union and the New Partnership for Africa's Development (NEPAD) presents an opportune moment to rethink the milliard conflicts that have cost loss of millions of lives and caused unfathomable humanitarian crises.



It is hoped that the information and the specific recommendations generated by this study will influence actors, mediators and other key stakeholders in the DRC conflict on methodologies and approaches to the conflict.

Focusing on DRC, the study will look at the complex and politically tense relationships that fuel the conflict in order to isolate them with a view to encapsulating them in any recommendation on resolving the conflict. Issues of governance and management of internationalized conflicts to bring durable resolutions will be particularly central. In addition, the complex links between conflict, humanitarian intervention and sovereignty of a state will be examined.

#### **1.1.5 THEORETICAL FRAMEWORK**

In carrying out analysis of the DRC conflict, this study will adopt the conflict Research paradigm. Reference in passing will however be made of other competing paradigms for purposes of comparison and distinction. Conflict research is embedded in the world society paradigm which unlike realist's paradigm regards the state as one but not the only actor in the international system. This paradigm unlike the realist model does not elevate the state as the only actor in the international system but rather one of the many actors. According to this paradigm, the state is a penetrated society. It can be a nodal point, an actor or a potential gatekeeper. This model lays emphasis on the transaction so that the notion of system (a set of patterned interactions) is the

basic unit of analysis.<sup>34</sup> The Conflict Researcher does not accept that the cause of conflict is an instinct in man rather than conflictual behaviour is a response to an actor's perception of the environment. That is to say conflictual behaviour according to this paradigm is subjective. It is a learned behaviour triggered by circumstances and to the extent that the environment can be manipulated, so can conflictual behaviour which is dysfunctional.<sup>35</sup> The conflict researcher's ultimate goal is resolution and not settlement of a conflict. By resolution is meant a situation in which relationships between the parties are legitimised and self-sustaining without any third party intervention and without imposition of behavioural patterns which is inherent in settlement. With resolution parties to a dispute accept the relationships between them and base their behaviour on the criteria fully acceptable both to them and to the other actors in the system.

#### 1.1.6 HYPOTHESES

- Humanitarian intervention in DRC conflict has failed to yield enduring resolution due its limit in scope and inadequacy of methods of approach to the conflict.
  
- The UN-led humanitarian intervention efforts in DRC are a function of the Western policy of disengagement to African Conflicts.

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<sup>34</sup> A.J.R Groom, 'Paradigms in Conflict: The Strategist, the Conflict Researcher and the Peace Researcher', in *Conflict: Readings in Management and Resolution*, J. Burton & Frank Dukes (eds) (New York: St. Martin's Press, 1990) p75

<sup>35</sup> *ibid*

### 1.1.7 SCOPE AND LIMITATION OF THE STUDY

The study will analyse the humanitarian intervention in DRC conflict by transplanting the intervention mechanisms so far adopted onto the causes of the conflict with a view to projecting the relationship between the mechanisms adopted and the continuation of the conflict. This will entail the examination of comments, articles and papers written from time to time on the conflict. In-depth scrutiny will be done on some <sup>of</sup> these findings in order to isolate the principal causes of the conflict and how humanitarian intervention efforts so far have addressed them.

One of limitations of the study stem from the fact that the study is to a large extent reliant on secondary data collected by parties other than the researcher. Where possible, oral interviews will be conducted with UN personnel, Congolese nationals and those of states involved and or connected with the conflict such as Uganda, Rwanda, South Africa, Zimbabwe and Burundi, resident in Kenya. The data envisaged is often open to biases and manipulation by the interviewees and collectors to suit their own aims and agenda. While all steps will be taken to guard against the infiltration of such biases into findings of the study, there is little guaranteeing that such infiltration can be completely blocked. The financial, logistic and time constraints that have led to the researcher's inability to collect his own primary data from the field for this study is, to say the least, regretted.

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### **1.1.8 CHAPTER OUTLINE**

#### **a) Chapter One**

Introduction and Background to the study -This proposal

#### **b) Chapter Two**

The Concept of Humanitarian Intervention, its origins, evolution and justification.

This chapter traces the origins of the concept of humanitarian intervention and gives a concise historical overview of the concept and makes analysis of the justification of the concept vis-à-vis the concept of non-interference in internal affairs of states.

#### **c) Chapter Three**

Actors, issues and processes in the conflict in DRC.

This chapter seeks to identify both internal and external actors in the conflict by giving an overview of the issues surrounding the conflict. It looks at the conflict from the perspective of ethnicity, internal misgovernance, economic interests and systemic connection with other conflicts in the region.

#### **d) Chapter Four**

International and regional responses to the conflict

This chapter presents various efforts to resolve the conflict by UN, international and regional bodies. It will catalogue some of the resolutions and recommendations by these various organizations towards attainment of peaceful resolution to the conflict

**e) Chapter Five**

Critical analysis of the International and regional humanitarian intervention in DRC

The chapter makes a critical analysis of the humanitarian intervention efforts discussed in the previous chapter. It highlights the problems and assumptions of the intervention efforts and makes an appraisal of their success or otherwise.

**f) Chapter Six**

Conclusions and recommendations

## CHAPTER TWO

### 2. THE CONCEPT OF HUMANITARIAN INTERVENTION, ITS ORIGINS, DEVELOPMENT AND JUSTIFICATION.

#### 2.1. ORIGINS AND EVOLUTION OF THE CONCEPT OF HUMANITARIAN INTERVENTION

In this chapter an examination will be carried out of the ethical, legal and political dilemmas that dominate the fiercely polarised international discourse on humanitarian intervention. The chapter will open with an examination of the definition of the term 'humanitarian intervention' and briefly tracing its historical origins. The second phase will examine some of the major contentions that dominate humanitarian intervention discourse from international law, international relations and conflict perspective. The final phase will examine catalogue the developments in the field of humanitarian intervention which appear to lean more towards violation of the doctrine of sovereignty in cases of gross abuse of fundamental human rights.

#### A) CLASSICAL THEORIES OF INTERVENTION

The term humanitarian intervention traditionally denotes armed interference by one or several states in the internal affairs of another state, without its prior consent to prevent a situation where the most basic rights of the people of that state <sup>are</sup> being violated on wide scale. To the extent that it involves violation of the most fundamental principle of international law (*jus cogens*), to wit the principle of sovereignty, the doctrine remains controversial. The right to sovereignty being

one of the cardinal principles of customary international law makes it germane for humanitarian intervention insofar as it imports negation and intrusion into this fundamental principle, to have a strong justification and a clear legal basis.

Before attempting to trace the origins of the concept of humanitarian intervention it is useful at this stage to give a working definition of the term in order to provide a clear understanding of the concept. It is however noteworthy that any attempt to deal with the concept of intervention is often faced with problems inherent in its definition.<sup>1</sup> Judge Higgins for instance argues that intervention can mean many things to many people which range from a simple interference in the form of economic influence to military intervention.<sup>2</sup> While Fernando Teson on the other hand in attempting a definition identifies three different categories of intervention namely, "soft", "hard", and "forcible". According to him, soft intervention implies simply discussion, examination and recommendatory actions and hard intervention refers to measures that are coercive but do not imply use of force such as economic, political and military sanctions while forcible intervention comprises acts involving the use of force.<sup>3</sup> Verwey<sup>4</sup> however attributes lack of agreement on the legal meaning of the term to lack of uniformity of opinion on both the term "intervention and "humanitarian." The

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<sup>1</sup> Hernan Vales, 'The Latin American view on the doctrine of humanitarian intervention', *Journal of Humanitarian Assistance* February, 2001 online: [www.jha.ac/articles/a064.htm](http://www.jha.ac/articles/a064.htm)

<sup>2</sup> Rosalyn Higgins, 'Intervention and International Law, in *Intervention in World Politics*' 29 (Hedley Bull ed.) 1984, pp37-38

<sup>3</sup> Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (2d ed.), Transnational Publishers 1997. p 135

<sup>4</sup> V.D Verwey, 'Humanitarian Intervention Under International Law', (1985) 32 *Netherlands ILR* 357 at 358.

International Commission on Intervention and State Sovereignty (ICISS)<sup>5</sup> identifies the controversy over definition as emanating from the potential width of activities this term can cover. Some would regard any application of pressure to a state as being intervention, and would include in this, conditional support programmes by major international financial institutions. While others would regard almost any non-consensual interference in the internal affairs of another state as being intervention including the delivery of emergency assistance to a section of a country's population in need. Others still, would regard any kind of outright coercive actions not just military action but actual or threatened political and economic sanctions, blockades, diplomatic and military threats and international criminal prosecution as all being included in the term yet others would confine its use to military force<sup>6</sup>. Despite lack of definitional *consensus ad idem* three conceptual strands appear to run uninterrupted across the controversy. Scholars appear to agree that first, humanitarian intervention involves some considerable measure of violation of the sovereignty of the state intervened upon, second, it inherently entails use of armed force as one of its tools, third, the term "humanitarian" implies ~~that~~ violation of human rights on a large scale such as acts of genocide and crimes against humanity.<sup>7</sup>

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<sup>5</sup> ICISS was a joint initiative of the Government of Canada and major foundations with the approval of the UN general Assembly formed in 2000 to deal with the legal moral, operational and political questions over the Humanitarian Intervention debate. It released its report in December, 2001 hereafter referred to in this study as the ICISS Report. Online: [www.iciss.ca/report2-en.asp](http://www.iciss.ca/report2-en.asp)

<sup>6</sup> *ibid* p16

<sup>7</sup> J. Donnelly, 'State Sovereignty and International Intervention: The Case for Human Rights', in G.M Lyons and Mastanduno (eds) *Beyond Westphalia? State Sovereignty and International Intervention*, Baltimore, Johns Hopkins University Press, 1995 p115, E.Rostow, 'In Search of a Major Premise: What is Foreign Policy For?' *Round Table* April, 1971 239 at 242, see also International Law Commissions draft declaration on rights and duties of states 1949 articles 1 & 2



therefore

Sean Murphy defines humanitarian intervention as the threat or use of force by a state, group of states, or an international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognised human rights<sup>8</sup> while Verwey defines it as threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt to serious violation of fundamental human rights, in particular right to life of persons, regardless of nationality, such protection taking place neither upon authorization by relevant organs of the United Nations nor with the permission of the legitimate government of the target state.<sup>9</sup> ICISS report however envisions a much more broad-based definition which includes but not limited to use of armed force. The report thus defines humanitarian intervention as action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective. The ICISS report thus, while accepting military intervention as one of the modes of intervention admits of other modes including preventive measures and coercive intervention measures such as sanctions and criminal prosecution. In order to encapsulate comprehensively the debate over the doctrine while at the same circumscribing analysis, this study will proceed from the traditional definition of the doctrine of humanitarian

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<sup>8</sup> Murphy Sean D., *Humanitarian Intervention: The United Nations in an Evolving World Order*, 1996 University of Pennsylvania Press, Philadelphia.

<sup>9</sup> Verwey supra n 41

intervention as captured by Verwey and Sean Murphy while adopting in conclusion The ICISS report's approach.

Historically the concept of humanitarian intervention is not new. In the early stages of western culture, Greek philosophers argued that there existed a universal law of nature which everybody was obliged to obey and all positive laws had to conform to. Aristotle (384-322 BC) for example in this period writes:

“...one part of what is politically just is natural, and the other part legal. What is natural is what has the same validity everywhere alike.”<sup>10</sup>

Stoicists somewhat later developed a coherent theory of the law of nature. They saw natural law as built into the structure of the universe directing all actions of all rational beings. The law of nature was therefore universal and applied to all human beings alike.<sup>11</sup> It formed the philosophical foundation of several basic moral and legal principles and inherently the origin of human rights. In this context, natural law became the most fundamental source of ideas concerning humanitarian intervention and has remained its basis ever since

Deriving from natural law, humanitarian intervention gave rise to concepts like just war (*bellum justum*). St Augustine (354-430 BC) for example was the first theologian to speak of a permissible, just war. He attempted to bridge the

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<sup>10</sup> In his *Nicomachan Ethics* Book V

<sup>11</sup> *ibid*

disconnect between the Christian ideal of pacifism and the political reality of war, by introducing a set of criteria that would make the waging of war a justifiable act.<sup>12</sup> St Thomas Aquinas (1225-74 A.D) writing after Aristotle produced a powerful philosophical synthesis between Greek philosophy and Christian theology. He argued that God had laid down eternal law directing all things to act for the good of the community of the universe and part of this eternal law was natural law which God had inscribed in the minds of every human being.<sup>13</sup> Aquinas attempted to limit the Christian pacifists command from the bible which seemed to prohibit all kinds of war by arguing that there is no general valid objection to the act of waging war, but for war to be just, it had to meet certain requirements. First it had to be waged by a competent authority, since political leaders are the ones who inaugurate wars, setting their armed forces in motion; they are to be held accountable to just war principles. If they fail in that responsibility, then they commit war crimes. Second, there had to be a just cause namely that those being attacked merited the attack because of some fault (*culpa*). Finally it had to be waged with right intention.<sup>14</sup>

16<sup>th</sup> Century philosophers such as Vitoria, Suarez and Gentili while acknowledging pacifism as a possible moral interpretation of the Bible argued that the theory was wrong because God never willed the evils against which war

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<sup>12</sup> *The New Catholic Encyclopedia* (New York McGraw-Hill, 1967) vol. 14. R.A McCormick, 'Morality of War' In *New Catholic Encyclopedia*, p803.

<sup>13</sup> *Summa Theologica* (1260) See L.R.B Walters *Five Classic Just War Theories: A study in thought of Thomas Aquinas, Vitoria Suarez, Gentili and Grotius*, Michigan University Microfilms.

<sup>14</sup> *ibid*

was waged but merely permitted them hence God never forbade their repelling. From this it was deduced that denying the right of innocent passage, piracy and killing of innocent humans were just causes for war.<sup>15</sup>

Writing in 17<sup>th</sup> Century Hugo Grotius detached the law of nature from God. While not dismissing God in its entirety he used God as an explanatory factor lending validity to natural law. According to Grotius man is a social animal (*zoon politikon*) and that man strives to live in harmony with his fellow humans. The individual and his natural rights are thus at the core of the law. Therefore if an individual's basic rights are violated, not only this individual himself, but every other person is entitled to use force to secure his rights. In the context of international law, Grotius argues that Law of Nations is founded on the Law of Nature and that the nation-state was born out of the need by individuals to improve their security and prosperity within the community. The individual in this context is thus possessed of some inherent rights which the state was duty bound to secure and their protection marked the outer limit of the nation-state sovereignty. Grotius therefore argues that if the sovereign violated the basic rights of his people, he had exceeded his jurisdiction and other states were entitled to intervene to restore Law of Nature.<sup>16</sup>

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<sup>15</sup> *ibid*

<sup>16</sup> Hugo Grotius, *The Law of War and Peace*, *Carnegie Foundation for International Peace*, 1925

## B) HUMANITARIAN INTERVENTION IN 19TH CENTURY

Hans Kochler<sup>17</sup> notes that despite these early writings by legal philosophers like Hugo Grotius, Emer de Vattel and Samuel Pufendorf<sup>18</sup> the concept of humanitarian intervention in its earnest gained ground in the context of Oriental European policies during the 19<sup>th</sup> century. During this period an elaborate doctrine of humanitarian intervention (*intervention d'humanité*) evolved to provide a kind of moral justification for the repeated intervention of European powers on the territory of the Ottoman Empire which was by this time rapidly disintegrating causing a great deal of concern to European powers.

Charles Shotwell & Kimberly Thachuck<sup>19</sup> while agreeing with Kochler note however that there is lack of consistent consensus (*opinio juris communis*) under international law on the right of states to intervene in others. They argue that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force in 1951, provides for prosecution of violators but does not authorize armed intervention to prevent or stop genocide. Nor does the Universal Declaration of Human Rights, or the International Covenant on Civil and Political Rights, authorize humanitarian intervention.

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<sup>17</sup> Hans Kochler, Humanitarian Intervention in the Context of Modern Power Politics, *International Progress Organization*, Vienna, Kohlmarkt 4. online: [www.i-p-o.org/humanitarianintervention.html](http://www.i-p-o.org/humanitarianintervention.html).

<sup>18</sup> *De jure belli pacis*, 1625, *Le droit des gens*, 1758, *de jure naturae et gentium*, 1694 respectively

<sup>19</sup> Charles B. Shotwell & Kimberly Thachuck, Humanitarian Intervention, The Case for Legitimacy, *Strategic Forum* No. 166, July, 1999 *Institute for National Strategic Studies, National Defense University*. online: [www.ndu.edu/inss/srforum](http://www.ndu.edu/inss/srforum)

In the context of European power politics however humanitarian intervention in other states was anchored on the contention that any government though acting within limits of its sovereign rights which violates the *droits d'humanité* (rights of humanity) whether by measures contrary to the interests of other states, or by excesses of injustice and cruelty that deeply injured European-Christian interests could not lay claim to its right of sovereignty. The European states in this context thus developed some sort of law of solidarity based on the notion that states are not isolated entities free to act in whatever manner within the confines of their sovereignty but were members of a higher community of nations. Deriving from this argument, French writer Leon Bourgeois<sup>20</sup> justifies the several interventions by European states in the internal affairs of the Ottoman Empire as being born out of the self-declared concern embodied in the Treaty of Berlin of 13<sup>th</sup> July, 1878<sup>21</sup>. In this agreement concluded between the major European powers and Turkey, the former authoritatively obliged the *Sublime Porte*<sup>22</sup> to apply specific legislative and administrative measures in areas within its own jurisdiction thereby establishing a regime of permanent control over the internal administration of the Ottoman Empire in order to guarantee as they claimed, a minimum standard of rights, in particular religious freedom to the citizens under Turkish rule.<sup>23</sup>

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<sup>20</sup> Leon Bourgeois, *Pour la société des nations*, Paris E. Fasquelle, 1910

<sup>21</sup> The treaty of Berlin of 13<sup>th</sup> July 1878 was entered into between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey.

<sup>22</sup> The Court or government of the Ottoman Empire regarded as the seat of government.

<sup>23</sup> See especially Art. LXII ("In no part of the Ottoman Empire shall the difference of religion be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil or political rights...") R. B. Mowat, *Select*

The doctrine of humanitarian intervention has thus subsequent to the Treaty of Berlin remained an integral part of European powers conduct of foreign policy until the First World War. Antoine Rougier for instance writes about a diplomatic note addressed to the Sultan of Morocco in which the European powers signatories to the General Act of Algeiras of 1906 demanded of him to stop alleged practice of "cruel punishment" and in future observe the laws of humanity (*"d'observer à l'avenir les lois d'humanite"*).<sup>24</sup>

The early phases of the doctrine of humanitarian intervention while claiming to be inspired purely by humanitarian motives were in reality underpinned by European imperialist agenda. As Hans Kochler aptly observes, its actual practice in the 19<sup>th</sup> Century was dictated by the geopolitical interests of the then European powers. While insisting on respect for rights of Christian minorities under the Ottoman Empire, they accepted no similar standards with regard to populations under their control in the colonies at that time, who they regarded as barbarian.<sup>25</sup> The Eurocentrism of the 19<sup>th</sup> century therefore regarded Christianity as superior to all other religions and common principles of humanity were construed in the context of Christian dogma. The doctrine was during this period regarded as the natural outflow of the European powers tendency to camouflage

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Treaties and Documents to Illustrate the Development of the Modern European States-System, (Oxford University Press, 1915), pp. 79-83.

<sup>24</sup> Antoine Rougier, MAROC, La question de l'abolition des supplices et l'intervention européenne, in *Revue générale de Droit International Public*, Vol. 17 (1910) p99 Quoted in Kochler op. cit

<sup>25</sup> supra n.54

their imperialist motives in niceties of religious precepts. The unavoidably Eurocentric orientation and the direct link to the hegemonic interests of the 19<sup>th</sup> Century European society made humanitarian intervention suspicious in the eyes of legal theorists who saw its use as a tool of power politics.<sup>26</sup>

### C) HUMANITARIAN INTERVENTION IN 20<sup>TH</sup> & 21<sup>ST</sup> CENTURY

The Eurocentric oriented doctrine of humanitarian intervention underwent profound changes in the 20<sup>th</sup> Century particularly in the period after the First World War, following the collapse of the old European order of the 19<sup>th</sup> Century. This geopolitical phenomenon repeated itself towards the end of the same century through the end of Cold War occasioned by the collapse of Communism in Eastern Europe. During the Cold War the principal aim of the actors was to contain the influence of one another particularly in spheres of strategic interest. In the African Continent the United States policy was to contain the Soviet influence and eliminate communist and radical nationalist governments and movements across the Continent.<sup>27</sup> Pursuant to this policy the US mounted air strikes against Libya, conducted direct military intervention in Zaire, and carried out covert military operations against Soviet supported government of Angola. In this context the super-powers propped up or supported governments or regimes that were anti-people and which engaged in gross violations of human

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<sup>26</sup> See for instance Antoine Rougier, 'La Theorie de l'intervention' in : *Revue generale de droit International Public* vol.17

<sup>27</sup> Daniel Volman, 'Peace and Military Policy in Africa', Vol.2 Number 9 online: [www.fpiif.org/briefs/vol2/v2n9afr\\_body.html](http://www.fpiif.org/briefs/vol2/v2n9afr_body.html)



rights provided they could support their geo-strategic interests.<sup>28</sup> Humanitarian intervention was thus a chimerical undertaking in the prevalent bipolar world as it became impossible to get the Security Council to approve such intervention, besides any attempt to intervene either by a state alone or through a regional body could have very easily turned into a proxy war between the superpowers. For this reason unpopular regimes characterised by dictatorship, personal rule and kleptocracy became the norm.

A profound change has however occurred in the geopolitical constellation as a result of the sudden disintegration of the Soviet power bloc. The erstwhile bipolar system, characterised by a balance of forces based on mutual deterrence, transformed into a unipolar order in which the US acts as the only superpower. Without indispensable strategic 'choke points' and no competing power blocs in this new power realignment, Africa appears to be drifting towards strategic marginalisation.<sup>29</sup> Autocrats that cashed in on the power rivalry between the US and the Soviet bloc found themselves literally orphaned as they faced the full force of clamour for democratisation to which some have responded with brute force and gerrymandering aimed at their survival. However under the dual influence of the policy of constructive disengagement pursued by the major world powers and of increased arms transfers to Africa, old conflicts and long

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<sup>28</sup> For example the US government frustrated and eliminated Patrice Lumumba in DRC supposedly for being a Communist and installed Mobutu in his place. For more on this see Georges Nzongola-Ntalaja: *The Congo from Leopold to Kabila: A Peoples History*, Zed Books London & New York, 2003 p94 *et seq*

<sup>29</sup> Stephen Maniger, Heart of Darkness: Western policy of non-interventionism in Africa', *Africa Security Review* Vol.8 no.6, 1999 online: [www.iss.co.za/pubs/ASR/8No6/HeartOfDarkness.html](http://www.iss.co.za/pubs/ASR/8No6/HeartOfDarkness.html)

simmering disputes flared up and new ones have been born yielding serious humanitarian crises.<sup>30</sup> The renewed interest in humanitarian intervention particularly as it relates to Africa therefore requires to be looked at in the context of the new world order characterised by constructive disengagement by Western powers in African conflicts.

#### D) THE HUMANITARIAN INTERVENTION DEBATE IN THE MODERN CONTEXT

##### I) HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW

As discussed in Chapter 1, the issue that underlies the debate over whether or not humanitarian intervention is defensible or not is the perceived tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention, and self-determination which are regarded as the cornerstones for the maintenance of international peace and security. These values are nested in the Charter of the United Nations as the fundamental purposes for which the UN was formed. Article 2[4] decrees that member states do refrain in the conduct of international relations, from threat or use of force against the territorial integrity or political independence of any state<sup>31</sup> Further, Article 2[7] of the Charter implicitly prohibits intervention by articulating that:

[n]othing contained in the present Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state... this principle shall however not prejudice the application of enforcement measures under chapter VII

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<sup>30</sup> supra n.31

<sup>31</sup> see Article 1 of the UN Charter

This general prohibition on use of force has been confirmed by the International Court of Justice in the *Corfu Channel Case (1949)*<sup>32</sup> and the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (1986)*<sup>33</sup> where it was decided that article 2[4] was a codification of customary international law (*jus cogens*). The two main exceptions to this general prohibition are the right of a state to use force in self defence or collective self defence under article 51 and the right of the Security Council under article 42 to authorise use of force to maintain or restore international peace and security.

Sovereignty has been defined as the legal independence of all other states or international organs. The formal structure of the international state system is built on the principle that each state is autonomous and independent and has the right in its internal affairs to be free from acts of coercion committed or assisted by other states. According to this doctrine every state has the right to independence and hence to exercise freely without dictation by any other state, all its legal powers including the choice of its own form of government. The doctrine further permits a state to exercise jurisdiction over its territory and over all persons and things therein subject to the immunities recognised by

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<sup>32</sup> ICJ Reports 1949 p4

<sup>33</sup> ICJ Reports 1986 p14

international law.<sup>34</sup> The theory of state sovereignty therefore implies that a state cannot be ruled from an external source, but that the main decisions about its actions must come from within it.<sup>35</sup>

From the foregoing it clearly emerges that the fundamental problem regarding humanitarian intervention lies in its inherent breach of the principle of sovereignty. In legal terms therefore legal scholars have for a long time narrowly interpreted the concept of international peace and security as stipulated under article 51 to refer only to the maintenance of inter-state as opposed to intrastate order, only.<sup>36</sup> The rationale for the principle of sovereignty was aimed at assuring member states of the UN that their sovereign rights are respected and that they would never become targets of intervention.<sup>37</sup>

Developments in international law however can no longer sustain the non-interference principle. There appears to be a rapid shift towards a more circumscribed interpretation of the sovereignty doctrine. Those who argue in favour of intervention maintain that the evolution of international human rights law and the Charter of the UN place the individual and not the state at the centre of international law. According to this school of thought states receive their

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<sup>34</sup> Articles 1 & 2 International Law Commission (ILC) Draft Declaration on Rights and Duties of States (1949), [www.un.org/law/ilc/convents.htm](http://www.un.org/law/ilc/convents.htm)

<sup>35</sup> M. Malan, 'The Principles of Non-interference and the future of multinational Intervention in Africa', *Africa Society Review* No 6/3 (1997) pp32-33 online: [www.iss.co.za/Pubs/ASR/6No3/Contents.html](http://www.iss.co.za/Pubs/ASR/6No3/Contents.html)

<sup>36</sup> Penelope C. Simmons, 'Humanitarian Intervention: A Review of Literature', *Ploughshares Working Paper* 01-2

<sup>37</sup> See for example R. Falk, 'The new interventionism and the Third World', *Carroll History*, 98/631 November, 1999. p370

legitimacy from the will of the people hence sovereignty is not an inherent right of states but rather derives from individual rights. Thus where state sovereignty comes into conflict with human rights, the latter must prevail. Fernando Teson for instance argues as follows:

“The human rights imperative underlies the concepts of state and government and the precepts that are designed to protect them... [t]he rights of states recognised by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found in article 1[3] and by reference in article 2[4] as a qualifying clause to the prohibition of war has a necessary primacy over the respect for state sovereignty. Force used in defence of fundamental human rights is therefore not a use of force inconsistent with the purpose of the United Nations”<sup>38</sup>

The underlying assumption in the argument is that human rights constitute self-evident truth and a natural law which has primacy over any notion of state sovereignty or positive international law. Humanitarian intervention in this context is regarded as a right that comes into being when a state renders itself guilty of cruelties and persecution of its nationals in such a way as to deny their fundamental rights.<sup>39</sup> The central argument here is that the interests of humanity in these circumstances outweigh the prohibition on intervention. The Charter of the UN is therefore being interpreted away from an exclusive focus on sovereignty and more towards an emphasis on balancing sovereignty with human rights. The shift towards individual-oriented interpretation of the Charter has been brought about by the adoption of international conventions for the protection of human rights. The argument here is that, to the extent that a

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<sup>38</sup> supra n.14

<sup>39</sup> G.Barrie, ‘International Law and forcible intervention: A Millennium Assessment’ in L.Du Plessis & M. Fough (eds) *Managing Africa's Conflicts: The challenge of military intervention*, HSRC: Pretoria (2000)

state has ratified these documents on human rights and humanitarian law, such issues no longer belong to the exclusive domain of the state.<sup>40</sup>

In the context of conflict management the notion of universalization of human rights is closely related to the concept of internationalization of conflicts. That is to say conflicts can no longer be perceived as locked in the country where they originate. Violent conflicts inevitably generate displacement of populations in form of refugees or internally displaced persons. The former category usually seek refuge in countries contiguous to their own, upsetting social patterns in the recipient countries by bringing the trauma of the conflict with them and adding pressure on the local infrastructure especially where these are inadequate or underdeveloped. Besides ethnic communities particularly in Africa more often extend in more than one country and conflict involving their kinsfolk in one country has the tendency to draw their sympathy and support. This becomes more critical where the conflicting communities live side by side in the neighbouring country. There is a tendency for their relationship to be strained because of the conflict involving their kinsmen in the neighbouring country. This phenomenon is aptly demonstrated by the spill-over effect of the 1994 Rwanda genocide in which the predominantly Hutu refugees and the Hutu militia fleeing from invasion by the Tutsi-led Rwanda Patriotic Front [RPF] entered Eastern

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<sup>40</sup> supra n.18

DRC complicating the already tense relationship between Congolese Hutus and Tutsis living in the area<sup>41</sup>.

On the other hand proponents of the primacy state sovereignty defend their position from positivist perspective. Simma Bruno, Sean Murphy and others in this school of thought maintain that based on the accepted rules of treaty interpretation, article 2[4] was meant to be a watertight prohibition against use of force and any customary right of unilateral intervention which may have existed was extinguished by the enactment of the United Nations Charter.<sup>42</sup> These writers argue that despite the fact that certain fundamental human rights are obligations *erga omnes*, that is, obligations every state is bound to observe *vis-à-vis* all other states, and each state has the right to take action to ensure respect for these fundamental rights, this does not however entail a right to use force. Whereas they acknowledge that respect for human rights is considered important to a just international legal order, they deny that the Charter, current state practice or scholarly opinion conclusively support the view that there is a right of internationally recognised human rights. It is thus their position that humanitarian intervention remains a violation of international law and should not be tolerated except in extreme cases.

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<sup>41</sup> M. Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, 2001 Fountain Press Ltd, Kampala. Pp253 et seq.

<sup>42</sup> See for instance Simma Bruno's "Nato, the UN and the Use of Force: Legal Aspects" *The European Journal of International Law Discussion Forum* [www.ejil.org/forum](http://www.ejil.org/forum), Murphy Sean D. "Humanitarian Intervention: The United Nations in an Evolving World Order," Charney Jonathan, "Anticipatory Humanitarian Intervention in Kosovo," *Vanderbilt Journal of Transnational Law*.

i) HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS

Arguments for or against humanitarian intervention while exhibiting a great diversity in classification, no particular taxonomy pretends to be the best. For the purposes of this study and in order to circumscribe issues around the discourse, Realist and Pluralists views will be discussed as representative of the anti-intervention school of thought while those of solidarists and cosmopolitanists will be considered to represent the pro-intervention school of thought.

Like the legal arguments surrounding humanitarian intervention, the moral or ethical arguments in international relations theory also reflect the tension between opposing concepts of order and justice.<sup>43</sup> The question being what is most important, to preserve stability and law internationally or to act to protect suffering or threatened individuals in a conflict? Order and justice are therefore perceived as antagonistic concepts. In one respect order is a precondition for justice while in another justice is a precondition for order. On one hand it can be argued that order is a prerequisite for justice. Without some degree of political order and authority within states chaos and civil war might result. In that case protection of rights of individuals and minorities will be difficult to achieve. According to this line of argument maintenance of order is considered a moral and political imperative because domestic and international stability is a

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<sup>43</sup> Simmons C. Penelope, 'Humanitarian Intervention, A review of Literature', *Ploughshares Working Paper 01-2*



precondition for the pursuit and enforcement of other values such as human rights, minority rights, and democracy.<sup>44</sup> On the other hand it can be argued that justice is a precondition for order. Without legitimacy based on individual rights, consensus on political rules of the game and general acceptance of the definition of the community over which the governance is exercised, domestic orders are not only authoritarian and unjust but also fragile and vulnerable to breakdown. If traditional norms of sovereignty and non-intervention are not overruled by international community when governments violate these principles on massive scale, neither justice for the greatest number nor long-term domestic and international order will be secured because oppressed groups and individuals will inevitably revolt against their rulers and internal conflict will spill over into international conflict. That is to say domestic and international orders derive their legitimacy and stability from their ability to protect individuals and groups from arbitrary coercion and violence.

Ramsbotham and Woodhouse however identify the core of the debate surrounding the issue of humanitarian intervention as

... lying in the tension between the two clusters of values reflected in the UN Charter, which intersect with each other and which may sometimes work at cross-purposes. These are state system values and human rights values."<sup>45</sup>

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<sup>44</sup> supra n.18

<sup>45</sup> Ramsbotham, Oliver and Woodhouse, Tom 1996, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualisation*, Policy Press, London

The state-centric values are backed by realists and pluralists for whom intervention undermines international order while orientation towards human rights is favoured by solidarists and cosmopolitanists for whom intervention is a moral obligation stemming from membership to a cosmopolitan community of mankind.<sup>46</sup>

Realists perceive relations among states as anarchic while pluralists view international society as a community of sovereign and independent entities to these two schools of thought, humanitarian intervention is not an option. Realists argue that the state is the only sphere of morality. Thus states and their citizens have no overriding obligations to the citizens of other states and governments and therefore a state should not risk their soldiers' lives except for its own security and interest. The pluralists while accepting that there exists a universal minimum moral code of which genocide is a breach, like realists they argue that any intervention undermines the foundational norms of the current world order. Moreover, both schools point to a lack of consensus on the universality of human rights and on the principles guiding such interventions as providing no clear legal basis for such action. Thus, Michael Walzer argues:

... even though the fit between government and the political life of its people may be bad, this is no justification for humanitarian intervention. We must act as if governments are internally legitimate, because to do otherwise threatens the autonomy necessary for the natural, if painful, emergence of free, civilized polities.<sup>47</sup>

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<sup>46</sup> supra n. 81

<sup>47</sup> Walzer, Michael 1992, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd ed., Basic Books, New York.

The concern here is that intervention may present an insurmountable challenge to autonomy and self-determination, which would preclude a people's determining their own political destiny. Luttwak<sup>48</sup> further argues that abrupt stop of combat of lesser powers by ordering ceasefires do not permit these conflicts to follow their natural course and eventually exhaust and destroy the energies of war which is a precondition for peace. According to him unless further diplomatic interventions directly ensue to impose peace negotiations as well, cease fires merely relieve war-induced exhaustion, favouring, the reconstitution and rearming of the belligerents, thus intensifying and prolonging the fighting once the ceasefire comes to an end. Realists further identify practical and political problems which seem to bedevil pro-interventionists. For instance Wheeler and Morris<sup>49</sup> identify a number of practical and political objections to humanitarian intervention. First, they argue that because states will continue to act in their perceived national interest, they will intervene where it serves that interest. This selectivity means that target states and those states wedded to the concept of sovereignty will view the interventions with suspicion. Second, it follows that states will never act for primarily humanitarian motives which is why most of the cases which can plausibly be regarded as examples of humanitarian intervention involve mixed motives: that is, they are cases in which humanitarian objectives and self-interest coincide, and both serve to drive policy.

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<sup>48</sup> Edward N. Luttwak, 'The Curse of Inconclusive Intervention in A Chester Crocker, O. Hampson and P. Aall (eds.) *Turbulent Peace, The Challenges of Managing International Conflicts*, Washington, United States Institute of Peace, 1996

<sup>49</sup> Wheeler, Nicholas J. and Morris, Justin, 1996 'Humanitarian Intervention and State Practice at The End of the Cold War', in Rick Fawn and Jeremy Larkins (eds). *International Society after the Cold War*, St Martin's Press, New York

Finally, there is no impartial mechanism for deciding when such intervention is permissible nor is there international consensus about what constitutes widespread deprivations of internationally recognised human rights which would trigger a humanitarian intervention. Thus the international community is better served by upholding the principle of non-intervention.

The question of mixed motives and lack of consensus on what constitutes widespread deprivation of internationally recognized human rights can best be illustrated by the attitude of developing countries towards intervention. While they play host to some of the worlds longest and atrocious humanitarian crises these countries generally regard interventionism as a rebirth of imperialism. According to Verwey,<sup>50</sup> their scepticism against intervention is based on four grounds. First, the imperialist implications in the history of the doctrine which developed during the era of Western hegemony over the so called 'uncivilised states', second, the fact that it has frequently been abused, third, that it can only be resorted to by powerful states against weak ones and finally that the consideration that the doctrine is vague and has been used only to benefit the interests of the intervening state makes it suspicious.<sup>51</sup> In this regard several Asian and Islamic countries challenged the universality of human rights in the preparatory conference to the Vienna Conference on Human Rights charging that human rights more often than not reflect western ethical and moral

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<sup>50</sup> supra n.41

<sup>51</sup> Duke Simmon, 'The State and Human Rights: Sovereignty versus Humanitarian Intervention', 1994 *International Relations* XII(2)

standards.<sup>52</sup> The Danish Institute Report<sup>53</sup> of 1999 also notes that the resistance to the doctrine has been as result of doubts over the real motive behind the intervention hence weaker states tend to assert their sovereignty as a defence against what they generally perceive as the dynamics of unequal world. Scepticism over humanitarian intervention was poignantly put by the Algerian President Abdelaziz Bouteflika in response to Kofi Annan's General Assembly address in 1999 thus:

"We remain extremely sensitive to any undermining of our sovereignty, not only because sovereignty is our last defence against the rules of an unequal world but because we are not taking part in the decision-making process of the Security Council"<sup>54</sup>

In addition, to the above objections can be added the high cost of, and the difficulty in gaining universal support for, such interventions; the lack of financial and military resources of the United Nations and the decision-making process of the Security Council; as well as the reality that most states are unwilling to support the long-term commitment to such interventions which may be necessary to their success.

On the other hand, the solidarists or internationalists perceive human rights as universal norms and justice as an important component of international order. Hence, human rights values are given as much weight as state system values. For this reason they argue that sovereignty is conditional. It is linked to internal

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<sup>51</sup> supra n42

<sup>53</sup> supra n.18

<sup>54</sup> Barbara Crossette, 'UN Chief Wants Faster Action to Halt Civil Wars and Killings', *The New York Times*, September 21, 1999

legitimacy and requires governments to respect at least minimally the well-being and human rights of their citizens<sup>55</sup>. According to Smith

...it follows, then, that a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty. Thus, a liberal ethics of world order subordinates the principle of state sovereignty to the recognition and respect of human rights.... The principle of an individual's right to moral autonomy, or to put it differently, to the human rights enshrined in the Universal Declaration on Human Rights, should be recognized as the highest principle of world order, ethically speaking, with state sovereignty as a circumscribed and conditional norm<sup>56</sup>.

Thus, the principles of sovereignty and non-intervention cannot shield governments or other perpetrators of gross violations of human rights. It follows that where widespread deprivations of internationally recognised rights entail a moral obligation on the part of the international community to take action, the principles of sovereignty and non-intervention are not a moral bar to such action. Further, there are a number of practical and political arguments which favour humanitarian intervention. For instance, the fact that states may have mixed motives for intervening is not necessarily an objection to intervention. On the contrary, Jean Daudelin<sup>57</sup> argues that an interventionist regime needs mixed motives. Harnessing national interest is key to the success of interventions; it gives staying power to interventions and it greatly facilitates the mobilization of resources. According to Abiew<sup>58</sup> states have begun to redefine national interest more broadly, in ways which acknowledge the relationship between

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<sup>55</sup> *Supra* n82

<sup>56</sup> Smith, Michael J, "Humanitarian Intervention: An Overview of the Ethical Issues," pp. 271-295 in *Ethics and International Affairs: A Reader*, ed. Joel H. Rosenthal, Georgetown University Press, Washington, DC, 1996.

<sup>57</sup> Daudelin, Jean, 'Rethinking Humanitarian Intervention', 2000 *The North-South Institute*.

<sup>58</sup> Abiew Francis Kofi, 'The Evolution of the Doctrine and Practice of Humanitarian Intervention', 1998 *Kluwer Law International*, The Hague.

humanitarian crises, national, political and economic security. National security is now coming to be identified with threats other than military threats such as cross-border refugee flows, environmental degradation, and competition for natural resources, to name a few. The self-interest of a state therefore may coincide with humanitarian motivations for intervening to prevent widespread deprivations of internationally recognised human rights.

Whereas there appears to be lack of consensus among scholars on whether or not humanitarian intervention should attain the status of international norm, the practice by the UN Security Council although has been criticized as erratic, leans more in favour of intervention. The interface between the two sharply divided schools of thought will nevertheless be discussed further in chapter six when an analysis will be made of the criteria, speed, scope and success of humanitarian response in the DRC.

## **CHAPTER THREE**

### **3.0 ACTORS, ISSUES AND PROCESSES IN THE DRC CONFLICT.**

This chapter traces the origins of the DRC conflict and seeks to identify both internal and external actors in the conflict by giving an overview of the issues and processes surrounding the conflict. It looks at the conflict from the perspective of ethnicity, internal misgovernance, economic interests and systemic connection with other conflicts in the region and how they have impacted on the humanitarian intervention efforts in terminating this conflict. This approach is considered best as it filters and collapses the analysis of this multi-faceted conflict into manageable portions. It further identifies the structural and immediate (trigger) causes to the conflict.

### **3.1 ORIGINS OF THE PRESENT WAR**

In terms of origins, the current war in DRC can be connected with the Great Lakes Conflict System which is a function of tension laden relationship among various ethnic groups straddling Rwanda, Burundi, Uganda and DRC. Hutus and Tutsis who bestride Rwanda, Burundi and DRC have for decades lived in ethnic disharmony which has frequently degenerated into ethnic violence as was witnessed in Rwanda in 1994 and the Hema who are kinsmen to the Bahema of Uganda are currently engaged in horrendous blood letting fuelled by mutual ethnic hatred against the Lendu with whom they live in Eastern Ituri.



Whereas a significant portion of the vast Congolese territory especially Kinshasha, Lubumbashi and environs are relatively stable, instability in the Eastern part of the country which appears to be the current epicentre to the Great Lakes Conflict System has a ripple effect on the rest of the Country in terms of disrupting the much needed territorial tranquillity conducive for economic and social development. Perhaps it is its interlocking nature in the Congolese conflict which has led The Institute for Security Studies of South Africa to argue that to a large degree, the key to the conflict in the DRC as well as in the Great Lakes region can be found in the Eastern Kivu provinces.<sup>59</sup>

A brief geographical statement on the Kivus would serve to elucidate its centrality to the Congolese crisis. The Kivu region is located on the eastern side of the Congo and shares borders with Uganda, Rwanda and Burundi. As a highly populated though very fertile region, the highlands of Kivu reflect the realities of both densely populated highlands of Rwanda in the east, and the under-populated Congolese hinterland in the West. Originally this region was one administrative unit but it now consists of three provinces; namely Maniema, North Kivu and South Kivu. Its geographical position and the enormous presence of natural, easily exploitable resources such as coltan, diamond and gold, facilitated the expansion of unrecorded trade in Congo, which offered an enormous potential for the development of commercial activities across its

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<sup>59</sup> 'Peace Keeping in the DRC, MONUC and the Road to Peace', *Institute for Security Studies monograph no.66*, October, 2001, chapter 2 online: [www.iss.co.za/Pubs/Monographs/No66/Chap2.html](http://www.iss.co.za/Pubs/Monographs/No66/Chap2.html)

borders and for the building of a certain degree of political and economic independence.

Politically, the two Kivus have always been a hotbed of conflict and turmoil. While there is the undeniable impact of the nature of the Congolese political system which as is discussed later in this chapter, granted differentiated rights to those regarded as indigenous and immigrants, the local potential for social conflict is mainly due to its geographical position and local history.<sup>60</sup> Political events in both provinces have always been linked to the social and political dynamics of neighbouring Rwanda and Burundi. This phenomenon can be explained by the systemic connection to the larger Great Lakes Conflict System alluded to earlier which internationalises the conflict. According to Mahmood Mamdani 'Kivu province is where losers in Rwanda traditionally end up and it is here that they prepare to return to power'<sup>61</sup>

Since 1959, the various crises in Rwanda and Burundi have generated four major refugee flows that have affected the demographics, economics, politics and security in the Great Lakes region, and the Kivus in particular. The first was between 1959 and 1963, when an estimated 200,000 Tutsis fled from the Hutu revolution in Rwanda into Uganda, Burundi and eastern Congo. The second, in 1972, involved approximately 300,000 Hutus from Burundi, who fled into

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<sup>60</sup> Koen Vlassenroot & Hans Roomkema, 'The Emergence of a New Order? Resources and War in Eastern Congo', *The Journal of Humanitarian Assistance*, 29<sup>th</sup> October, 2002. [www.jha.ac/articles/a111.htm](http://www.jha.ac/articles/a111.htm)

<sup>61</sup> Mahmood Mamdani, *When Victims Become Killers, Colonialism, Nativism, and the Genocide in Rwanda*, Fountain Press Ltd, Kampala, 2001

Tanzania and Rwanda to escape the genocidal massacres of Hutus by the Tutsi-dominated army. The third involved up to 400,000 refugees flowing into already crowded refugee camps in Tanzania, Rwanda and Burundi following the assassination of president-elect Melchior Ndadaye on 21<sup>st</sup> October, 1993. The fourth and largest flow of refugees followed the 1994 genocide, and involved approximately 2 million Hutus from Rwanda fleeing into eastern Congo and Tanzania. Most had fled Rwanda when the Tutsi-dominated Rwandan Patriotic Front (RPF) and its military wing, the Rwandan Patriotic Army (RPA) took power in Kigali, advancing from Uganda under Paul Kagame<sup>62</sup>.

Up to 30,000 Hutus who fled into North and South Kivu were members of the former Rwandan army (*ex-Forces armées rwandaises* or *ex-FAR*) and the *Interahamwe* (Rwandan Hutu militia) who had been responsible for the massacre of up to 800,000 Rwandan Tutsis and moderate Hutus in the preceding months. These perpetrators of the genocide subsequently rearmed in the refugee camps of eastern Congo and with the support of Mobutu Sese Seko were able to resume the war in 1996 and again in 1998.<sup>63</sup> In response, Rwanda, together with Uganda, Burundi, Angola and Eritrea, entered the DRC in 1996 in support of a loose alliance of anti-Mobutu rebels calling itself *Alliance des Forces Démocratiques pour la Libération du Congo* (ADFL). They broke up the refugee camps, and the Hutu militants fled deeper into Zaire.

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<sup>62</sup> *ibid*

<sup>63</sup> Mobutu employed these forces to destabilise Rwanda and Uganda in order to use the conflict as an excuse to delay progress in the stalled constitutional transition process in his own country.

Finding little resistance in their pursuit, the ADFL headed for Kinshasa, toppling the regime in 1997 and installing Laurent Kabila as president and renaming Zaire the Democratic Republic of the Congo. However rifts soon developed in the friendship between the new government and its backers leading to occasional pockets of mutiny. The armed rebellion however escalated when Kabila dismissed the Rwandan contingent of the *Forces Armées Congolaises* (FAC) as he tried to free himself from his former Ugandan and Rwandan sponsors. Uganda and Rwanda did not take this action by Kabila kindly as they saw the break as a threat to their security and economic interests since the rationale for the initial invasion and ouster of Mobutu was justified by the two countries as arising out of security concerns caused by DRC playing host to rebels and insurgents who used its territory to attack and or destabilise Rwanda and Uganda. While for Rwanda the concern was the ex-FAR and the *Interahamwe* for Uganda the concern was the Alliance of Democratic Forces ADF.<sup>64</sup> In terms of economic interests, Rwanda and Uganda as will be demonstrated later in this chapter have used their security concerns to make armed incursions into DRC while their real motive is plunder of Congolese natural resources.

Rwanda and Uganda therefore, in collaboration with domestic groups opposed to the new regime raided DRC presumably to install a client government. Kabila

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<sup>64</sup> The Alliance of Democratic Forces (ADF) is made up of Ugandan opposition forces, supported by the Government of Sudan, which fought the Government of Uganda. They are based in the Rwenzori Mountains of western Uganda and use bases Eastern DRC to mount attacks on Uganda.

however moved quickly to attract support for his regime and with the assistance of Zimbabwe, Angola, Namibia Chad and Sudan repulsed the designs of the invaders. This intervention by pro-Kabila forces as discussed later in this chapter, gave a new dimension to the conflict moving it from the notion of a conflict born out of security concerns into multifaceted conflict driven by quest for national power or political representation, ethnic solidarity, economic aggrandizement through exploitation of rich Eastern Congolese mineral resources and sometimes outright banditry.

The interlocking nature of political events in DRC, Rwanda and Uganda outlined above demonstrate the concept of conflict systems discussed in chapter 1. This notion holds that every conflict has intimate relationship regionally and what might first appear as an individualised conflict is in fact a regional conflict. Any intervention effort in DRC, as will be demonstrated in chapter 5, which therefore does not take cognisance of the systemic aspects of the conflict, is bound to run into problems<sup>65</sup>.

### 3.2 ECONOMIC DIMENSION TO THE CONFLICT

Although the armies of the seven African States that were drawn into DRC war have substantially withdrawn from the Congolese soil, the overlapping micro conflicts that they provoked are continuing.<sup>66</sup> These conflicts are fought over

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<sup>65</sup> Mwangi op.cit

<sup>66</sup> United Nations Report of the Panel of Experts on the Illegal Exploitation of natural Resources and Other Forms of Wealth of The Democratic Republic of Congo 16<sup>th</sup> October, 2002

minerals, farm produce, land and even tax revenues. Criminal groups linked to the armies of Rwanda, Uganda, Zimbabwe and the government of DRC have built up a self-financing war economy centred on mineral exploitation.

According to the UN Panel of Experts' Report<sup>67</sup>, troop withdrawal facilitated by Pretoria<sup>68</sup> and Lusaka Peace Agreements<sup>69</sup> although has recorded considerable progress, it has not had a significant impact on the determination of Rwanda, Uganda and Zimbabwean individuals to exercise control over portions of the DRC.

The departure of these has done little to reduce economic control or means of achieving it since the use of national armies is one of the many methods of exercising this control. They have ensured that their established networks to the richest and most readily exploitable mineral assets are moved into joint ventures that are controlled by their private companies.

To illustrate this, Zimbabwe's intervention in DRC was initially informed by regional power ambitions which were driven by President Mugabe's antipathy towards South Africa and the desire to find counterweight to South African

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<sup>67</sup> *ibid*

<sup>68</sup> Under the terms of the agreement signed on 1<sup>st</sup> November, 2002, DR Congo has guaranteed Rwanda's security, especially at its eastern borders. [Rwanda has always maintained that it cannot pull its troops out of Congo unless its frontiers are safe]. In return, Rwanda has pledged to withdraw its forces from the DRC, as long as the Kinshasa government sticks to its commitment to neutralise disarm and repatriate armed Rwandan Hutu militias (known as Interahamwe) and former elements of the Rwandan army (ex-FAR).

<sup>69</sup> The Lusaka Peace Accord was signed on July 10, 1999, by regional governments, rebel groups involved in the Great Lakes conflict and international observers. A ceasefire provision within the agreement called for a DRC national dialogue and reconciliation initiative on political, military and civilian levels. Through a process of participation and by holding democratic elections, the national Inter-Congolese Dialogue is intended to provide the basis for a new constitutional and governmental framework to enable a lasting peace in the DRC.

influence<sup>70</sup>. This however changed fundamentally after the Victoria Falls Summit<sup>71</sup> in which Angola, Zimbabwe, Namibia and DRC established a Co-operation Committee as Zimbabwe immediately entered into a self financing deal with Kabila's government in which Zimbabwe Defence Industries (ZDI) would provide arms and munitions to the DRC in return for which the Zimbabwean mining company, Ridgepointe would take over the management of state owned Gecamines<sup>72</sup> and receive a 37.5% share on DRC state mining company<sup>73</sup>. The UN Panel of Experts further received evidence that a company known as Oryx Natural Resources is being used as a front for Zimbabwe Defence Forces (ZDF) and its military company OSLEG. The Panel further received a copy of a memorandum from Zimbabwe's Defence Minister, Sidney Sekeramayi, to President Mugabe, proposing that a joint company be set up in Mauritius to disguise the continuing economic interests of ZDF in DRC.

In the case of Uganda, although its original declared aim when invading Eastern DRC was to flush out the Allied Democratic Forces (ADF) who were accused by authorities for waging war of terror against the population of northern Uganda, commercial considerations have gained primacy and appear to replace the

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<sup>70</sup> Mugabe for a long time and prior to independence of South Africa regarded himself as a senior African statesman championing the liberation of Africa from the West. The entry of Nelson Mandela and the Republic of South Africa in the scene naturally posed a threat to his bloated ego

<sup>71</sup> Under the terms of article 4 of the treaty reached at this summit, the state parties agreed to treat an armed attack against one of them as an attack against the others and each of them will assist the state attacked by taking forthwith individually or in collaboration with other parties such action as it deems necessary including the use of armed force to repel such attack and restore peace and security in the territory of the party attacked. It is on the basis of this agreement that the parties intervened in aid of Kabila during the raid by joint Uganda and Rwandan forces.

<sup>72</sup> Acronym for the state owned *Générale des carrières et des mines*

<sup>73</sup> Peace Keeping in the DRC, MONUC and the Road to Peace, *Institute for Security Studies Monographs* No.66, October, 2001. [www.iss.co.za/Pubs/Monographs?No66/Chap2.html](http://www.iss.co.za/Pubs/Monographs?No66/Chap2.html)

original justification for the invasion. According to International Crisis Group (ICG) there has been remarkable increase in Uganda's gold exports since 1998. Official figures by Bank of Uganda show that her gold exports shot up from \$12.4 million in 1994-95 to \$110 million in 1996.<sup>74</sup> Major General Salim Saleh, President Museveni's brother has been accused of deep involvement in buying gold in areas controlled by Uganda People's Defence Forces (UPDF)<sup>75</sup>. Furthermore the UPDF has been accused by the UN Panel of Experts Report of provoking ethnic conflict in Ituri cognisant that the unrest in the region will require the continuing presence of minimum UPDF personnel. The UN Panel of Experts received credible evidence that high ranking UPDF officers train local militia to serve as paramilitary both directly and discreetly under UPDF command<sup>76</sup>. Therefore as UPDF continue to arm local groups albeit less conspicuously than before, the official departure of UPDF personnel will have very little impact in altering the already entrenched illicit economic activities.

For Rwanda, its claims concerning its security to justify continuing presence of its armed forces tumbles in the face of damning evidence which the UN Panel came across which reveal Rwanda's actual intentions in DRC. For example the Panel came across a letter from Jean-Pierre Ondekane, first Vice-President of Rwanda and Chief of the Military High Command for the RCD-Goma urging all

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<sup>74</sup> International Crisis Group, "Scramble for the Congo: Anatomy of an Ugly War", *Africa Report* N°26 20 December 2000, [www.crisisgroup.org/home/index.cfm?id=1638&l=5](http://www.crisisgroup.org/home/index.cfm?id=1638&l=5)

<sup>75</sup> *ibid*

<sup>76</sup> *Supra* n65



army units to maintain good relations “with our Interahamwe and Mayi-Mayi brothers”, and further “if necessary to let them exploit the subsoil for their survival”. To entrench their economic interests further, Rwanda has found support in prominent members of Congolese Hutu group, *Benemugabohumwe*, who encourage Hutus living in the DRC, some of which are in opposition groups, to work instead for the cause of Rwanda in the country which is poignantly captured by an *Interahamwe* combatant living in the area of Bukavu who describes the situation as follows:

“...we haven’t fought much with the RPA in the last two years. We think they are tired of this war, like we are. In any case they aren’t here in the Congo to chase us, like they pretend. I have seen the gold and coltan mining they do here, we see how they rob the population. These are the reasons for their being here. The RPA come and shoot in the air and raid villagers’ houses but they don’t attack us anymore...”<sup>77</sup>

In its conclusion based on analysis of evidence, The Panel holds the view that the main justification for Rwanda’s presence in Eastern DRC is to increase the number of Rwandese settlers here and to encourage those already settled to act in unison to support its economic interests in the region. The recent troop withdrawal therefore should not be seen as a sign of Rwanda’s willingness to reduce the level of armed conflict or to diminish the humanitarian crisis in the region. In the light of the foregoing it would be safe to conclude that whereas Rwanda overtly wants to convince the international community that it has withdrawn its troops from DRC, covertly it has migrated its operations from

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<sup>77</sup> Supra note 65

overt plunder to clandestine and integrated economic exploitation. This is so because just like the UPDF, Rwanda's withdrawal was not until its troops put in place economic control mechanisms that do not rely on the explicit presence of its armies. RPA battalions that specialised in mining activities remain in place, although they have ceased wearing RPA uniforms. RCD-Goma has been reorganised to accommodate large number of RPA soldiers. To divert the attention of the international community from focusing on its strategic repositioning Rwanda has hosted pompous press ceremonies for its troops allegedly returning from Eastern DRC.<sup>78</sup>

In concluding the overview of economic causes of the conflict, an important phenomenon closely related to the flourishing of the war economy and which has a direct bearing on the prolongation of the conflict is the survival of pre-colonial trans-border trade networks. The African nation-states that were carved out by the colonial powers at the end of the 19th century cut through ancient trade routes between natural regions offering different resources. These trade networks are often based on ethnic groups now separated by the national borders. The development of the state and national economies has not been able to stop or replace these old trading networks and alternative social organisation competing with the state. Quite the opposite; the severe bureaucracy and numerous regulations made official economic transactions difficult and

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<sup>78</sup> Supra n.65

stimulated smuggling and bypassing the official distribution systems. Bribes were a standard procedure in government and officials were directly involved in many business adventures.<sup>79</sup>

In DRC the national economy has never managed to overcome the existing cross-border trade networks. Studies of illicit trade across Zaire's southern, north-eastern and western borders show how the circulation of smuggled commodities links these three regions more closely to other countries than to the rest of Zaire. North-eastern Zaire is part of a regional area extending eastwards to the parts of the Indian Ocean and north to the Sudan, but only as far west as Kisangani. The looting of the DRC's natural resources into Rwanda and Uganda is a continuation of older informal smuggling patterns. These cross-border trade networks as will be shown later in the chapter are partly a result of the DRC's state's failure to integrate and build a national economy.<sup>80</sup>

It must however be noted that the illicit extraction of Congolese minerals by elite networks from Uganda, Rwanda, Burundi and Zimbabwe, would not continue unless there was growing demand for them. In this respect US-Canadian, British and South African mineral and raw material conglomerates are some of the main buyer of these minerals. For example, dealings by De Beers and Anglo-American

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<sup>79</sup> Carlo Cornelis, 'The crippled Bula Matari: the roots of the Congolese war economy', *Review of International Social Questions (RISQ)* 11 June 2003, [www.risq.org/article108.html](http://www.risq.org/article108.html)

<sup>80</sup> *ibid*

reveal production and movement of conflict diamonds and gold from Angola and the DRC.<sup>81</sup> According to Dani Wadada Nabudere of Institute for Justice and Reconciliation of South Africa, two-thirds of the world's diamonds go through De Beers' Central Selling Office in Holborn, London and taxes from these sales contribute hugely to tax revenues for the British government. He notes that until recently when the issue of "blood diamonds" became a global hot issue, De Beers openly admitted to buying UNITA diamonds "second -hand" on the open markets, in order to protect its control over diamond trade.<sup>82</sup>In other situations, diamonds were smuggled through porous borders to South Africa or through customs borders where corrupt customs officials were paid to turn a blind eye to the movement of these precious metals across national borders. Once in South Africa, De Beers purchased them and processed them as South African diamonds for sale on international markets. Most of these diamonds were mixed with other diamonds from other countries, and from this point of view it becomes difficult to identify which diamonds are dirty/blood (or conflict) diamonds and which are not.<sup>83</sup>

The forgoing analysis exposes one of the major underlying motivations in the conflicts which is the struggle for mineral resources. So what on the surface appears to be a conflict over security concerns by DRC neighbours and internal

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<sup>81</sup> Dani Wadada Nabudere, 'The Political Economy of Conflict and War in The Great Lakes Region', *The Institute for Justice and Reconciliation Monograph No. 1*, 2003 [www.ijr.org.za/publications/nabudere/download](http://www.ijr.org.za/publications/nabudere/download)

<sup>82</sup> *ibid*

<sup>83</sup> *ibid*

struggle for restoration of a democratic state has turned out to be a global conflict over resources in which the Congolese people are partly the victims and partly the perpetrators of the violence.

### 3.3 THE ETHNIC QUESTION

Another important dimension necessary in conceptualising conflict in DR Congo, is the appreciation of the role played by inter-ethnic relationship among the Congolese people who live in DRC and their kinsmen who live in the Great Lakes region and more particularly the internal relationship among the Hutus and Tutsi's who live in DRC and how they relate with the migrants from Rwanda and Burundi. Considering the systemic connection of this conflict, the relationship is best captured when one takes cognisance of the colonial based policies of the Belgians, the controversial Zairian Citizenship Act of 1991 and the Zairian National Conference of 1991 (discussed later in this section) which link land rights and citizenship.

The DRC owes its present boundaries to the imperial aspirations of one person, King Leopold II of Belgium, who obtained much of this vast territory in 1885. This was sanctioned during Bismarck's Berlin Conference (1884-85) on the colonial partition of Africa. It was then declared that the Congo Free State would be under the personal government of Leopold. He obtained most of this territory through treaties entered into on his behalf by the explorer-merchant Henry Morton Stanley who had signed these treaties with indigenous leaders in the

region. At the time, the King's ambition was to occupy and possess the whole of the territory between Boma (the original capital of the Free State) situated at the Congo River mouth on the Atlantic coast in the west, the Rift Valley lakes of Tanganyika in the south-east, Kivu in the east and the Nile River in the north-east.<sup>84</sup> At that stage, the Katanga/Shaba province in the south-east was outside the Free State. In the north-east, the dream to progress to the left bank of the Nile River was thwarted by the British who occupied Uganda and the Sudan, extending to regions to the west of the Nile.

Within the Kivu area, a substantial number of Tutsis and Hutus were found whose original allegiances were to the kingdoms of Rwanda and Burundi to the east of Kivu that had come under German control since 1888<sup>85</sup>.

The cattle-owning Tutsi aristocracy, who were a numerical minority in a stratified society, ruled (through their *mwami* kings) over the majority Hutu agriculturalists as their serfs, as well as over the Twa pygmies at the bottom of the hierarchy. It is noteworthy that as early as these monarchical days, many Tutsis (the Banyamulenge as they have come to be known) settled to the west of Lake Kivu where the DRC's Kivu province is currently situated. Colonial boundaries – in this case Leopoldian and German – had therefore split Tutsis and Hutus into at least three colonies, two German and one Belgian.

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<sup>84</sup> J Stengers, 'The Congo Free State and the Belgian Congo', in L.H Gann & P Duignan (eds), *Colonialism in Africa 1870-1960, Volume I*, Cambridge University Press, Cambridge, 1969, pp261-267

<sup>85</sup> R Cornevin, 'The Germans in Africa before 1918', in *ibid.*, pp. 405-410

In 1908, the Belgian government took over the Congo Free State from King Leopold II. The boundaries were left unaltered. By then, Kasai and Katanga had been added. But in 1922, after Germany's possessions were taken away following the defeat in World War I, Rwanda and Burundi were handed over to the Belgians to administer on behalf of the League of Nations, and later the United Nations. Belgian control lasted till 1960-1962, when these three territories became independent.

Prior to independence, the Belgian Congo was divided into six provinces, one of which was Kivu, with the principal town of Costermansville (now Bukavu) as capital. Within the provinces, the colonial authorities ruled indirectly through African chiefs who were incorporated as low-level officials of the colonial administration.<sup>86</sup>

In Rwanda, the Belgians supported the Tutsis as traditional rulers against the Hutus, while in Kivu, Tutsis and Hutus were both treated as non-indigenous and land rights were therefore not conferred to them as the Belgians did for other indigenous inhabitants. However as the clamour for self-determination appeared to gain ground with grant of internal self governance not too remote a possibility, the Belgians switched their support to the Hutus due to their numerical strength which gave them a definite advantage over the erstwhile favoured Tutsis in taking over leadership upon attainment of internal self

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<sup>86</sup> Nzongola-Ntalaja, 'The second independence movement in the Congo Kinshasa', in P Anyang' Nyong'o (ed.), *Popular struggles for democracy in Africa*, Zed Books, London, p. 117.

government in Rwanda. It is indeed this that happened when the Parmehutu Party won the elections. But their victory set in motion conflict with the Tutsis who were forced into exile in DRC to join their brothers who had already settled there. Here they were devoid of the privileges they enjoyed in Rwanda besides they did not have land rights. It is at this point that the Banyamulenge<sup>87</sup> equation enters the conflict<sup>88</sup>.

According to Mahmood Mamdani and Jordan<sup>89</sup>, if the roots of the conflict in the Congo are to be understood, one has to dig back into the Belgian colonial system of indirect rule. The system of indirect rule divided the country into two distinct legal systems, one civic and the other ethnic. The enforcer of civic power was the central state (and provinces) through civil law, while Native Authorities which supervised customary law, enforced ethnic power. In civic law, individuals were given rights, but it was only applicable to metropolitan populations who were seen to be racially different.

While natives, especially those in the rural areas, were ruled by a different regime that enforced custom, no single customary law was introduced for all natives. Each ethnic group had different sets of customary laws that were

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<sup>87</sup> The name 'Banyamulenge' does not refer to an ethnic group, but to those from Mulenge. The name is used for all immigrants moving into the area called Mulenge, including those who recently moved there as refugees after the problems of the 1960s and 1970s, and the 1990-1994 genocide in Rwanda. Thus, in native eyes, Banyamulenge is a collective classification of all non-indigenous, mainly Tutsi-speaking, inhabitants of Kivu. Thus, the question for most (older) ethnic groups in Kivu province is why their land should be given to immigrants and refugees for occupation.

<sup>88</sup> C Newbury, 'Rwanda: Recent debates over governance and rural development', in G Hyden & M Bratton (eds.), *Governance and politics in Africa*, Lynne Rienner, Boulder, p.196.

<sup>89</sup> M Mamdani & A Jordan, 'Preliminary thoughts on the Congo crisis', *Centre for African Studies*, University of Cape Town, 1998; and M Mamdani, 'Naive South Africa must not adopt missionary position', *Weekly Mail & Guardian*, 23-29 May 1997



enforced by different native authorities. The difference in these two systems was that, while civic power was racialised (the law favoured whites compared to blacks), the Native Authority was ethnicised. Further, the colonial state also made a distinction between those who were indigenous and those who were not (e.g. settlers from Rwanda or Burundi), while it also enforced ethnic separation among the indigenous through the recognition of tribal law.<sup>90</sup>

Following independence in the Congo in 1960, however, the legal system was reformed; civic power was deracialised while Native Authority remained ethnicised. Moreover, the importance of this arrangement is that the Congo has been held together not so much by civic power in Kinshasa, Kisangani and Bukavu in the period of post-colonialism, but by the different native authorities that control most of the population by enforcing custom<sup>91</sup>.

The result of this 'double citizenship' is that, while civic citizenship gives one membership of the state and is based on rights, ethnic citizenship gives membership of a Native Authority and hence allows one to have access to social and economic rights such as land. But these rights are only accessed by virtue of membership of an indigenous ethnic group. That is to say whilst everyone has been a citizen of the Congo since 1960, not everyone has ethnic citizenship or land rights. Only those who are considered to be indigenous have a Native

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<sup>90</sup> Willie Breytenbach, Dalitso Chilemba, Thomas A Brown and Charlotte Plantive, 'Conflicts in the Congo: From Kivu to Kabila', University of Stellenbosch, *African Security Review* Vol 8 No 5, 1999

<sup>91</sup> *ibid*

Authority and consequently ethnic citizenship. This neat division between nationals of pre-colonial vintage and colonial migrants, the former indigenous and the latter not, tend to break down in Congo because two entire groups seem to fall between the cracks. The first are the Banyamasisi of North Kivu and second are the Banyamulenge of South Kivu. Consequently the claim of the Banyamasisi to Congolese citizenship has become a bone of contention in the decades that followed independence and has continued simmering to date.

The contention over citizenship appears to stem from the difference between the two types of colonial migrations, separating the labour migrants of an earlier period (1926-1937) from those transplanted after 1937. The labour migrants were a corollary to the white settlement which created an acute labour problem in view of the fact that the local Bahunde were given to hunting and foraging for life and were reluctant to cultivate land. As land was divided and forests cleared however, hunting and foraging entered into a period of crisis. To force the Bahunde into an alternative livelihood, colonial authorities passed an ordinance in 1917 which required them to grow food and crops. The Bahunde however in response, migrated from the area forcing the settler population to turn to Rwanda for migrant labour. A decree was therefore passed authorising

Rwandese to seek employment freely outside their country. This marked the beginning of the era of transplantation.<sup>92</sup>

Whereas the labour migrants were presumed to have a home away from where they were resident, those transplanted were not. The whole idea was that they were uprooted from home and had to make another. In line with this thinking, the transplanted Banyarwanda were granted their own Native Authority in Gishari in Masisi. (*Collectivite Gishari*) This created a tension with the local population particularly the Bahunde who saw it as increasing the competition for land.<sup>93</sup>

When *Collectivite Gishari* ceased to be a Kinyarwanda-speaking Native Authority in 1957, the Banyarwanda of Masisi lost any ethnic space to express their political preference. With the coming of independence of Congo, however, an alternative political space began to open up for the natives. This was marked by the oncoming provincial and municipal elections. Being the majority, the Banyarwanda in Masisi won the collegial elections of 1958. The response of the Bahunde elite was to use their ethnic prerogative as the population indigenous to the *collectivite* to hound most of the Banyarwanda from positions of influence in the local state.

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<sup>92</sup> Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide in Rwanda*, Fountain Publishers, Kampala, 2001 p.240

<sup>93</sup> *ibid*

Outside the political sphere, the indigenous prerogative translated into the assertion of customary control over land designated as indigenous so that only those migrants paying tribute to the traditional authorities were allowed to continue to till customary land. It is the acceleration of these trends which led to the eruption of armed conflict in Masisi in 1963-64 known as *la guerre du Banyarwanda* which was essentially an uprising against abuse by the Bahunde chiefs.<sup>94</sup>

The more they felt blocked from the local level, the more the Banyarwanda minority looked to the civic sphere- both the market and the central state- for alternative strategies. Unable to access land as did the indigenous Congolese as a customary right, those with resources devoted them to purchasing as much land as possible through the market. They also made every effort to access positions at high provincial and national levels through either elections or connections. This in turn drew opposition from indigenous who became afraid of possible Banyarwanda dominance they therefore opposed citizenship rights to them. Therefore using their influence within the state apparatus, and presumably responding to the refugee influx into Kivu following the massacre of some 200,000 Hutus in Burundi, President Mobutu extended citizenship rights to the Kinyarwanda speaking minority by the enactment of the Citizenship Decree of

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<sup>94</sup> Mamdani supra

1972. This was done to distinguish them from the incoming refugees. To many in Kivu province, the 1972 Citizenship Decree came to symbolise not simply an inclusive citizenship policy but one so indiscriminating that if followed in practice would turn Kivu into an open sanctuary for the surplus population from Rwanda and Burundi.

In 1977 however the indigenous majority following the legislative elections developed a strategy to counter the Banyarwanda minority's penetration of Mobutu's government. Once in Parliament they passed a new Citizenship law in 1981 which stipulated that only those persons who could demonstrate an ancestral connection to the population residing in 1885 in the territory then demarcated as Congo would qualify to be citizens of Congo. This development obviously created great anxiety for the Kinyarwanda minority and informed a crucial element in the discussions during the Sovereign National Conference (CNS) of 1991. This law also became the impetus behind the crossing over by Kinyarwanda speaking youths into Uganda to join RPF forces in their campaign against the Hutu dominated regime in Kigali.

It may therefore be said that for the decade that stretched from the end of *la guerre du Banyarwanda* to the Citizenship Law of 1981, the nationality conflict in the Kivu's revolved around two pivots. The first pitted the indigenous majority against the Kinyarwanda speaking minority whether immigrant or not. As a

consequence the more this tension grew the more it tended to blur historical distinctions among different groups that had come at different times. As a result, all Kinyarwanda speakers came to be considered non-indigenous. The second pivot of conflict is internal to the Banyarwanda themselves. It pitted the Tutsis against the Hutus. As tension grows between the Hutu and Tutsis in Rwanda so is the case in the Kivus. As each group begin to organise to return to power relations between the Congolese Hutu and Tutsis get sour regardless of whether they consider themselves indigenous or not.

Another area of ethnic tension which although of recent origin and which needs to be taken into account is the relationship between the Hema and Lendu tribes. These two communities have lived together in the Djugu region of Ituri for centuries. Historical accounts put the arrival of the Hema who are predominantly a pastoral community, in the area to around sixteenth century. Culturally they are related to the Tutsis in Burundi and Rwanda as well as the Hema and the Banyoros of Western Uganda. The indigenous Lendu are farmers and hunters and are related to the Kakwa, Lugbara and even the Alur of West Nile region in Uganda<sup>95</sup>.

The heart of the dispute between these two communities concerns land. Belgian Colonial authorities favoured the Hema and permitted them to amass large

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<sup>95</sup> Supra note 71

landholdings in the final days of European rule. Despite the resentment of the Lendu, the two groups lived alongside one another peaceably until the sunset days of Mobutu's regime. In the chaos that followed the overthrow of Mobutu, some of the rich Hema landowners upset the status quo by seeking to acquire additional landholdings from the Lendu. In this they were facilitated by the collapse of state administrative structures and loss of important records such as land title deeds in the war to overthrow Mobutu. Powerless to respond legally because they lacked documentary proof of ownership, the Lendu turned to violent means of resistance. These violent clashes have been exacerbated by the presence of UPDF in the area. Senior UPDF soldiers side with rich members of the mainly Batutsi tribes such as the Hema in Ituri province who they train and arm, against the Lendu.<sup>96</sup>

The foregoing chronological account of inter-ethnic relationships in the Great Lakes Region as will be discussed in chapter 5, gains more relevance if conceptualised against the background of Johan Galtung's structural violence paradigm. According to Galtung, violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realization.<sup>97</sup> Galtung illustrates this by arguing that if people are starving when this is objectively avoidable then violence is committed. In order to distinguish structural violence from personal violence, he argues that in the

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<sup>96</sup> *ibid*

<sup>97</sup> Johan Galtung, 'Violence, Peace and Peace Research', *Journal of Peace Research*, Vol. 6 No. 3 (1969) p168

former there is no immediately identifiable actor while in the latter there is. To illustrate this argument Galtung remarks:

'...when one husband beats his wife there is clear case of personal violence, but when one million husbands keep one million wives in ignorance there is structural violence...'<sup>98</sup>

Structural violence in this context refers to the political-economic organisation of society that imposes conditions of physical or emotional distress such as high morbidity and mortality rates, poverty and abusive working relations.

The tension-laden relationship between the Hutu and Tutsi Rwanda, Burundi and DRC embedded in differences in political influence, land ownership and economic power can be explained in this context. This argument is further entrenched by Zartman who contends that when groups see themselves as targeted for deprivation such as the Banyamulenge in DRC and the Hutu-led AFDR and Interahamwe in the case of Rwanda, they are bound to resort to violence.<sup>99</sup>

#### 3.4 MOBUTU'S REGIME: A CASE OF COLLAPSE AND DECAY OF THE STATE AND COLD WAR POLITICS.

Joseph Desire Mobutu otherwise known as Mobutu Sésé Seko ruled DRC from 24<sup>th</sup> November, 1965 until May 17<sup>th</sup>, 1997. During his reign he became the undisputed master of the country. V.S Naipaul describes him as the *big man*, a new king for the Congo, and the true successor to King Leopold as the owner of

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<sup>98</sup> Ibid p.171

<sup>99</sup> J William Zartman, 'Mediation in Ethnic Conflicts: Facing Ethnic Conflicts', *Centre for Development Research (ZEF Bonn)* (14<sup>th</sup>-16<sup>th</sup> December, 2000) [www.zef.de/download/ethnic\\_conflict.pdf](http://www.zef.de/download/ethnic_conflict.pdf)



the country and its resources.<sup>100</sup> Presumably to prove that the country was his personal possession, upon ascendancy to power Mobutu changed the country's name to Zaire in 1971 and took pleasure in privatizing the state and its assets for the benefit of his relatives, cronies and clients.<sup>101</sup> Starting his rule as a military dictatorship with the entire army high command making the junta, Mobutu's regime gradually and steadily drifted to personal rule then prevalent across Africa and for over thirty years he and his closest followers managed to plunder the Congolese mineral wealth and hung on to power by a mixture of cooptation, repression and external backing. The state was hijacked by small political-economic elite known as *Les Grosses Légumes* ( The Big Wigs) consisting of Mobutu's extended family, members of his tribe the Ngbandi, local strongmen, army commanders, business cronies and political clients. This small elite was in charge of all state institutions and state corporations like the copper giant Gécamines. All positions in the army, security services, offices or state enterprises depended on one's personal relationship to Mobutu. He was able to antagonize powerful members of the elite from each other and reshuffled them constantly over the important offices.<sup>102</sup> In the emergent government structure Mobutu's power became so absolute that he could do anything his heart desired including use of brute force whenever necessary. And he did so with such ferocity and regularity that in addition to corruption, gross violations of human

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<sup>100</sup> Naipaul, V.S "A new king for Congo", New York Review of Books, 26<sup>th</sup> June, 1975

<sup>101</sup> Georges Nzongola-Ntalaja: *The Congo from Leopold to Kabila: A Peoples History*, Zed Books London & New York, 2003 p 141

<sup>102</sup> Carlo Cornelis, 'The crippled Bula Matari: the roots of the Congolese war economy' *Review of International Social Questions*, [www.risq.org/article108.html](http://www.risq.org/article108.html)

rights including assassinations, extrajudicial executions, massacres of unarmed civilians, and banishment to remote penal colonies became the defining characteristics of his regime. He thus succeeded in demobilizing the mass democratic movement forcing them into exile<sup>103</sup>.

Under Mobutu, the Congolese ruling class was responsible for an administration that could not administer properly. Lacking the most elementary demographic and other statistical data due to poor quality of record keeping, the Congolese public administration often worked with fictitious data. Economic regulation was best limited to selling of various business licenses, while the privileged groups whose activities and businesses often endangered the health and welfare of the public were usually able to frustrate law enforcement. The rich used their might to evade taxes, while the poor and powerless suffered a state of permanent insecurity due to the arbitrary nature of revenue collection. Corrupt military chiefs embezzled funds appropriated for the soldiers pay, sold military equipment and supplies and paid more attention to their private businesses than to discipline. As a result ordinary soldiers became demoralised while senior officers were involved in gold, diamond and arms trafficking<sup>104</sup>. Regular troops, in order make ends meet resorted to extortion, theft and looting as was witnessed in 1991 and 1993.<sup>105</sup> By 1990 however the Congolese decided to follow

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<sup>103</sup> *ibid*

<sup>104</sup> Yakemtchouk, Romain, 'Les deux guerres du Shaba: Les relations entre la Belgique, la France et le Zaïre' *Studia Diplomatica*, Vol.41, Nos 4-6, 1988

<sup>105</sup> *Supra* n77

the example of Mobutu and his cronies and took whatever they could lay their hands on. In fact it is Mobutu himself who told them in a speech broadcasted live on national television to go ahead and steal, as long as they did not take too much. Consequently minerals like copper and cobalt disappeared and were smuggled across the border; equipment, spare parts and even high voltage electricity cables were stolen and sold. By 1994, around a third of Gécamines' production was being smuggled south of the border.

Over the years as the pillage by Mobutu and his cronies continued the population developed various creative survival strategies and in the process society became disconnected from the state. People came to rely on themselves, their local community and the second economy for their survival. The state became irrelevant as a provider of jobs, welfare or security; people found their own ways of meeting their needs<sup>106</sup>.

Whereas personal rule by Mobutu had a significant role in his thirty-two year dictatorship, the role of external forces in his rise to power cannot be ignored. For much of its life, the Mobutu regime enjoyed strong external support. This came primarily from the United States, France, Belgium and some of their regional allies and clients such as Israel, Egypt, Morocco, Saudi Arabia and South Africa. The support was predicated on three major premises. The first premise which

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<sup>106</sup> Carlo Cornelis supra n 78

was consistent with the logic of both Cold War politics and institutional racism in the United States was that a vast and multiethnic country such as Congo needed a 'strongman' to keep and prevent chaos, and therefore communist subversion and or takeover. The second premise was the need to support loyal friends, regardless of their behaviour towards their own people. It had to do with the so called moral commitment to US allies in the context of the Cold War, and with the close personal ties between the French ruling class and heads of state in francophone Africa. The third was the need to use Congo to promote Western economic interests in central and southern Africa<sup>107</sup>. All these premises were interdependent and they played a crucial role in US and Western policy towards the Congo.

Capitalising on the western fears of chaos Mobutu applied all skills and resources to retain their support for his regime. For instance in 1978, his own troops killed whites seeking refuge from Angola-based Congolese rebels and disingenuously blamed the killing on the rebels and used the incident to give France, Belgium and the US the pretext for intervening in Shaba II war. Likewise, the looting incidents of 1991 and 1993 by unpaid and poorly paid soldiers, as well as the ethnic cleansing in Katanga and North Kivu in 1992-1994 were all his handiwork.<sup>108</sup>

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<sup>107</sup> Georges Nzongola-Ntalaja, *supra*

<sup>108</sup> *Ibid* p161

The collapse of the state system created a culture of impunity and disorder and led to the creation of criminal economic and social networks who exploited it for their own personal gain. These networks continue to operate even after the collapse of the Mobutu's regime. Their tentacles have found root in the current government of Joseph Kabila and various self-proclaimed rebel groups such as the Mai Mai and RCD- Kisangani who claim to champion restoration of Congolese democracy while in actual fact are merely perpetuating the chaotic situation for their personal gain. Georges Nzongola-Ntalaja describes the new regime as lacking in strategic vision for the Congo and organizational capacity to govern a modern state. This he attributes to the fact that in over thirty years of sporadic campaign of armed struggle, the late Laurent Kabila, father to the current President had for all practical purposes become a warlord rather than a revolutionary guerrilla leader. He does not therefore regard them as the liberators they hope to be.<sup>109</sup>

According to the International Crisis Group Kabila is a ruler by default and one who prefers sharing the country to sharing power.<sup>110</sup> Laurent Kabila ran a system of personal rule marked by absence of statesmanship and regime building. He,

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<sup>109</sup> Georges Nzongola-Ntalaja: *The Congo from Leopold to Kabila: A Peoples History*, Zed Books London & New York, 2002 p243

<sup>110</sup> *Supra* n71

like Mobutu relied for political control on a multiplicity of intelligence agencies and relatives including his son Joseph who succeeded him upon assassination.<sup>111</sup>

In concluding this chapter it is important to mention that the foregoing overview of the actors, issues and processes of the DRC conflict demonstrate the various cleavages which must be born in mind in any intervention aimed at resolving the conflict. None of them can be singled out as the *piece de resistance* of this complicated war. They correlate and interlock as shall be demonstrated in chapter 5, however before such analysis is undertaken, it is important to make a survey of the efforts which have been made by UN, international and regional bodies in seeking an enduring solution to the conflict. It is the purpose of the next chapter to make this survey.

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<sup>111</sup> Ntalaja op cit.

## CHAPTER FOUR

### 4.0 INTERNATIONAL REGIONAL AND DOMESTIC ATTEMPTS IN SOLVING THE DRC CONFLICT

After taking a panoramic view of the origins, actors and issues in the DRC conflict it is apt at this point to discuss the various humanitarian intervention efforts which have been made in bringing to an end this internecine war which is arguably one of the worst humanitarian catastrophes in recent times. In doing this, this chapter will catalogue some the most important arrangements, resolutions and agreements which have been reached in seeking a solution to the conflict. Prior to cataloguing the initiatives however, it is important to state at the onset that the discussion will be nested on theoretical underpinnings which govern third party mediation such as the mediator as a facilitator, mediator as a formulator and mediator as manipulator. The intervention efforts will also be looked at in the context of Zartman's models of mutually hurting stalemate and ripeness for settlement discussed in chapter 1.

Bercovitch, Anagson, and Wille define mediation as:

"...a process of conflict management where disputants seek the assistance of, or accept an offer of help from an individual group, state or organisation to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law."<sup>112</sup>

This definition is regarded as useful by most authors due to its focus on behavioural aspects of mediation. Bercovitch and Langely<sup>113</sup> for instance approve

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<sup>112</sup> Bercovitch, J, J.T.Anagson, and Donnette L. Wille 'Some Conceptual Issues and Empirical Trends in the Study of Successful Mediation in International Relations' 1991, *Journal of Peace Research* (Vol.28) p8

of it due to its emphasis on the key components of mediation to wit, the disputants, the third party, and the specific conflict resolution context. By recognising the actors in the mediation process (disputants and the third party) as well as the context of the conflict in issue this definition takes cognisance of the fact that mediation is in essence an extension of the negotiation process whereby an acceptable third party intervenes to change the course or outcome of a particular conflict.<sup>114</sup>

Literature on mediation appears to have converged on three basic mediation models. These are the facilitator, the formulator, and the manipulator.<sup>115</sup> The mediator as facilitator models presents the mediator as a channel of communication among the disputing parties. This type of mediation has variously been referred to as third party consultation, good offices or the process of facilitation. The role of the mediator in this type of mediation include provision logistics of the negotiation process, collection of information and setting the agenda regarding which issues will be discussed and the order in which they will be discussed. Where face to face communication is not possible he also delivers messages. Mediator as formulator model on the other hand entails mediator's involvement in substantive contribution to the negotiation

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<sup>113</sup> Bercovitch J and Jaffrey Langley, 'The Nature of the dispute and the effectiveness of International Mediation' 1993 *Journal of Conflict Resolution* Vol. 37 pp 670-99

<sup>114</sup> Burton, Touval, Zartman, Fisher, Kelman Hopmann et al

<sup>115</sup> See for example Touval & Zartman, 'Introduction: Mediation in Theory. In Saadia Touval and I. William Zartman (eds) *International Mediation in Theory and Practice*, 1985 Boulder Co. Westview Press, Bercovitch & Allison Houston, 1996. 'The Study of International Mediation: Theoretical Issues and Empirical Evidence' in Bercovitch J (ed) *Resolving International Conflicts*, Boulder Co. Lynne Rienner.



process including developing and proposing new solutions to the disputants, assisting them in the event of an impasse in the negotiation process. The mediator as formulator is however not empowered to pressure crisis actors to endorse or advocate any particular outcome.<sup>116</sup> In mediator as manipulator model, the mediator while providing substantive contribution to the negotiation by formulating potential solutions just like the mediator as formulator, additionally uses his position and leverage to manipulate the parties into agreement. He augments the appeal of the solutions by adding and subtracting benefits to and from the proposed solution.<sup>117</sup> Hopman<sup>118</sup> contends that only a powerful mediator can play this role where he can use carrot and stick measures as well as manipulate the international environment.

No particular method is superior to the other hence Bercovitch, Touval and Zartman argue that mediators ought not to adopt one style but should adapt throughout the course of the conflict. Proponents of mediator as facilitator such as Fisher, Carnvale and Burton<sup>119</sup> on the other hand contend that parties should arrive at their own solutions and that styles that allow mediators to suggest solutions stand to prejudice the mediator's position. Advocates of mediator as

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<sup>116</sup> Touval & Zartman *op.cit*

<sup>117</sup> *ibid*

<sup>118</sup> Hopmann, P. Terrence. 1996. *The Negotiation Process and the Resolution on International Conflicts*, Columbia University of South Carolina Press

<sup>119</sup> Fisher, Ronald J. 'Third Party Consultation: A method for Study and Resolution of Conflict.' 1972 *Journal of Conflict Resolutions*. Vol. 16 pp67-94, Carnvale, Peter J. D & Richard Peggner. 1985 'The Selection of Mediation Tactics in Public sector disputes: A Contingency Analysis'. *Journal of Social Issues* Vol. 41(2) pp65-81, Burton, John W. 1972 'The Resolution of Conflict' *International Studies Quarterly* Vol 16(2). 5-29

facilitator model<sup>120</sup> deprecate manipulative mediation as potentially destructive to the atmosphere of goodwill, trust and joint problem solving between the parties. To them facilitation effectively promotes peaceful settlement. Bercovitch however disputes the tendency to restrict the role of a mediator to that of a facilitator only. To illustrate his argument, he examined some 241 international conflicts which took place between 1945 and 1990 and found that of these, 52% where the mediator had leverage were successfully mediated. He thus concludes that effective mediation is more a matter of resource utilization leverage and influence than impartiality<sup>121</sup>. The foregoing overview must be borne in mind while considering the various humanitarian intervention efforts discussed below.

#### 4.1 LUSAKA PEACE ACCORD OF JULY, 1999

Prior to the Lusaka Peace Accord, there was peacemaking process which began virtually at the outset of the DRC war in 1998, long before many of the interlocutors understood the dynamics of the conflict. For example, an emergency summit of SADC leaders was convened in Pretoria on 23 August 1998. The leaders present decided to confirm their recognition of the legitimacy of the government of DRC and to call for an immediate ceasefire, to be followed by political dialogue aimed at securing a peaceful settlement to the crisis. The meeting mandated President Mandela, as chairperson of SADC, to organise a

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<sup>120</sup> See for example Jabri Vivienne. *Discourse on Violence: Conflict Analysis Reconsidered*. 1996 Manchester, UK: Manchester University Press, Princen Thomas. 1992. *Intermediaries in International Conflicts*. Princeton, NJ: Princeton University Press.

<sup>121</sup> Bercovitch J, 'Understanding Mediation's Role in Preventive Diplomacy', *Negotiations Journal*, 12:3 (July, 1996) p.241-258.

ceasefire in consultation with the Secretary-General of the Organisation of African Unity (OAU)<sup>122</sup>. The intervention at this stage was purely a track 1 diplomacy affair. This type of diplomacy refers to official, state approaches to conflict management. It is formal diplomacy and hence constrained by official policies.<sup>123</sup> That is to say it involves official diplomacy between governments or its agencies. This type of diplomacy is often bogged down by diplomatic protocol and the intellectual bricolage of official (sometimes officious) positions.<sup>124</sup> In terms of conflict management, track 1 diplomacy thrives in settlement of conflicts. It rejoices in the whole bricolage of settlements such as peace treaties and elaborate signing ceremonies<sup>125</sup>. This type of diplomacy is not predisposed towards approaching conflicts from the level of causes and perceptions. It is more concerned with among other things, bargaining constitutional structures and timetabling elections. Consequently as Mwagiru argues, its results are rather short-lived and rarely endure.

At the 18<sup>th</sup> SADC Summit, held in Mauritius on 13-14 September 1998, the regional heads of state and government in tacit support of Zimbabwe-led coalition against joint Rwanda and Uganda invasion of DRC, welcomed the

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<sup>122</sup> Lusaka Ceasefire Agreement: Peacekeeping in the DRC, MONUC and the Road to Peace', *Institute for Security Studies Published Monograph* no.66 Chapter3 [www.iss.co.za/Pubs/Monographs/No66/Chap3.html](http://www.iss.co.za/Pubs/Monographs/No66/Chap3.html)

<sup>123</sup> Mwagiru M. 1998. 'Conflict and Peace Management in the Horn of Africa: Theoretical and Practical Perspectives', *International Resource Group Conference*, Mombasa Kenya, [www.ploughshares.ca/content/BUILD%20PEACE/MwagiruIRG96.html](http://www.ploughshares.ca/content/BUILD%20PEACE/MwagiruIRG96.html)

<sup>124</sup> Mwagiru. M. 'The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practises, Paper prepared for the USAID project on Conflict Management in The Greater Horn of Africa, April, 1997.

<sup>125</sup> Mwagiru op.cit

initiative intended to assist in the restoration of peace, security and stability in DRC, in particular the Victoria Falls and Pretoria initiatives.<sup>126</sup> They significantly commended the Governments of Angola, Namibia and Zimbabwe for timeously providing troops to assist the Government and people of DRC and mandated Zambian President Frederick Chiluba to lead mediation efforts, assisted by the presidents of Tanzania and Mozambique.

The action by SADC countries to intervene and mediate in this conflict could be explained in the context their vested interest in DRC particularly for South Africa and Zimbabwe who as discussed in the previous chapter, have substantial interest in exploiting DRC minerals. In this context, Bercovitch, argues that whilst many authors assert that impartiality is a crucial ingredient to a mediator's success, effective mediation is more a matter of resource utilization leverage and influence than impartiality. Of the 241 conflicts considered in his study referred to above, 52% where the mediator had leverage were successfully mediated. Bercovitch and Houston further argue that emphasis on impartiality stems from failure to recognise mediation as a process of social interaction in which the mediator is a major participant<sup>127</sup>. Regarding mediation as an external input with no interest in the outcome is therefore both erroneous and unrealistic.

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<sup>126</sup> *ibid*

<sup>127</sup> J. Bercovitch & Houston, 'The Study of International Mediation: Theoretical Issues and Empirical Evidence', *Political Science & Communication*, University of Kent at Canterbury, [www.posc.canterbury.ac.nz/staffpages/jbercovitch/publications/intmediation.pdf](http://www.posc.canterbury.ac.nz/staffpages/jbercovitch/publications/intmediation.pdf)

Despite intervention the early intervention efforts by SADC countries, no ceasefire among the warring factions was however arrived at. This could perhaps be explained in terms of Zartman's concept of mutually hurting stalemate. According to this concept, parties resolve their conflict only when they are ready to do so. This occurs usually when the alternative (usually unilateral) means of achieving a satisfactory result are blocked and the parties feel they are in an uncomfortable and costly predicament.<sup>128</sup> When this stage is reached, Zartman argues, the moment is said to be ripe for intervention. The disputants in the DRC conflict may not have reached this stage as each belligerent still felt they had a chance of victory in the war. Rwanda particularly has always felt confident in overrunning Eastern DRC in order to deal with the AFDR problem once and for all. This confidence can be demonstrated by several border incursions into DRC which have never met any serious resistance from the DRC army.

Lack of substantial progress in reducing, if not ending the war continued to preoccupy the movers of official diplomacy hence between 24-26 December 1998, Muammar Gaddafi held separate meetings with Laurent Kabila and Yoweri Museveni and shortly thereafter, on 18<sup>th</sup> January 1999, a summit of five nations with troops in the Congo was held in Windhoek, Namibia. The presidents of Rwanda, Uganda, Namibia, Zimbabwe and Angola agreed on a ceasefire at this meeting. However, with Kabila not present and the RCD not

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<sup>128</sup> Zartman, I. William, 'The Time of Peace Initiatives: Hurting Stalemates and Ripe Moments', *2001 Global Review of Ethnopolitics* Vol.1 no. 1 pp8-18

invited to the summit, this agreement came to nothing<sup>129</sup>. By the end of February 1999 however there was renewed enthusiasm for the peacemaking process shown by regional leaders. Over the weekend of 27-28 February, at least five heads of state were engaged in different consultations to agree on the contents of a peace plan championed by President Chiluba.

Namibian President Sam Nujoma was on a mission to South Africa, where he met President Nelson Mandela. Chiluba himself went on a visit to Rwanda to consult President Pasteur Bizimungu, while Mozambican President Joaquim Chissano (the vice-chairperson of SADC) travelled to Luanda to hold talks with President Dos Santos on ways of bringing peace to the DRC. South African Foreign Minister Alfred Nzo and Tony Lloyd, Britain's Minister of State in the Foreign and Commonwealth Office, also travelled on separate missions to Luanda over this period. The United States sent Thomas Pickering, the Under-Secretary of State for political affairs, to Harare, Zimbabwe, where he met President Robert Mugabe as the first leader he consulted during his five-nation African tour<sup>130</sup>. These manoeuvres by heads of states and senior government officials further exhibit the concentrated use of track 1 diplomacy and attempt to use the previous relations between the belligerents to bring them to negotiate. Nujoma is a long time friend and comrade to Mandela during the struggle for independence of their countries, while the relationship between the US and

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<sup>129</sup> *Supra* n111

<sup>130</sup> *ibid*

Angola during the cold war was not friendly due to the support US gave to UNITA rebels. Bercovitch in this regard argues that an international dispute is not an isolated event. It has a past and presumably some sort of future. It may occur between parties who have had a history of friendship or one of enmity<sup>131</sup>. The past events cannot therefore be discounted as they have a bearing on the outcome of the conflict. Therefore where parties' previous relationship was friendly, the probability of successful mediation was high.

Up to this point in the conflict, although the UN Security Council had issued three presidential statements calling for an end to hostilities in the DRC, no strong UN concern over the lack of progress in the peace process was exhibited by the world body until 9<sup>th</sup> April 1999 when the Council agreed on Resolution 1234 which demanded an immediate halt to the hostilities and called for:

*"the immediate signing of a ceasefire agreement allowing the orderly withdrawal of all foreign forces, the re-establishment of the authority of the Government of the Democratic Republic of the Congo throughout its territory, and the disarmament of non-governmental armed groups in the Democratic Republic of the Congo, and stresses, in the context of a lasting peaceful settlement, the need for the engagement of all Congolese in an all-inclusive process of political dialogue with a view to achieving national reconciliation and to the holding on an early date of democratic, free and fair elections, and for the provision of arrangements for security along the relevant international borders of the Democratic Republic of the Congo."*<sup>132</sup>

The slow action of the UN may be interpreted in the context of the policy of constructive disengagement discussed in chapter 1 and further expounded in the next chapter. The UN dithering is demonstrative of its haplessness in the face of

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<sup>131</sup> Supra not 126

<sup>132</sup> Resolution number 1234 of 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/101/73/PDF/N9910173>

conflicts particularly those which do not fall within the scope of its Security Council members' geo-strategic radar. In this respect Virgil Hawkins has argued that the failure of the Council to take concrete measures to become seriously involved in resolution of the DRC conflict is a reflection of apathy of the Council's powerful members towards a conflict that does not have a significant effect on their economic or political interests.<sup>133</sup> Counter to this argument is that some of the Security Council's permanent members such as the US have substantial mining interest in the DRC. For instance Anglo American Plc owns majority shares in AngloGold Ashanti, one of the largest gold production companies in the world. This company holds lucrative gold mining concession in Mongbwalu area in North Eastern DRC<sup>134</sup>. Further, according to Executive Intelligence Review, before the out break of the AFDL rebellion, a US Canadian gold mining company called Barrick Gold Corporation was formed and former president George Bush and former Canadian Prime Minister Mulroney were reported to have control over these new conglomerates in Zaire<sup>135</sup>. In the latter context, Georges Nzongola-Ntalaja argues that parochial interests of the US and other major powers include maintaining access to the strategic resources to the Congo, selling weapons of war and, in the particular case of US, supporting allies such as Rwanda and Uganda, which may ensure

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<sup>133</sup> Supra n19

<sup>134</sup> Human Rights Watch. 2005 'Curse of Gold' p56 <http://hrw.org/reports/2005/drc0505/drc0505text.pdf>

<sup>135</sup> Executive Intelligence Review (EIR), 1997 p 17. [www.larouche.org/pubinfo.html](http://www.larouche.org/pubinfo.html)



access in addition to being frontline vis-à-vis the Islamist threat from Sudan.<sup>136</sup> It may thus be arguable that the slow response by the UN Security Council is underpinned by these US interests.

The terms of Resolution 1234 cited above, were echoed and amplified three months later in the Lusaka Ceasefire Agreement. Prior to Lusaka however no breakthrough was made until 18 April 1999, when presidents Museveni and Kabila signed a ceasefire accord in Sirte, Libya, under the mediation of Muammar Gaddafi. This agreement – which provided for the deployment of peacekeepers, the withdrawal of foreign troops, and the initiation of a national dialogue – although welcomed by the Security Council, was rejected by both the RCD and Rwanda<sup>137</sup>. President Chiluba however agreed to work with Gaddafi to implement the Sirte accord, while Rwanda insisted that it recognised only the Chiluba peace initiative. The peace process was further complicated by an announcement on 17<sup>th</sup> May 1999 that the RCD had ousted Ernest Wamba dia Wamba as the chairperson of the movement. During April, Wamba had disagreed with the Goma-based RCD leaders on the continuation of military hostilities, and had relocated to Kisangani. Henceforth, peace makers had to deal with three *de facto* rebel movements – RCD-Goma, led by the new RCD President, Emile Ilunga; RCD-Kisangani, chaired by Mbusa Nyamwisi; and the

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<sup>136</sup> Nzongola-Ntalaja op.cit

<sup>137</sup> Africa Policy E-Journal, [www.africaaction.org/docs99/con9906.htm](http://www.africaaction.org/docs99/con9906.htm)

MLC, led by Jean-Pierre Bemba.<sup>138</sup>What one may make of the divisions in the rebel organisation and the refusal by Rwanda to recognise the Sirte Agreement could perhaps be that according to them the conflict was not ripe for settlement. Rwanda still saw chances of winning the war against Kabila and the AFDR. On the part of the rebels, the negotiations carried out through official diplomacy may not have fully addressed their interests.

In compliance with the Sirte Agreement however, some 2,000 Chadian troops, who had been backing Kabila, began withdrawing<sup>139</sup>. At the same time, Rwanda announced a unilateral ceasefire which was followed in the heels by an announcement that a team of military experts from the DRC and Uganda would begin drawing up plans for the withdrawal of Ugandan troops, and that an intervention force would be deployed to secure the border between the DRC and Uganda.<sup>140</sup>

The Lusaka Peace Agreement which is generally regarded as a crucial reference point in the journey towards peace in DR Congo was after several lengthy delays arrived at on 10<sup>th</sup> July, 1999 and signed by the leaders of the six states that were parties to the conflict namely, the DRC, Zimbabwe, Namibia, Angola, Rwanda and Uganda but not by the Congolese rebel groups. However in a further ceremony in Lusaka on 21 August 1999, all representatives of the different rebel

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<sup>138</sup> Supra n.103

<sup>139</sup> Supra n.108

<sup>140</sup> Supra n.103

groups signed the Lusaka peace agreement agreeing to a truce.<sup>141</sup> The main provisions of the Lusaka agreement can be summarised as follows:

- the immediate cessation of hostilities;
- the withdrawal of all foreign troops from the national territory of the DRC in accordance with the established calendar;
- deployment of a UN Chapter VII peacekeeping force to disarm armed groups, collect weapons from civilians, provide humanitarian assistance, and protect displaced persons and refugees;
- the establishment of a Joint Military Commission (JMC) composed of the belligerent parties to investigate cease-fire violations;
- the formulation of mechanisms to disarm the identified militias; and
- initiate Congolese National Dialogue intended to lead to a "new political dispensation in the DRC.

Implementation of the terms of the agreement as will be demonstrated in the next chapter, has however been riddled with difficulties with each side in the conflict repeatedly accusing the other of violating it. Conflict has therefore continued between the government and rebel forces in the north-eastern part of the DRC despite committing themselves to a ceasefire and agreeing on transitional arrangements intended to set the stage for the holding of free and fair elections. Forces from the Congolese Rally for Democracy-

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<sup>141</sup> Congo Civil War, GlobalSecurity.org, [www.globalsecurity.org/military/world/war/congo.htm](http://www.globalsecurity.org/military/world/war/congo.htm)

National/Congolese Liberation Movement (RCD-N/MLC), joined possibly by those from the Union of Congolese Patriots (UPC), have failed to heed calls by the UN Security Council to cease all hostilities and settle their differences peacefully.

#### 4.2 MONUC<sup>142</sup>

Upon its creation in November, 1999, the United Nations Security Council asked MONUC, by the resolution 1291, to monitor the implementation of the Lusaka Ceasefire Agreement and investigate cases of its violation. It was further to establish and maintain continuous liaison with the headquarters of all the parties' military forces; to develop, within 45 days following the adoption of the resolution 1291, an action plan for the overall implementation of the Lusaka Ceasefire Agreement by all concerned with particular emphasis on the following key objectives which included the collection and verification of military information on the parties' forces, the maintenance of the cessation of hostilities and the disengagement and redeployment of the parties' forces, disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) of all members of all armed groups referred to in the Ceasefire Agreement, and the orderly withdrawal of all foreign forces. This was undoubtedly huge task conferred on MONUC which required equally huge amount of resources and personnel but which were not forthcoming.

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<sup>142</sup> Mission de l'Organisation des Nations Unies au RD Congo (United Nations Mission in Congo)

In the area of humanitarian intervention, MONUC was to facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers, as it deemed within its capabilities and under acceptable security conditions, in close cooperation with other UN agencies, related organizations and non-governmental organizations.<sup>143</sup>

Acting under chapter VII of the Charter of the United Nations, the Security Council also decided that MONUC may take additional measures, in the areas of deployment of its infantry battalions and as it deemed within its capabilities, to protect United Nations and co-located Joint Military Commission personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.

The current mandate of MONUC is mostly provided for by Resolution 1493, dated 28 July 2003, whereby the Security Council, acting under the Chapter VII of the United Nations Charter, authorized the increase of MONUC's military strength to 10,800 soldiers. According to this resolution the Security Council: requested MONUC, which convenes the International Committee in support of the Transition, to coordinate all the activities of the United Nations system in the Democratic Republic of the Congo and to facilitate coordination with other

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<sup>143</sup> MONUC's Mandate & Resolutions, [www.monuc.org/MandateEn.aspx](http://www.monuc.org/MandateEn.aspx)

national and international participants in support of the transition; it further encouraged MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance during the transition period for the reform of security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections throughout the territory of the Democratic Republic of the Congo. The Security Council further by this resolution, authorized MONUC to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Program (MDRP), pending the establishment of a national DDR program in coordination with the United Nations Development Program and other concerned agencies. For effective implementation of its mandate the Security Council authorized MONUC to take the necessary measures, in the areas of deployment of its armed units, to protect United Nations personnel, facilities, installations and equipment; to ensure the security and freedom of movement of its personnel, in particular those engaged in missions of observation, verification and DDRRR<sup>144</sup>; to protect civilians and humanitarian workers under imminent threat of physical violence; and to contribute to the improvement of the security conditions in which humanitarian assistance is provided. MONUC's mandate has been renewed from time to time

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<sup>144</sup> Acronym for Disarmament, Demobilization, Repatriation, Resettlement and Reintegration.

with the current one expiring on 1<sup>st</sup> October, 2005.<sup>145</sup> As will be discussed in the next chapter despite these renewals and extensions of mandates, the effectiveness of MONUC in stemming humanitarian crisis in DRC remains doubtful if not controversial.

#### 4.3 PRETORIA ACCORD JULY 2002

On 30<sup>th</sup> July 2002 Rwanda and the Democratic Republic of Congo, after successful mediation by South African Deputy President Jacob Nzo reached a peace deal after five days of talks in South Africa. The talks centred on two issues. One was the withdrawal of the estimated 20,000 Rwandan troops in the DRC. The other was the rounding up and dismantling of the ex-Rwandan soldiers (AFDLR) and Hutu extremist militia known as *Interahamwe*, who took part in Rwanda's 1994 genocide and continue to operate from Eastern Congo. Rwanda had an estimated 20,000 troops in the DRC and had refused to withdraw them until the *Interahamwe* militiamen are dealt with. Under the Accord however, Rwanda and Uganda agreed to withdraw their forces from DRC, in return for a promise by the Kinshasa government to apprehend, disarm, and repatriate Hutu militiamen menacing their borders<sup>146</sup>.

The text of the Accord expressly stated that the DRC's government did not wish to have the armed groups present in its territory and further that it does not want

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<sup>145</sup> The Security Council's resolution 1592 dated 30 March 2005 extended the mandate of MONUC until 1 October 2005 [www.monuc.org/MandateFin.aspx](http://www.monuc.org/MandateFin.aspx)

<sup>146</sup> *ibid*

its territory to be used as a base for attacks against its neighbouring countries. The Accord further provided for the setting up of a Third Party Verification Mechanism consisting of South Africa and UN representatives (MONUC), tasked to monitor its application.<sup>147</sup> As already noted in the previous chapter and will be demonstrated in the next, troop withdrawal from the DRC in as much as has remained elusive and piecemeal appears not to have had any significant impact on the conflict.

#### 4.4 SEPTEMBER 2002 - LUANDA AGREEMENT [L'ACCORD DE LUANDA]

This agreement was entered into in September between the DRC and Uganda under the auspices of the Angolan government. Among various undertakings made was for Uganda to withdraw its troops completely from the DRC by the end of 2002, except for some border patrols. The volatile situation in Ituri was recognised as needing special attention before Uganda pulled out. The Agreement therefore provided for the establishment of the Joint Pacification Committee (JPC) consisting of representatives of parties, political, military economic and social forces and local communities to get together to make peace in the region, with support from MONUC. An annex to the accord further stipulated that the Kinshasa government was expected to take control of Ituri, at least in part, before 50 days had elapsed from the signing of the agreement on 6<sup>th</sup> September and Uganda's pull-out was expected thereafter in 100 days. All these

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<sup>147</sup> Clauses 8.1-8.7. This report can be viewed at Institute for Security Studies website on the following web address [www.iss.co.za/AF/profiles/DRCongo/ptaagmt0202.htm](http://www.iss.co.za/AF/profiles/DRCongo/ptaagmt0202.htm)



deadlines have been missed. Further, Doubts have been raised by some observers of the sincerity of the Uganda's professed desire to pull out.<sup>148</sup> The reluctance by Uganda to pull out although has been officially been stated as born out of concern over attacks by ADF, the real reason is exploitation and plunder of Congolese resources.

#### 4.5 INTER-CONGOLESE DIALOGUE

According to article 19 of the Lusaka Ceasefire Agreement, on its coming to force the Government of the DRC, the armed opposition, namely the RCD and MLC as well as the unarmed opposition were to enter into an open national dialogue. These inter-Congolese political negotiations involving *les forces vives de la Nation* (Civil Society) were intended by the Lusaka agreement to lead to a new political dispensation and national reconciliation in the DRC. They were to be under the aegis of a neutral facilitator to be agreed upon by the Congolese parties.<sup>149</sup> Although the Lusaka Peace Agreement is not clear on the exact structures and modalities for such negotiations, it binds the parties to agree on among other things a timetable and rule of procedure; the formation of a mechanism to establish a new Congolese National Army after the conclusion of the Inter-

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<sup>148</sup> IRIN Web Special on Ituri in Eastern DRC, Saturday, 06 July, 2005 Integrated Regional Information Networks (IRIN) is part of the UN Office for the Coordination of Humanitarian Affairs (OCHA)  
[www.irinnews.org/web/specials/Ituri/srep5.asp](http://www.irinnews.org/web/specials/Ituri/srep5.asp)

<sup>149</sup> Supra n.103

Congolese Dialogue; and a new political dispensation, including a constitution, to govern the country after elections.<sup>150</sup>

The Inter-Congolese Dialogue itself was planned to last a mere 45 days, and new institutions were to be established immediately thereafter.<sup>151</sup> The meeting of these targets set by the agreement was obviously a tall order as many hurdles had to be crossed before the Gaberone preparatory meeting, most of which were created by Laurent Kabila, who signed the Lusaka agreement under extreme military pressure. For example it took five months before former Botswana President, Sir Ketumile Masire, was approved as facilitator. For several months, Laurent Kabila, who sought to obstruct and delay movement on the Inter-Congolese Dialogue, denied him facilities or even common courtesy. He refused all co-operations with Masire, requesting the appointment of a new facilitator and even seeking to launch his own national dialogue to circumvent the Lusaka agreement. Kabila's behaviour was intended to buy him time to consolidate his power and derail and design to share power which was the ultimate aim of Inter-Congolese Dialogue. As discussed earlier, the helplessness of Sir Ketumile in the face of these delaying tactics by Kabila illustrate the constraints abound whenever mediator facilitator model is used. All of this however changed with Joseph Kabila's accession to power following assassination of his father Laurent Kabila. Under the new leadership Masire was able to strengthen his office in Kinshasa, headed by Mr Hacem Ould Lebatt, former minister of foreign affairs of

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<sup>150</sup> Articles 19 & 20 of Lusaka Peace Agreement

<sup>151</sup> Clause 2-5 of annex to chapter 5 of the Agreement.

Mauritania, and momentum was restored to the Inter-Congolese Dialogue.<sup>152</sup> Ketumile became able to broker pre-dialogue talks in Gaborone from 20-24 August 2001, where decisions were reached over the place, the date and agenda of the Dialogue proper, as well as the rules and regulations underpinning the negotiations. Addis-Ababa was selected as the place and date set for 15<sup>th</sup> October, 2001. However the talks which lasted from 15-21 October were a total failure. Disagreement was rife, and the only matter parties were able to agree on was the postponement of the talks to unspecified date in South Africa. The government delegation complaining bitterly about the method of facilitation, stormed out of the meeting before it officially ended. According to the ICG, while the Gaborone preparatory talks had been successful, the delegates were clearly more pre-occupied with putting on a show of goodwill towards the Dialogue for the benefit of the Congolese population and the international community while in actual fact both the government, the rebels, political opposition and civil society groups pursued their own strategies for consolidating their gains and winning or at least, sharing political power.<sup>153</sup> For instance, for Joseph Kabila the Addis meeting came too early. Since he came to power his entire strategy had been to secure legitimacy to his rule by portraying himself as a credible and responsible head of state that was destined to assume the unchallenged role of transitional president. To achieve this, he had to make key changes to the terms

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<sup>152</sup> *Supra* n.103

<sup>153</sup> International Crisis Group, 'The Inter-Congolese Dialogue: Political Negotiation or Game of Bluff?' p2 *ICG Africa Report* No. 37, 16<sup>th</sup> November, 2001

of in the Inter-Congolese Dialogue, particularly to article 5, which stipulated that, the Head of State must stand on equal footing with rebel forces.<sup>154</sup> To the armed opposition, the Lusaka Agreement placed them at the same level as the government and pursuant to this, MLC rebels proposed a presidency that revolved every three years; the seat of prime minister be given to unarmed political opposition and that the presidency of the parliament be allotted to the *Forces vives de la nation* (civil Society). The government immediately rejected the proposal, stating that the post of head of state was neither vacant nor negotiable. To which the MLC responded by stating that short of their proposal they would not be interested in attending another meeting, while RCD expressed its intention to continue with the war.

In the unarmed opposition side there were even bigger problems. The existence of several hundred Congolese political parties and the general confusion over the legal status made their selection even more difficult. The parties had to be “opposition” parties but opposed to whom? The government or the rebellion? This question made it impossible to leave decision-making to hundreds of parties who were clearly susceptible to manipulation by the warring elements<sup>155</sup>

From conflict analysis perspective, these delaying tactics are familiar to negotiation theory which recognises that a party may enter into particular

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<sup>154</sup> Swart & Solomon op. cit.

<sup>155</sup> ICG supra n.153 p4-5

negotiations with objectives other than achieving the best possible compromise or indeed any compromise at all. Parties frequently engage in sham and purposeful negotiations that include largely symbolic elements which sometimes assume a greater importance than actually reaching an agreement.<sup>156</sup> Negotiations are thus employed to delay the adversary's vigorous prosecution of the conflict. Proposals are in this regard put forward, not in the hope that the adversary will accept them, but to postpone some coercive action<sup>157</sup>. According to the ICG, the real aim of the Dialogue in 1999 was to weaken Laurent Kabila and boost political legitimacy of rebel movements acting as key negotiators of the Kinshasa government to find a solution to the conflict.<sup>158</sup>

In spite of these pre-negotiation skirmishes and cajoling, the inter-Congolese Dialogue finally took off February, 2002 in Sun City South Africa when the government of DRC declared a unilateral ceasefire for fear that clashes between its forces and the Rwandan army would have jeopardised the progress of the Dialogue.<sup>159</sup>

#### 4.6 APRIL 2003 - SUN CITY AGREEMENT

This agreement was preceded by an earlier one in April, 2002 which brought together representatives of government, rebel factions, tribal militia, opposition parties and civil society to discuss the creation of an interim government and the

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<sup>156</sup> Swart & Solomon op. cit.p23-24

<sup>157</sup> *ibid*

<sup>158</sup> C.R Mitchell, *The Structure of International Conflict*, (London: Macmillan Press Limited, 1981) p238

<sup>159</sup> Kabila, rebels in surprise Congo peace talks', *SAPA-AFP* 14 January 2002, [www.icol.co.za](http://www.icol.co.za)

restoration of peace. However, the parties could not come to a consensus over the composition of a transitional government and the talks ended with only partial agreement in April, 2002 between Jean-Pierre Bemba's MLC and the government of Joseph Kabila.<sup>160</sup> This earlier accord was however outside the framework of the Inter- Congolese Dialogue (ICD). Named the Political Agreement on Consensual Management of the Transition in DRC (PACMT), the earlier agreement united Kabila and Bemba and basically consolidated their control of the transitional authority. It entailed the awarding of the post of Prime Minister to Bemba. Most notably the accord heralded the end of the anti-Kabila coalition and confirmed the isolation of RCD and its ally Rwanda. With its existence threatened RCD responded by forming an alliance with the Congolese opposition party UDPS led by Etienne Tshisekedi and threatened to renew hostilities.<sup>161</sup> This led to the urgent convening of Sun City II which yielded the Final Act.

Under the terms of the Final Act, President Joseph Kabila keeps his post for a term of two years with a possible extension to three, while the rebels and the civilian opposition get vice-presidential posts in a two-year transitional authority. The president is given the power to nominate senior officials, and has the power to declare war with the agreement of the cabinet and parliament. Four vice presidents will be drawn from the government, the Ugandan-backed

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<sup>160</sup> Storm clouds over Sun City: The Urgent need to recast the Congolese peace process' *International Crisis Group*, [www.crisisgroup.org/home/index.cfm?id=2065&d=1&m=1](http://www.crisisgroup.org/home/index.cfm?id=2065&d=1&m=1)

<sup>161</sup> Ibid

Congolese Liberation Movement (MLC), the Rwandan-backed Congolese Rally for Democracy (RCD) and the political opposition. The agreement further splits thirty-six ministries among the government, rebels, the Mai-Mai and the political opposition and civil society. Interior and finance go to the government, defense and state enterprises to the RCD, foreign affairs and budget to the MLC.<sup>162</sup>

The speakership of the National Assembly, which was a major sticky point, goes to the MLC, which argued that it needed it for a fair balance of power. The National Assembly is to have 500 members and the Senate 120 members, designated by the signatories. The first president of the Supreme Court, the attorney general and the military auditor general will be appointed immediately under a balancing mechanism to be agreed by the signatories.

Signatories further renewed their commitments to cease hostilities and to embark on the process of setting up a restructured and integrated army as was agreed during first Sun City Agreement the previous year. This new army is to include fighters of the MLC and RCD, rebel splinter groups, and the pro-government Mai-Mai militia<sup>163</sup>. The agreement provides for the holding of election upon the expiry of the transition period and mandates the civil society representatives to head five independent institutions to be set up in support of democracy these

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<sup>162</sup> Full text of the Sun City Final Act is available online at [www.reliefweb.int/library/documents/2003/ic-drc-2apr.pdf](http://www.reliefweb.int/library/documents/2003/ic-drc-2apr.pdf)

<sup>163</sup> Supra n112

are: an independent electoral commission; a human rights monitoring body; an ethics commission; a high authority on the media; and a Truth and Reconciliation Commission.

Under the Sun City Final Act, the President was mandated to promulgate the Transitional Constitution which was rolled out at the same time with the Final Act. Pursuant to this, on 4 April 2003 Joseph Kabila promulgated the Transitional Constitution and was formally sworn in as President for the transitional period on 7 April and the Chairman of the National Follow-Up Commission (*Commission de Suivi*) composed of representatives of all the components and entities of the Inter-Congolese Dialogue. He thereafter convened in Kinshasa its first meeting to make the necessary preparations for the installation of the new transitional institutions<sup>164</sup>.

On 30 June 2003, President Kabila signed a decree appointing the Ministers and Vice Ministers of the Transitional Government, who were chosen by the Inter-Congolese Dialogue components under the auspices of the Follow-up Commission, in accordance with the All-Inclusive Agreement. These included Mr. Abdoulaye Yerodia Ndombasi (former Government component), Mr. Azarias Ruberwa (RCD), Mr. Jean-Pierre Bemba (MLC) and Mr. Arthur Z'Ahidi Ngoma (unarmed political opposition) who were sworn in as Vice-Presidents of

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<sup>164</sup> United Nations, " DRG Background, 25<sup>th</sup> February, 2004, [www.un.org/Depts/dpa/prev\\_dip/africa/dem\\_rep\\_congo/fr\\_dem\\_rep\\_congo\\_background\\_2.htm](http://www.un.org/Depts/dpa/prev_dip/africa/dem_rep_congo/fr_dem_rep_congo_background_2.htm)



the Transitional Government<sup>165</sup>. On 24 July, the first meeting of the Council of Ministers, under the chairmanship of President Kabila and with the participation of all the Vice-Presidents, Ministers and Vice-Ministers, was held in Kinshasa where it has been meeting on a regular basis.

The Facilitator of the Inter-Congolese Dialogue on 1<sup>st</sup> August, 2003 formally handed over to President Kabila the final report of the dialogue and its 36 resolutions, which are to form the basis of the Transitional Government's activities during the two-year period leading to elections.

The 500-member National Assembly and the 120-member Senate were finally inaugurated in Kinshasa on 22 August 2003, with Mr. Olivier Kamitatu (MLC) leading the National Assembly and Mr. Marini Bodho (civil society) leading the Senate. The National Assembly began its first ordinary session on 6<sup>th</sup> October by adopting the work programme of the Transitional Government on 18<sup>th</sup> December 2003.<sup>166</sup>

#### 4.7 MEDIATION EFFORTS BY THE AFRICAN UNION

Perhaps due to its recent inauguration, the African Union has not as an institution independently engaged in stemming the humanitarian crisis in DRC. It has however co-operated with the UN and supported regional efforts in

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<sup>165</sup> *ibid*

<sup>166</sup> *ibid*

seeking a solution to the conflict.<sup>167</sup> By the decision of the Summit of Lusaka of July 2001, a Peace and Security Council (PSC) with the mandate to promote peace, security and stability in the Continent was established. Under article 4[j] member states have the power to intervene in a member state in the event of grave circumstances namely war crimes, genocide and crimes against humanity in accordance with article 4[h] of the Constitutive Act. Though still under ratification process, acting on it, the PSC has occasionally issued communiqués condemning the ongoing conflict in DRC and urging the combatants to adhere to negotiated peace agreements. For example at its 12<sup>th</sup> Ministerial level meeting in Addis Ababa the PSC expressed concern at the continued difficulties preventing the normal functioning of the transitional institutions and the delaying of the implementation of the comprehensive and all inclusive agreement, as well as the deterioration of relations between the DRC and Rwanda.

The PSC has invited the chairperson of the commission, in close consultation with the United Nations, to take the necessary measures to facilitate the establishment of the Joint DRC/Rwanda Verification mechanism. The PSC further invited the chairperson of the Commission to initiate in consultations with the UN Secretary-General, ways and means of finding a lasting solution to

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<sup>167</sup> The African Union was formally inaugurated in 2002 at the Durban Summit where it convened its 1st Assembly of the Heads of States.

the problem of the negative forces particularly the ex-FAR and *Interahamwe*<sup>168</sup>. Further with the With the threat of renewed regional conflict in the Democratic Republic of the Congo (DRC), the African Union's (AU's) Peace and Security Council announced in July, 2005 that it would seek a greater role in helping to disarm Rwandan armed groups based in eastern DRC.<sup>169</sup> It is important to note that the establishment of Africa Union and the constitution of the PSC under article 4]] of the constitutive Act by the Lusaka Summit is a reflection of the global trend away from treating security issues as the sole preserve of governments, in favour of ideas of common security based upon an international or cosmopolitan community of citizens, bound together by multiple ties of common interest and commitment to basic values.<sup>170</sup> For decades, the study of international relations and security was dominated by the realist thinking that identified communities as existing only at the national level or below, with there being no such thing as an 'international community' in anything other than the utopian dreams of idealist thinkers.<sup>171</sup> The precursor to African Union, the OAU and its member states present a classical example of this realist thought. Chapter III of the Charter stipulated non-interference in the affairs of member states and sanctified the integrity of their territories. The organization operated on the Cold War doctrine of African international politics such as the doctrines of non-

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<sup>168</sup> *ibid*

<sup>169</sup> 'Great Lakes: African Union may help disarm militias', IRINnews.org, UN Office for the Coordination of Humanitarian Affairs, Wednesday 13 July 2005 [www.irinnews.org](http://www.irinnews.org)

<sup>170</sup> InterAfrica Group/Justice Africa, *Peace and Security Dimensions of the African Union*, Background Paper for African Development Forum (ADF III) Economic Commission for Africa [www.uneca.org/adfiii/docs/p&sbbackground.PDF](http://www.uneca.org/adfiii/docs/p&sbbackground.PDF)

<sup>171</sup> *ibid*

interference, *uti possidetis juris*<sup>172</sup>, and respect for the sovereign equality of states<sup>173</sup>.

In concluding this chapter it is necessary to observe that although the mediation efforts by regional bodies and individuals have not to date yielded peace to DRC, they have to a significant extent set up structures and initiated processes aimed at finding a lasting solution to the conflict. These structures and processes will be adverted to in the final chapter where ways of nurturing and empowering them will be discussed. It is the aim of the next chapter to take a critical analysis of the intervention efforts discussed in this chapter and highlight the problems and assumptions which may be responsible for their lack impact.

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<sup>172</sup> This principle requires respect for boundaries delineated by colonial authorities as at independence

<sup>173</sup> Makumi Mwangi, 'The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practises', International Relations Division of Arts and Science, United States International University- Africa

## CHAPTER FIVE

### 5.0 CRITICAL ANALYSIS OF THE INTERVENTION EFFORTS IN DRC

In order to conceptualise and make a critical analysis of the humanitarian responses outlined in the previous chapter, it is important to revisit once more the conflict paradigms discussed in chapter one. These paradigms as will be demonstrated form the building blocks around which the inefficiencies yielded by the humanitarian intervention attempts in resolving the DRC conflict can be explained.

As was stated in chapter one, this study adopts the conflict research paradigm as its framework of analysis of humanitarian intervention efforts in DRC. The conflict research approach as has been noted in this study is embedded in the World Society paradigm which treats the role of states in international relations as an empirical question rather than as being axiomatic. That is to say, world society paradigm unlike realist paradigm which is state-centric focuses on the transaction rather than preset belief systems. It thus holds that, states may on significant occasions be the most important actors but this is not necessarily so. Nor are state boundaries necessarily the fundamental dividing lines between intra-state consensus and inter-state anarchy.<sup>174</sup> According to this approach a

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<sup>174</sup> A.J.R Groom, 'Paradigms in Conflict: The Strategist, the Conflict Researcher and the Peace Researcher', in *Conflict: Readings in Management and Resolution*, J. Burton & Frank Dukes (eds) (New York: St. Martin's Press, 1990) p74

state can be a nodal point, an actor, a potential gate-keeper, but when and the extent to which it is, must be an empirical question and cannot be assumed. To analyse a phenomenon therefore, it may be necessary to include the activities of actors as widely disparate as a particular individual and the UN Security Council.<sup>175</sup> It is incumbent on the conflict researcher to identify who the actors in a conflict are; the issues about which they are in conflict; whether the conflict has any connection with other conflicts in its locale (systemic connection) and finally if the conflict is ripe for settlement. Of these four vital aspects, the latter two may for the sake of clarity require further elaboration.

Classically, conflicts were perceived as either internal or international. This dichotomy was informed by realist doctrine which regarded states as the only actors in the international system. With emergence of technology which saw improvement in communication, information technology and transport this dichotomy has become of less significance if not obsolete. The term '*intermesticity*' which is a marriage of domestic and international life has come into use and explains the rapid blurring of domestic and international politics<sup>176</sup>. These developments are relevant to analysis of conflicts. For instance the conflicts revolving around ethnicity and borders inherited at independence have been transformed from what were originally perceived as internal conflicts to

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<sup>175</sup> *ibid*

<sup>176</sup> M. Mwangi, *Conflict & Peace Management in the Horn of Africa: Theoretical and Practical Perspectives*, November, 1996 (revised 1998), *Institute of Diplomacy & International Studies, University of Nairobi*. [www.ploughshares.ca/content/BUILD%20PEACE/MwaginlRG96.html](http://www.ploughshares.ca/content/BUILD%20PEACE/MwaginlRG96.html)

international conflicts. This has what has become known as internationalisation of conflicts. This means, conflicts that were previously regarded as internal become endowed with many international characteristics which render them no longer purely internal.<sup>177</sup>

A conflict may be said to be ripe for settlement when the aims which originally caused the conflict diminish in intensity and the worth of whatever was to be gained or defended is reconsidered against its costs in blood, treasure and agony and found to have petered out.<sup>178</sup> For this reason Zartman argues that conflicts cannot be negotiated just any time; the context must lend itself to a search for a bilateral solution. Normally combatants need to find themselves in a mutually hurting stalemate where the hopes of victory of each side are blocked by the other and that blockage hurts.<sup>179</sup> At this point parties will exhibit noticeable changes, such as being ready to accept formal ceasefires or unilateral restraints on further coercion.<sup>180</sup>

#### 5.1 LUSAKA PEACE AGREEMENT OF 1999 AND RELATED REGIONAL INTERVENTION EFFORTS

In the foregoing context, the Lusaka Peace Accord of July, 1999 and other regional intervention efforts discussed in the previous chapter to begin with, have floundered for they appear to have omitted to take cognisance of the

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<sup>177</sup> *ibid*

<sup>178</sup> Edward N. Luttwak, 'The Curse of Inconclusive Intervention' in A Chester Crocker, O. Hampson and P. Aall eds. *Turbulent Peace, The Challenges of Managing International Conflicts*, Washington, United States Institute of Peace, 1996 p.266

<sup>179</sup> I. William Zartman., *Ripe for resolution: Conflicts and intervention in Africa*, 1989 New York: Oxford University Press

<sup>180</sup> C.R Mitchell, *The Structure of International Conflict*, ( London: Macmillan Press Limited, 1981) p.165

systemic connection of the DRC conflict to the larger Great Lakes Conflict System<sup>181</sup>. For instance the arrangements precursor to the Lusaka accord such as the Pretoria and Mauritius Summits of SADC leaders and the Sirte ceasefire agreement between Kabila and Museveni brokered by Muammar Gaddafi proceeded from the traditional state-centric approach to conflicts. This approach is underpinned by the realist tradition which regards states as the only actors in the international system. These arrangements, particularly the Pretoria Summit of August, 1998 recognised at the onset, Kabila's government without taking due regard whether its legitimacy was under contest as was the case when the Rwanda and Uganda-led war broke out.

Swart and Solomon<sup>182</sup> argue that the main reason Kabila had been forced to negotiate was the weakening commitment by his allies to continuing the war, and the growing pressure on his regime. According to the ICG, critical observers in Kinshasa regarded Kabila not even as a dictator as he had not been in control of his country at any moment since he had taken over. In fact according to the ICG Kabila was a ruler by default and one who preferred sharing the country to sharing power<sup>183</sup>. He had proved himself unable to build a sustainable regime in

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<sup>181</sup> Great Lakes Conflict System refers to both intra-state and inter-state conflicts involving mainly Uganda, Rwanda, Burundi and DRC.

<sup>182</sup> Gerrie Swart & Hussein Solomon, 'A critical assessment of whether the Lusaka Ceasefire Agreement has been a success', *Centre for International Political Studies (CIPS)* p12 et seq.

<http://www.up.ac.za/academic/cips/Publications/IDRC%20SAIIA%20Report%202004%20FINAL%20COPY.pdf>

<sup>183</sup> *Supra* n71



Kinshasa.<sup>184</sup> The involvement of the state-actors in the Great Lakes Conflict System to the exclusion of non-state actors such as the Congolese rebel forces, unarmed political opposition, the civil society, the ex-FAR and *Interahamwe* and the ADF<sup>185</sup> merely addressed the surface issues and processes in the conflict leaving subsurface issues such as the legitimacy of Kabila's government, the Hutu- Tutsi question in Rwanda and Burundi and its impact in the Great Lakes Region, and the illicit war economy discussed in chapter 3 and so on unresolved.

Viewed from conflict research perspective, it is impossible to attain any meaningful intervention in DRC conflict by engaging state-level actors only. This is so because whereas the authorities in Rwanda and Burundi perceive ex-FAR, *Interahamwe* and *Conseil National pour la defense de la democratie-Forces de defense de la democratie* (CNND- FDD)<sup>186</sup> respectively as war criminals or genocidaires who must either be exterminated or forcefully disarmed and repatriated to face trial for crimes against humanity, they see themselves as a communities who have been unfairly uprooted from their ancestral land and forced into exile. The Tutsi-led government of Rwanda in fact regard ex-Far and *Interahamwe*, who are predominantly Hutu, as savage criminals with whom there

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<sup>184</sup> 'Storm clouds over Sun City: The Urgent need to recast the Congolese peace process', *International Crisis Group Africa Report, No. 44*, 14 May 2002, p21

<sup>185</sup> The Alliance for Democratic Forces. This a rebel group which emerged in western Uganda in late 1996 and is accused by Ugandan Government of using bases in Zaire to attacked Uganda.

<sup>186</sup> Forces for the Defence of Democracy, one of the major rebel forces fighting against Burundi government and are operating from DRC

can be no compromise. The authorities therefore remain determined to neutralise them and destroy the threat they pose.<sup>187</sup>

Kaufman observes that ethnic civil war creates a security dilemma which makes it impossible for the groups to trust each other. As ethnic conflicts escalate, populations come increasingly to hold enemy image of the other group<sup>188</sup>. They thus frequently do not want to agree to compromise and when they agree, they frequently see the agreements as temporary concession which they plan to violate as soon as conditions permit<sup>189</sup>. The relationship between the Hutu and the Tutsis in both Rwanda and Burundi exhibit to a considerable degree, the foregoing elements as demonstrated by the various refugee flows triggered by ethnic massacres discussed in chapter 3. In this context, it can be argued with some measure of certainty that the requirement by the Lusaka and Pretoria Agreements and arrangements prior to and subsequent to them, that these ex-Far and *Interahamwe* disarm and return to Rwanda in absence of any settlement or compromise is chimerical. This perhaps explains why the carrying out of this exercise has proved a daunting task. Considering that this conflict has been internationalised, it is apt as the ICG recommends that countries that are in war in the DRC ought to be pressurised by the international community to invest

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<sup>187</sup> Supra n.71

<sup>188</sup> Chaim Kaufmann, "Possible and Impossible Solutions to Ethnic Wars," *International Security* vol.20 no.4, 1996

<sup>189</sup> Stuart J. Kaufman, "Peace-Building and Conflict Resolution, Department of Political Science, University of Kentucky, Conference Paper for "Debating the Kaufmann Hypothesis" Rutgers University, New Brunswick, NJ, October 14, 2000  
[www.cgsd.rutgers.edu/Document/skaufman-full.pdf](http://www.cgsd.rutgers.edu/Document/skaufman-full.pdf)

more of their energies in domestic political reconciliation efforts that in the end offer the only means to convince the rebel fighters to return home.<sup>190</sup>

Even though the Lusaka ceasefire agreement identified the questions of regional security and political reconstruction that must be confronted for peace to be achieved, it laid out a road map to peace which was difficult to follow<sup>191</sup>. Further the ceasefire agreement did not define who should take leadership in overseeing its implementation.<sup>192</sup> To begin with the agreement presented an unrealistically short timetable for its implementation. The total number of days stipulated for the full implementation from the date of signature was 270 days.<sup>193</sup> Analysts such as H. Solomon and K Mngibisa of ISS criticised as short, the period (30 days) provided for the disarmament of the various groups, considering that these groups had operated very clandestinely and would not willingly hand over their weapons.<sup>194</sup>

The Joint Military Council (JMC) which was established under the agreement also marked an ambitious attempt by the SADC countries to seize the leadership role in the region's peace process. The problem with the JMC however, was that it was composed of the representatives of the belligerents who still held each other in suspicion.

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<sup>190</sup> 'Scramble For The Congo, Anatomy of an Ugly War', *ICG Africa Report* No. 26, 20 December, 2000 p. V

<sup>191</sup> Article II raises concern for Security in DRC and neighbouring countries

<sup>192</sup> *Ibid* p70

<sup>193</sup> See Chapter 3 of the Agreement

<sup>194</sup> *Supra* n.136

According to Mitchell, the problem for those committed to the peace process is one of persuading the parties of the need to make a compromise settlement, while redefining defeat in such a way that it appears a partial victory.<sup>195</sup> Often this proves impossible. The victors dislike dealing with governments against whom they have been fighting<sup>196</sup> In this context the fact that Kabila was facing imminent defeat by rebel forces thanks to the support by Rwanda and Uganda and the fact that his rescue came from intervention by Angola, Zimbabwe and Namibia who were anxious to exit from the war, portrays the Lusaka Peace Agreement as a hurriedly concluded accord. It came at time when the stakes in the war were tilted in favour of the rebels. Gerrie Swart and Hussein Solomon<sup>197</sup> contend that the agreement was imposed, even forced upon the signatories, metaphorically at gunpoint, rather than being offered as a symbolic "olive branch." To ask their leaders to help in disarming them without achieving their ultimate aim of going to war was an act of betrayal especially in the light of the fact that victory was not too remote a possibility.

The manner in which the Lusaka agreement was reached contributes significantly to its failure because it largely froze the armies in their positions,

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<sup>195</sup> Mitchell *op.cit* p184

<sup>196</sup> *Ibid* p190

<sup>197</sup> Gerrie Swart & Hussein Solomon *op.cit*

but did not stop the fighting.<sup>198</sup> It created far too many loopholes and allowed for an almost self-imposed escape clause whenever a critical juncture reached and the parties, refusing to bow under intense pressure from their sworn enemies, rather opted for confrontation than reconciliation. For all practical purposes the agreement immediately after its signing was drained of substantial amount of its content and was treated merely as a reference document when the parties found themselves with very few other options<sup>199</sup>

## 5.2 UNITED NATIONS (MONUC) AND THE AFRICAN UNION.

As discussed in the previous chapter, MONUC's current mandate is provided for by Resolution 1493, dated 28 July 2003, by which the Security Council, acting under the Chapter VII of the United Nations Charter has authorized the increase of MONUC's military strength to 10,800 soldiers. The resolution mandates MONUC as the convenor of the International Committee in support of the Transition, to coordinate all the activities of the United Nations system in the Democratic Republic of the Congo and to facilitate coordination with other national and international participants in support of the transition. MONUC is to work in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance during the transition period for the reform of security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections throughout the territory of

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<sup>198</sup> Gerrie Swart & Hussein Solomon op.cit

<sup>199</sup> Supra n71

the Democratic Republic of the Congo. The Security Council further by this resolution, authorized MONUC to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Program (MDRP), pending the establishment of a national DDR program in coordination with the United Nations Development Program and other concerned agencies. For effective implementation of its mandate the Security Council authorized MONUC to take the necessary measures, in the areas of deployment of its armed units, to protect United Nations personnel, facilities, installations and equipment; to ensure the security and freedom of movement of its personnel, in particular those engaged in missions of observation, verification and DDRRR<sup>200</sup>; to protect civilians and humanitarian workers under imminent threat of physical violence; and to contribute to the improvement of the security conditions in which humanitarian assistance is provided. The tasks assigned to MONUC by their very nature are vast and complex considering that it has only 10,800 soldiers in a country the size of Western Europe; a country with poor or non-functional infrastructure and non-existent road network. Apart from its endemic shortage of well trained soldiers, MONUC has since its inception been hampered by an unwieldy bureaucracy and organisational problems. According to the ICG, whereas the media and the

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<sup>200</sup> Acronym for Disarmament, Demobilization, Repatriation, Resettlement and Reintegration.

Congolese people see MONUC's inefficiency as a problem of mandate and resources, a more fundamental impediment has been lack of coherent strategy and vision to implement the mission.<sup>201</sup> As a result MONUC has been unable to live up to its mandate in several areas, most notably the protection of civilians, support of to the national army in demobilising the FDLR and enforcement of the arms embargo.<sup>202</sup> For instance the massacre in May 2002 of 160 civilians in Kisangani just kilometres from a camp of 1,000 MONUC soldiers portrayed the mission in a bad light<sup>203</sup>. Its failure to protect civilians coupled with the recent scandal on sexual abuse has severely dented its standing among the Congolese people. The UN leadership both in Kinshasa and New York appear to adopt an overly cautious approach to peacekeeping, forcing MONUC to react hastily to contingencies rather than prevent them. According to the ICG, MONUC's political leadership in Kinshasa and Department of Peace Keeping Operations in New York have instructed the forces to stay out what they consider internal affairs.<sup>204</sup> As the UN's spokesman, Fred Eckhard, explained to BBC, "It's for the [Congolese] parties to sort out. When war breaks out, the role of peacekeepers ends."<sup>205</sup> This lack of strategy and coherence on the part of MONUC may be explained in the context of the general attitude by the Security Council and more particularly its permanent members, towards conflicts in Africa especially in the Post-Cold War period. These countries appear to lean more towards constructive

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<sup>201</sup> 'The Congo's Transition Is Failing: Crisis in the Kivus', *ICG Africa Report* No. 91, 30<sup>th</sup> March, 2005

<sup>202</sup> *ibid*

<sup>203</sup> 'War Crimes in Kisangani', *Human Rights Watch*, August, 2002

<sup>204</sup> ICG *supra* n202

<sup>205</sup> Susana Price, "Peacekeepers powerless in DR Congo" *BBC online*, 3 June, 2004.

disengagement. That is to say, they are rapidly becoming unwilling to directly involve in African conflicts.

The end of the Cold War in the early 1990s marked the beginning of a new phase in the African security landscape marked by upsurge in intrastate conflicts. The global geo-political and strategic relevance of the continent has become gradually yet markedly diminished<sup>206</sup>. The superpower race to win political, ideological and strategic friends and allies is virtually over; similarly, there is a termination of the various forms of cold war defence alliances, military and technical assistance programmes. In the emerging configuration of interests, actors, and agendas, therefore, the continent's intrinsic value as ideological spoils, or an economic or diplomatic asset to major powers seems to be increasingly inconsequential<sup>207</sup>. In this context, the Security Council has gradually developed not only lacklustre response to Africa's complex emergencies but, most importantly, individual major powers - particularly the United States - have become reluctant to get embroiled in large-scale overseas interventions perceived to be of low strategic import. The US experience in Somalia in 1993 marked a turning point in American (and Western) contribution to peacekeeping

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<sup>206</sup> Harbeson, J. and D. Rothchild, "The African State and State System in a Flux" in John W. Harbeson and D. Rothchild (eds). *Africa in World Politics: The African State System in Flux*. 3<sup>rd</sup> Edition. Boulder, Co: Westview Press. 2000:3-22.

<sup>207</sup> Severine Rugumamu, African Peacekeeping and US Africa Relations, *Institute of Development Studies* University of Dar es Salaam, Tanzania



operations especially as regards involvement to African conflicts.<sup>208</sup> This declining interest is graphically demonstrated by the Security Council's increasing use of political criteria to determine which conflicts to respond to and with what resources. The major powers have shown willingness to commit their own troops as well as massive funds to enforcement operations even without the Security Council's authorization in Europe and the Middle East, while refusing to send troops with adequate mandate to end brutal conflicts in Africa<sup>209</sup>. This inclination to intervene more robustly in Europe and the Middle East is driven by the strategic interests such as oil in the Middle East and investment opportunities in newly emergent European states.

Virgil Hawkins<sup>210</sup> argues that the huge escalation of hostilities has not been matched by an escalation of the Security Council's response. To illustrate this she notes that in spite of a number of complaints by the DRC government following the outbreak of the war in 1998, the UN Security Council only discussed, in informal consultations, the issue on a number of occasions, with the president addressing the press following the discussion. It took a full month for the Council to formally express itself on the issue, calling for a ceasefire and the withdrawal of foreign forces in a presidential statement. In its resolution 1291 of 2000, the Council authorised MONUC to "take the necessary action...to protect

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<sup>208</sup> Theo Neethling, *International Peacekeeping Trends: The Significance of African Contributions to African Peacekeeping Requirements*, *Faculty of Military Science, University of Stellenbosch*, South Africa, <http://www.essex.ac.uk/ecpr/events/generalconference/marburg/papers/3/4/Neethling.pdf>

<sup>209</sup> In March, 1999, NATO deployed a force of almost 50,000 well-resourced soldiers in Kosovo without the UN approval.

<sup>210</sup> Hawkins op.cit

United Nations... personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence". In theory, such a mandate is not very far from the right of self-defence of regular peacekeepers<sup>211</sup>. In authorising the deployment of up to 5,537 lightly armed peacekeepers, the resolution provided neither the numbers nor the force structure necessary to even attempt to implement the mandate it provided. The decision showed how little the Council had chosen to learn from the lessons of its own experiences, and was a clear example of the 'do something syndrome'<sup>212</sup>.

In order to disengage with a clear conscience most of these western countries have embarked on multifaceted initiatives intended to build the capacity of African countries in intervening in conflicts in their midst. France, the United Kingdom and the United States have started to offer peacekeeping related training, instruction and equipment to African states. For instance the US is behind the African Crisis Response Initiative (ACRI) which provides peacekeeping training and related non-lethal equipment to countries on a bilateral basis. France conducts sub-regional peacekeeping training exercises, classroom instruction and pre-position heavy equipment in designated locations

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<sup>211</sup> In practice, however, the actual use of "necessary action" to ensure freedom of movement and to protect civilians is more often than not seen as a provocation (to be met with a military response) by the parties to the conflict, particularly when the mandate is adopted under Chapter VII of the UN Charter.

<sup>212</sup> Donald M. Snow uses this term to refer to inappropriate or ineffective responses to conflict situations used to project the image (usually in response to pressure to act) of being seriously involved in conflict resolution, when little intent exists. See Donald M. *Snow Distant Thunder: Patterns of Conflict in the Developing World*, (second edition), Armonk: M. E. Sharpe, 1997, p. 193.

in Africa through its *Reinforcement des africaines de maintien de la paix* (RECAMP) programme. The UK African Peacekeeping Training Support Programme focuses primarily on training and education.<sup>213</sup>

Apart from the larger UN and Western policy dynamics discussed above, within DRC itself, MONUC is often caught in the dilemma of not wanting to alienate the very parties it is trying to get to collaborate in the peace process. For instance, when Colonel Mutebutsi and General Mbuza Mabe<sup>214</sup> clashed, MONUC acted swiftly and cantoned Mutebutsi's troops at several locations in Bukavu while setting up a buffer zone in the town. As General Nkunda<sup>215</sup> approached from Goma, MONUC though was ready to stop Nkunda's advance was advised by the political leadership in Kinshasa and the DPKO's office in New York to stay out of what they considered internal affairs.<sup>216</sup> Analysts at DPKO in New York strongly believe that the RCD-G would withdraw from the transition if MONUC attacked Nkunda or Mutebutsi. Luttwak explains this phenomenon by arguing that it is the absolute priority of UN peacekeeping contingents to avoid casualties to their own personnel. Their unit commanders therefore habitually appease the locally stronger belligerent, accepting its dictates and tolerating its abuses<sup>217</sup>. Luttwak further argues that sometimes the presence of the UN peacekeepers is

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<sup>213</sup> Eric G Berman and Katie E Sains, 'Constructive Disengagement, Western Efforts to Develop African Peacekeeping', *ISS Monograph No.33 December 1998*

<sup>214</sup> Mutebutsi is a commander of the RCD-Goma who had been suspended from the intergrated national army in late February,2004 while General Mbuza Mabe is the commander of newly crated Tenth Military Region.

<sup>215</sup> Laurent Nkunda is one of the RCD-Goma Generals who have refused to join the national integrated army.

<sup>216</sup> ICG op. cit

<sup>217</sup> Luttwak op. cit

worse than useless in protecting civilians. In Srebrenica for instance, the Dutch contingent not only failed to fight to protect civilians in their care as military honour would have required, but also unwittingly assisted in subsequent massacre by helping Bosnian Serbs to separate the men of military age from women and children, almost all of whom were promptly murdered<sup>218</sup>.

Whereas MONUC's mission in DRC is caught in the constructive disengagement policies of the Security Council, the African Union does not appear to have readied itself to take over. The Constitutive Act of the Union, although provides for the formation of the Peace and Security Committee (PSC) which, as already discussed above, has in fact been formed; Africa Union suffers from a host of weaknesses which hamper its intervention efforts in conflicts in member states.

To begin with AU just like its predecessor has a tenuous financial base which hampers its ability to make any progress in promoting peace and security. The failure of majority of member states to pay their dues on time and in full exacerbates the problem. Second, considering that the AU is raised from OAU's funeral pyre, it is unlikely that the predecessor's realist tradition which precluded member states from interfering in internal affairs of one another has totally been eliminated. Article 4 of the Constitutive Act which spells out the principles upon which the AU shall function, displays at subsurface level the realist hangover. Article 4[b] provides for respect of borders existing on

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<sup>218</sup> Luttwak op. cit.

achievement of independence and 4[g] prohibit interference by any member state in the internal affairs of another while 4[j] gives the Union the right to intervene in a member state pursuant to a decision of the assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. One of the difficult questions presented by these three principles is how to reconcile AU's declared wedding to the principle of *uti possidetis juris* as stipulated under article 4[a] and the right of self determination as recognized under international law.<sup>219</sup> It is ironical that most conflicts in Africa and which the AU will require to intervene in, revolve around ethnic boundaries, claims by communities for self-determination and are in most cases internal but subtending to combatants' kinsfolk living in contiguous countries<sup>220</sup> Stephan Maninger argues that allowing ethnic partition on the basis of self-determination can be reconciled with the need to form more viable states. He contends that fears of 'domino effect' and greater violence are largely offset by the existing reality that the 'psychological geography' of Africa's inhabitants bears no relation to the maps of published atlases. According to him areas currently plagued by structural ethnic conflict as a result of arbitrary colonial boundaries, could return to relative stability if

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<sup>219</sup> Under article 1[1] of The United Nations International Convention on Civil and Political Rights, all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

<sup>220</sup> For example the Oromo Liberation Front in Ethiopia which champion the establishment of the larger Oromo Republic which transcends Northern Kenya and Southern Ethiopia; The Southern Sudanese headed by Dr. Garang only agreed to a ceasefire with Khartoum upon promise to secede in six years.

partitioned.<sup>221</sup> It is perhaps as a result of this dilemma among other factors that the AU has not been forceful in its policies towards intervention in DRC.

### 5.3 INTER-CONGOLESE DIALOGUE AND THE TRANSITION TO PEACE

The disagreements and difficulties in the Inter-Congolese Dialogue outlined in the previous chapter display the problem of internal cleavages which more often bedevil attempts to end major conflicts. Cleavages normally appear when problems attendant on the ending of a conflict have to be confronted. Even in cases where no significant intra-party difference existed before the start of the conflict, they are likely to develop when questions of compromise, surrender or the cessation of hostilities arise.<sup>222</sup> The most integrated party will exhibit signs of internal disunity when the need to make a possibly disadvantageous compromise becomes pressing.<sup>223</sup> An effective tactic for one faction of an embattled party is to accuse its rivals of preparing a premature 'sell-out' to the enemy. At Sun City, the parties displayed several aspects of this analogy, for instance, failure to reach consensus because of intense rivalry between MLC and RCD and the fear by civil society of domination by three large armed organisations that had been holding the country hostage for a protracted period.<sup>224</sup> In this context the Sun City talks began badly, were poorly organised

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<sup>221</sup> Stephan Maninger, 'Heart of Darkness: Western policy of non-intervention in Africa', *Africa Security Review* Vol8 No.6, 1999 [www.iss.co.za/Pubs/ASR/8No6/HeartOfDarkness.html](http://www.iss.co.za/Pubs/ASR/8No6/HeartOfDarkness.html)

<sup>222</sup> Swart & Solomon op.cit

<sup>223</sup> C.R. Mitchell, *The Structure of International Conflict*, op. cit p187

<sup>224</sup> Swart & Solomon supra

and substantially failed to address real issues. According to Swart & Solomon the formal nature of the gathering created conducive environment for playing to the gallery and production of propaganda. It is their argument that Sir Ketumile could have taken advantage of private discussions which could have permitted the making of specific concessions by belligerents without loss of prestige. According them, the agreement reached at Sun City under such difficult circumstances was not sufficient to secure the instant cessation of hostilities and the immediate arrival of a peaceful DRC either.<sup>225</sup>

Despite the promulgation of the Transitional Constitution and the setting up of institutions stipulated thereunder, the much awaited election in June, 2005 has been postponed pursuant to article 196 of the Transitional Constitution. Under this article the duration of the transition was to determine after duration of 24 months with the possibility of extension twice for six months. That is to say the maximum period for transition is 36 months.

According to the head of the Independent Electoral Commission, Appollinaire Malu Malu the country is not ready for its first free vote since independence in 1960. He cited a number of factors including legislative and logistical factors. He particularly cited the failure by the Transitional Government to establish its authority over much of the country. Serious unrest still wracks eastern DRC

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<sup>225</sup> *ibid*

where a range of rebel forces, mutinous troops and ethnic armies are active.<sup>226</sup> Inability to resolve political differences in Kinshasa have been mirrored by new military tensions that the parties, as well as Rwanda, have stirred up in the Kivus, the birthplace of the war.<sup>227</sup> For instance in the area of security sector reform (SSR) and integration of various armed components into a single national army, the Transitional Government (TG) at Kinshasa has displayed complete lack of common purpose among its members. A number of TG factions, particularly the *Forces Armees Congolaise* (FAC) and *Rassemblement Congolaise Democratique* (RCD-G) maintain a high degree of informal autonomous control over their armed groups, which are supposed to be subordinate to the *Forces Armees de la Republique Democratique du Congo* (FARC)<sup>228</sup> - the integrated military command as per the Sun City Final Act and the Transitional Constitution.

Jerome Bonso of *Ligue nationale pour les elections libres et transparentes*[LINELIT]<sup>229</sup> puts forward a litany of reasons why the election could not have taken place as initially scheduled. He acknowledges first of all that since independence, there has been a problem with legitimacy of the regime in DRC. Power has each time been taken by arms, even by the opposing parties and there have been violations of human rights. Hence a culture has emerged that implies that power is taken

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<sup>226</sup> Sunday Times 'DRC mulls new election date', 29<sup>th</sup> April, 2005, [www.sundaytimes.co.za](http://www.sundaytimes.co.za)

<sup>227</sup> ICG, *The Congo's Transition is Failing The Crisis in the Kivus*, ICG Africa Report no.91 30<sup>th</sup> March, 2005

<sup>228</sup> Jim Terrie, 'Building security for the elections', *Africa Security Review* Vol.14 no.1, 2005

[www.iss.co.za/pubs/asr/14No1/AWTerrie.htm](http://www.iss.co.za/pubs/asr/14No1/AWTerrie.htm)

<sup>229</sup> Jerome Bonso is the President of LINELIT-a Swedish NGO- and representative from Swedish International Development Co-operation Agency and the Ministry of Foreign Affairs.



by arms and not by the people. In this context it is crucial to train people on democratic culture. The people must learn to adopt a democratic mindset.<sup>230</sup> Besides the endemic ethnic wars particularly in the Eastern DRC have inculcated in the inhabitants a culture of violence and ethnic hatred which require to be addressed extensively prior to elections. There is an urgent necessity for reconciliation before elections can take place. According to Bonso, reconciliation should be expressed as pacification of minds and on these grounds alone, can the outcomes of the elections be successful in the eyes of the people.

Another obstacle highlighted by Bonso is the insufficient infrastructure and lack of means of communication. DRC is a very large Country (approximately 2.3 million square metres) with insufficient infrastructure, there is bound to be problems with respect to counting and communication of votes. It is hard to make one's way through the country, to reach all villages and its inhabitants. This state of affairs further impedes the determination of census to make out what people have the right to vote in such a short time. Since Mobutu regime, there has been some census but in the East the problem of nationality remains unresolved and has instead become more politically charged. The will of excluding the Banyamulenge group has its pretext in that they are originally Rwandans but since they have lived in the DRC it is no longer a matter of this

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<sup>230</sup> Jerome Bonso, 'Elections in the Democratic Republic of the Congo', A report from the Consultative meeting of Swedish NGO Foundation for Human Rights- 4<sup>th</sup> June, 2004  
[www.humanrights.se/svenska/Report%20in%20in%20DRC%2040604.pdf](http://www.humanrights.se/svenska/Report%20in%20in%20DRC%2040604.pdf)

group wanting to become Congolese, but that of them having been denied their Congolese nationality.<sup>231</sup>

The regional aspects of the Congolese transition also appear not to have been taken into account in preparing for the transition. Instability in the Eastern DRC as is the case at the moment is not conducive for election. According to *Centralafrikagruppen*<sup>232</sup>, there has to be peace and stability Eastern DRC in order for the democratic process to be successful. If there are problems in the DRC, there will be problems in Rwanda and Burundi as well. It is therefore necessary to cooperate with other countries and try and work out a common framework for the democratic process in the region. According to them it is crucial to create an enabling environment for the civil society to influence policies in all these countries and to decide what policies should be pursued in the Great Lakes Region

The lack of commitment by the international community has been a recurring theme in this study. In the context of the transition to peace in DRC, the task of supervising and monitoring the transition process assigned to MONUC does not correspond with the resources needed to carry out these tasks. Moreover the military capacity is insufficient to stop the rebels and has in some instances attracted the wrath of students to attack UN troops in protest against their lack of

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<sup>231</sup> Bonso, supra

<sup>232</sup> *Centralafrikagruppen* is a consortium of Swedish NGOs operating in Central Africa, these sentiments were expressed at their consultative meeting in Stockholm on 4<sup>th</sup> June, 2004  
[www.humanrights.se/svenska/Report%20Elections%20in%20DRC%2040604.pdf](http://www.humanrights.se/svenska/Report%20Elections%20in%20DRC%2040604.pdf)

capacity and for not having been able to resolve the conflict.<sup>233</sup> According to the ICG the International Committee Accompanying the Transition (CIAT) has not played the strong role that was hoped for guiding and assisting the transition. If CIAT is to be effective its members must work together to present a common view to the Transitional Government in terms of strategy and implementation.

In conclusion but of paramount importance in bringing to an end the DRC conflict is the political will of the Congolese leadership<sup>234</sup>. As discussed earlier in chapter 3 there exist forces within and without DRC which have an interest in the preservation of the *status quo* as it is now. These forces suffer from the fear that they might recede to oblivion once democracy takes root. Zartman observes that political entrepreneurs turn collective needs into instruments of action and solidarity. Hence the more their greed can mask itself as general need or specific (creed) grievances, the more they can attract a following and hide the personal nature of their greed.<sup>235</sup> Parallel chains of command that persist in the FARDC as well as in the administration, empirically explain this theory by Zartman. The leaders of the belligerents still use taxation schemes and mining deals to enrich themselves and many stand to lose power in the elections hence they are set on prolonging the transition.<sup>236</sup> Therefore unless the issue of political will within DRC and regionally is adequately addressed, it will be hard to go to polls as

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<sup>233</sup> *ibid*

<sup>234</sup> For instance during discussions with Mohammed Guyo of Institute for Security Studies Kenya office and Kathy Clement of International Crisis Group, it emerged the issue of good governance and setting up of democratic institutions is key. The DRC government must assert its authority over the entire country if intervention efforts are to yield any fruit.

<sup>235</sup> Zartman *op. cit*

<sup>236</sup> *Supra* n195

people are afraid of what will happen if elections results turn out to be illegitimate or unacceptable to some political forces at play in DRC.

## CHAPTER SIX

### 6.0 CONCLUSION AND RECOMMENDATIONS

Chapter one of this study presents the subject of inquiry by setting out the mode of conducting it and its justification. A brief literature review and theoretical framework underpinning the study has also been discussed in the chapter.

Chapter two traces the history and rationale for humanitarian intervention. It explores the fierce and heavily polarised debate on whether or not to intervene.

Chapter three identifies and discusses the actors, issues in the DRC conflict. It explores the tense ethnic relationship in the Great Lakes region particularly the Hutu-Tutsi relationship and its role in the DRC conflict. It also discusses the connection between illegal exploitation of the DRC mineral resources and the continuation of the war. The chapter also considers the issue of misgovernance and state decay particularly under Mobutu's regime and its contribution to the conflict. Chapter four catalogues and discusses some of the international and regional efforts in bringing to an end the conflict while in chapter five a critical analysis of these intervention efforts is undertaken.

In overall however, in this study, it has been demonstrated that humanitarian intervention in modern times is underpinned by the growing primacy of human rights over state sovereignty. States can no longer plead their sovereignty when confronted with questions concerning abuse of human rights within their

territories. Human rights constitute the outer limit of state sovereignty and any state which engages in or condones gross deprivation of internationally recognised human rights, loses its right of claim over sovereignty and may therefore be intervened upon by members of the international community acting individually, through regional alliances or through a supranational body such as the UN, for the purposes of preventing or putting to a halt gross violation of human rights.

The study has also highlighted new approaches to humanitarian intervention which show a drift away from the traditional approaches which were restricted to military intervention only. Military intervention although still forms the bulk of the contents of humanitarian intervention operations, is however not the only method of intervention in cases of gross and widespread deprivation of human rights. The World Council of Churches (WCC) has argued that humanitarian intervention can be understood to mean a wide variety of actions which seek to protect civilian populations from grave human rights violations<sup>237</sup>. International relations scholars, such as Oliver Ramsbotham and Tom Woodhouse have echoed similar sentiments when they state:

“...humanitarian intervention is no longer adequately understood in form of forcible international military intervention in the affairs of a state on humanitarian grounds. Instead, a much wider array of international actors (UN agencies, NGOs and new

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<sup>237</sup> The protection of endangered populations in situations of armed violence: Towards an ecumenical ethical approach, *World Conference of Churches* February, 2001, [www.wcc-coe.org/wcc/who/cc2001/p16.2-e.html](http://www.wcc-coe.org/wcc/who/cc2001/p16.2-e.html)

variants of UN forces) are all recognised as conducting humanitarian interventions in contemporary conflict..."<sup>238</sup>

John N. Clark argues that intervention is multi-purposed and includes peace building, providing aid, preventive deployment, securing an end to the fighting, facilitating political settlement and post conflict development and governance.<sup>239</sup>

In this context military personnel play a new, multi-functional role and the threat and use of force must foster preconditions for political dialogue, facilitating and supporting the political settlement of crises. Force therefore remains a blunt instrument and military intervention for humanitarian ends becomes part of a broader, more holistic conflict agenda, ranging from early warning and conflict prevention to post conflict reconstruction and development.<sup>240</sup>

The study has also noted that the non military humanitarian intervention although of recent origin, appears to be quickly gaining currency and acceptance as a method of intervention in humanitarian crises. As pointed out in chapter 2 the ICISS report advocates for a change in approach underpinned by the responsibility to protect millions of human beings which remain at the mercy of civil insurgencies, state repression and state collapse. In this respect the report calls for the consideration of non-military intervention alternatives including all

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<sup>238</sup> Ramsbotham, Oliver and Woodhouse, Tom 1996, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*, Polity Press, London

<sup>239</sup> John N. Clarke, 'A Pragmatic Approach to Humanitarian Intervention' *Journal Of Humanitarian Assistance*, September, 2001, [www.jha.ac/articles/a072.pdf](http://www.jha.ac/articles/a072.pdf)

<sup>240</sup> *ibid*

forms of preventive measures, and coercive intervention measures such as sanctions and criminal prosecutions.<sup>241</sup>

It has further been argued in this dissertation that intervention in any conflict for purposes of alleviating human suffering requires a deep understanding of the causes of the conflict, who the actors are, and the issues about which they are in conflict. Any intervention whose aim is to end a conflict must derive its strategies and approaches from understanding the foregoing aspects. Conflict research which was the basic paradigm in this study underscores the need to focus on the transaction in order to determine who the actors are in any given conflict. As pointed out, the state-centric approach and the misidentification of the issues about which the combatants in the DRC war are fighting has led to floundering of most of the processes and arrangements whose frameworks appear to have been well crafted to unlock the DRC stalemate if properly contextualised and implemented.

The study also discussed the apparent foreign policy shift by Western Nations towards disengagement from conflicts in regions they deem non-strategic to their geopolitical interests. Africa which plays hosts to most of complex and protracted intra-ethnic conflicts has since the end of Cold War remained peripheral in the emergent geopolitical realignment of Western interests. In this

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<sup>241</sup> ICSS report op.cit p16-17



context African states have attempted to come up with their own home-grown humanitarian intervention mechanisms through the development of collective responses to humanitarian crises within the continent. The creation of the PSC under article 4[j] of the Constitutive Act of the AU is a step in the right direction. It marks the departure from the traditional posture of non-intervention in the internal affairs of other states. Richard Gueli, while acknowledging the tendency of African leaders to go slowly in ratification of many treaties and protocols, and their lack of political will to undertake what they have committed themselves to do, nonetheless sees the creation of the PSC by the AU as significant for two reasons. First, the AU's Constitutive Act is the first international treaty to recognise the right to intervene for humanitarian purposes; second, it reflects a growing recognition that the principle of sovereignty cannot, and should not, be used as a barrier by which oppressive leaders may continue to abuse their people. Third, if leaders are held responsible for abusing their people, intervention will be considered as a means to end violence and restore peace and finally, it appears as if Africa (at least on paper) is defining and asserting its own priorities.<sup>242</sup> Further the expansion of mandates of a number of political and economic alliances to include military dimensions is positive and has enabled them to respond quickly to humanitarian crises in Africa where the incongruent

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<sup>242</sup> Gueli Richard, 'Humanitarian Intervention in Africa: Towards a new posture', 2004 Faculty of Military Science, Stellenbosch University, [http://academic.sun.ac.za/mil/scientia\\_militaria/Internet%20Vol%2032\(1\)/Intervention\\_SA\(1\)-Gueli-2004.pdf](http://academic.sun.ac.za/mil/scientia_militaria/Internet%20Vol%2032(1)/Intervention_SA(1)-Gueli-2004.pdf)

interests and at times competing ideological leanings of the members of the Security Council of the UN would have led to costly delays in response. In this respect, ECOWAS, SADC and IGAD have made commendable responses to conflicts in their regions. As noted in chapter 4, SADC has particularly been very instrumental in helping to find a solution to the DRC conflict while ECOWAS and IGAD have been instrumental in seeking solution to Sierra Leone and Sudanese conflict respectively. There however exist teething problems and mistaken assumptions -some of which were discussed in the previous chapter- which require to be investigated with a view to strengthening their capacities in handling conflicts within their regions. These problems can however be understood and appreciated in the context of the fact that for a long time intra-ethnic conflicts which form the majority of African conflicts were avoided by the OAU and member states as they were treated as domestic affairs in respect of which the Charter enjoined member states from interfering.

#### 6.1 WHITHER NOW DRC?

Having discussed the various aspects of the Congolese conflict, this study would be incomplete if no attempt is made at making suggestions on possible options and strategies which may need to be considered if the humanitarian efforts at resolving the conflict are to gain meaningful ground. In that respect and in view of the fact that this study adopts the position that humanitarian intervention consists of array of measures which seek to protect civilian populations from

grave human rights violation and include military as well as non-military intervention; recommendations will be made for the adoption of new tools supportive of the shift towards more robust and non-military-centric interventions.

At the onset it is important to appreciate that DRC since its annexation as personal property of King Leopold II in 1885, has never been run as a modern state. Power has been personalised and its transmission has been by the barrel of the gun and not the ballot. The short stint at independence in 1960 which saw the election of Joseph Kasavubu as President and Patrice Lumumba as Prime Minister, due to its brevity and the dynamics of Cold War politics then, did not make any significant contribution towards developing institutional and administrative structures capable of supporting a democratic state in the modern sense. The newly elected regime was soon to find itself entrapped in power rivalry between the US and the Soviets which saw the brutal murder of Patrice Lumumba with the complicity of the United States presumably for being pro-Communism and ushering in the dictatorial and personal rule of Joseph Mobutu.<sup>243</sup> For this reason and as argued by Jerome Bonso<sup>244</sup>, there is a culture of impunity in DRC which must be addressed. People need education on democratic governance and understanding that ascension to power can be

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<sup>243</sup> For more details on the Congo soon after independence see Georges Ntalaja's, *Congo from Leopold to Kabila* op.cit.

<sup>244</sup> Bonso op. cit

possible through peaceful elections. This may be attained through empowerment of the Congolese public through civic education.

Presently the negotiation process revolves around placating belligerents who through recourse to violence against civilians hold the most leverage in negotiations. Civilians who are most affected by the war are arguably the major stakeholders in peace yet they have been denied the voice in the peace process.<sup>245</sup>

Civic education is particularly necessary in dealing with ethnic animosity in eastern DRC. As was discussed in chapter 3 the ethnic hatred between the Hema and Lendu in Bunia as well as between the Tutsis and Hutus in the Kivus is rooted in among other things, the perception that one group is superior in terms of economic power to the other. These communities must rid themselves of the enemy perception of one another. They need to be empowered to resist manipulation by economic bandits who exploit their intra-ethnic differences to stir up violence to masquerade their illicit exploitation of DRC minerals and other natural resources. Dirk Kotze contends that in dealing with conflicts, it is important to bear in mind not just overt, physical violence, but also the sometimes subtly disguised forms of structural and cultural violence. The focus should not only be on hostile behaviour, but also on prejudiced attitudes and incompatible interests. From such wider perspectives meaningful insights may

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<sup>245</sup> Vanessa Kent & Angela McIntyre, 'From Protection to Empowerment: Civilians as Stakeholders in the Democratic Republic of Congo', *ISS Paper* 84 February, 2004 [www.iss.co.za/pubs/papers/84/Paper84.pdf](http://www.iss.co.za/pubs/papers/84/Paper84.pdf)

be developed about cultural values underlying conflicts.<sup>246</sup> The killing and bloodletting in the Kivus has no doubt entrenched the culture of revenge which might not be easily disentangled unless the communities concerned undergo some form of psychological reconciliation. As Kaufman notes, when ethnic conflicts escalate, populations come increasingly to hold enemy image of the other group<sup>247</sup>. The killing in this context tends to be cyclic as the groups seek to revenge the killings of their members. The belligerents need to be dissuaded through civic education from regarding use of force as tool for settling political differences. Particularly their leaders in the TG must desist from playing power games at Kinshasa which have been responsible for the slow transition to democracy. There is urgent need to consolidate power centres and their private armies subjected to DDR as stipulated in the Lusaka Agreement.

Establishment of Great Lakes Region Truth and Reconciliation Commission (TRC) to reconcile ethnic communities living in the region, particularly the Hutu-Tutsi question which appears to have a see-saw effect on the politics of Rwanda and Burundi and forms the main justification for Rwanda invasion of DRC needs to be seriously considered, as reckoning with the past is necessary in order for former opponents to look to a peaceful shared future.

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<sup>246</sup> Dirk Kotze, 'Issues in conflict Resolution', *Africa Journal on Conflict Resolution*, 2002, Vol.2 No.2

<sup>247</sup> Chaim Kaufmann, *supra* n157

Truth commissions are generally understood to be bodies set up to investigate a past history of violations of human rights in a particular country which can include violations by the military or other government forces or armed opposition forces.<sup>248</sup> Hayner delineates four main characteristics of truth commissions. First, they focus on the past. The events may have occurred in the recent past. Second, truth commissions investigate a pattern of abuse over a set period of time rather than a specific event. In its mandate, the truth commission is given the parameters of its investigation both in terms of the time period covered as well as the type of human rights violations to be explored. Third, they are temporary bodies usually operating over a period ranging from six months to two years and completing its work by submitting a report. These parameters are established at the time of the commission's formation, but often an extension can be obtained to wrap things up. Fourth, truth commissions are officially sanctioned, authorized, or empowered by the state. This, in principle, allows the commission to have greater access to information, greater security, and increased assurance that its findings will be taken under serious consideration. Official sanction from the government is crucial because it represents an acknowledgment of past wrongs and a commitment to address the issues and move on. Furthermore, governments may be more likely to enact recommended

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<sup>248</sup> Priscilla B. Hayner, "Fifteen Truth Commissions -1974 to 1994: A Comparative Study." *In Human Rights Quarterly*, Volume: 16 Issue: 4. 1994, p. 558.

reforms if they have established the commission.<sup>249</sup> Margaret Popkin and Naomi Roht-Arriaza identify four significant functions of TRC. These are: First, TRCs seek to contribute to transitional peace by creating an authoritative record of what happened; second, they provide a platform for the victims to tell their stories and obtain some form of redress; third, they recommend legislative, structural or other changes to avoid a repetition of past abuses; and lastly they seek to establish who was responsible and provide a measure of accountability for the perpetrators.<sup>250</sup>

The several refugee flows discussed in chapter 3 will continue unless the differences between the Tutsis and the Hutus living in the entire Great Lakes Region, is discussed openly and reconciliation over past bouts of violence reached. TRCs have been attempted with considerable degree of success in South Africa and in Sierra Leone. In Sierra Leone's case, in July 2002, six months after the eleven-year-long civil war was officially over, a TRC was inaugurated. The slogan, "Truth hurts," announced the TRC's posters and leaflets, "but war hurts more." Radio and television skits and jingles in Sierra Leone's lingua Franca, Krio, urged listeners to "come blow your mind; come clear your chest," to "make peace *sidon na Salone*" ("sit down in Sierra Leone"). Blow mind—the release of thoughts and feelings—was the Krio expression used to convey to a Sierra

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<sup>249</sup> Priscilla B. Hayner, *Unspeakable Truths*. New York: Routledge, 2001, p. 14.

<sup>250</sup> Quoted in Christie, Kenneth, *The South African Truth Commission*. (2000). New York, St. Martin's Press, p. 61.

Leonean audience the practice of truth telling in the TRC hearings. As described in the Truth and Reconciliation Act of 2000, truth telling was to be the primary means by which the TRC pursued the five goals of its mandate namely: to create an impartial historical record of violations and abuses . . . , to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered."<sup>251</sup> In the case of DRC, TRC would rebuild the confidence among the Hutus and Tutsis and also the Hema and Lendu in order to erase the enemy perception they currently hold against one another.

Rwanda needs to consider seriously negotiating with AFDR and other opposition groups still in exile and not to see them as genocidiaries. ICG argues that whereas none of the AFDR members should enjoy immunity, relatively few risk the most severe judicial penalties. Neither the ICTR nor Rwandan courts are likely to launch new investigations into crimes committed during the 1994 genocide. According to the ICG very few FDLR commanders have been indicted in either Rwanda or Arusha<sup>252</sup>. This state of affairs seems to lend legitimacy to the argument by FDLR leaders that they be allowed to convert themselves as a political movement. In a BBC interview<sup>253</sup> an FDLR official linked their return to

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<sup>251</sup> Rosalind Shaw, 'Rethinking Truth and Reconciliation Commissions Lessons from Sierra Leone' *United States Institute of Peace*, February, 2005 Special Report 130

<sup>252</sup> 'The Congo: Solving the FDLR Problem Once and for All', *ICG Africa Briefing* No. 25 12<sup>th</sup> May, 2005

<sup>253</sup> BBC French Service, 1 April, 2005



liberalisation of Rwandan politics with recognition by the government that there had been widespread massacres of Hutus as well as Tutsis in 1994.

The jurisdiction of Rwanda's traditional courts (*gacaca*) needs to be clearly defined or rationalised as their present constitution and pronouncements appear biased against the Hutus. As Kotze observes, in conflict situations crimes are committed on all sides and prisoners taken. Perpetrators of the crimes, and in particular the military components on all sides, as well as those with political responsibility for the perpetrators will not be party to an agreement without guarantees against prosecution afterwards unless they have been militarily defeated.<sup>254</sup> ICG notes that many FDLR commanders still have reservations about return to Rwanda as action was taken against several of high ranking Hutus who were integrated into the new government and the army after the genocide, including General Marcel Gatsinzi, the current minister of defence and Major General Laurent Munatezi, a division commander in the army. Both officers were accused of genocide crimes, a move that some international observers say was timed to discourage the FDLR.<sup>255</sup> Gacaca proceedings currently have named a whopping 761,000 people including 650 national and local leaders.<sup>256</sup> This large number of suspects could suggest bias or retributive justice.

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<sup>254</sup> Kotze, *op.cit*

<sup>255</sup> 'The Congo: Solving the FDLR Problem Once and for All', *ICG Africa Briefing* No. 25 12<sup>th</sup> May, 2005

<sup>256</sup> *ibid*

In the area of governance, the international community through MONUC or AU needs to support financially and materially, DRC in setting up institutions which promote good governance and democracy. There is urgent need for material and financial support in building the capacity of the DRC army and police to deal with crime and banditry which is prevalent in the country, particularly illegal economic networks which seem to fuel the war in order to continue with their illicit trade. The UN Report of experts recommends reconstruction and reformation of state institutions of DRC particularly its capacity to secure its territory and borders.<sup>257</sup> The main purpose should be to enable the legitimate Transitional Government to control the country's natural resources and borders without foreign intervention. The UN report further emphasises the need for a fast-track programme to retrain and professionalize the entire national security apparatus including the military and intelligence, law enforcement and regulatory bodies such as customs, revenue authority, immigration and natural resource agencies. These institutions if properly empowered will be in a position to break the illicit economic networks and regulate trade in Congolese resources by issuing certificates of origin to demonstrate that the products have been legitimately acquired. The UN panel of experts further recommends creation of

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<sup>257</sup> United Nations Report of the Panel of Experts on the Illegal Exploitation of natural Resources and Other Forms of Wealth of The Democratic Republic of Congo 16th October, 2002 [www.un.org/News/Press/docs/2003/sc7642.doc.htm](http://www.un.org/News/Press/docs/2003/sc7642.doc.htm)

awareness in transit and end-user countries in the ethical responsibilities posed by conflict driven trade.<sup>258</sup>

International community under the auspices of the UN and multilateral donor agencies need to peg support to Countries implicated in the DRC war on their commitment to withdrawal of troops and support of processes aimed at ending the war. Over the past decade, aid donors have pledged billions of dollars to support peace-building efforts in collapsed states and war-torn societies. James Boyce argues that peace conditionality - the use of formal performance criteria and informal policy dialogue to encourage the implementation of peace accords and the consolidation of peace - could make aid a more effective tool for building peace<sup>259</sup>. In Bosnia, for example, donors have attempted to link aid to the protection of human rights, co-operation with the international war crimes tribunal, and the right of people displaced by 'ethnic cleansing' to return to their homes. A multi-donor evaluation of the international response to the 1994 Rwanda genocide concluded that peace conditionality could have helped to deter the holocaust.<sup>260</sup> Donor aid was blamed for driving the Hutu's deeper into poverty thereby increasing their traditional resentment for the Tutsis who as was discussed in chapter 3 are perceived by Hutus as responsible for the latter's

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<sup>258</sup> UN Panel of Experts *op.cit*

<sup>259</sup> James Boyce, 'Aid Conditionality as a Tool for Peace-building, 'Opportunities and Constraints' *Development and Change* Volume 33 Issue 5 Page 1025 - November 2002. [Published on behalf of the *Institute of Social Studies*, The Hague] [www.blackwell-synergy.com](http://www.blackwell-synergy.com)

<sup>260</sup> James K. Boyce & Manuel Pastor, 'Aid for Peace: Can International Financial Institutions Help Prevent Conflict?' 1998, *Political Economy Research Institute*, University of Massachusetts Amherst, [www.umass.edu/perri/pdfs/PS2.pdf](http://www.umass.edu/perri/pdfs/PS2.pdf)

omic marginalisation.<sup>261</sup> In the months leading to the slaughter the donors were only preoccupied themselves with economic reforms, and many praised the Rwandan government's absorptive capacity for aid. A few voiced concern about the government's flagrant violation of human rights but never cut aid on that basis. Foreign aid to Rwanda during this period rose by 50% from \$235 million per year in late 1980s, to \$355 million.<sup>262</sup> The present relationship between the donor community and the government of Rwanda must therefore be re-evaluated to see if there is any genuine political will towards ethnic reconciliation and whether the accusations against the AFDR vis-à-vis the latter's demands for political legitimization are genuine and not driven by retribution against the Hutus for the 1994 genocide.

In terms of Continental response, the AU must step in robustly in African conflicts. In this respect, the PSC must be empowered to intervene quickly and effectively. To this end, the recommendation by the AU for the development of a common security policy and establishment by 2010 of an African Standby Force (ASF) capable of rapid deployment to keep, or enforce, peace is a welcome one.<sup>263</sup> The proposed ASF would comprise of standby brigades in each of the five regions, and incorporate a police and civilian expert capacity. This proposal has been widely received by G8 leaders who have pledged to support it

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The omen of recent genocides: whither development policy? *Minority Rights in Development Aid Policy*.

[www.minorityrights.org](http://www.minorityrights.org)

Boyce & Pastor op.cit

Vanessa Kent & Mark Malan, 'The African Standby Force: Progress and prospects', *African Security Review* Vol 12 No 3.

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through funding, training, and enhanced co-ordination of activities, demands of the AU to undertake realistic assessment of members capabilities, to clearly articulate its needs, and to set realistic and achievable goals. According to Vanessa Kent and Mark Malan, this latest plan for establishing a rapidly deployable African peacekeeping force will require something that similar proposals have in the past lacked: the political will to fund and implement a long list of recommendations. Its success will ultimately be judged by the AU's future responses to situations of armed conflict. Even if such responses are largely symbolic in the short term, a sufficient display of political will among African leaders could inspire the confidence needed to galvanise international support.<sup>264</sup> In may be argued that it is perhaps the absence of structures and security policies as proposed by the AU which has made determination of the DRC conflict elusive. The exercise has thus been left entirely in the hands of MONUC but which as discussed earlier appears unable to alleviate the humanitarian suffering occasioned by the war. MONUC is shackled by the UN bureaucracy and appears hapless in changing the direction of the Congolese war towards peace. As discussed in chapter 5 MONUC which derives its mandate from UN Security Council resolutions has been slow in responding to violence in DRC and where they do, they lack the mandate to use decisive force to protect civilians and disarm the militias.

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<sup>264</sup> *ibid*

In concluding this study, it is important to state that the recommendations outlined above constitute the broader menu of humanitarian intervention efforts which may require to be harnessed if a lasting solution to the DRC conflict is to be found. In as much as they are not exclusive in themselves, they form some of the key pillars around which humanitarian intervention efforts need to be built around. The transition towards democracy currently being undertaken may not yield tangible results without addressing some of the questions raised in this study.

It is instructive to note that at the close of this study the much awaited elections scheduled for end of June, 2005 have been postponed for another six months due to some of the reasons discussed herein such as the unpreparedness of the Congolese people and institutions to undertake such an important exercise and the state of insecurity prevailing in Eastern parts of DRC. This development to a large extent validates the argument in this study that humanitarian intervention efforts in DRC have failed to address and effectively respond to the issues and processes at stake in the conflict.

## ANNEX 1

QUESTIONS POSED TO MOHAMMED GUYO OF INSTITUTE FOR SECURITY STUDIES AND KATHY CLEMENT OF INTERNATIONAL CRISIS GROUP DURING INTERVIEW ON 5<sup>TH</sup> OCTOBER, 2005.

1. A lot has been written and discussed on ways of solving the DRC conflict and yet there seems to be no end in sight to the conflict. In your view what seems to be going or rather have gone wrong?
2. Is Rwanda justified in invading Congo in pursuit of AFDR without collaboration with DRC government?
3. Do you think the international community is committed to seeing the DRC peace process through?
4. Will the holding of elections which have since been postponed bring peace to DRC?
5. Do you think the circumstances obtaining in DRC presently are conducive for an election?

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