

10-1-2001

# International Law and Uganda's Involvement in the Democratic Republic of the Congo (DROC)

Phillip Apuuli Kasaija

Follow this and additional works at: <http://repository.law.miami.edu/umicl>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

## Recommended Citation

Phillip Apuuli Kasaija, *International Law and Uganda's Involvement in the Democratic Republic of the Congo (DROC)*, 10 U. Miami Int'l & Comp. L. Rev. 75 (2015)

Available at: <http://repository.law.miami.edu/umicl/vol10/iss2/8>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## **International Law and Uganda's Involvement in the Democratic Republic of the Congo (DROC)**

**Phillip Apuuli Kasaija**

### **Introduction \*\***

Since September 1998, Uganda has been engaged in the Democratic Republic of Congo (DRC). There are various reasons that have been advanced as to why Uganda is in the DRC. These include the safeguarding of Uganda's security interests on her Western border, Museveni's desire to become a hegemonic power in the Great Lakes region, and the desire by the Museveni government to see a change in leadership in Kinshasa. Finally, it is argued that having helped Kabila come to power, he no longer had respect for Museveni.

The purpose of this paper is to address the international law issues that Uganda's engagement in the DRC raises. The paper argues that on the one hand, the regional politics in the Great Lakes Region makes Uganda's involvement inevitable. However, we also argue that under international law while Uganda's involvement can be justified as lawful, counter-arguments are inclined to its illegality.

### **I. Background to the Present Uganda Involvement in the DRC**

The government of President Yoweri Museveni has acknowledged that it helped the forces of Laurent Kabila to remove the government of deposed President Mobutu from power in Zaire (now called the DRC) in May 1997. The reason for Uganda's support to Kabila was the fact that the government of Mobutu had failed to stop rebel forces opposed to Museveni's National Resistance Movement (NRM) government from using the DRC to attack Uganda. Indeed on the 12th of November 1996, the Allied Democratic Forces (ADF) attacked Uganda from the direction of the DRC. Although the Uganda army repelled the invaders, this gave the Museveni government the excuse to support the Kabila forces that were then fighting the government of Mobutu.

When Kabila took over power in the DRC in May 1997, President Museveni was one of the main guests at his inauguration. However, relations between Kabila and Museveni turned sour thereafter. On 27 July 1997, Kabila decided to send the Rwandese troops that had helped him topple Mobutu back home.<sup>1</sup> Suffice it to note that, relations

---

\*\* Lecturer in International Law and Diplomacy in the Department of Political Science and Public Administration, Makerere University Kampala, Uganda.

<sup>1</sup> The crisis actually began, when Kabila announced on 14 July 1998 that he was replacing the Rwanda officer, James Kabare who had acted as his Chief of Staff, with a native Congolese. *See* BBC FOCUS ON AFRICA MAG., October-December 1998, at 5.

between Museveni and Kabila had thawed even before the present rebellion in the DRC had broken out. This is exemplified by the fact that, Museveni refused to honor Kabila's invitation to attend anniversary celebrations that were to mark his first year in power.

As soon as the present rebellion in the DRC broke out, Kabila immediately announced that his country had been attacked, by the Ugandan and Rwandan troops. Kabila addressed a press conference and is quoted to have said that; "it was Kagame and Museveni [who were] fomenting the rebellion in the DRC."<sup>2</sup> He repeated these accusations when he addressed the 4092<sup>nd</sup> Meeting of the Security Council.<sup>3</sup>

The government of Uganda first denied that it was involved in the affairs of the DRC. Uganda's Foreign Minister, Eriya Kategaya, came out with a statement rebutting Kabila's accusations that Uganda had invaded the DRC.<sup>4</sup> It was not until nearly one month after the breakout of the rebellion in the DRC that, President Museveni defined Uganda's interests in the DRC.<sup>5</sup> However, he did not say whether Ugandan troops were actually present in the DRC.

It was not until August 26 1998, that Uganda's Foreign Minister, Eriya Kategaya, told Uganda's Parliament that indeed the Uganda Peoples Defence Force (UPDF) was actually deployed in the DRC.<sup>6</sup> He explained that, the UPDF was in the DRC to protect the country's legitimate interests.<sup>7</sup> He did not elaborate what these interests were. This was emphasized by Major General Salim Saleh, then 'Overseer' of the Ministry of Defence and Presidential Advisor on Defence and Military Affairs. Major General Saleh was quoted to have intimated that, "Uganda troops will remain deep in the Congo until Kabila [accepted] a political solution to the crisis."<sup>8</sup> He further said that, "[they had] evidence that

---

2 THE NEW VISION, August 7, 1998.

3 United Nations, Security Council 4092<sup>nd</sup> Meeting, Monday January 24, 2000, p. 11. President Laurent Desire Kabila was assassinated on 16th January 2001 by one of his bodyguards. He was succeeded by his son Major General Joseph Kabila. Incidentally while addressing a United Nations Human Rights Session in Geneva Switzerland, he was quoted as saying that he wanted the "aggressors" to get out of his country. See THE NEW VISION, Sunday April 1, 2001.

4 *Supra* note 2 .

5 He defined Uganda's security interests in the DRC as; Congo's territory being used by Sudan to infiltrate terrorists into Uganda; Congo's territory not being used by the Interahamwe to kill people in Kisoro; together with the international community not allowing genocide to take place; and the hope that the Congolese people can be democratically empowered after a generation of Mobutuism. See THE NEW VISION, August 23, 1998.

6 THE NEW VISION, August 26, 1998.

7 *Id.*

8 THE NEW VISION , August 28, 1998.

Kabila was arranging to attack [Uganda] on all frontiers.”<sup>9</sup> Thus, Uganda had to move very fast to forestall such an attack.

When Kabila came to power, his government signed a memorandum of understanding with the Uganda government to the effect that the UPDF would conduct joint operations with the Congolese Armed Forces (FAC), to stop the DRC territory from being used by the Uganda rebels as a launching pad to attack Uganda.<sup>10</sup>

It is well known now that some countries were convinced by Kabila's assertions that it was indeed Uganda and Rwanda that had invaded his territory. Zimbabwe, Namibia, Angola and later on Chad joined on the side of Kabila under the Southern Africa Development Community (SADC) Organ on Politics, Defence and Security established in 1996, of which Zimbabwe was holding the Chairmanship at that time. When Kabila took over power, the DRC joined this regional grouping. Meanwhile, Uganda and Rwanda got involved on the side of the Congolese rebels controlling large areas of Eastern Congo. But is foreign intervention in the DRC especially that of Uganda, lawful under international law? Before we answer this question, we need to establish what the different international law instruments say. To this we shall now turn.

## II. An Examination of the International Law Instruments

One of the primary purposes of the UN is, "... [t]he suppression of acts of aggression or other breaches of peace ..."<sup>11</sup> This is further expounded in Article 2 (4) of the Charter which says that, "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN." The central obligation of the Charter law and customary international law is the prohibition of the use of force, one that finds expression in judicial decisions of the International court of Justice (ICJ).<sup>12</sup> This obligation has

---

<sup>9</sup> *Id.*

<sup>10</sup> In an interview with the New Vision, Uganda's Ambassador to the DRC, Dr. Kamanda Bataringaya said that, three Memoranda of Understanding had been signed between the DRC and Uganda. These covered an agreement for joint operations between the UPDF and the FAC; an agreement between the DRC, Uganda and the UNHCR to repatriate DRC refugees from Kyaka I and II; and agreement for the Uganda Police to train the DRC Police on handling riots. See THE NEW VISION September 13, 1998.

<sup>11</sup> U.N. CHARTER art. 1, para.1.

<sup>12</sup> Corfu Channel Case (UK v Albania) (1949) ICJ Reports (1949); See also Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Merits) (Nicaragua v USA) (1986) ICJ p. 6

also been emphasised in international case law.<sup>13</sup> Article 2 (4) of the Charter is now regarded as a principle of customary international law, and as such is binding upon all states of the world community. Similarly, the Charter of the Organisation of African Unity (OAU), in re-affirming the member states obligations in pursuing the purposes of the Organisation states that “[the member states will] respect the sovereignty and territorial integrity of each state and for its inalienable right to independent existence”<sup>14</sup> Article 2(4) of the UN Charter has been elaborated upon by different international law instruments. These include:

The 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty<sup>15</sup> (hereafter called the 1965 Declaration) reinforces Article 2 (4) by saying that “[n]o state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state.” It further emphasises that, “[c]onsequently armed intervention and all other interference or attempted threats against the personality of the state or against its political, economic and cultural element are condemned.”

The 1965 Declaration was re-affirmed in the 1970 Declaration on the Principles of International Law<sup>16</sup> (hereafter called the 1970 Declaration). This declaration states that, “[w]ars of aggression constitute a crime against peace for which there is state responsibility under international law.” It further emphatically states among other things that:

“[s]tates must refrain from organising, instigating, assisting and participating in acts of civil strife or terrorist acts in another state and must not encourage the formation of armed bandits for incursion into another states territory.”

These two declarations constitute an important interpretation of the UN Charter provisions especially Article 2(4).

According to the General Assembly Resolution on the Definition of Aggression of 1974 (hereafter called The General Assembly Definition of Aggression), any of the following acts regardless of a declaration of war shall ... qualify as an act of aggression,

“[t]he invasion or attack by the armed forces of a state of the territory of another state, or any military occupation however temporary, resulting from such invasion or attack, or annexation by the use of force of the territory of another state or part thereof.”<sup>17</sup>

---

<sup>13</sup> Nicaragua v USA (Merits) Case, 1986.

<sup>14</sup> THE OAU CHARTER art. 3 para. 2.

<sup>15</sup> G.A. Resn. 2131 (XX). December 21, 1965. U.N. G.A.O.R., 20th Sess., Supp. No. 14, p.11

<sup>16</sup> G.A. Resn. 2625 (XXV), October 24, 1970.

<sup>17</sup> See *supra* note 15 and 16 at Art. 3 (a).

It further states that aggression is committed, “[by] the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed above or its substantial involvement therein.”<sup>18</sup>

Thus the question we need to answer is whether Uganda's presence in the DRC is consistent with the principles of international law as spelled out in these instruments. If this is answered in the negative, can Uganda justify her presence in the DRC using other customary rules of international law?

### III. The Illegality Debate

Looking at the principles of international law it is correct to say that the use of force in any form against the territory of another state is outlawed. Now the issue that we need to address is whether the UPDF's presence in the DRC constitutes the use of force prohibited by conventional and customary international law. Kabila has persistently claimed that the UPDF's presence in the DRC is unwelcome. This means that by Uganda keeping her troops there, she is committing aggression. The General Assembly's Definition of Aggression, talks of, “the invasion by the armed forces of a state or the territory of another state...” Kabila has contended that the UPDF actually invaded the territory of the DRC. Further the General Assembly's Definition talks of, “... any military occupation...” The Uganda troops are actually occupying a swathe of territory in Eastern Congo which clearly is an act of aggression.

Even under the 1965 Declaration, the UPDF's occupation would be considered contrary to international law. Now, Uganda has persistently claimed that, her troops are in the DRC to forestall attacks on the personality of Uganda by the ADF rebels. Although, this is not in conformity with what Major General Saleh stated as Uganda's reason for going into the DRC as alluded to above. If the 1965 Declaration is strictly interpreted, the UPDF occupation of DRC territory would be contrary to international law. This is because, the Declaration talks of “... armed intervention...” The UPDF went into the Congo well armed to fight, and as Kabila has persistently stated uninvited. This, no doubt, constitutes armed intervention in a sovereign state.

International law treats civil wars as purely internal matters. This position finds expression both in the 1965 and 1970 Declarations.<sup>19</sup>

---

<sup>18</sup> See *id.* at Art. 3 (g).

<sup>19</sup> The 1965 Declaration states that no state has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are condemned. While the 1970

However of recent, there have arisen reports that Ugandan troops stationed inside the DRC are assisting the Congolese Rally for Democracy (RCD) rebels fighting to remove the government of Laurent Kabila. And further, reports have come up saying that the Uganda government has helped set up the Congolese Rally for Democracy (RCD) before it broke into two factions and its troops are fighting alongside another anti-Kabila group called the Congolese Liberation Movement (CLM) led by Jean Pierre Bemba.<sup>20</sup> This group is operating in Northern Congo. Uganda, in supporting the CLM and RCD-Kisangani, is acting contrary to international law. Article 2(4) of the Charter clearly forbids states in their relations with other states from, "... the ... use of force against the territorial integrity ... of any state in any manner inconsistent with the purposes of the UN Charter." The UPDF fighting alongside the anti-Kabila forces would clearly indicate that Uganda is using force against the territory of another state (the DRC). This would be contrary to Article 2(4) and the other purposes of the UN Charter to which Uganda is a signatory.

Again, the 1965 Declaration is very succinct. It states that "no state has the right to intervene, directly or indirectly for any reason whatsoever in the internal ... affairs of any other state." The UPDF's participation directly or indirectly in the Congo war, is therefore, contrary to this Declaration and is against established international law norms.

The 1970 Declaration would be more appropriate to apply in the instance that the UPDF is engaged directly in the Congo war. It emphasises that "states must refrain from organising, instigating, assisting or participating in acts of civil strife ... in another state..." The International Court of Justice, in the *Nicaragua (Merits)* case, was called upon to decide whether the support given to the Contras by the United States constituted intervention by the United States in the internal affairs of Nicaragua. The court held that "the support given by the USA, up to the end of 1984 to the military and paramilitary activities of the Contras in Nicaragua, by financial support, training, supply of weapons, intelligence and logistical support, constitutes a clear breach of the

---

Declaration states that every state has the duty to refrain from organising, instigating, assisting, participating in acts of civil strife or terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

20 BBC Correspondent in Uganda, Anna Borzello was given transport to travel to the CLM's liberated areas by the Uganda Army (UPDF) and she was told that she might find Jean Pierre Bemba, the leader of CLM 'interesting'. BBC's FOCUS ON AFRICA MAGAZINE., Jan-March 1999, at 12.

principle of non-intervention.”<sup>21</sup> Reports out of the DRC have confirmed that the UPDF has been training the anti-Kabila forces in the use of arms. Also, it has been reported that the UPDF has actually participated in rebel battles against the forces of Kabila.<sup>22</sup> As has been emphasised in international law, there is generally no right of intervention in support of an opposition within another state.<sup>23</sup> These actions by Uganda clearly constitute “organising, assisting or participating in acts of civil strife in another state.”

The General Assembly’s Resolution on the Definition of Aggression states that aggression is committed, “by the sending by or on behalf of a state of armed bands, groups, irregulars ...which carry out acts of armed force against another state... or its substantial involvement thereof”(emphasis added). The anti-Kabila forces are clearly not operating from the Ugandan territory, although their leaders come and go as they please in Uganda. While Uganda has not acknowledged that these forces are acting on her behalf, the following inference can be drawn: Uganda is contravening the 1974 General Assembly Resolution. By actively helping the anti-Kabila forces, Uganda’s actions clearly constitute, “... the substantial involvement” of Uganda in the affairs of the DRC.

#### IV. The Legality Debate

The only justification for the use of force by one state against the other under the legal regime of the Charter is self-defence or participation in the United Nations enforcement action.<sup>24</sup> The principle of non-intervention by one state in the affairs of other states is emphasised under the UN Charter and doctrine.<sup>25</sup> Uganda has persistently said that her troops are in the DRC to prevent that territory from being used by the ADF rebels with the support of Sudan to attack Uganda. Based on the different statements of the Uganda government, it is clear that Uganda thinks that Kabila was supporting the Uganda rebels. The support by the Kabila government of the Uganda rebel elements based in the DRC is contrary to principles of customary international law. All the

---

21 *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (Merits paragraph 242).

22 Brigadier James Kazini, the UPDF Acting Chief of Staff admitted that his soldiers helped to fight the Chadian troops fighting for Kabila. (*See BBC’S supra*). Also it was reported that it was the UPDF which did most of the fighting when the town of Buta was captured by the rebels on 5th October 1998. (*Id.* at 17).

23 MALCOLM SHAW, *INTERNATIONAL LAW*, 798 (1997). Also this position was re-emphasised by the ICJ in the *Nicaragua (Merits)* case when it stated, “no such general right [of intervention for the benefit of the forces opposed to the government of another state...] exists in international law.

24 U.N. CHARTER art. 51

25 *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (Merits).



international law instruments cited above outlaw such kind of actions. Uganda therefore has the right to take self-defensive measures to safeguard her territorial sovereignty against Kabila supported rebels.

Until the proliferation of the UN Charter,<sup>26</sup> the most authoritative definition of self-defence is found in the *Caroline Case (1837)*. That case says that for a state to claim self-defence, “[t]here has to exist a necessity of self defence, instant, overwhelming, leaving no choice of means and no moment of deliberation.”<sup>27</sup> Today, however, customary international law holds that not only should such conditions exist for self-defence to be claimed, but also the action taken in pursuance of it must not be unreasonable or excessive, since the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it. The question then to be asked and answered is: Can Uganda claim self-defence for her involvement in the DRC?

## V. The Self Defence Claim

The International Court of Justice (ICJ) in the *Nicaragua v USA (Merits)* case clearly established that the right of self-defence exists as an inherent right under customary international law, as well as under the United Nations Charter.<sup>28</sup> However, the ICJ also confirmed that action taken as self-defence remains subject to the *Caroline* requirements of necessity and proportionality. The clearest rationalisation, to-date, as to why Uganda got entangled in the DRC was spelled out in detail by the Minister of State for Foreign Affairs in charge of Regional Co-operation, Amama Mbabazi, while addressing the 53<sup>rd</sup> General Assembly Session of the UN in New York. The reasons for Uganda’s involvement in the DRC were presented in terms of both external and internal dimensions. The external dimensions were spelled out as: attacks by ADF rebels on Uganda from the DRC, from the Mobutu regime through to the present Kabila regime, necessitating self-defence and hot pursuit by Uganda into the DRC; an understanding between the Kabila regime and the Ugandan regime to collaborate in the task of flushing out of Ugandan rebels from the DRC; collusion between the DRC and the Khartoum regime to provide operational bases and material support to the rebels in the DRC, as well as to avail to the Khartoum regime the use of the DRC territory as a launching pad for attacks on Uganda; and the (unexpected) involvement of other new actors (Namibia, Angola, Zimbabwe and Chad) which acted as a catalyst to increase the level of Uganda’s own intervention.

The internal dimensions were spelled out as: the breakout of the rebellion of August 2, 1998 in the DRC, arising from the alienation of

---

26 Article 51 of the UN Charter talks about the [inherent] right of self defence and collective self defence, but the term self defence or what constitutes self defence is not defined.

27 R.Y. Jennings, *The Caroline and McLeod Cases*, 32 A.J.I.L 82, 89 (1938).

28 *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (Merits).

Congolese political actors excluded from the narrowly-based and sectarian regime established by Kabila after his ascent to power in 1997; the imminent threat of another genocide in the region, arising from Kabila's open support to the Rwandese Interahamwe and ex-FAR or Rwandese soldiers of the late Habyarimana regime on the territory of the DRC; Uganda's obligation (which should, incidentally, be the obligation of the rest of the international community, as well) to stop this threatening crime against humanity; and the need to look at the idea of the sacro-sanctity of national sovereignty and of territorial borders more critically in circumstances involving such grave threats to human life as those prevailing in the DRC and in the Sudan. These reasons stated the Minister, formed the basis of Uganda's intervention in the DRC.

As already noted above, indeed Uganda rebels have been very active on the Uganda-DRC border. Time and again the rebels have attacked Uganda from the direction of the DRC. The most prominent attack occurred on the 12<sup>th</sup> of November 1996, when a group of Uganda rebels calling themselves ADF attacked and overran several small towns on the Uganda-DRC border. Uganda was therefore a victim of an armed attack. It took the entire mobilisation of the UPDF to expel the invaders. The ICJ in the *Nicaragua (Merits)* case considered what constitutes an armed attack. The ICJ held that,

“...it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another state of such gravity as to amount to inter alia an actual armed attack conducted by regular forces or its substantial involvement therein.”<sup>29</sup>

As already noted, the Uganda government believed that the ADF was actively being supported by the Kabila government.<sup>30</sup> Therefore, the Minister's imperative of stopping these rebels from attacking Uganda would justify Uganda's stationing her troops in the DRC. This is clearly within the parameters of self defence allowed under international norms. Suffice it to note that the DRC was acting contrary to international norms in the first place by allowing her territory to be used by these rebels.

The other imperative of stopping genocide in the DRC would not fall under self-defence but rather under humanitarian intervention. It should be noted that the other imperatives for intervention as advanced by the Minister, however novel or noble they are, would be contrary to

---

<sup>29</sup>*Id.* at 195.

<sup>30</sup> For example in his address to Parliament President Museveni said, “even when the Rwandese were still there, the Congolese Army would cohabit peacefully with those who were terrorising us, saying” *Hi siyo vita yetu (That is not our war)*. See THE NEW VISION, Sept. 17, 1998.

international law. The internal political arrangements of a country, however unpalatable to other countries, would not lead to intervention by other states. If this happens, then this would be interference in the internal affairs of that country which is contrary to established norms of customary international law. Internal political arrangements can precipitate intervention by other states only if they give rise to genocide, ethnic cleansing, and general abuse of human rights of large sections of the population. This intervention would then be rightfully undertaken in the name of humanitarianism. To this possibility we shall now turn.

## **VI. Humanitarian Intervention?**

Among the reasons advanced by Amama Mbabazi for Uganda's intervention in the DRC was the issue of forestalling genocide from taking place in the DRC. One of the reasons why the rebellion against Mobutu was started in 1996 by Kabila, was the fact that the Mobutu government had asked the Banyamulenge, an ethnic group living in Congo related to the Tutsis of Rwanda, to leave the DRC. There were well founded fears that genocide would arise because the government of Kabila was helping the ex FAR and Interahamwe who were the main perpetrators of the 1994 genocide in Rwanda. In this genocide, up to one million Tutsis and moderate Hutus were killed by extremist Hutus. When the Rwandese Patriotic Force/Army (RPF/A) took over power in Kigali after the genocide, the ex-Far and Interahamwe forces ran into exile in the DRC. From that time, they have started organising for their return to power in Kigali.

Humanitarian intervention has been a controversial issue in international law.<sup>31</sup> Major questions have related to the circumstances under which humanitarian intervention is accepted in international law. How does one tally humanitarian intervention with the doctrine of state sovereignty? A number of international law scholars have attempted to answer these questions.<sup>32</sup> However, recent cases in international system have given insight as to what humanitarian intervention is all about.

---

31 For example, Ian Brownlie has observed that unilateral action by a state in the territory of another state on the ground that human rights require protection or a threat of force against a state for this reason is unlawful. Whereas the United Kingdom view is that when a state commits cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible. (*See* U.K. Foreign Office Policy, Doc. 48, at II-20.).

32 For example Christopher Greenwood has cited the examples of India's intervention in East Bengal in 1971, Tanzania's overthrow of the Amin government in Uganda in 1979, and Vietnam's use of force against Pol Pot's regime in Cambodia in 1979. In all these cases the countries intervening, pleaded self-defence.

For a long time, international law held that no intervention in the internal affairs of another state was allowed whatsoever even by the United Nations itself.<sup>33</sup> Intervention by one state in another state's affairs was allowed only when that other state was exercising its right of self-defence. However, recent events have shown that humanitarian intervention can be pled when particular circumstances are taking place within a country. In support of humanitarian intervention, former United Nations Secretary General Javier Perez de Cuellar observed, "[w]e are witnessing what is probably the most irreversible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents."<sup>34</sup>

International interventions in the Former Yugoslavia (Kosovo in particular) and Iraq, among others, was done in the name of humanitarian intervention. Thus, the position of De Cuellar was vindicated. After the end of the Gulf War in 1991, there was an uprising by the Kurdish and Shiite populations of Iraq. President Saddam Hussein of Iraq, who had just lost the war, decided to vent his anger on the Kurds and Shiite Muslims. The entire Kurdish population living in the North of Iraq was sent into the mountains bordering Turkey. In response, the Security Council of the UN adopted Resolution 688 on April 5, 1991. The Resolution among other things insisted that Iraq "allow immediate access by the international humanitarian organisations to all those in need of assistance in all parts of Iraq." This Resolution, as one scholar has put it, "broke new ground in the degree to which it involved the Security Council in taking a stand against a state's ill-treatment of its own people."<sup>35</sup> Resolution 688 contained no provision regarding the enforcement of the resolution either by the UN or by individual member states.<sup>36</sup> However, the USA, UK and others decided, among other things, to impose no-fly zones over Northern and Southern Iraq. No Iraqi planes are allowed to fly over these designated zones.

On top of the no-fly zones declaration, the Western powers provided humanitarian assistance to the Kurds and Shiites. All this was done in the name of humanitarian intervention. The Security Council could not sit by and see the human rights of a large number of people being trampled upon by a dictator. Up to now, the no-fly zones are still in place over Northern and Southern Iraq. Therefore, the sovereignty of Iraq and the provisions of the UN Charter were overridden by the humanitarian imperative.

---

33 U.N. CHARTER art. 2, para 7.

34 Christopher Greenwood, *Is There a Right of Humanitarian Intervention?* THE WORLD TODAY, Feb. 1993, at 35.

35 *Id.* at 36.

36 *Id.*

When the majority Kosovo Albanians rose up in the province of Kosovo in the former Yugoslavia for greater autonomy, the government of Yugoslavia under Slobodan Milosevic decided to use force to curb the unrest. Whole populations of Kosovar Albanians were expelled from their homes and men of fighting age were arrested and killed by the Serbs. The international community first reacted by calling and organising peace talks between the Yugoslav authorities and the Kosovar Albanians. When an agreement was reached at Rambouillet France, the Kosovo Albanians signed but the Yugoslav authorities refused to sign. When the ethnic cleansing of the Kosovars by the Serbs continued in Kosovo, the North Atlantic Treaty Organisation (NATO) decided to act.<sup>37</sup> It launched air strikes on Yugoslavia, until the Yugoslav authorities accepted the international community terms. Currently, the province of Kosovo is under NATO control and the expelled Kosovars are returning to their villages. All this was done in the name of humanitarian intervention. NATO did not have to go to the Security Council of the UN to ask for permission to start bombing Yugoslavia.

Thus, from the above two examples, it can be deduced that today under international law, humanitarian intervention in another state's internal affairs by the international community is permitted. One commentator has put it that, "the Nuremberg norm prohibiting genocide 'trumps' the Westphalian norm of non-intervention."<sup>38</sup> Thus, Uganda claiming to have gone into the DRC to forestall genocide from taking place there (which was a real possibility given the presence of the Interahamwe) would not be contrary to international law. Genocide is an act that gives rise to *erga omnes* obligations owed to all states, and which all states are under an obligation to stop from occurring. Already, the international community failed to intervene in Rwanda and stop the 1994 genocide from occurring.

## Conclusion

There have been multifarious debates all trying to explain the legality and illegality in international law of Uganda's involvement in the DRC. The treatment above has attempted to explain within the bounds of international law instruments the legality and illegality of Uganda's involvement. The politics of the Great Lakes Region and the internal politics of Uganda required that Uganda get involved in the DRC. The only arguable point is the extent of Uganda's involvement. Does a country need to occupy a quarter of another country's territory to protect

---

<sup>37</sup> Although, it has to be noted that there was no specific Security Council Resolution authorising NATO to use force. In this regard therefore it may be argued that NATO's use of force against Yugoslavia was illegal under international law.

<sup>38</sup> Kenneth Campbell, *The Role of Force in Humanitarian Intervention*, at <http://www.usafa.mil>

her borders against rebel incursion? Suffice it to note that Article 2(4) of the United Nations Charter emphasises territorial integrity of states.

This paper has shown that there are undisputed reasons that are clearly within international law bounds that Uganda has advanced to be engaged in the DRC. Indeed, no country should sit idly-by and leave genocide to take place in another country simply because of respect of the sovereignty of another country. The costs of inaction are far greater than intervention. This was clearly shown by the 1994 genocide in Rwanda. However, there are other activities that Uganda has engaged in that are clearly illegal under international law. The training and arming of DRC insurgents and the actual participation in military operations against the DRC army are clear violations.

Also, the reported rapacious looting of the DRC natural resources by the Ugandan army and civilian individuals is clearly not within the bounds of international law. Despite persistent denials that Uganda is not exploiting DRC wealth, evidence has come up pointing to the contrary. Professor Wamba dia Wamba one of the rebel leaders in Congo in an interview with a Danish newspaper *Aktuelt* confirmed that the armies of Uganda and Rwanda were behind extensive looting of Congo's natural resources. He said, "[I]n the case of Rwanda it is a state policy. In the case of Uganda it is individuals."<sup>39</sup> He confirmed that several high-ranking Ugandan officers organise looting of Congo's vast natural resources such as gold, precious stones and timber. Also, a

---

39 Gunnar Willum, *Rebel Leader Confirms What Western Donors Deny: Uganda Plunders Congo*, 2 (Jan.22, 2001), at <http://www.willum.com/articles/aktuelt22jan2001/index.htm>, cited in THE SUNDAY MONITOR, Feb. 18, 2001.

United Nations Panel<sup>40</sup> probing illegal exploitation of Congo's natural resources named among other countries Uganda, as being one of the looters of Congo's wealth. The Panel's report<sup>41</sup> noted that although Uganda as country had no policy to loot Congo, "several Uganda Peoples Defence Force (UPDF) officers, former Presidential Advisor on Defence and Security Affairs, as well as political heavy weights [were implicated in the looting]."<sup>42</sup>

---

40 By the President statement of 2 June 2000 (S/PRST/2000/20), the Security Council requested the Secretary General to establish this expert panel for a period of six months. The Secretary General in a letter to the President of the Security Council of 31 July 2000 (S/2000/76) notified the President of the Security Council the composition of the panel as follows: Madame Safiatou Ba-N'Daw (Cote d'Ivoire-Chairperson); Mr Francois Ekoku-Cameroon; Mr. Mel Holt-United States; Mr. Henri Maire-Switzerland; and Mr. Moustapha Tall-Senegal.

41 The report is titled, "Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo."

42 See Uganda, Rwanda Officers Cited in DR Congo Looting, THE NEW VISION, Mar. 28, 2001.