

The International Conference on the Great Lakes Region (ICGLR) and the Implementation of International Humanitarian Law (IHL) in The Great Lakes Region

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Introduction

Since the early 1990s, the African Great Lakes Region (GLR), comprising the countries of Burundi, Democratic Republic of Congo (DRC), Rwanda, Tanzania and Uganda, has been convulsed by genocide, civil wars and inter-state conflicts.¹ Officially, between 800,000 and 1 million ethnic Tutsis and moderate

¹ Jon Lunn, *The African Great Lakes Region: An end to Conflict?* Research Paper 06/51, House of Commons Library, 25 October 2006.

Hutus were killed in the Rwanda genocide of 1994,² and 1.5 million Hutus fled in exile in Eastern DRC of which an estimated 300,000 perished in massacres, exhaustion, hunger and disease.³ The total death toll in the DRC conflict between 1994 and 2004 was estimated to be 3.9 million people⁴ resulting in the conflict being declared as the world's most deadly since the end of the Second World War (WWII).⁵ No one knows exactly how many thousands died in the long conflict in northern Uganda—some say the figure is about 30,000, with 1.8 million persons being displaced.⁶ According to the Abducted Children Registration and Information Systems database developed and maintained jointly by the United Nations Children Education Fund (UNICEF) and the Uganda government, the LRA had abducted 26,615 children by 2001.⁷ The death toll in the Burundi conflict between 1993 and 2005 stood at 300,000 people killed.⁸ Generally, other than Tanzania,⁹ the rest of the countries of the region have experienced civil wars, which some of them are yet to recover from.

In recognition of the dire conflict situation in the GLR, the United Nations (UN), during the second half of the 1990s proposed the establishment of the International Conference on the GLR (ICGLR) in order to “develop a regional approach to conflict resolution.”¹⁰ The initiative was supported by external partners including: Canada, France, the African Development Bank (ADB), the European Union (EU) and the United States of America (USA). Eventually, the area of the GLR was expanded to also include the countries of Angola, Central African Republic (CAR), Kenya, The Republic of Congo, The Republic of Sudan and Zambia. At its 5th Extra-ordinary summit of heads of state and

² A census carried out by Rwanda's Ministry of Youth, Culture and Sports in 2004 found that 937,000 Tutsi and politically moderate Hutus were killed during the genocide. See, 'Rwanda: Census finds 937,000 died in Genocide,' *The United Nations Regional Information Network*, 2 April 2004.

³ See generally Marie Beatrice Umutesi, *Surviving the Slaughter: The Ordeal of a Rwandan Refugee in Zaire*. Translated by Julia Emerson, Madison: University of Wisconsin Press, 2004.

⁴ Benjamin Coghlan et al. Mortality in the Democratic Republic of Congo (DRC): A Nationwide Survey, 367 (2) *Lancet*, 2006, p. 44 (44-51).

⁵ *ibid.*

⁶ Tim Judah, 'The Secret War', *The New York Review of Books*, 23 September 2004 at <http://www.nybooks.com/articles/archives/2004/sep/23/uganda-the-secret-war/?pagination=false> (accessed 20 March 2013).

⁷ Payam Akhavan, Payam. 2005. 'The Lord's Resistance Army Case: Uganda's submission of the First State Referral to the International Criminal Court' 99 (2) *American Journal of International Law*, 2005, p. 407.

⁸ Lunn, *The African Great Lakes Region*, p. 31.

⁹ The country has also suffered from the effects of these conflicts because it has been forced to host several thousands of refugees.

¹⁰ International Crisis Group (ICG), *Congo: No stability in Kivu despite a Rapprochement with Rwanda*, *Crisis Group Africa Report no. 163*, Nairobi/Brussels, 16 November 2010, p. 30.

government, the Republic of South Sudan was admitted as the 12th member state of the organization.¹¹

This paper, using the examples of Eastern DRC and Darfur Sudan, discusses the efforts of the ICGLR to implement International Humanitarian Law (IHL) in the Great Lakes Region. The region is awash with individuals, national armies and non-state armed groups (NSAGs) who continue to pose a threat to the security of the region including violating the most basic principles of IHL. Generally, the paper concludes by noting that whilst the ICGLR has developed mechanisms on paper which try to promote IHL, nevertheless, practically the organisation has made small strides in the implementation of IHL. Some member states of the ICGLR have developed measures especially in the area of illegal exploitation of natural resources that aim at regulating the extraction and export of some minerals in the region. Suffice it to note that, the extraction has been characterised by horrendous IHL infractions.

The paper sequentially first presents a short history of the ICGLR. The next section describes the Pact on Security Stability and Development in the GLR and the mechanism of its implementation. The next section analyses the implementation of IHL by the ICGLR by looking at its work since it was established in 2006. Specifically, the paper draws on the examples of the continued IHL violations in Eastern DRC and Darfur Sudan. The paper ends with a conclusion.

A History of the ICGLR

Within the context of the on-going conflict in the DRC, the United Nations Security Council (UN SC) in the year 2000 passed Resolutions 1292¹² and 1304¹³ in which it re-affirmed its desire, to hold an international conference on peace, security, democracy and development in the GLR with the AU, with participation of all the governments of the region and all others concerned. Subsequently, later in the year 2000, the Secretariat of the International Conference was established in Nairobi, Kenya under the umbrella of the UN and the AU.

In November 2004, the heads of state and government of the eleven countries unanimously adopted the Declaration on Peace, Security and Development

11 ICGLR, *Declaration of the Heads of State and Government of the member States of the ICGLR on the Security Situation in Eastern DRC- 5th Extraordinary Summit of the Heads of State and Government*, Kampala, Uganda, 24 November 2012, para. 13.

12 UN SC, Resolution 1291 (2000), S/RES/ 1291 (2000), 24 February 2000, para. 18.

13 UN SC, Resolution 1304 (2000), S/RES/ 1304 (2000), 16 June 2000, para. 18.

in the Great Lakes Region in Dar es Salaam Tanzania.¹⁴ The Declaration presented a political statement with the intention to address the root causes of intractable conflicts and constraints to development in a regional and innovative approach. It identified the priority policy options and guidelines of: peace and security; democracy and good governance; economic development and regional integration and humanitarian and social issues. On each of these, the heads of state and government committed themselves to undertake specific activities.

In November 2006, the Heads of State and Government convened in Nairobi and signed The Pact on Security, Stability and Development in the Great Lakes Region (*hereinafter* The Pact). The Pact which includes the Dar es Salaam Declaration, Programmes of Action and Protocols, aims at inter alia "creating the conditions for security stability and sustainable development between the member states."¹⁵

The ICGLR Executive Secretariat headquartered in Bujumbura, Burundi was inaugurated in May 2007 with responsibility to coordinate, facilitate, monitor and thereby ensure the implementation of the Pact in order to attain peace, security, political stability and development in the Great Lakes Region. The main divisions of ICGLR are: Peace and Security; Democracy and Good Governance; Economic Development and Regional Integration; and Humanitarian and Social Issues. In addition, the Conference addresses Cross-cutting issues such as Gender, Environment, Human Rights, HIV/AIDS and Human Settlements.

The Pact on Security, Stability and Development in the Great Lakes Region

The main objectives of the Pact include: providing a legal framework governing relations between the member states within the limits of the selected priority areas in matters of peace and security, democracy and good governance, economic development and regional integration, and humanitarian, social and environmental issues;¹⁶ and creating conditions for security, stability,

14 ICGLR, *Background: Who we are*, 25 November 2010 at <https://icglr.org/spip.php?article1> (accessed 3 January 2013). See also International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, *First Summit of Heads of State and Government: Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region*, Dar-es-Salaam, 19-20 November 2004 at https://icglr.org/IMG/pdf/Dar_Es_Salaam_Declaration_on_Peace_Security_Democracy_and_Development.pdf (accessed 3 January 2013).

15 The Pact, Article 2(c).

16 *ibid.*, Articles 2(a) and 4(a).

and sustainable development between member states. The Pact also seeks to implement the Dar es Salam declaration, the protocols, programmes of action, the regional follow-up mechanism and the special reconstruction and development fund.

The Pact envisages the conclusion of various protocols by the member states. The protocols that have been concluded include: Protocol on Democracy and Good Governance to *inter alia* promote and observe democratic principles; Protocol on Judicial Cooperation to promote cooperation among member states in matters of extradition, judicial investigations and prosecution; Protocol against the Illegal Exploitation of natural Resources to *inter alia* provide for regional rules and mechanisms for combating the illegal exploitation of natural resources which constitute a violation of the States' right of permanent sovereignty over their natural resources ...; Protocol on the Specific Reconstruction and Development zone under-which the member states are to institute trans-border development basins to promote local regional integration of the border populations, and the establishment of a Special Reconstruction and Development for supporting the implementation of selected priority areas of peace and security, democracy and good governance, economic development and regional integration, and humanitarian, social and environmental issues.

Other protocols under the pact include: Protocol on the Prevention and Suppression of Sexual Violence against Women and Children under which member states commit themselves to combat sexual violence against women and children through preventing, criminalizing and punishing acts of sexual violence, both in times of peace and in times of war in accordance with national laws and international criminal law; Protocol on the Protection and Assistance to internally Displaced Persons providing for special protection and assistance to internally displaced persons; Protocol on Property Rights of Returning Persons providing for legal protection for the property of internally displaced persons and refugees in their countries of origin. Under the protocol member states are to first ensure that refugees and internally displaced persons, upon returning to their areas of origin shall recover their property with the assistance of the local and administrative authorities, and secondly create a legal framework for resolving disputes arising from the recovery of property previously occupied or owned by returning persons. The Protocol on the Management of Information and Communication creates a Regional Council for Information and Communication with the role of: promoting the free exchange of ideas; promoting freedom of expression and the press; and providing training and civic education through the media. The Pact also envisages that other protocols will be concluded by the member states in future but which shall be an integral part of the Pact.

Under the Protocol for the prevention and the punishment of the crime of genocide, war crimes and crimes against humanity and all forms of discrimination (which is the subject of this article) member states undertake *inter alia* to; refrain from, prevent and punish such crimes; condemn and eliminate all forms of discrimination and discriminatory practices; and proscribe all propaganda and all organizations which are inspired by ideas or theories based on the superiority of a race or a group of people of a particular ethnic origin, or which try to justify or encourage any form of ethnic, religious, racial or gender based hatred or discrimination.

The Pact in addition to the various protocols enumerated above, also provides for the establishment of Programmes of Action in the various priority areas identified by the member states including: Peace and Security aimed at *inter alia* promoting the joint management of the security of common borders; promoting, maintaining and enhancing cooperation in the fields of peace, conflict prevention and the peaceful settlement of disputes; and promoting inter-State cooperation on general security issues including combating illicit proliferation of small arms and light weapons, preventing and combating organized transnational criminal activities and terrorism. Under the Programme of Action for Democracy and Good Governance the member states undertake to entrench values, principles and norms on democracy, good governance and respect for human rights. The specific aims of the programme include: the establishment of regional mechanisms which work together to strengthen the rule of law in the region, promote human rights and combat impunity; consolidation of the democratization process by enhancing institutional capacity by promoting political participation of all segments of society, and developing and implementing communication and information strategies; and harmonization and coordination of policies on the protection and rational management of natural resources in the region.

Under the Programme of Action for Economic Development and Regional Integration member states undertake to jointly promote a prosperous, integrated economic space to improve the standard of living of the population; and to contribute to the development of the region by *inter alia*; promoting cooperation and economic integration by harmonizing and coordinating national and regional policies with relevant regional economic communities so as to improve stability and economic competitiveness, and to reduce poverty; developing common infrastructure in the areas of energy, transport and communications; and promoting local regional integration by strengthening multi-sectoral cooperation and solidarity among the border populations of neighbouring states.

The Programme of Action on Humanitarian, Social and Environmental Issues calls on member states to undertake to find lasting solutions to guarantee protection and assistance to populations affected by political conflicts in the

Great Lakes Region, as well as by humanitarian, social and environmental catastrophes. The programme specifically aims at promoting policies on disaster prevention, protection, assistance and the search for durable solutions for refugees and internally displaced persons, as well as the environment; and promoting relevant policies to guarantee access to basic services by the populations affected by conflicts and effects of natural disasters.

Two mechanisms were provided for to *implement* the Pact. First, is the Special Fund for Reconstruction and Development with mandatory contributions from the member states as well as voluntary contributions from cooperating and development partners. Secondly, to ensure the full implementation of the Pact, a regional follow-up mechanism consisting of: the Summit of the Heads of State and Government, Regional Inter-Ministerial Committee (RIMC), the Conference Secretariat, the National Coordination Mechanisms among others is contemplated. The various bodies consisting of the mechanism have their structures, procedures and functions spelled out in the Pact.

Application of IHL

International Humanitarian Law (IHL) establishes protection for civilians, other non-combatants as well as combatants, and limits methods and means of warfare in armed conflict. IHL has developed through a series of treaties, the most important of which the Hague Conventions of 1899 and 1907; the four Geneva Conventions (dealing with the wounded and sick on land, wounded, sick and ship wrecked at sea, prisoners of war and civilians) of 1949; the two 1977 Additional Protocols to those conventions; [and the 2005 Additional Protocol].¹⁷ The 1949 Conventions are binding on almost every state in the world, including those in the GLR.

At one time, the law of war applied only if there was a state of war between two or more states. War, for these purposes, was a formal legal concept which only came into being when there was a declaration of war or some other indication by one of the parties to a conflict that it regarded itself as being at war with its adversary.¹⁸ But declarations of war have become rare with most states engaged in hostilities denying that they were at war. Nevertheless, IHL affirms that the duty to for example treat prisoners of war or civilians in a humane fashion is not dependent upon the formalities of "official declaration of war". The Geneva

Conventions apply to any armed conflict between state parties, even if the state of war has not been recognized by one of them.¹⁹ Today, therefore, IHL applies to any armed conflict between two or more states, whether or not the parties regard themselves as being in a state of war.²⁰ A situation of armed conflict has existed between a number of countries in the GLR. For example, Burundi, Rwanda, Uganda intervened in the Democratic Republic of Congo between 1996 and 2003; Angola, Chad, Namibia and Zimbabwe also were involved militarily in the DRC in the same period; and Uganda and Sudan have also been involved in a situation of armed conflict. But generally, increasingly, inter-state conflicts have receded in the GLR although suspicions of some countries involvement in the internal affairs, (for example Rwanda and Uganda in the DRC), persist. What the GLR has in plenty are armed conflicts involving non-state armed groups with government forces (what could be called insurgencies).

The question that arises is: Does IHL apply in situations of insurgencies (non-international armed conflicts) like the ones we find in the GLR? The answer is yes. Common Article 3 of the Geneva Conventions which applies to any case of 'armed conflict not of an international character' occurring in the territory of one the States party to the Convention requires that the parties to such an internal conflict observe the minimum standards of: persons taking no part in hostilities must not be harmed and the wounded and the sick must be cared for. Additional Protocol II amplifies the provisions applicable to non-international armed conflicts. Its substantive articles contain more detailed provisions on fundamental guarantees, treatment of the wounded and the sick, and protection of the civilian population. However, it applies only to those states which have become parties to it. The Protocol provides that it shall only apply to armed conflict which;

... take place within the territory of [a state party to the protocol] between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.²¹

17 Christopher Greenwood, *The law of War (International Humanitarian Law, in Malcolm D. Evans, International Law (2nd edn.), Oxford: Oxford University Press, 2006, p. 784.*

18 *ibid.*, p. 785.

19 Article 2, Geneva Conventions 1949.

20 Greenwood, *The law of War*, p. 786.

21 Article I(1), Additional Protocol II.

Protocol II is not applicable to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts. However, Protocol II applies to civil wars in which both sides control tracts of territory, and where the fighting has reached a level that can be described as an armed conflict. The situations in Eastern DRC and Darfur Sudan can be described as civil wars as both government forces and the NSAGs (insurgents) control territory, and are locked in a confrontation that can be described as an armed conflict. It should be noted that the DRC and Sudan acceded to the Geneva Conventions and Protocol II in 1961 and 2002; and 1957 and 2006 respectively.

Applications of the ICGLR Protocols relating to IHL, and the Situation in the GLR

As noted above, the countries of the ICGLR have concluded protocols which directly seek to promote IHL principles including: the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (*hereinafter* Protocol on Women and Children); Protocol for the Prevention and Punishment of the crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination (*hereinafter* Protocol on Genocide) and Protocol against the Illegal Exploitation of Natural Resources (*hereinafter* Protocol on Natural Resources). In this section, I analyze the application of these protocols to the situation in the GLR taking the examples of Eastern DRC and Darfur Sudan.

Eastern DRC

Since the end of the Rwanda genocide and entry into the DRC²² of the defeated *Interahamwe* and the Rwanda Armed Forces (FAR) in 1994, the whole of DRC in general, and Eastern DRC in particular, have never known peace. Rebels and militia groups have sprung up in the country to a point that one cannot keep track of who is who. The availability of mineral and other forms of natural wealth in the country have been a source of the continued instability in the region. In fact, the rebel and militia groups have transformed their military operations and presence in the country into self sustaining activities, through the extraction and

22 The Democratic Republic of Congo (DRC) has changed names a number of times. During colonial times, it was called Congo Free State and then Belgian Congo. After independence it was called Republic of Congo then Mobutu changed the name to Zaire which lasted up to 1997 when Laurent Kabila changed it to the Democratic Republic of Congo (DRC).

sale of the available natural resources. The instability occasioned by these groups has resulted in mass deaths, displacement, and human rights violations some of which amount to be classified as grave breaches of international humanitarian law.

In more recent years, Eastern DRC has been the epicenter of conflict in the DRC. The main areas that have been wracked by violence include: the Provinces of North and South Kivu, and the region of Ituri in Orientale Province.

North Kivu

The province of North Kivu has been the epicentre of conflict in the DRC since the early 1990's. In 1993 conflict broke out in the areas of Walikale, Masisi and Brito/Rutshuru in North Kivu. The conflict also known as the "Masisi War" took a new turn in 1996 with the start of the Tutsi led uprising in Kivu also known as the "First Banyamulenge Rebellion."²³ The cause of this uprising was a decision by the Mobutu government to expel all people of Tutsi descent from Congo. This Eastern Congo Crisis as the rebellion of the Banyamulenges came to be called, spread and resulted in the overthrow of Mobutu.

There are nine major ethnic groups which inhabit North Kivu including: Hunde, Hutu, Kano, Kumu, Nande, Nyanga, Tembo, Tutsi and Twa.²⁴ The root causes of the conflict in the province stem from the Belgian colonial policies. Before the independence of Congo, the Belgian colonizers initiated a well organized migration scheme which brought thousands of Banyarwanda families, especially Hutu from Rwanda to North Kivu in order to develop the region.²⁵ At independence, the Banyarwanda had become the majority ethnic group in their adopted country and the Congolese ethnic groups became a minority. This resulted in ethnic tensions mainly over land ownership between the native (*autochtones*) groups and the Banyarwanda immigrants. For example, clashes between the Banyarwanda on one hand, and Hunde and Nyanga in 1993 resulted in thousands killed and hundreds of thousands displaced. Nevertheless, several

23 Stanislas Bucyalimule Mararo. 2005. "Kivu and Ituri in the Congo War: The Roots and Nature of a Linkage," in Siefaan Marysse and Filip Reyntjens (eds.), *The Political Economy of the Great Lakes Region in Africa: The Pitfalls of Enforced Democracy and Globalisation*. Basingstoke: Palgrave MacMillan, p. 190.

24 Phil Clark. 2008. "Ethnicity, Leadership and Conflict Mediation in Eastern DRC: The case of the *Barza Inter-Communautaire*, 2(1) *Journal for Eastern African Studies*, p. 1. The Nande is the largest ethnic group.

25 Law Group, *Ethnic Conflict in North Kivu* at <http://www.grandslacs.net/doc/0448.pdf> (accessed 13 December 2012).

new factors have come to complicate the conflict including: the arrival of a million refugees from Rwanda in 1994; increase in arms trafficking; and the proliferation of local and international non-state armed groups.²⁶

Goma, the capital of North Kivu was the headquarters of the Rally for Congolese Democracy (RCD) faction led by Emille Illunga.²⁷ After the conclusion of the establishment of transitional government in 2003, the province enjoyed some relative peace. Nevertheless, skirmishes continued between the FARDC and the different non-state armed groups mainly the *Forces Democratiques de Liberation du Rwanda* (FDLR), which is composed mainly of persons (Hutu) who allegedly committed the Rwanda genocide of 1994. The situation was exacerbated by the numerous mutinies within the ranks of the FARDC. In August 2008, renewed combat broke out between the FARDC and General Laurent Nkunda's *Congres Nationale de Defense de Peuple* (CNDP) which he established in 2006 to ostensibly fight against the FDLR.²⁸ After several rounds of talks in Nairobi and Goma, the CNDP and the Congolese government signed a peace agreement on 23 March 2009.²⁹ Earlier on in January 2008, 22 armed groups and the DRC government signed the Goma Acts of Engagement which *inter alia* provided for those groups to undertake the programme of Disarmament, Demobilisation, Resettlement and Reintegration (DDRR).

South Kivu

The demographic make up of the province include: the Bafulero, Bashi, Babembe, Baluba, Batembi, Bahavu, Barega and Banyamulenge. Of recent, South Kivu province has relatively been peaceful. Nevertheless, controversy still surrounds the political and social position of the Banyamulenge (Tutsi Rwandan) ethnic group that lives around the Itombwe Plateau in the province. The group played an instrumental role in bringing Laurent Kabila to power in 1997, and starting the rebellion against the Kabila government in August 1998. The Banyamulenge have been a subject of attacks especially from the Hutu *genocidaires* who arrived in South Kivu after being routed by the RPA in Rwanda.

The insecurity in the province has also been orchestrated by the numerous FARDC mutinies. FARDC elements have been responsible for many continuing

²⁶ *ibid.*

²⁷ He was later replaced by Azarias Ruberwa.

²⁸ More on this *infra*.

²⁹ Peace Agreement between the Government and *Le Congres National pour La Defense du Peuple* (CNDP), Goma, 23 March 2009.

human rights abuses, due to a culture of impunity for military personnel, bad conditions, lack of pay, and lack of training.

Ituri

For a while now, Ituri region of Province Orientale has enjoyed relative peace. The demographic makeup of Ituri region is as follows: Alur, Lendu, Hema, Ngiti, Bira and Ndo-Okebo. The Hemas and Lendu account for 40% of the total population of the province. The two main ethnic groups (Hema and Lendu) have always lived together sharing a language of Kilendu and inter-marrying. But ethnic clashes have flared between them in the past. In fact it is said that the groups clashed previously in 1972, 1985 and 1996. The conflict in Ituri province intensified between 1999 and 2003, due to ethnic clashes over land between the Hema and Lendu ethnic groups. In mid-June 1999, some Hema landholders in the locality of Walendu/Pitsi tried to exploit the absence of a credible local authority by expanding their holdings on territory claimed by Lendu communities.³⁰ The Hema landowners reportedly presented land titles falsified with the help of local officials and the perceived falsification was taken in very bad faith by the Lendus.³¹ At the height of the conflict, both groups sought to expel each other from contested areas in a policy of ethnic cleansing.

The situation in Ituri was finally stabilized in 2003 with the dismantling of the different militia groups that were operating there.³² The groups included: the *Front Nationaliste et Integrationniste* (FNI) led by Peter Karim; the *Mouvement Revolutionnaire Congolaise* (MRC) led by Matthieu Ngudjolo; the Union of Patriotic Congolese (UPC) of Thomas Lubanga and the *Forces de Resistance Patriotique en Ituri* (FRPI) of Cobra Matata. Lubanga and Ngudjolo were indicted by the ICC, arrested and transferred to the court where they were charged with war crimes committed in the conflict. Whilst Ngudjolo is still facing prosecution, Lubanga became the first person to be convicted by the ICC in March 2012.

³⁰ Human Rights Watch (HRW). 2001. *Uganda in Eastern DRC: Fuelling Ethnic Strife, Report*, 13 (2A), March.

³¹ *ibid.*

³² The French led, and UN authorized Operation Artemis liberated the region from the grip of the militias.

Alleged violations of IHL in Eastern DRC

The human rights situation in eastern DRC has been deteriorating year in year out. The numerous NSAGs (Congolese and foreign) continue to commit human rights violations which sometimes reach the threshold of grave breaches under IHL. Of the more than 4 million deaths that have been recorded since the start of the DRC conflict in 1996, the majority have occurred in Eastern DRC. In their broad struggle to seize economic, political and military power, the militias and rebel movements have carried out the most horrific human rights abuses, including widespread killings of unarmed civilians, rape, torture and looting, recruitment of child soldiers to fight in their ranks, and forced displacement of hundreds of thousands of people.³³

In the *Case concerning armed activities on the Territory of Congo [DRC v. Uganda]* (1999) (*hereinafter* The DRC case), the International Court of Justice (ICJ), *inter alia* held that “the actions of various parties to the complex conflict in the DRC have contributed to the immense suffering faced by the Congolese population.”³⁴ It added, that the human rights violations committed included deliberate killing of civilians, rape, looting and some acts of cannibalism, contrary to customary international humanitarian law principles.³⁵

The United Nations’ Mapping Exercise report- Mapping of the most serious human rights and international humanitarian law violations committed in the DRC between 1993 and 2003 published in 2010³⁶ accused the countries including of Burundi, Rwanda and Uganda, of committing human rights and international humanitarian law violations during the successive DRC conflicts. The report concludes that “the vast majority of the 617 most serious incidents described in the mapping report point to the commission of multiple violations of human rights and/or international humanitarian law, which may constitute crimes against humanity or war crimes, and often both at the same time” The human rights infractions and IHL violations cited include: killing of civilian refugees, summary executions of non-combatants, rape, pillaging, using indiscriminate

33 Kasajja Phillip Apuuli. 2010. Rebels and Militias in Resource Conflict in Eastern Democratic Republic of Congo (DRC), in *Rebels, Militias and Islamist Militants: Human Insecurity and State Crises in Africa*, Wafula Okumu and Augustine Ikelegbe, Pretoria: ISS, p. 194.

34 *Judgement*, 19 December 2005, para. 221.

35 See generally, Kasajja Phillip Apuuli, (2008). ‘The Implications of the Arrest of Jean Pierre Bemba by the International Criminal Court,’ *East African Journal of Peace and Human Rights* 14(2), pp. 247-265.

36 Available at www.ohchr.org/.../ZR/DRC_Mapping-Report_Final_EN.pdf (accessed 26 February 2013).

and disproportionate force against civilians, killing of humanitarian workers, and destroying numerous buildings, private homes and premises used by local and international non-governmental organizations in towns such as Bunia.³⁷

Alleged specific IHL violations

Sexual violence

Rape as a weapon of war in Congo “exists on a scale seen nowhere else in the world”.³⁸ It has been estimated that 48 women are raped hourly in the DRC.³⁹ Thus, the DRC has been described as the most dangerous place in the world to be a woman.⁴⁰ For example, between January and September 2007, Panzi Hospital in South Kivu, registered a total of 2,773 cases of rape, of which 2,447 were attributed to members of the FDLR or *Interahamwe*.⁴¹

More recently, the UN has recorded 333 cases of sexual violence involving women.⁴² These included 70 cases involving girls that were allegedly committed by armed groups and national security forces. In Orientale Province, in November 2012, at least 66 women, including four minors, were reportedly raped by Mayi-Mayi Simba/Lumumba combatants. The victims were reportedly targeted during attacks on their villages. In South Kivu, at least 126 women, including 24 girls, were reportedly victims of sexual violence by FARDC soldiers in Minova and its surrounding villages, in Kalehe territory, from 20 to 22 November 2012. No wonder, the UN Special Representative on Sexual Violence in Conflict, Margot

37 For a discussion of the report with regard to the allegations against Uganda see Kasajja Phillip Apuuli, (2011). ‘The United Nations’ Mapping Exercise Report and Uganda’s Involvement in the Democratic Republic of Congo conflict from 1996-2003,’ *African Human Rights Law Journal* 11(2), pp. 659-682.

38 International Coalition for the Responsibility to Protect (ICRtoP), Crisis in the DRC, at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc> (accessed 26 February 2013). It has been estimated that “as many as two million women have been raped during the ongoing conflict, possible more, with women victimized at a rate of nearly one every minute.” See Mayme Audra Lefrgey, ‘DRC: One of the most dangerous places to be a woman or girl,’ *Make every Woman Count*, 26 November 2012 at http://www.makeeverywomancount.org/index.php?option=com_content&view=article&id=4589:drc-one-of-the-most-dangerous-place-to-be-a-woman-or-a-girl&catid=70:16daysactivism&Itemid=187 (accessed 26 February 2012).

39 Lefrgey, ‘DRC: One of the most dangerous places to be a woman or girl.’

40 *ibid*.

41 International Crisis Group, 2009. *Congo. A Comprehensive Strategy to Disarm the FDLR*, Africa Report No. 151, Nairobi/Brussels, 9 July, p. 17.

42 For details see generally UN SC, *Report of the Secretary General on the United Nations Organization Stabilization Mission in the DRC, S/2013/96*, 15 February 2013, p. 11.

Wallstrom has declared the DRC the rape capital of the world.⁴³ In eastern DRC alone, the UN has estimated that in the year 2009 alone, 15,000 women were raped.⁴⁴ During the period of 30 July to 4 August 2010, mass rapes were carried out by members of the FDLR and Congolese Mayi-Mayi-Cheka militias in Eastern DRC.⁴⁵

Internal Displacement and attacks against humanitarian workers

The UN has reported that by January 2013, more than 2.6 million people have been displaced in the DRC, with close to 1.6 million in the Kivu Provinces.⁴⁶ Many of the internally displaced persons have found themselves in protracted and multiple displacements. Attacks against humanitarian workers have also intensified with 54 incidents being reported as of December 2012.⁴⁷

Recruitment of Children in armed conflict

The conflict in the DRC has been marked by the systematic use of children in the ranks of the NSGs and sometimes government forces. It has been estimated that at least 30,000 children have been recruited or used by the armed forces or groups during the DRC.⁴⁸ As at 31 December 2012, the UN had documented 41 children casualties as a direct result of violent conflict.⁴⁹ Documented cases of recruitment of children include 210 children-187 boys and 23 girls, who were separated or escaped from the armed groups. There is a deliberate policy by the M23 group to recruit children in both Rwanda and Congolese territories. The situation has been exacerbated by the fact that in North and South Kivu, at least 42 primary and secondary schools have been occupied and damaged by the Congolese armed forces. As a result, children of school going age are vulnerable to recruitment in the armed conflict.

43 Malokele Nanivazo. 2012. 'Sexual Violence in the Democratic Republic of Congo', United Nations University, 24 May, at <http://unu.edu/publications/articles/sexual-violence-in-the-democratic-republic-of-the-congo.html> (accessed 26 February 2013).

44 ICRT(P), Crisis in the DRC.

45 *ibid.*

46 UN SC, *Report of the Secretary General*, p. 6.

47 *ibid.*

48 Apuuli, 'The United Nations' Mapping Exercise Report', p. 669.

49 UN SC, *Report of the Secretary General*, p. 12.

Plundering of Congo Resources

The DRC is home to an abundance of natural resources, ranging from a multitude of minerals-including diamonds, gold, copper, cobalt, cassiterite (tin ore) and coltan- to timber, coffee and oil. This vast natural wealth has scarcely benefited the Congolese people, however, and has in contrast been the cause of numerous serious human rights abuses and violations of international humanitarian law. It has been concluded that natural resources exploitation is the driving force behind the war in the DRC.⁵⁰

In the *DRC case*, the ICJ discussed the issue of the illegal plunder of DRC's natural wealth with regard to Ugandan soldiers who were deployed in the DRC up to 2003. In the context of violations of international humanitarian laws, the Court concluded that '... whenever members of the UPDF were involved in looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the *jus in bello*, which prohibits the commission of such acts by a foreign army in the territory where it is present.'⁵¹ The court added that '... Article 33 of the Fourth Geneva Convention of 1949 prohibits pillage.'⁵² Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC's natural resources.

More recently, the UN has reported that the illegal exploitation of the natural resources continues as a result of the existence of thousands of artisanal miners.⁵³ There is rivalry between the holders of mining titles and the artisanal miners. The absence of official artisanal exploitation zones has exacerbated the situation.

Action by ICGLR in Eastern DRC conflict

The ICGLR has held several heads of state and government meetings and dialogues on the situation in eastern DRC, with a view to finding a lasting solution. Specifically on the implementation of IHL, the organization's Summit of Heads of State and Government has held special summits/sessions on Illegal Exploitation of Natural Resources held in Lusaka, Zambia 15 December 2010,

50 Addendum to the Report of the panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC, S/2001/1072, 13 November 2001.

51 *The DRC case*, Judgement, para. 245.

52 *ibid.*, para 246.

53 UN SC, *Report of the Secretary General*, p. 12.

and Sexual Gender Based Violence (SGBV) during the Fourth Ordinary Summit held in Kampala, Uganda on 15th-16 December 2011 respectively.

Illegal Exploitation of Natural Resources

In the GLR, the persistent illegal exploitation of natural resources is directly linked to violations of IHL. In their quest for funds to finance their violence, both NSAGs and national armies have engaged in the illegal exploitation of natural resources especially in eastern DRC. Violence is prevalent in the areas where these resources are being exploited. Under the Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the GLR (2010), member states commit themselves to fight the illegal exploitation of natural resources through national, regional and international legal means.⁵⁴ The declaration establishes six tools to curb the illegal exploitation of natural resources namely: 1) Regional Certification Mechanism; 2) Harmonization of National Legislation; 3) Regional Database on Mineral Flows; 4) Formalization of the Artisanal Mining Sector; 5) Promotion of the Extractive Industry Transparency Initiative (EITI); and 6) Whistle Blowing Mechanism. In addition to among other undertakings, the member states through the Regional Committee on Natural Resources working together with the Secretariat commit to integrate the processes and standards of the Organization for Economic and Cooperation and Development (OECD) Due Diligence on Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources.

Some of the member states, such as the DRC and Rwanda have established the Ministerial Regulations on the Regional Certification Mechanism for Minerals to curb the export of illegally mined minerals.⁵⁵ In addition, the ICGLR has developed a Regional Mine Site Data Base which details *inter alia*: the name, location, types of minerals produced, licensing information, production details, owner/operator, and the site status and inspection details, of the mines.⁵⁶ Unfortunately, only four member countries-Burundi, DRC, Rwanda and Uganda- are covered currently.

54 Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the GLR, Lusaka Zambia, 15 December 2010.

55 See details at https://icglr.org/IMG/pdf/Arrete_Ministeriel_DRC.pdf (for the DRC); and https://icglr.org/IMG/pdf/Rwanda_Instructions_Ministerielles_mineral_certification_02-2012.pdf (for Rwanda) (accessed 28 February 2013).

56 See details at ICGLR, *Natural Resources*, 30 May 2012 at <https://icglr.org/spip.php?article93> (accessed 28 February 2013). The minerals covered include: cassiterite, coltan, gold and Tungsten.

Sexual Violence

Sexual violence against women has been one of the main features of conflicts in the Great lakes region, which has been used as a weapon by all sides of the conflicts: rebel groups and national armies. According to Human Rights Watch (HRW), 4.6% of combatants involved in the war in eastern DRC, are HIV-positive, which means that there is a high risk of infection.⁵⁷ Thus during the special session on SGBV it was observed that "the ICGLR [must] treat women's rights and the prevention of sexual violence as central to its peace, security and development interests."⁵⁸ In this regard, the special session concluded the ICGLR Heads of State and Government Declaration on SGBV.

The declaration seeks to prevent SGBV by *inter alia*: eradicating existing armed groups in the Region in conformity with the ICGLR Protocol on Non-Aggression and Mutual Defense; Fully domesticating and implementing the Protocol on Non-aggression and Mutual Defense, Protocol on Prevention and suppression of sexual Violence against women and children as well as the Protocol on Judicial Cooperation, in order to eradicate the existing armed groups, combat Sexual and Gender based Violence and cooperate in matters of extradition, judicial investigation and prosecution of the perpetrators; Committing to increase financial and technical support for judicial and security sector reform on human and women's rights and SGBV eradication by providing institutional capacity and accountability to protect women, girls, men and boys from sexual and Gender Based violence in peace time, during conflict and post-conflict situations as a political and security strategy within 12 months; Directing responsible institutions to strengthen or establish national level structures, such as national committees for protection and support for women and children against SGBV and early warning mechanisms within 12 months after the special session to facilitate reporting and documentation of SGBV cases from the grassroots and fast track prosecution of those responsible for perpetrating sexual violence to make sure that justice is done swiftly and effectively; and Committing to allocate budget lines for prevention and response to SGBV particularly the ministries of Health, Defense, Security, Interior, Local Government, Justice, Education and Youth.⁵⁹

57 Ugamedia services, 'Uganda offers to host Sexual Gender based Violence regional training facility,' (n-d).

58 Margot Wallstrom, *Statement by the UN Special Representative of the Secretary General delivered during the 4th Ordinary Summit of the ICGLR, Speke Reson Munyonyo, 15 December 2011.*

59 Kampala Declaration of the Heads of State and Government of the ICGLR on the Special Session on Sexual and Gender Based Violence (SGBV), 15th December 2011.

The countries of the region, under the declaration, also undertook to end impunity for the SGBV. In this regard, they declared "Zero Tolerance Now" on SGBV crimes and impunity and launched national campaign for zero tolerance on SGBV simultaneously including men in all ICGLR countries; Directed concerned ministries to establish and strengthen special courts, sessions and procedures in order to fast track SGBV cases in the Police and the Judiciary (with adequate financing, facilities and gender sensitive officers) within 12 months after the Special Session on SGBV, to improve access to justice and protect SGBV victims/survivors in line with Article 6(5) of ICGLR Protocol (2006) on Prevention and Suppression of Sexual Violence against women and children; and Established appropriate mechanisms to investigate and prosecute sexual violence crimes, including crimes that amounts to genocide, war crimes or crimes against humanity committed in the region.⁶⁰

In order to support the victims/survivors of SGBV, the ICGLR countries commit to: fast-track the contribution to ICGLR special fund for reconstruction and development so that assistance for victims/survivors of SGBV is provided in line with Article 6 (8) of the ICGLR Protocol (2006); fast track the establishment and/or scale up (decentralization) of "one stop centres" for comprehensive services including free medical, psycho-social, forensic, judicial/prosecution services within the next two years of the Special Session on SGBV, with such centres being user friendly particularly to women, youth, children, persons with disabilities and men; and establish and strengthen income generating programmes and initiatives to support women especially those in cross-border trade areas, targeting survivors of SGBV.⁶¹

Lastly, the ICGLR countries commit themselves to: strengthen the Levy Mwanawasa Regional Centre for Democracy, Good Governance, Human Rights and Civic Education to be able to train and sensitize judicial officers, police units, social workers medical officers and other categories of persons who handle cases of sexual and gender based violence in the great Lakes region in line with Article 6 (9) of ICGLR Protocol (2006) within the next 12 months; and put in place national and regional media strategy for sustainable use of electronic and print media especially radios, news papers, televisions and community/traditional based means to expose the atrocities of sexual and gender based violence, and facilitate the sensitization and fight against SGBV.⁶²

60 *ibid.*61 *ibid.*62 *ibid.*

As can be seen, the ICGLR has made great strides in the implementation of IHL in the areas of sexual violence and illegal exploitation of natural resources. However, according to a top official at the Secretariat beyond calling on member states to ratify the various legal instruments that aim at stopping IHL violations, the ICGLR as an organisation cannot do much.⁶³ The activities of the organisation are limited because "member states do not pay."⁶⁴ The Special Fund for Reconstruction and Development which could have been used to fund programmes aimed at mitigating the effects of IHL violations in the GLR has only received paltry contributions. By the end of the year 2012, only four countries of the DRC, Kenya, Uganda and Zambia had contributed about US\$3.5 million.⁶⁵ Development partners had not made any contribution.

Darfur Sudan

In late February 2003, fighting broke out in Darfur region of Sudan between the rebels of the Sudan Liberation Movement (SLM) and government forces.⁶⁶ The former accused the government in Khartoum of neglect and marginalization. In turn, the government organized its own militia in counter-insurgency operations resulting in hundreds of thousands of people being killed while an equal number was displaced. The situation in Darfur attracted a lot of attention, with some declaring that what was happening there amounted to genocide.⁶⁷ Secretary of State Collin Powell appeared before the Congressional Foreign Relations committee in September 2004 and accused the Sudan government of presiding over a genocide that could rival those in Rwanda and Bosnia.⁶⁸ Picking on the American claim, the UN Secretary General appointed a commission to

63 Interview, Kampala, 30 January 2013

64 *ibid.*65 *ibid.*66 For background information see Mahmood Mamdani, 'The International Criminal Court's case against the President of Sudan: A Critical Look', 62(2) *Journal of International Affairs* (Spring/Summer 2009) 85-92.67 Peter Beaumont, 'US "hyping" Darfur genocide fears', *The Observer*, 3 October 2004 at <http://www.guardian.co.uk/world/2004/oct/03/usa.sudan> (accessed 20 February 2013). On 27 April 2007, Congress passed a resolution demanding the Arab League to issue a declaration to the effect that the human rights violations in Darfur amounted to genocide. See *Sudan Vision*, 30 April 2007, 'AL rejects US Congress allegations of genocide in Darfur' at <http://sudanvisiondaily.com/modules.php?name=News&file=article&sid=20751> (accessed 12 December 2012).68 Beaumont, 'US "hyping" Darfur genocide fears'. See also Jamal Jafari, 'Never Again,' Again: Darfur, The Genocide Convention, And the Duty to prevent Genocide, 12(1) *Human Rights Brief* (2004) at <http://www.wcl.american.edu/hrbrief/12/1/jafari.cfm> (accessed 5 October 2012).

investigate the genocide claims. The UN Security Council Resolution 1564⁶⁹ which set up the Commission mandated it to “investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties; to determine whether or not acts of genocide have occurred; and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.” The resolution called upon all the parties “to cooperate fully with the Commission.”

The UN Commission of Inquiry into violations of International Humanitarian Law in Darfur⁷⁰ reported its findings in January 2005 and concluded that whilst genocide had not occurred in Darfur, violations of international humanitarian law had taken place which could as well be crimes under the jurisdiction of the ICC.⁷¹ The Cassese Commission prepared a secret list of 51 potential suspects and recommended that the ICC investigate the Darfur atrocities. In March 2005, under resolution 1593,⁷² the UN Security Council (UN SC) formally referred the situation in Darfur to the ICC.

The entry point of the ICGLR in the Darfur conflict has been, in the context of eliminating all the negative forces in the region, to include armed negative forces operating in Darfur Sudan on the wanted list.⁷³ Prior to the 4th Ordinary Summit meeting, the ICGLR ministers agreed to recognise the existence of armed negative forces operating in Darfur and include them in the regional effort in the fight against the negative forces.⁷⁴ According to a high ICGLR official, up to the point when the ministers recognised the existence of negative forces in Darfur, the ICGLR “had not concentrated [on the] conflict.”⁷⁵ The ICGLR wanted to visit the conflict area but the government of Sudan refused to grant permission.⁷⁶

After receiving complaints from non-governmental organisations (NGOs)- International Refugee Rights Initiative and Darfur Consortium- and the UN, on serious violations of human rights that could amount to war crimes, crimes

69 UN Security Council, Resolution 1564 (2004), S/RES/1564 (2004), 18 September 2004.

70 It was chaired by Italian international law professor and Judge the late Antonio Cassese.

71 See Report of the International Commission of Inquiry on Darfur to the UN Secretary General, 25 January 2005 at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf (accessed 2 February 2013).

72 UN Security Council, Resolution 1593 (2005), S/RES/1593 (2003), 31 March 2005.

73 See Ugamedia, ‘ICGLR to pursue Darfur rebels’ (n-d).

74 See *Report of the Inter-Ministerial Committee of the ICGLR*, Munyonyo Resort Hotel, Kampala, 14 -15 December 2011.

75 Interview, Kampala, 30 January 2013.

76 *ibid.*

against humanity and genocide in the regions of South Kordofan and Blue Nile, the ICGLR’s Committee on the Prevention of Genocide sought to undertake a fact finding mission in Sudan to investigate the allegations. But just like in the case of Darfur, the Sudan government refused to sanction the mission.⁷⁷

Conclusion

The ICGLR has developed a comprehensive legal framework in form of protocols and action programmes to deal with the various issues including IHL infractions occurring in the GLR. The region is awash with individuals, national armies and non-state armed groups (NSAGs) who continue to pose a threat to the security of the region including violating the most basic principles of IHL. The situations in eastern DRC and Darfur Sudan continue to pose a challenge to the ICGLR. IHL violations continue to take place there with the ICGLR seeming not to have answers to the infractions even when the two countries of DRC and the Republic of Sudan are signatories to the ICGLR Pact. Nevertheless, practically, some member states of the ICGLR have developed measures especially in the area of illegal exploitation of natural resources aimed at regulating the extraction and export of some minerals in the region. The illegal exploitations of the natural resources has been closely linked to violations of IHL. As a result, therefore, it can be argued that the ICGLR has taken modest strides in the implementation of IHL in the GLR.

77 Personal email communication by Nathan Byamukoma, Programme Officer Cross-cutting Issues, ICGLR Secretariat Bujumbura, 2 March 2013.