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The space for Congolese self-determination between absences and presences of the African Union and the United Nations

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The conflict in the Democratic Republic of Congo demonstrates the many challenges that the international community (symbolised in the UN and AU in this case) faces with its new self-proclaimed responsibility of reconstruction and state building. It is argued that both the UN and the AU would be more effective by guiding their strategies in light of the principle of self-determination. This approach would leave the necessary space for Congolese institutions to develop while the UN and AU could focus stopping external intervention and resource plundering as well as securing prosecution for war crimes and crimes against humanity. The article follows a time-sequencing method that assumes outcomes to be affected by the sequence of events at specific points in time.

Key words: Democratic Republic of Congo, self-determination, state building, conflict resolution, African Union and United Nations.

INTRODUCTION

The conflict that erupted in 1996 in Democratic Republic of Congo (DRC) (Ex-Zaire) has seen an interesting evolution in the conflict resolution approach of the United Nations (UN) and the African Union (AU) (Formerly the Organization of the African Unity (OAU)). In these over ten years, the AU has gone from taking a leading role in deploying a peacekeeping force and arranging a ceasefire agreement between the parties of Zaire, to turning into a supporter of the UN's actions in the conflict and playing a secondary role. Conversely, the UN was, firstly, reluctant to take any actions towards the conflict, or, as the Department of Peacekeeping Operations (DPKO) affirms, it "lacked the capacity to deploy a sufficiently strong force quickly enough to cope with the situation" (DPKO, 1996). Since approximately 2001, however, the UN has become a building agent of the moral, bureaucratic and economic apparatus of the DRC state. The UN, with the support of the AU, has devoted quite a lot of efforts to set up a government, to renew a police force, to undertake civil society building activities. Other more foundational responsibilities like impeding external intervention, illegal plundering of the country's resources or facilitating an arms control have come late or are inexistent. A question this raises is whether state building responsibilities are a departure from Chapter VII responsibilities to keep international peace and security

and more of a recovery of the Trusteeship Council, and whether by doing so they are ultimately guaranteeing a long lasting peace in the DRC (Taking care of the construction of the whole state-apparatus was the role of the UN Trusteeship Council, which stopped its operations with the independence of Palau in 1994 (UN, 2008). Even if this is the case, and state building is a revival of the Trusteeship council, it still raises questions as to whether this approach can guarantee peace in the DRC).

In the last few years there has been a wide spread scholarship critical of state building core values and practices. Substantial recent research has come from the Research Partnership on Post war State building under the direction of Roland Paris and Timothy Sisk (2007). The working papers released from this project highlight current debates: local ownership, external agency, co-ordination between different actors, roles and duration. In a still relevant review, Cutter (2005) identified the major agreements in this critical literature as being: the need for a modest approach by external actors, the need for a review of the peace building strategies and not to expect a quick success. Unfortunately, the literature has not paid sufficient attention to the role of the AU, albeit for occasional exceptions (Okoth, 2008). In addition, despite the sudden attention being devoted to General Nkunda, and the statement of Angola to intervene, the DRC

remains an underesearched conflict. Furthermore, despite the also recent interest devoted to the capacity and the need to explore traditional African institutions (Francis, 2006; Kartas, 2007; Normandy, 2008; UNECA, 2007) the very important principle of self-determination has been only superficially analyzed as part of an old discourse belonging to the decolonization past. Instead a new concept of local ownership has come to imply both a technical strategy and a normative guidance that, in reality, has re-stated the leading role of international actors above local actors. It has implied that local actors should eventually own a process that the international community has drafted for them. The concept of self-determination, a very old principle in which both the UN and the AU were founded, has the potential to revert the process into one that is led by local actors and supported by international ones. As a result, there is a gap in the literature that demands a systematic analysis of the UN and AU activities in the DRC in light of their charter responsibilities as well as a focus on the principle of self-determination.

Ever since the UN adopted state building as the key strategy for the maintenance of peace and security, it has devoted a reasonable amount of resources, culminating recently in the creation of the Peace Building Commission (UN Department of Political Affairs, 2007). The Peace Building Commission and the state building strategy are based on 'reconstruction, institution-building and sustainable development' (UN Peace Building Commission, 2007). This essay thus argues that rather than overtaking central roles and reenacting colonial-like practices, playing a facilitating role in the search for Congolese autonomy from their respective international and regional levels would be in accordance with UN and AU foundational principles and would foster the ground for strong institutions within the DRC, brought from within. These organizations should have focused on helping the DRC to stop external intervention, challenge the plundering of resources, have encourage disarmament from a very early stage and support to bring to justice criminals of war crimes.

As defined by UN General Assembly Resolution (1514), "all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (UN General Assembly, 1960). Similarly, the OAU Charter stated in the opening line of its preamble that "it is the inalienable right of all people to control their own destiny" (OAU, 1963), which was further absorbed by the AU Constitutive Act. At the same time, these organizations are based on the principles of sovereign equality of their members and of non-interference (The principles of the UN are stated in UN Charter, Article 2 (UN, 1945); the principles of the OAU are stated in OAU Charter, Article 3 (OAU, 1963); the principles of the AU are stated in Article 4 (African Union, 2000)). Therefore, the principle of self-determination could

be seen as the interlocking institution between the democratic principle by which sovereignty emerges from the people, and the principle of non-interference, by which states refrain from intervening in each other's domestic affairs. Nothing, however, suggests that these organizations, in particular the UN, which specifically states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state" (UN 1945), can undertake state building activities to the detail that they are doing in the DRC, especially the UN.

Using a sequential method, this essay aims to observe the sequence of broader international events that marked UN and AU's behaviors towards the DRC (Essentially a case-based temporal-sequence approach as outlined by Pierson for comparative politics (2000). The assumption is that the context and the sequence of events as they happened affected actors' behaviours and thus outcomes. The article has also derived mostly from text analysis, especially from primary analysis of UN and AU documents in light of their foundational Charters).

Thus it will be shown that the pendulum-like absences and presences of the AU and UN within the DRC refer back to a broader context of the international events at the time. The research derives mostly from primary research of UN and OAU/AU official documents, as well as relevant secondary sources. Using the 1996 conflict in the DRC as an "instrumental case study" (Sake cited in Silverman 2005) will provide an opportunity to examine this specific case in detail in order to offer insight into the broader issue of conflict resolution.

The essay is divided into four sections. The first will analyze the historical context in which the 1996 and 1998 conflicts in the DRC erupted and what broader international circumstances constrained the UN and AU's attitude towards the conflict. The second and third will examine separately, both the role of the AU and of the UN, looking at their involvement in the DRC's conflict. Finally, the fourth section will outline the birth of the principle of self-determination to observe how it is intertwined in the foundation of both the UN and the AU and how this should be a main principle to include in both organizations' to guide their conflict resolution strategies.

The historical context, the historical explanation

The conflict in the DRC has its roots in a brutal colonization period. Leopold King gained control of a large territory he named the Congo Free State through the enslavement, genocide and exploitation of the population (Conrad, 2008; Hoshchild, 2006). The legacy of the Cold War and the super power intervention competing for further influence within Africa also caused much disruption into an already hurt society (In the DRC, Lumumba, the first democratically elected leader after

years of a brutal colonization was killed with US and France and accomplices (BBC, 2006; Castle, 2001; Stockwell, 1976)). However, for the purpose of the analysis, and for time and space constrains, this article will focus on the decade between the start of the first phase of the DRC conflict in 1996 and the elections the UN organized in 2006. The current events are just an extension of how the circumstances and the actors have developed since the early 2000s.

What makes the DRC conflict unique both in its first 1996 phase as well as the 1998 phase is that it was an inter-state war, one of the only instances of inter-state war in Africa. In the mid 1990s the end of the Cold War and the pitfalls of the UN intervention in Somalia had a major impact on the behavior of the international community (symbolized in the UN and the AU). The end of the Cold War, with the collapse of the USSR and the triumph of liberal democracy as an international model of state-government, brought with it a belief in what started to be called humanitarian intervention, as seen in the first Gulf War. This was extended to an explosion of civil society organizations demanding greater responsibility of great powers in promoting democracy (Cohen, 2006). This is the context in which the UN Secretary General at the time, Boutros Ghali (1992), launched his agenda for peace. It is also the context in which, as Barnett and Finnemore observed, powers found mutual interests in stopping regional conflicts and in putting on the UN's shoulders conflicts that were not in their own security interests (Barnett and Finnemore, 2004). It is also in this context that Mobutu, who managed to stay in power for over thirty-two years in the DRC, making it one of the poorest countries in the world, while turning himself into one of the richest men in the world, was pushed by the international community to organize elections and legalize political parties (BBC, 2006).

However, all these feelings of cooperation and peace were turned down with the failures in Somalia (Sens, 1997). Somalia represents two turning points. One in regards to the enthusiasm brought up to the UN circles by the success of military intervention based on humanitarian grounds in the Gulf War. The second one is the start of a new doctrine that links between security and so-called "failed states" (The discourse of failed states as implying the portrayal of a successful state and what the responses have been to it has been extensive explored. Recent accounts that specifically focused on Africa include Ghani and Lockhart (2008), Bates (2008), Kieh (2007), Francis (2006).

Mobutu, in trying to, on the one hand, be seen as opening up his regime to greater political participation by the international community and NGOs, and, on the other hand, attempting to keep in power, he intensified his traditional ethnopolitical game of giving advantages and taking benefits to different ethnic groups. For instance, in 1989 Mobutu would not give Rwandan-Banyarwanda political representation or participation and prevented

(Also called Banyamulenge, the terms given to Hutus and Tutsis from Rwanda, Uganda and Burundi) them from accessing economic benefits (HRW, 1996). In addition, Mobutu provided organization assistance and weapons to the eastern Mai-Mai militias (Also referred to as Mayi-Mayi or Bangiri), which were militias formed of so-called autochthonous people from the eastern areas that wanted to expel Banyarwanda, even if they had been born in Zaire (HRW, 1996). Since 1992 Eastern Zaire, the areas of North and South Kivu, has been the scene for violence between the Mai-Mai militias and the Banyarwanda up to today (Weaver and McGreal, 2008).

The genocide perpetrated between April and July 1994 in Rwanda exacerbated the already existing violence in the DRC. Many of those who found refuge in the camps in the Eastern border of the DRC were the actual geno-cidaires from Rwanda (HRW, 1996; HRW, 1997). The conflict was further exacerbated with provision of wea-pons into the area; with the formation of the Forces Democratiques de Liberation du Rwanda (FDLR), aiming at ousting Paul Kagame (FDLR, 2006), by the Interahamwe militias and the ex-FAR; and by the call, in 1996, for elections after international pressure had be-come unendurable for Mobutu's regime. The lack of action towards the Rwandan genocide could be ex-plained the same way as the lack of action towards the DRC conflict. While in the 1990s, traditional powers had left Africa to its own fate, Mandela and his successor Mbeki promoted the idea of an African renaissance.

Lack of interest within the UN did not mean the inexis-tence of that certain individual interest and moves in regards to gain influence and control over DRC's re-sources. On the contrary, in the mid 1990s supporting or attacking Mobutu meant likelihood to access DRC's rich resources. Most of his neighbors had become fed up with him, leaving him with only the support of those like France, Gabon and Morocco, who had been attempting to compete in gaining access to mining contracts and other resources, against the traditional and new colonial powers in the country like Belgium and the US (Sangmpam, 1997). Laurent Kabila organized the Demo-cratic Forces for the Liberation of Congo-Zaire (ADFL), formed by troops from Rwanda, Uganda, Burundi, Angola, Zimbabwe, Namibia and Chad (HRW, 1997; Hoebeke, 2006). Significantly, all of these parties have been receiving aid from foreign countries in their steeplechase to assure first place-positions to political and economic benefits (For example, the US has been giving military training and resources to Rwanda (Amnesty Duke 1998; Amnesty International, 2002); France aided Mobutu first and then Mobutu's loyalists (Kamm, 1997; Washington Times, 1997); Libya and Sudan have indirectly also supported Kabila (Scherrer, 2002). Mobutu countered these forces with his Zairian Armed Forces (FAZ), supported by some Mai-Mai militias and France). The war between these two parties became official when in April 1996 military forces from the capital

Kinshasa were sent to the Eastern region to stop the attacks committed by the ADFL (Amnesty International, 1996). In May 1997 Kabila and his ADFL allies took control over Kinshasa and changed the name of the country back to DRC, expelling Mobutu into exile.

Unfortunately, what had been already a full international war did not stop there. In February 1998, when Kabila asked the Tutsi-Banyamulenge to lay down their arms and expelled some Rwandese officials from the government (Garreton, 1998), Kabila encountered that Rwanda, Uganda and Burundi wanted to continue the war. The UN panel on the illegal exploitation of natural resources of the DRC affirms that it was to maintain the control they had achieved over the Eastern parts of DRC (Ba-N'Daw, 2001). However, it is also probable that they aimed to gain control over DRC central government as well. Furthermore, South Africa, who led the initiative as one of the first AU peacekeeping missions, could neither be seen as a neutral intervener. His long-term relationship with mining interests through the Anglo-American Corporation greatly influenced its capacity to impose itself over the different warring parties (Reno, 1998; Moody, 1992).

Thus, in 1998, another set of international blocks confronted each other within the DRC borders. On the one hand, Rwanda and Uganda formed their own parties, such as the Rassemblement Congolese pour la Democratie (RCD), supported by Rwanda; the Allied Democratic forces/National Army for the liberation of Uganda (ADF/NALU) and the Movement pour la Libe-ration du Congo (MLC), both supported by Uganda. On the other hand, Burundi and Uganda also had their national armies in the DRC territory (Ceasefire, 1999). The RCD was subsequently portioned into several factions (The different factions were: RCD-Goma, the RCD-Kisangani (RCD-K), The RCD-pour la democratie-National (RCD-N) and the RCD-Movement Liberation (RCD-ML)) Angola, Namibia, Chad and Zimbabwe stayed on Kabila's side (Africa review, 2006). The consequences of the war are hard to summarize, perhaps the token of "Africa's First World War" gives some depth into the human catastrophe that has been taking place in the country ever since 1996.

A first attempt of signing a ceasefire came in 1999, after the pressure exerted by the OAU, specifically Zambia and South Africa, and the UN Secretary General (Masire, 2001). However, the ceasefire failed, perhaps inevitably after the long years of economic and political interests created, fueled by the fragility of the DRC state. This failure came at a time when the UN Security Council was uninterested in addressing a conflict that otherwise completely and directly fitted under its responsibility. When the UN decided to intervene, it came under the doctrine of building a state. This is understandable, given the level of co-optation that rebel groups and foreign countries had gained in the DRC. However, this caused the UN negotiate with armed men above the civil popula-

tion and it made it, together with the AU, took the space that the population needed to make their institutions flourish.

In January 2001 Laurent Kabila was assassinated by one of his bodyguards and succeeded by his son Joseph Kabila. Later that year a dialogue between the warring parties commenced in what seemed a flourishing of the Lusaka ceasefire. Chapter five of the Lusaka ceasefire mandated the establishment of what was called the Inter-Congolese dialogue. It required not just the participation of the warring parties but also the so-called "forces vives", which the agreement itself defined as the "stake-holders representatives of the civil society such as the churches, the Trade Unions, etc" (Ceasefire, 1999). The Inter-Congolese dialogue took place in Sun City between the 25th February and the 18th April, 2002. It hosted 366 organizations, armed and unarmed opposition, civil society organizations and political parties (Irinnews, 2002b). Nonetheless, instead of being an "inter-Congolese dialogue", it was a government – MLC dialogue, in which the other organizations were able to participate but who, at the end, were left with the option of whether or not to sign the agreement reached by the government and the MLC (Irinnews, 2002a). Thus, for example, main political opposition parties decided not to sign the agreement. Amongst them were the UDPS of Etienne Tshizekedi, Parti des Lumumbistes unifies (PALU), Forces Novatrices pour l'Union et la Solidarite (FONUS) and Mouvement des Nationalistes congolais (MNC-L) (Irinnews, 2002b).

Nor were heard the demands of a Congolese Women's conference in Nairobi, demanding, amongst other things, to be "active in peace-building in our country […] access to land and resources […] significant representation of women in all instances of decision-making; […] no impunity for all criminal acts, and that rape is legislated as a crime against the humanity of women" (Nairobi Declaration, 2002). The preamble of the constitution was only vague in reaffirming the adherence to the UN Conventions in regards to women's rights and expressing the need to represent women in parity with men in the direction of the country (DRC Constitution, 2006). As it will be shown, despite the UN Security Council resolution 1325, which aims at giving women a central role in conflict resolution (2000), the UN has prioritized armed men as negotiators that women from the civil society.

In the 2003 implementation of the transitional government the armed parties were then given a vice presidency and ministries, but the rest of the civil society were left as passive spectators (Hoebeke, 2006). The parties agreed to retain Joseph Kabila as president, supported by four vice-presidents, thirty-six ministries and twenty-three vice ministries. The new government thus would be formed of, for instance, Abdoulaye Yerodia Ndombasi, who had been accused of crimes against humanity and of incitement to commit genocide by the Belgian government against the Tutsis that were apparently rebelling

against Kabila's government (ICJ, 2002) (The case, now known as the Warrant Arrest Case, has set a precedent for the international jurisdiction for the protection of human rights, although the International Criminal Court (ICJ) found him not guilty on the basis of his diplomatic immunity for being a high government official). Jean-Pierre Bemba from the MLC constituted the economic and financial vice-presidency (Annan, 2003c). His name keeps coming up in the report from the UN panel on the illegal exploitation of national resources of the DRC's for arranging multiple deals for armed groups and multinational corporations to keep looting the country's resources (Ba-N"Daw, 2001). A third vice-presidency was established for the RCD-Goma of Azarias Ruberwa with the responsibility for political affairs (Annan, 2003c). The RCD-Goma was also identified in the UN panel on the illegal exploitation of national resources of the DRC, accused of looting the eastern regions in favor of Rwanda (Ba-N"Daw, 2001).

One of the most important responsibilities the UN took upon itself was the organizing of elections for a new constitution and for government. The major groups agreed upon the new 2006 constitution and it further received a favorable vote by 80% of the population in December 2005. This overwhelming support for the constitution reflects the desire of the Congolese for peace, and also to participate in shaping the future of their country. The constitution was promulgated in February 2006. Parliamentary elections were held on the 30th of July 2006, with the support of the AU, the European Union (EU) and the UN (BBC, 2005).

It is still too soon to assess the further developments of the process, as the conflict, despite the 2006 elections still seems far from over. Some soldiers and militias have not wanted to join the integrated army, rather they have formed their own groups, such as the case of General Laurent Nkunda and provoked much conflict (Annan, 2006). In addition, as the 2006 UN Secretary General's report points out, there are still approximately 9000 troops, mostly FDLR's, but also a few hundred from ADF/NALU and the Burundian Forces Nationales de Liberation (FNL) (Annan, 2006). Furthermore, there is the underlying issue of the suffering to which the civilian population has been and keeps being subjected to. As stated, the conflict has already led to over four million deaths; mass rape has been used as a weapon of war (Hodgson 2003; Koinange, 2006); abduction of women and children for sex or for fighting has also been a trend in all parties, including government forces (Amnesty International, 2004; Amnesty International, 2006; Annan, 2005a). Even the UN peacekeepers and personnel within MONUC have been investigated and charged for sexual abuse of the civilian population, including children (Al-Hussein, 2005; Annan, 2005b). These are further issues that challenge the peace process that the UN and the AU have sanctioned and promoted, by which they are promoting the political activism of the armed groups

above the civil society.

In conclusion, a historical analysis of the sequence of events in which the different actors operated has shed light in to why the 1996 and 1998 conflicts developed in the DRC, as well as it has highlighted that the role UN and the AU played was also tight up to the historical circumstances within those years. A further issue that this analysis points to is that the role these organizations have played is far from that their charters mandate. Rather than being concerned about breaches of international law and peace and security, they have enacted a very detailed program for the construction of a self-interpreted state, leaving the Congolese civil society little space in which to consolidate self-determined institutions.

The role of the African union

While at the start of the conflict the AU, the OAU at the time, took the lead, encouraged by some emerging hegemons in the African continent and its sub-regional organizations, it turned at the start of the 2000s into a convenient supporter of the UN. As will be shown in this section, this has been due to the lack of commitment from its members to the very idea of the AU and so towards endowing the organization with the necessary resources as well as to the economic interests created in the DRC. The result has been the undermining of the AU's capacity to play a much firmer role as the negotiating forum in regional politics and as a promoter of Congolese self-determination. In what follows, the political and historical context in which the OAU took the lead in the conflict will firstly be analyzed, then how it lost this lead, and finally what could have been done differently.

Since the end of the Cold War, western powers had been paying less attention to Africa, which allowed countries in the continent to strengthen their common institutions towards the trinity of peace, democracy and development. Aderinwale notes that "with the end of the Cold War, resources previously directed at Africa by the West and the Soviet Union would be redirected elsewhere, and this was likely to lead to the marginalization of the continent" (2001). Many efforts within Africa were, thus, aimed to counterweight this threatening "marginalization" process and multiple conferences and ideas were floated. For example, the Kampala Forum, in which unionists, business people, peasants, students, academics and representatives of governments, the OAU and NGOs participated, made what is considered a landmark statement, asserting the link between security, stability, development and cooperation (Kampala Declaration, 1991). Many authors name this era as the "third democratic wave in Africa" (Guseh and Oritsejafor, 2005).

Accordingly, African states soon reacted by working together to extinguish their conflicts. In this context, and

very early in the 1990s, sub-regional economic organizations such as the Economic Community of Central African States (ECCAS), the Economic Community of Western African states (ECOWAS) and the Southern African Development Community (SADC) introduced their own mechanisms for conflict resolution (Adebajo, 2005). In 2000, the change from the OAU to the AU, brought a major transformation, allowing the possibility to intervene in cases of crimes against humanity, war crimes and genocide (African Union, 2000). The AU Peace and Security Council was instituted in 2002 to approach both conflict resolution and peace-building. Significantly, all these new institutions stated the need to engage the civil society in conflict resolution and aim at their participation in the organizations.

Given these circumstances, it is understandable that in 1996 when the DRC conflict was just beginning, while the UN Security Council was remaining inactive, the OAU organized a regional summit in Nairobi on the situation in Eastern Zaire. The Nairobi conference restated the principle of defending and respecting Zaire's territorial integrity, its sovereignty and asked the UN Security Council to establish "safe corridors" for the provision of humanitarian assistance to the population and the refugees that the escalating tensions were creating (Mahugu, 1996).

At the same time, emerging hegemons within the continent were determined to take into their own hands tasks that had traditionally been the UN Security Council's. South Africa, for example, quickly assumed "a leading role in international peace missions" (South African Department of Foreign Affairs 1999). In relation to the DRC conflict, South Africa has been a major engine behind the organization of elections and it convinced the DRC to join SADC in 1997. Zambia has also played a key peacemaking role in the conflict with the aim of having a major economic partner and of projecting an image of mediator for peace in the domestic and international arena. It was not a coincidence that Zambia made significant efforts to end the DRC conflict and finally, in 1999, a ceasefire agreement was signed in Lusaka. Nonetheless, neither South Africa, Zambia nor the regional organizations, including SADC and the AU, have been successful in implementing actions that will assure the participation of the Congolese civil society in the process.

Nevertheless, all of this impetus has had little repercussion in practical terms because of several reasons. Firstly, the economic interests created by a fragile and seemingly easily manipulable DRC. Not surprisingly most 'mining deals were negotiated during the six-year war or the subsequent three-year transition' (Bavier, 2007). However, the distribution of quotas, the coming of new economic partners, such as China, and the resilience of arms trade (perhaps here the stuff from Mbembe), all made the DRC conflict a mission impossible. Furthermore, the AU did not come with a strong force in the first

place. As Gottschalk and Schmidt note, "whereas the UN has approximately 2.3 billion US dollars for peacekeeping – and even that is insufficient – the AU had only six million US dollars in its Peace Fund in 2003" (2004). Barely more than a hundred troops were able to deploy in the DRC. The result of this is that by the mid 2000s, the AU was humbly supporting the UN. As Adebajo states "the return of the UN peacekeepers to Africa is a clear manifestation of the construing weaknesses of Africa's regional organizations" (2005). However, arguably, the major loss has been suffered by civil society whose participation has been overlooked in favor of alien supranational bodies.

On another note, the AU has gained recognition by actually joining UN initiatives. For instance, they both established a framework in which the peace agreement was signed in 1999 and later the Global and All Inclusive Agreement, which finalized the details for the formation of the transitional government. As mentioned earlier, these agreements are limited to the warring parties and have ignored the capacity and the legitimate right of the Congolese people to find suitable institutions. Hence, as Tshiyembe notes, "by drawing up rules for states raven by civil war, the international community effectively substitutes itself for the peoples involved" (1999). In this example, however, the AU, given its specific regional focus, could have identified representative human rights, civil rights and women-specific groups to be part of the ceasefire or, at least, to witness and participate in its negotiation. Contrary, the establishment of the Inter-Congolese dialogue and the subsequent organization of the government legitimized armed groups over the civil society. In addition, while in the preamble of the AU there are several references to the fact that both the OUA and the AU were instituted to play a major role in "the liberation of the continent and the affirmation of a common identity" (2000) and that in the AU Constitutive Act it states that the AU should work on the principle of the participation of the African people in the organization. These provisions have not been put into practice. As we will observe in the following section, the UN's extensive intervention in the reconstruction of the state has come with the total compliance of the AU. If this is inconsistent with the principle of reaffirming the continent's common identity, it is undermining Congolese identity.

Another example is the AU partner role with the UN in the sponsoring of the newly created International Conference of the Great Lakes Region, which aims to foster better relationships in the region. It was a UN Secretary-General initiative (UN, 2006). Moreover, with Rwandan and Ugandan-supported armed groups in the government and still acting with impunity in the plun-dering of resources in the Eastern regions, the AU is likely to sanction the stagnation of relationships in the Great Lakes region, based on the acceptance of the exploit-tation of those resources and of the impunity of war criminals. Regarding legal prosecution, it should be pointed

out that, since the signing of the Final Act and in further reports of the UN Secretary General, it is common knowledge that the widespread impunity currently taking place is something that needs to be brought to an end. However, the inefficiency of the local judiciary and compromises between armed parties have resulted in what Congolese human rights defender Mossi Mota observes: "while there have been millions of rape and killings, only a few criminals have been charged" (Le Potenciel, 2006). While the DRC conflict has been the first case to be investigated by the newly established International Criminal Court (ICC) (ICC 2004), the African Court of Justice is waiting for the necessary ratifications to enter into force (Amnesty International, 2005).

Overall, the AU's strengthened aims and objectives have not translated into a strengthened commitment of its members towards endowing the organization with the necessary resources to meet its tasks. The power politics played to get access to DRC's resources has further undermined the actions of a leading AU force. As a result, it has lost the momentum gained in the wake of the Cold War to consolidate itself as the negotiating forum and interlocking authority within the region. However, it is supporting UN actions and promoting certain activities that have made it gained credibility. Unfortunately, among all this changes and spontaneous behaviours, it has lost its vision of promoting DRC's self-determination. The democratic inspiration that led to many transformations within the OAU structures and that gave way to the AU has not translated into the real commitment of engaging the civil society into its own peace process.

The role of the United Nations

The output of the UN in the DRC has certainly been contentious and changing with time. Accordingly, this section will specifically look at the role of the UN in the conflict, focusing on the state building activities that it is undertaking in contrast with the mandate given in its Charter. As stated, the UN Security Council was reticent at the start of the conflict to activate its powers and, thus, it left uncontested grave breaches and threats to international peace and security, such as the interference of states into another state's domestic affairs, the huge arms trafficking within the region and the endowing of armed groups by foreign states to act within another state. In contrast, the UN peacekeeping operation in the DRC, the MONUC, is now one that is likely to become precedent setting. Not only are its size and cost becoming unparalleled, but also the fact that almost the entire UN system is working towards setting the foundations of a state, with multiple pilot projects in place and many agencies getting involved in areas outside their normal mandates. The result of this has been the undermining of an opportunity for Congolese's self-determina-

tion that could foster local institutions towards conflict resolution. This section will, firstly, examine the responsebility of the UN towards international peace and security in relation with the DRC conflict and, secondly, the developments towards state building.

The UN Security Council had a responsibility towards the DRC conflict given that its mandate, as stated in the UN Charter, is to maintain and restore international peace and security (UN Charter, Article 24, Chapter VI and VII (1945)) and that the DRC has been a UN member since it achieved independence in 1960. The UN Security Council's guidelines are laid out in UN Charter's chapters VI, VII, VIII and XII, corresponding to the pacific settlement of disputes, actions to take with respect to threats to the peace, breaches of the peace and acts of aggression, and the international trustee system for decolonization, respectively. The creators of the UN Charter, however, failed to give a definition of threat or breach to international peace and security, or even what they meant by international peace and security. The responsibility left to the UN Security Council was thus double, including not only acting but also interpreting. Nevertheless, there have been several efforts to fill this gap. The UN General Assembly resolution 3314 includes in its definition of acts of aggression "the use of arm forces of one state which are in the territory of another state" and "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" (UN General Assembly, 1974). Hence, acts in the DRC like those of Rwanda, Uganda and Burundi could be categorized as aggression, at least since 1998. Similarly, those acts in DRC from Angola, Zimbabwe, Namibia and Chad, could, at least, be seen as threats to peace and security.

However, the UN Security Council did not have so much trouble interpreting the situation as deciding what to do about it. Arguably the actions undertaken in the DRC have greatly exceeded the provisions of the UN Security Council's mandate and they have not attended some of the responsibilities it sets out. While on various occasions since 1996 it stated that the events in the region were a threat to international peace and security (1996a; 1996b; 1998), it has chosen state building activities over those which were specifically designed in the Charter. In particular, two specific factors that have greatly contributed to the exacerbation and continuation of the conflict, the arms flow into the region and the commercialization of goods illegally extracted from the DRC. Let us firstly examine this to then contrast the state building activities that the UN is undertaking.

The arms flow that has been threatening the stability of the region dates from even before the conflict officially began. Nevertheless, an arms embargo was not imposed until 2003. In 1995, several NGOs requested a major role of the powers in the UN Security Council in stopping the flow of arms into the former Zaire, which was both fuelling

the destabilization of Rwanda and Eastern Zaire (Commission of Inquiry, 1996). The government of Zaire, for instance, asked the UN Security Council not to lift the arms embargo against Rwanda in order not to exacerbate the tensions and increase the capacity of the armed groups operating in its Eastern region (Kamanda, 1995). However, as the investigations carried out by Human Rights Watch point out, some members of the UN Security Council, such as France and China, had been supplying weapons to the ex-government Rwandan forces in Zaire, against the arms embargo, and thus were likely to oppose any extension of the embargo (HRW, 1995). The UN Security Council could, at this time, have imposed sanctions on Zaire for arming militias against Rwanda and, more specifically, to establish an arms embargo on Zaire as well.

Human rights organizations and civil society groups, in general, both within and outside the DRC, had long demanded the establishment of an arms embargo. Nonetheless, this came when, actually, one of the members of the transitional government declared the war over, in 2003 (Afrique Express, 2003). The fact is that neither the arms trafficking nor the war is over. DRC organizations have made a public declaration demanding effective measures to implement the embargo (ACEJ, 2006). However, there seems to be a lack of commitment towards this from both the parties to the conflict and the UN Security Council. A UN commission created to monitor the DRC arms embargo has pointed out the need to apply the arms embargo to the whole country and to unify the recipients of the imported weapons in one province and one authority (Baali, 2005). Additionally, Rwanda and Burundi, pointed to as significant contributors to the failure of the arms embargo by the same commission, could also have received sanctions. However, the UN Security Council was busy with other matters.

Similarly, the fuelling of the conflict with the natural resources of the DRC is something that was made clear by the UN panel on the illegal exploitation of natural resources of the DRC in 2001. The panel found an unequivocal connection between the continuation of the war and the plundering of DRC resources, which included minerals, agriculture, forestry, wildlife, financial resources and Congolese labor. It suggested, amongst many other things, the imposition of an embargo on the comercialization of certain products such as minerals and forestry from Rwanda, Uganda and Burundi, which were clearly illegally extracted from the DRC (Ba-N"Daw, 2001). However, this has not been approached by the UN Security Council in any way.

The UN Security Council has reacted contradictorily towards the conflict. Unfortunately, a thorough analysis of the reasons for this falls outside the scope of this essay. As stated before, the mid 1990s saw a backlash to UN peacekeeping operation in Somalia, after which the organization undertook a reformulation of peacekeeping

rules. Hence, humanitarian intervention, or military intervention on allegedly humanitarian grounds, born in the wake of the Cold War, quickly set its own standards, such as the need for a peace agreement, a request from the country and guaranteed security for its personnel (Barnett and Finnemore, 2004). Thus, arguably, a strengthened self-imposed rule of impartiality seems to have affected negatively the interpretation that the UN Security Council made of its responsibility towards the DRC conflict.

Therefore, it was not until the ceasefire in 1999 was signed and the parties requested the intervention of the UN that the UN Security Council agreed to form a small mission in charge of monitoring the peace agreement. The mission would be run in coordination with the OAU and only for three months (UN Security Council, 1999). However, while the AU deployed its troops, the UN failed to do so until 2001 (UN Security Council, 2001).

The new discourse of the link between failed and rogue states and international security, made the UN feel responsible towards not just responding to the international conflict taking place in the DRC but towards the reconstruction of the whole state apparatus. Ever since 2002, the UN has augmented the number of its peacekeepers and civilian personnel, as well as its budget. From 5500 troops it now has 17000 on the ground and up to 23.900 approved, and from $41m. for the first eight months in 1999 – 2000 (Annan, 2000), to the current $1.153.89m. for the period between July 2005 and June 2006 (MONUC, 2006). Furthermore, in several different resolutions it has increased its mandate from observing the implementation of the cease-fire to a variety of issues such as organizing elections, helping disarming the different militias, reinserting their members into the official army and raising awareness amongst the reinserted soldiers about the issue of sexual violence. Many projects have been implemented for the first time in a mission, stretching many UN agencies.

For instance, the International Commission for support to the Transition composed by the UN, the AU, the EU, the US and France was created to provide "necessary" support for the transitional process (Annan, 2003b). In addition, the UN Development Program (UNDP) has established a number of projects, including a program providing nine-day courses to educate government officials and bureaucrats into the practicalities of the diplomacy business and missions, protocol, international and an educational program for ethics and good governance (Annan, 2005b). It also has enabled the Good Donorship Initiative, which aims to direct donor assistance through the action plan on good governance (Annan, 2005b). Another one is the Mobile Pilot Program aiming to educate magistrates on ethics for the administration of justice (Annan, 2005b).

Arguably, then, the UN has been more involved in creating the DRC state than in stopping the threats that an international conflict was causing to the region. Furthermore, UN Security Council resolution 1325, which

"urges Member States to ensure increased represent-tation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict" (2000) has not been put in practice in the DRC. Conversely, as stated before, the UN and the AU have been negotiating with armed men and it is with them that they are planning in detail the whole reconstruction of the country. Indeed, as previously noted, the Nairobi declaration, made by representative Congolese women's groups, has largely been overlooked despite its significance.

Overall, the UN has played a rather peculiar role in the DRC conflict. Hesitant about authorizing the intervention, it is now the biggest and costliest intervention in the UN history. In the middle of this process, the mandate given to the organ in charge of maintaining international peace and security has been undermined in favor of the new approach of state building. While this approach came as a conscious attempt made by the link between failed states and international insecurity, the problem is that neither the main threats have been fully contested, nor it is possible to say that the UN is succeeding in its state building task. The UN intervention in the DRC is, therefore, one that is setting a precedent, although a very risky one. It has features of turning the UN into a neo-colonial power, not only providing humanitarian assis-tance to the population, but also going through the most detailed reconstruction of the state apparatus in its moral and bureaucratic form. The result of this, ultimately, is the deterioration of the capacity of the civil society to take over their affairs, the undermining of the possibility of a renaissance of indigenous institutions and the contra-diction of one of the UN's founding principles, the princi-ple of self-determination. This latter statement is what will be examined in the forthcoming and final section.

Promoting self-determination, why?

In the previous sections, it has been shown that DRC's recent history is one where foreign interference has undermined the capacity of Congolese people to manage their affairs. In addition, it has been shown that when this interference provoked a serious threat to international peace and security it was left uncontested, resulting in the deadliest since World War II. Finally, the essay has analyzed how the AU and the UN have reinterpreted themselves in their roles towards the conflict, translating their mandates of peacekeeping, peace enforcing and peace building into state building. As a result, two things come to mind and these will be analyzed in this final section. One is the need to promote the principle of self-determination; the other is the questioning about how deep the strategies need to go in order to provide the basis for the Congolese state to survive. The former is enshrined both in the UN and AU foundational principles and should be promoted in their strategies towards con-

flict resolution. The latter needs to be negotiated with the Congolese society in a continuous and constant dialogue.

Both the AU and the UN are founded on the principle of self-determination. The right to self-determination is a collective right enjoyed by *all peoples*, without distinction and regardless of whether they are claiming statehood or the enjoyment of an autonomous organization within a state. When Wilson enunciated the *nations principle* in 1918, it encapsulated the liberal idea of collective security and peace, which gave foundation to the organization of the League of Nations and to the international relations for the years to come. Many commentators have argued that this was in fact not the real purpose of the principle. Realists, for example, understand that this was aiming to provide a balance amongst the powers and protect the status quo at the time (Burchill 2005). Cox also notes that "the ultimate purpose of the slogan was not to free all nations, but rather to undermine the remaining empires on the European continent and win America friends in east and central Europe" (cited in Dunne 2005:). How-ever, despite the criticism and the failure of the collective security system evidenced by World War II, in 1945, it was the liberal ideas that were evoked in the UN Charter with Article 2,1 stating: "The Organization is based on the principle of the sovereign equality of all its Members" (UN, 1945).

However, what realists and liberals under-estimate is the powerful desire of many first nations peoples to become independent. In this sense, Jackson and Owens wrote that "indigenous non-western nationalists even-tually went into revolt and claimed a right of self-deter-mination, which led to decolonization and the expansion of international society" (2005). Thus in 1960, Resolution 1514 granted most colonies independence and linked the principle of self-determination with fundamental human rights. As previously stated, this Resolution defined the principle as the right enjoyed "by all peoples" by which "they freely determine their political status and freely pursue their economic, social and cultural development" (UN General Assembly, 1960). A further development was made in 1970 with Resolution 2625, which clarifies what self-determination means in terms of political orga-nization. It reads:

The establishment of a sovereign and independent state, the free association or integration with an indepen-dent state or the emergence into any other political status freely determined by a people constitute modes of imple-menting the right of self-determination by that people (UN General Assembly, 1970).

Resolution 1514 and 2625 have therefore gone from the enunciation of the Wilsonian principle in 1918, to the establishment of a right to free determination of political, economical and social organization. This has thus imposed an obligation on the international community to allow a people the necessary space to rule their desti-nies.

Similarly, in the case of the AU, its Constitutive Act re-

restates many of the goals and aims of the former OAU, "recalling the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation" (2000). It was born to be a regional coordinator and an agent for dialogue between other international organizations and the countries in the African Continent. It further stated its commitment towards the defense of fundamental human rights and the principles of the UN. In 2002, as stated, the creation of the AU Peace and Security Council gave another dimension to the politics of conflict resolution and created a mechanism for conflict prevention and conflict resolution, including peace-enforcing and peace-building.

Nonetheless, it is not clear how peace building necessarily has to translate into state building. Daley for instance argues that what needs to be changed is the concept of peace in order to include social justice (2006). She comments that the model for peace-enforcing /building is flawed because it does not incorporate the participation of civil society, but instead alienates it in favor of the political elite that continues to promote ethnic divisions that push their own interests. This has clearly been the case of the DRC, as has been shown in the sections above.

The UN has a very broad mandate towards international peace and security, but also has specific instructions not "intervene in matters which are essentially within the domestic jurisdiction of any state" (UN, 1945). Nonetheless, in the last few years it seems to also have reinvented itself to the point of claiming to be "the most suitable institutional framework for most nation-building missions, one with a comparatively low cost structure, a comparatively high success rate, and the greatest degree of international legitimacy"(Dobbins cited in DPKO, 2006).

However these conclusions are questionable if one looks at a conflict such as the DRC's, with an unprecedented deployment and annual budget, and with a great deal of failures in the management of the operation. These conclusions are also questionable if one observes the mandate enshrined in the UN, where there is no mention of its responsibility for nation building. They are even more questionable if one attempts to make sense of the meaning of international legitimacy or where it comes from if states have failed or are unstructured. Finally, they contradict in many ways the UN's responsibility stated in its Charter about the principles of self-determination.

The right to self-determination has not been enjoyed by the Congolese yet. As previously stated, this right can be enjoyed in different forms. However, none of them are applicable if the Congolese lack access to the development of the political process. It seems that as Langford states, the UN seems to think that "helpless Africans require paternal assistance" (Langford, 1999). The Congolese have gone from colonialism to foreign interventionism to the current form of UN led management, supported by the AU, by which even the foundational values and ethics of the state are being laid down.

There are, however, other voices in Africa that are, in fact, demanding a more active role of the UN and financial international organizations. Adebajo, for example, based on the UN neglecting Africa for the Balkans, Iraq and Afghanistan, argues that where "Africa once feared intervention now fears marginalisation" (Adebajo, 2005). He asserts that regional and sub-regional organizations have a major role to play in re-negotiating borders that were once imposed on Africa and that the UN and the international financial institutions need to invest much more in Africa's development. Nonetheless, as Gordon argues "by permitting some other entity to act on its behalf, the state would be ceding an important part of its statehood and international personality" (Gordon cited in Langford, 1999). Tshiyembe, similarly, comments that by the UN and the AU taking over maintaining law and order the "states structures are reduced to instruments of outside bodies" (Tshiyembe, 1999). More importantly, as stated before, the evidence is that in the last hundred years the involvement of the "international community" has not provided a viable model that suits the needs of the Congolese people. This "involvement" should be done from the standpoint of inserting the ideas of self-determination and those principles enshrined in the resolutions that became a historical landmark into the strategies of conflict resolution.

Conclusion

A historical sequential analysis of the conflict that erupted in 1996 in the DRC and that is ongoing has highlighted how the AU and UN have gone through a period of transformation in which they have reinterpreted themselves in their roles towards conflict resolution. It has been shown how this is something that in some cases has undermined their original mandates and in other cases has exceeded them. It has been argued that while both organizations have a role to play in the conflict, if they want to approach conflict resolution and so-called peace-building activities, they have to incorporate the promotion of self-determination into their strategies.

The DRC represents a case of unprecedented state building activities. The UN is the guardian of international peace and security, but has left many acts of aggression against Zaire, and later the DRC, uncontested. Its new requirements for intervention, born in the wake of the cold War, imposed on it a strict rule of impartiality that influenced negatively the UN Security Council towards the conflict. In addition, the US was strongly opposed to any kind of intervention in the area. Nonetheless, possible actions such as an arms embargo came very late to reinforce the MONUC's limited mandate. On the other side, the OAU and later the AU took over a leading role that could not be maintained because members had other interests in the DRC to endow the organization with enough resources to deploy a strong peace keeping

force. However, the AU has nevertheless gained greater international recognition in coming together with the UN in some initiatives, such as the creation of the International Conference of the Great Lakes Region. However, between these absences and presences of the AU and the UN, the DRC is loosing yet a new opportunity to build from the bottom-up its own institutions.

The AU and the UN, with all the other agencies, "partners" and private investors involved are leaving very little space for the Congolese people to be in charge of their affairs. Firstly, the AU and the UN signed an agreement with only a few parties to the conflict where they sanctioned the possibility of forming a new government and further organizing a negotiating table in which the civil society, "the forces vives", would be included. However, this was greatly undermined in its capacity. The Inter-Congolese dialogue, which in its first version hosted more than three hundred organizations, instead of being a multi-party dialogue, became a strict dialogue between the government created through the warring parties and other warring parties that had not yet signed the cease-fire (the MLC). The second version of the Congolese dialogue finally configured many details about the administrative and bureaucratic organization of the state, drafted the constitution, reorganized the army, however, this time, the attendance was very limited. In contrast, UN agencies, such as the UNDP, are not only supplying the necessary humanitarian assistance and some economic aid, but are also teaching diplomatic protocol, giving lessons on good governance and ethics to the high-level government bureaucrats, formed from the different armed groups. It seems as if both the AU and the UN had been immersed into the geopolitical game that a fragile but incredibly rich DRC has provoked. That is why promoting the right to self-determination, a previous and necessary jumping board for the strengthening of sovereignty, would have been a better strategy for both organizations. It would have left the necessary space for Congolese institutions to flourish, with the international community aiding to confront external interference, resource plundering and promoting the prosecutions of crimes against humanity and war crimes.

Conversely, what the Congolese are finding is an externally created state in which indigenous institutions are not even being contemplated. The elections, which came in a tense climate with civil society groups being attacked, did thus not depend on the success of the task of reinventing the modern state in the heart of Africa, but on the capacity of meeting the needs of the armed groups. It is not surprising thus that a weak state co-opted by so the many actors involved in the DRC at all levels, is the result of the daunting task undertaken by the UN and the AU. The unrealistic expectation of building a state in a few years contradicts the logic of promoting the search for new institutions according to the self-determined needs, culture and identity of the Congolese. A logic that not only derives from a somehow idealistic desire, but that is enshrined in the foundational principles of both the UN and AU.

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