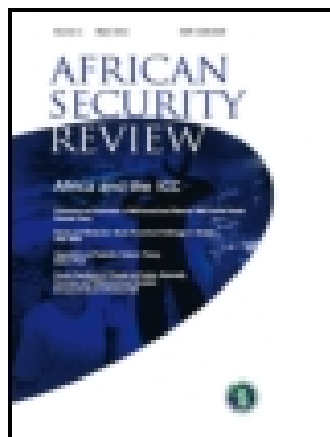


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Explaining the (il)legality of Uganda's intervention in the current South Sudan conflict

Kasaija Phillip Apuuli

During the night of 15 December 2013, fighting broke out between factions of the Sudan People's Liberation Army (SPLA) in Juba, the capital of the Republic of South Sudan. The fighting pitted forces loyal to President Salva Kiir against those loyal to former Vice President Riek Machar. Five days later, Uganda sent troops into South Sudan, advancing a number of reasons for intervention, including that it had been invited by the legitimate government of South Sudan to ensure order; it needed to evacuate Ugandan citizens caught up in the fighting; it had been asked by the United Nations Secretary-General to intervene; and that the regional organisation, the Intergovernmental Authority on Development had sanctioned the intervention. As the conflict escalated, Ugandan troops started fighting on the side of forces loyal to Kiir. The underlying reasons for the intervention were clearly economic, but those advanced were legal. This article discusses both sets of reasons and concludes that the economic reasons are more persuasive. Nevertheless, while some of the legal arguments (such as being invited by the legitimate government of South Sudan) can be asserted, others are clearly dubious. In addition, the participation of Ugandan troops in the fighting on the side of the Kiir government renders the intervention illegal.

Keywords Intergovernmental Authority on Development, Riek Machar, Salva Kiir, South Sudan, Sudan People's Liberation Army, Sudan People's Liberation Movement, Uganda Peoples' Defence Force

Introduction

The weekend before Christmas 2013, news started filtering through that Uganda had deployed soldiers in South Sudan.¹ According to a senior officer of the Uganda Peoples' Defence Force (UPDF), on 20 December 2013 Uganda deployed a company of soldiers to South Sudan to secure the evacuation of Ugandan citizens from the country.² Subsequently, following questions raised by sections of Uganda's political class – mainly opposition

members of Parliament – the government acknowledged that Ugandan troops had indeed been deployed to South Sudan.

Uganda's action followed the outbreak of fighting in Juba, during the night of 15 December 2013, between different factions of the Sudan People's Liberation Army/Movement (SPLA/M). The following day, President Salva Kiir Mayaradit, clad in a military uniform, addressed the nation and announced that there had been an attempted military coup d'état.³ He accused his former vice president, Riek Machar Teny, of being behind the attempted putsch. In turn, Machar, speaking from his hiding place, denied that he had been behind the insurrection, or that there had been an attempted coup d'état at all, stating: 'There was no coup. What took place in Juba was a misunderstanding between presidential guards within their division. It was not a coup attempt. I have no connection with or knowledge of any coup attempt.'⁴ Although initially confined to Juba, the fighting subsequently spread to the states of Jonglei, Unity and Upper Nile. Rebel soldiers took control of the towns of Bor and Bentiu, and parts of Malakal, which they held for some time before troops loyal to the President brought them back under government control. The government arrested 11 politicians from the governing party, the Sudan People's Liberation Movement (SPLM), accusing them of being involved in the attempt to overthrow the government.

This article discusses the reasons the Ugandan government advanced for its involvement in the latest conflict in South Sudan. While Uganda government officials were at pains to explain Uganda's intervention in the South Sudan conflict in legal terms,⁵ the underlying reasons for the intervention were clearly economic, according to the available evidence. With regard to the legal reasons, the intervention was justified on a number of grounds, including that Uganda was invited by the legitimate government of South Sudan to ensure order; the intervention was to evacuate Ugandan citizens caught up in the fighting; the intervention was requested by the United Nations (UN) Secretary-General; and that the regional organisation, the Intergovernmental Authority on Development (IGAD), had sanctioned the intervention. Apart from the legal argument of being invited by the legitimate government of South Sudan, which establishes partial justification, the legal grounds advanced by Uganda, when tested against existing international legal principles, point to an illegal intervention. The participation of the Ugandan troops in the fighting on the side of the Kiir government further renders the intervention illegal.

Current conflict in South Sudan

In July 2013, Kiir issued a decree dismissing his entire cabinet, including Machar.⁶ Analysts such as Andrea Mabior believe that the reshuffle specifically targeted Machar, who had earlier hinted that he would stand against Kiir for the party leadership ahead of the 2015 elections.⁷ The President had already stripped Machar of some of his powers and duties in April 2013, in a move aimed at 'cutting his profile'.⁸ Kiir extended the purge to the ruling party, the SPLM, where he sacked the Secretary-General Pa'gan Amum, accusing him of mismanaging the party.⁹ Amum had earlier criticised the President for dismissing two ministers embroiled in a multi-million-dollar financial scandal,¹⁰ describing the action as 'a political decision and abuse of power by the President'.¹¹ Through a decree, the President established a committee – chaired by the Speaker of Parliament and SPLM Deputy Chairman James Wani Igga – to probe Amum.¹²

When Kiir announced the cabinet reshuffle, analysts believed that this was the climax of a power struggle within the ruling SPLM, and thus warned of the possibility of a ‘full-blown catastrophe’.¹³ As a result of the crisis precipitated by the cabinet reshuffle, it was also feared that the President and his opponents would split the SPLM into two or more rival camps, raising tensions between the powerful Dinka and Nuer tribal groups.¹⁴ This fear has been partly realised: ‘partly’ because while there are clear tensions between the Dinkas and the Nuers, the SPLM appears not to have split along tribal lines, as Machar initially named Rebecca Nandeng Garang, a Dinka and widow of the late leader of the SPLA/M, John Garang, as part of his team at the IGAD-mediated peace talks in Addis Ababa, Ethiopia.

Nevertheless, the bad blood between Kiir and Machar seems to have been precipitated by the latter’s open criticism of the former while he was still serving as vice president. In an interview with *The Guardian* newspaper in early July 2013, Machar made a blistering attack on Kiir.¹⁵ He is reported as saying: ‘Kiir ha[s] failed to use his time as leader since 2005 to build strong institutions, tackle official corruption or create a co-operative relationship with Khartoum.’¹⁶ He added:

After almost a decade at the top, it [i]s time for Kiir to go. When a president has been in power for a long time, it becomes inevitable that a new generation arises. It is a natural process, it is best to move that way. It is not that the incumbent is at all bad. To avoid authoritarianism and dictatorship, it is better to change. Our time is limited now. I have been serving under Salva Kiir. I do my best serving under him. I think it is time for a change now.¹⁷

Thus, Machar, together with Rebecca Garang and others, openly declared that they would stand for the leadership of the SPLM ahead of the 2015 elections. The open declaration seemed to be the final straw for Kiir and he sacked the vice president. Commentators speculated that this was a calculated move by Kiir to prompt Machar and his associates to decamp from the SPLM and form their own party.¹⁸ This would leave Kiir with less opposition in the SPLM convention when the body convened to select its flag bearer for the 2015 elections.¹⁹ However, Machar and his allies foresaw this and remained in the SPLM. Machar was quoted as saying:

[I] hope we can resolve this issue. Currently there are four known people who expressed their desire to run for the presidency, including me and the incumbent. That shouldn’t lead to a split [of the SPLM]. We want to demonstrate democratic debate within ... I’m hoping we can remain together as one party.²⁰

Nevertheless, the SPLM national convention that would have discussed the leadership issue was postponed repeatedly.²¹

The events triggering the 15 December 2013 fighting have been aptly summarised by the International Coalition for the Responsibility to Protect (ICRtoP):

A major fissure within the SPLM ... became apparent during planned meetings of the SPLM’s party leadership in December 2013. Senior members of the party pulled out of the conference, citing ‘undemocratic leadership’, while others held competing press conferences demanding action by Kiir. Following a leadership meeting on 15 December 2013, fighting broke out between Nuer and Dinka members of the presidential guard, who

claimed loyalty to either Machar or Kiir. The fighting spread to military headquarters, subsequently igniting clashes throughout Juba and in Unity and Jonglei States.²²

Elsewhere it has been observed that the fighting followed a stormy meeting of the National Liberation Council (NLC), a key organ of the SPLM, at which pro-Machar and pro-Kiir factions failed to agree on the composition of a key body that would pick the party's presidential candidate for the next elections.²³ Subsequently, fighting broke out after an attempt to disarm predominantly Nuer members of the presidential guard.²⁴

With the help of Ugandan troops,²⁵ government forces wrested control of the towns of Bor, Bentiu and Malakal back from rebel troops.²⁶ It is estimated by the International Crisis Group (ICG) that the conflict has resulted in the death of over 10 000 people and displaced hundreds of thousands,²⁷ with estimates indicating that more than 250 000 people have sought shelter in neighbouring countries and more than 800 000 have been internally displaced.²⁸

Background to Uganda's intervention in South Sudan

Previous Uganda intervention in Sudan

It has been argued that Uganda has strong links to the SPLM/A, including decades of joint military deployments.²⁹ By the time the National Resistance Army/Movement (NRA/M) came to power in Uganda in 1986, the conflict between the Khartoum government and the SPLA/M had been raging for close to three years. The outbreak of a new civil war in the south and the formation of the SPLA/M was precipitated by President Gaafar Nimeiri abrogating the 1972 Addis Ababa Agreement by dividing the south into three regions and imposing Islamic law on the whole country, including southern Sudan.³⁰ When the NRM government came to power, it faced an insurgency in northern Uganda. The remnants of the defeated Ugandan army, which had taken refuge in Sudan, subsequently launched attacks on Uganda from their bases in Sudan. While the NRA was able to defeat a number of these militia groups using military and peace-talk strategies, including the Uganda People's Democratic Army (UPDA) and the Holy Spirit Movement (HSM) I and II, the most virulent insurgent group was the Lord's Resistance Army (LRA) led by Joseph Kony, which took root in northern Uganda.

Following the collapse of the peace talks between the LRA and the Ugandan government around 1993–4, the LRA started getting military assistance from the Khartoum government. According to Andrew Natsios, the Khartoum government 'armed and equipped the LRA' and allowed it to maintain 'a permanent military base in the Kit Valley'.³¹ Kevin Dunn notes that the Sudanese government was instrumental in 'transforming [the] rag-tag group of rebels [of the LRA] into a coherent, well supplied military force, largely through training, sharing of logistics and the introduction of more powerful and sophisticated weaponry such as land mines and rocket propelled grenades'.³² What prompted Khartoum's support of the LRA was the support that the NRM government had extended to the SPLA/M. Paul Omach has noted that the NRM government was sympathetic to the SPLA/M,³³ and Mari Tripp states that on 29 March 1989, a secret military cooperation agreement was signed between Uganda and Garang committing Uganda to provide equipment and training to the SPLA, as well as passports for travel abroad.³⁴ Uganda also committed to provide the SPLA with free passage through the country while conducting its operations.

In the wake of the failed peace talks between the LRA and the Ugandan government, and amid accusations of supporting each other's dissidents, Uganda and Sudan broke off diplomatic relations in 1995.³⁵ Subsequently, the NRM government intensified its support for the SPLA with, at one point, the group sharing military facilities with the Ugandan army.³⁶ In addition, the Ugandan troops made periodic incursions into Sudan in pursuit of the LRA and two other Ugandan rebel groups, the West Nile Bank Front (WNBFB) and the Uganda National Rescue Front II (UNRF), and also in support of the SPLA.³⁷

In 1999, the Sudan–Uganda peace process was initiated, following a request for assistance from The Carter Center (TCC) by President Yoweri Museveni.³⁸ The process resulted in the signing of the December 1999 Nairobi Agreement, which led to the normalisation of relations between the two countries.³⁹ In March 2002, the government of Sudan allowed the Ugandan army to pursue the LRA rebels into its territory in what was called Operation Iron Fist (OIF). In July 2002, the Sudanese president announced that his country's forces would actively cooperate in joint military actions with the Ugandan army against the LRA.⁴⁰ The OIF had the effect of uprooting the LRA from its bases in South Sudan. The signing of the Comprehensive Peace Agreement (CPA) between the SPLA/M and the Sudanese government in 2005 did not result in an end to the involvement of Ugandan troops in that part of Sudan. According to LeRiche and Arnold, 'during the first years of the CPA's interim period, Uganda was allowed to use its army, the UPDF, inside Southern Sudan to conduct counter-insurgency operations against the LRA'.⁴¹ Following the failure of the LRA to sign the Juba peace agreement in 2008, the African Union (AU) launched the Regional Cooperation Initiative for the Elimination of the LRA (RCI-LRA), under which Ugandan troops have been operating *inter alia* in South Sudan territory.

Current intervention

As mentioned in the introduction, in the immediate aftermath of the outbreak of fighting in Juba, Uganda deployed a company of the UPDF to secure Juba International Airport to enable foreigners to evacuate from South Sudan. In Uganda's army formation, a company consists of between 80 and 250 soldiers. However, as the conflict escalated, Ugandan troops were increased to the current estimated level of between 2 000 and 5 000 soldiers.⁴² The military support includes air support and tanks. The initial task of the UPDF was to secure vital infrastructure in Juba, such as the airport, in order to facilitate the evacuation of foreign persons caught up in the fighting. Museveni, in a letter to the Speaker of the Ugandan Parliament explaining the intervention, stated that he deployed a small force to guard Juba airport.⁴³ The legal framework under which Uganda deployed its troops is unknown, but Museveni stated that he had deployed the UPDF with the agreement of Kiir.⁴⁴ When questions began to be asked on the legal framework under which Ugandan troops were operating in South Sudan, the government of Uganda concluded a Status of Forces Agreement (SoFA) with the government of South Sudan, allowing the UPDF to operate on South Sudanese territory.⁴⁵

Uganda's intervention explained

The government of Uganda has been at pains to explain its current intervention in South Sudan in legal terms. In the next section, I explain the legal grounds that have been advanced. Later on, I elucidate on the more persuasive economic reasons for the intervention.

Legal grounds

Ugandan officials have justified the intervention in South Sudan by arguing that it was done in accordance with international law. In this regard they have *inter alia* argued that: Uganda was invited by the legitimate government of South Sudan to ensure order; Uganda needed to evacuate its citizens caught up in the fighting; Uganda was requested by the UN Secretary-General to intervene; and the regional organisation, IGAD, sanctioned the intervention. I test these reasons for their (il)legality against known international law principles.

Intervention on invitation

Uganda has sought to justify its intervention in the current conflict in South Sudan by claiming it was invited by the constitutional and legitimate government. However, in order to legally justify the intervention on this basis, it is important to note the different phases of the UPDF's intervention in the conflict. The first phase entailed the deployment of the UPDF to protect the vital infrastructure of Juba in order to enable the evacuation of foreigners. The second phase entailed the UPDF fighting on the side of the Kiir government. The two phases raise different conclusions regarding the (il)legality of the intervention.

Regarding the first phase, in a letter to the Speaker of Parliament of Uganda on the intervention, Museveni stated: 'I decided to deploy ... a small force to guard Juba airport with the agreement of President Salva Kiir.'⁴⁶ This would suggest that the government of South Sudan invited the UPDF onto its territory. The purpose of guarding the airport was ostensibly to aid in the evacuation of foreign persons caught up in the fighting (see below). Legally, a democratically elected government – such as South Sudan – has the legitimate authority to carry out state functions, including inviting another country's forces to come to its aid if its legitimacy is challenged. Many states have attempted to justify military intervention in other states on the basis of consent (read: invitation). It must be emphasised that the consent, to produce any legal effect, must be 'clearly established, [be] really expressed (which precludes merely presumed consent), [be] internationally attributable to the state and [be] anterior to the commission of the act to which it refers'.⁴⁷

In the case of South Sudan, the government is democratically elected and the only legitimate government. It has been observed that in cases where the incumbent government controls the political apparatus of the state, it may request external assistance, or even military intervention, to assist it in maintaining control of the state.⁴⁸ Malcolm Shaw has observed: 'It would appear that in general, aid to the government authorities to repress a revolt is perfectly legitimate, provided of course it was requested by the government.'⁴⁹ This point was supported by the International Court of Justice (ICJ) in the Case Concerning Military and Para-military Activities in and Against Nicaragua [Nicaragua v. USA] (1986), Judgment, 26 June 1986, where it was held that 'intervention is generally allowable ... at the request of the government of a state ...'.⁵⁰ The most recent example of this was France's intervention in Mali in 2013, upon the invitation of the interim transition government of Mali, to halt the advance of the Islamic Jihadists who were threatening to take over Bamako.⁵¹ Kabore and Maillart have observed:

Considering that France had been officially invited to intervene by Malian authorities in order to defeat Jihadists in the north of the country, 'Operation Serval' can be considered

as lawful under international law. ... as Mali gave its consent to the operation, no further legal justification was required.⁵²

But of course it must be observed that France's intervention in Mali has been mired in the politics of neocolonialism.

The only exception to the rule on aiding a government is when the recipient state (government) is forcibly suppressing the right of self-determination of a people entitled to such rights.⁵³ The general rule is that a government may not authorise external military intervention against a national liberation movement opposing racist or colonial domination.⁵⁴ This scenario does not apply to the situation in South Sudan.

The other issue that arises is whether Uganda was right to intervene in a civil war in South Sudan.⁵⁵ Doyle and Sambanis have established criteria that a civil war must meet: the war causes more than 1 000 battle deaths; the war represents a challenge to the sovereignty of an internationally recognised government; the war occurs within the recognised boundaries of the state; the war involves the [government] as one of the principle combatants; and the rebels are able to mount an organised military opposition to the government and to inflict significant casualties on it.⁵⁶ Of course, it must be emphasised that this is not a legal but rather a political definition. Thus, based on this definition and the factual evidence on the ground, it can be deduced that the conflict in South Sudan is a civil war. The arising question thus is: was Uganda right to intervene in a civil war?

The UN General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN states: 'No State ... has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.'⁵⁷ This would presuppose that a state's intervention in a civil war in another state is prohibited. However, while there exists the suggestion that intervention in a civil war on the side of the government at its request is unlawful, there is little support for this in practice.⁵⁸ Practice only seems to prohibit intervention on the side of those opposing the government. Accordingly, since Uganda intervened on the side of the South Sudan government, its intervention was legal.

Nevertheless, this ground of intervention has become increasingly tenuous following revelations that the government of South Sudan did not write a letter to Museveni requesting intervention, as had earlier been claimed by officials of the Ugandan government.⁵⁹ This would mean that there was no consent to the intervention by South Sudan. On 14 January 2014, Crispus Kiyonga, the Ugandan Minister of Defence, told the Ugandan Parliament that Kiir had written to Museveni, inviting the UPDF to 'help stabilize the situation',⁶⁰ but the Speaker of the South Sudan Parliament countered this and declared that Kiir had not written a letter requesting Uganda's intervention.⁶¹

Rescuing nationals

The other reason with international legal connotations cited for Uganda's intervention in South Sudan is that of rescuing Ugandans trapped by the outbreak of fighting. In his letter to the Speaker of Parliament on the intervention, Museveni stated that '... the deployment was to ... rescue trapped Ugandans'.⁶² This was supported by other government officials such as Kiyonga who, while addressing Parliament, stated: 'we are in South Sudan to evacuate our citizens'.⁶³ This followed Minister of State for Defence Jeje Odongo's presentation to the

Parliament Committee on Defence where he stated that 'following the [UPDF] deployment, Ugandans have been rescued and evacuated from Juba, Bor and Bentiu'.⁶⁴ He added, 'other nationals who have been rescued and evacuated include: Kenyans, Ethiopians, Eritreans and Chinese'.⁶⁵ However, he did not state whether these other nationals had been rescued by the UPDF. According to Uganda's Chief of Defence Forces (CDF), General Katumba Wamala, as of 14 January 2014 'at least 30,000 Ugandans had been rescued from South Sudan since the UPDF deployed there'.⁶⁶

Since the signing of the UN Charter, the legal basis of the right of states to protect their nationals abroad in situations where their lives or physical safety are directly threatened has been the subject of vigorous legal debate and contending views of states.⁶⁷ Nevertheless, protecting nationals abroad is more a political than a legal issue. Since the Charter came into force, states (especially those that can afford it) have frequently evacuated their nationals caught up in conflicts, even when they are not directly threatened, sometimes justifiably and sometimes not. For example, during the 2011 Libyan crisis, countries such as the United Kingdom (UK), Italy and the Netherlands deployed their military assets to secure the evacuation of their nationals from the country.⁶⁸ The Gaddafi government did not oppose the evacuations, but nor had it directly threatened the evacuees. When the issue of states evacuating their nationals from situations of armed conflict has come before the UN Security Council and, to some extent, the ICJ, neither organ has ever taken the position that the practice is illegal.⁶⁹ States that are not capable of mounting an evacuation leave their citizens in mortal danger, especially if they are caught up in the politics that gave rise to the conflict in the first place. For example, during the Libyan crisis, migrant workers coming from some sub-Saharan African states were in serious danger from anti-Gaddafi forces because of the allegation that the Gaddafi government was using 'sub-Saharan African mercenaries to quash popular protests'.⁷⁰ Thus calls to evacuate these migrant workers from Libya echoed all around.

In the case of South Sudan, Uganda's intervention seems to have gone beyond rescuing Ugandans caught up in the fighting. The announcement that the UPDF was fighting alongside government forces against the rebel troops supporting Machar⁷¹ clearly violates the requirement of proportionality, which demands that the action taken must not be 'excessive' (no more than is necessary to accomplish the stated objective). The UPDF fighting on behalf of one of the factions in the conflict points to an abuse of this state practice, which Terry Gill warned about.⁷²

Request by the Secretary-General of the UN

Ugandan officials, such as Fred Opolot of the Ministry of Foreign Affairs and the government spokesman Ofwono Opondo, have argued that Uganda's intervention in South Sudan is legal because 'the UN SG telephoned President Museveni and asked him to intervene by finding a political solution to the problem'.⁷³ Under the UN Charter, the UN Security Council has the primary responsibility for maintaining international peace and security.⁷⁴ The UNSC is also mandated to determine the existence of any threat to the peace, any breach of the peace or an act of aggression, and shall make recommendations or decide what measures shall be taken to maintain or restore international peace and security.⁷⁵ Under the Charter regime, the UN Secretary-General can only bring to the attention of the UNSC any matter that, in his opinion, may threaten international peace and security.⁷⁶ So, clearly, in matters of international peace and security, the role of the UN Secretary-General (as far as the UN

Charter in concerned) is limited to alerting the UNSC to potential threats to international peace and security. The UN Secretary-General has no mandate to 'authorise' a military intervention by one country into another.

In the case of South Sudan, two things can be observed. Either the UN Secretary-General's phone call was misinterpreted by Museveni; in which case, when the UN Secretary-General asked him to 'intervene to find a political solution', Museveni thought he had been authorised to deploy troops; or the Ugandan officials who are touting this as one of the grounds for Uganda's intervention do not understand the *modus operandi* of the UN Charter. Be that as it may, the Ugandan troop presence in South Sudan is overt. The UN Secretary-General and the UNSC have not denounced Uganda's presence in South Sudan and, as far as the public record is concerned, the UNSC has not debated and adopted a resolution authorising Ugandan troop presence there.⁷⁷ Can it thus be concluded that Uganda's intervention has been sanctioned by the UN system? In my opinion, it cannot. While the UN Secretary-General's request to Museveni cannot constitute intervention on legal grounds, equally the UNSC's silence on the matter cannot translate into authorising the intervention. Moreover, the UN Secretary-General's request to Museveni was explicit, 'to find a political solution' and not a military one.

Finally on this point, even if it is argued that the deployment of Ugandan troops would help to create conditions to find a political solution for the problem, the announcement by Museveni that the UPDF is fighting against the rebel troops loyal to Machar surely cannot help the cause of finding a political solution. Earlier, a spokesman of Ethiopia's Prime Minister intimated that Ugandan troops engaging in combat in South Sudan would be 'absolutely unwarranted'.⁷⁸ It seems the official spoke too soon.

Authorisation by IGAD

In an editorial in its 16 January 2014 issue, *The Observer* stated that 'many people had hoped that the UPDF's intervention [in South Sudan] would be under the auspices of the regional group, the IGAD, which would have given such action more legitimacy'.⁷⁹ In other words, the paper does not view Uganda's intervention as sanctioned by the region. However, according to Ugandan government officials, the UPDF's presence in South Sudan was sanctioned by the states of the IGAD.⁸⁰ South Sudan's ambassador to Uganda, Samuel Lominsuk, has also stated that 'Uganda's intervention [in South Sudan is] justified under the IGAD'.⁸¹

The Inter-Governmental Authority on Drought and Desertification (IGADD) was established in 1986 by the countries of Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda to coordinate the efforts of member states to combat the problems of drought and desertification in the region. The states of Eritrea and South Sudan were admitted as members in 1993 and 2012 respectively. Subsequently, it became apparent that IGADD could provide a regular forum where leaders of the region could tackle other political and socio-economic issues in the regional context. Realising this, the heads of state and government at an extraordinary Summit on 18 April 1995, resolved to expand the mandate of IGADD and issued a declaration to revitalise the group and expand areas of cooperation among member states. The revitalised IGADD was renamed the Inter-Governmental Authority on Development (IGAD).

The revitalised IGAD *inter alia* committed itself to 'promot[ing] peace and stability in the sub-region, and creating mechanisms within the sub-region for the prevention, management and resolution of inter- and intra-state conflicts through dialogue'.⁸² Based on this, IGAD

became the vehicle for mediating the Sudan and Somalia conflicts in the 1990s and early 2000s. As one of the eight AU-recognised regional economic communities (RECs) in Africa, IGAD is part and parcel of the African Peace and Security Architecture (APSA), whose objectives include conflict prevention, management and resolution.

IGAD's capacity to engage in peacekeeping/enforcement operations has been recognised by the AU and, in February 2005, IGAD was mandated (by the AU) to mount a peacekeeping/enforcement operation in Somalia called the IGAD Mission in Somalia (IGASOM).⁸³ IGASOM was supposed to oversee the voluntary disarmament of militias, protect the transitional federal institutions (TFIs) – the Transitional Federal Parliament and President – and prepare the ground for an AU force that would replace IGASOM nine months after its deployment. The mission failed to materialise partly because the organisation did not possess an in-house capacity to rapidly deploy peacekeepers to member states.⁸⁴ According to Sally Healy, 'no resources were available to mount the operation'⁸⁵ and no external financial support for the force was found.⁸⁶ So IGAD possesses the mandate to deploy peacekeeping/enforcement missions, but what it lacks (at least in the case of IGASOM) is the capacity to actually do it.

Nearly two weeks after the outbreak of fighting in South Sudan, the heads of state and government of IGAD met at an extra-ordinary summit in Nairobi, Kenya, and 'commended Uganda's efforts in securing critical infrastructure and installations in South Sudan and pledge[d] its support to these efforts'.⁸⁷ It can be argued that IGAD sanctioned Uganda's intervention implicitly but only to help secure critical infrastructure and installations. Any support contemplated by IGAD for Uganda would be towards achieving this objective. The wording of the communiqué does not suggest that IGAD intended to support Uganda's intervention in South Sudan beyond what is stated. It is a requirement of international law that agreements between states should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty.⁸⁸ If IGAD had intended to support Uganda's efforts beyond those stated in the communiqué (for example, its fighting alongside troops loyal to the government of South Sudan), it should have stated so. This is to avoid the Libyan scenario whereby the provision in UNSC Resolution 1973 requiring 'the protection of civilians' was expanded to include the removal of Muammar Gaddafi from power.

While Museveni confirmed in his letter to the Speaker of the Ugandan Parliament that he had deployed the UPDF to 'guard Juba airport', in actuality the Ugandans became embroiled in the conflict on the side of the Kiir government. Thus, it can be concluded that Uganda's intervention, as far as it goes beyond 'securing critical infrastructure and installation' as stated by IGAD, is illegal. The possible question then to ask is whether sub-regional organisations like IGAD can mandate an intervention?

The UN Charter enjoins member states

to establish regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. The Security Council shall

encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.⁸⁹

On the basis of this provision, regional organisations like the AU and sub-regional organisations such as IGAD have engaged in issues of peace and security. This has included the RECs sanctioning and conducting peacekeeping and peace-enforcement operations, although they are required to report their activities to the UNSC for formal authorisation in the case of the latter.⁹⁰ The most cited example where a sub-regional organisation sanctioned a peacekeeping mission was in 1990, when the Economic Community of West African States (ECOWAS) sanctioned the Economic Community Military Ceasefire Monitoring Group (ECOMOG) mission to Liberia. This followed the outbreak of the Liberian civil war in December 1989. ECOWAS, concerned with regional stability, floods of refugees and the high level of violence in Liberia, became involved in the conflict.⁹¹ ECOMOG was nominally constructed and specifically given the mandate to 'halt [Liberia's] slide into anarchy via civil war'.⁹² The UNSC did not sanction ECOWAS's action immediately but did so in 1992.⁹³ Subsequently, the ECOMOG mission was extended to Sierra Leone when the country also experienced a civil war.

Following the example of ECOWAS in Liberia and Sierra Leone, other sub-regional groups also started engaging in regional peacekeeping efforts, including the Southern African Development Community (SADC) mission in Lesotho (1998) and the Democratic Republic of the Congo (DRC) (1998); and IGAD's involvement in the Sudan and Somalia peace processes. So, doctrinally, sub-regional organisations can authorise interventions to maintain peace and security but they have to: (a) seek the authorisation of the UNSC; and (b) keep the UNSC fully informed of the activities undertaken in accordance with the requirements of Articles 53 and 54 of the UN Charter, respectively.

As far as IGAD's 'authorisation' of Uganda's intervention in South Sudan is concerned, the UNSC has not made a pronouncement on the matter, even if the IGAD summit has called on the IGAD Secretariat to forward the various IGAD communiqué decisions on the situation in South Sudan to it. Also, when the UNSC was expanding the size of UNMISS in December 2013, it did not mention anything on Uganda's intervention. The silence of the UNSC may mean two things: either it recognises the intervention and has decided to keep quiet; or IGAD has kept the UNSC informed of what is going on.

Having dealt with the legal arguments for the intervention, I now turn to the economic reasons, which I think are more persuasive in explaining the intervention.

Economic grounds

The most plausible justification for Uganda's intervention in South Sudan is economic. Since the signing of the CPA in 2005, peace and stability have led to a significant demand for expansion in South Sudan.⁹⁴ Population growth from the resettlement of returnees and former refugees, as well as an increased business presence by foreign investors in South Sudan, has also contributed to the demand growth.⁹⁵ According to the Uganda Bureau of Statistics (UBoS), bilateral trade between Uganda and South Sudan appears to have grown by 1 000 per cent between 2006 and 2008.⁹⁶ For both formal and informal trade combined, South Sudan has been the single largest destination of Uganda's exports since 2007.⁹⁷ In fact, during the

Interim Period (2005–2011), Uganda emerged as South Sudan's largest trading partner: its exports were worth US\$187 in 2010, and it had the largest number of foreigners resident in South Sudan, with approximately 12 000 officially registered.⁹⁸ In January 2014, the Bank of Uganda reported that Uganda's exports to South Sudan were valued at US\$220 million per month, with the country earning an estimated US\$1,3 billion from exports to South Sudan in 2012.⁹⁹ This means that out of Uganda's annual budget of slightly more than US\$5 billion (2013–14 estimates), trade with South Sudan (US\$1,3 billion) accounted for slightly more than a quarter of the budget.

Secondly, in 2006 Uganda discovered up to 2,5 million barrels of oil in the Albertine-Graben region, which is very close to South Sudan. Being landlocked and without major refineries, Uganda has faced challenges similar to those of South Sudan, which is similarly landlocked. Thus, the two countries (as well as Kenya and Rwanda) have been exploring the possibility of building a refinery or pipeline to serve them all.¹⁰⁰

The economic reasons elucidated above are justifiable grounds for Uganda's intervention in South Sudan. No country would sit idly by and see its economy ruined by a conflict in a neighbouring country that is its biggest trading partner and potential partner in oil matters. However, intervention on these grounds has to be rationalised not from a legal angle but rather from a politico-economic one.

Cessation of Hostilities Agreement

This article would not be complete without a discussion of the effects of signing the Cessation of Hostilities Agreement (CoHA) on Uganda's involvement in South Sudan between the government of the Republic of South Sudan and the SPLM/A In Opposition. The CoHA was signed on 23 January 2014, well after Uganda had intervened in the conflict. Some of the key provisions of the agreement relevant to this discussion are the requirements that the parties, upon the coming into force of the Agreement (24 hours after signing), shall (1) 'ensure that all forces or armed groups under their influence, control or/and command observe the Agreement';¹⁰¹ and (2) 'redeploy and/or progressively withdraw forces, armed groups and allied forces invited by either side from the theatre of operations in the Republic of South Sudan' (emphasis added).¹⁰²

The effect of this CoHA is that Uganda should have started withdrawing its troops by 25 January 2014 at the latest. This, however, has not happened at the time of writing, three months after the signing of the CoHA. The continued presence of the UPDF in South Sudan is therefore a breach of the CoHA. When calls were made for Ugandan troops to withdraw, subsequent to the signing of the agreement, the government of Uganda defiantly stated that it would start withdrawing the UPDF in mid-April 2014, and even then only after the contemplated IGAD peacekeeping mission had started deploying.¹⁰³ More recently, on a visit to South Sudan, the Commander of Uganda's Land Forces, Major General Muhoozi, was quoted as saying that the UPDF would not withdraw from South Sudan until elements of the IGAD Protection and Deterrence Force (PDF) started deploying to the country.¹⁰⁴ The principle of *pacta sunt servanda* in international law demands that agreements must be carried out in good faith.¹⁰⁵ It is clear from Uganda's actions that the country is acting in bad faith, notwithstanding calls by countries such as Ethiopia, Norway and the United States (US) for it to withdraw its troops from South Sudan.¹⁰⁶ The stance Uganda has taken is possibly

informed by the fact that the CoHA is 'ambiguous (less explicit) with regard to its demand for the parties to redeploy and/or progressively withdraw allied forces'.¹⁰⁷ The ambiguity seems to arise from the failure of the agreement to specifically name Ugandan troops as constituting 'allied forces'.

Conclusion

Uganda's military intervention in the current fighting in South Sudan has drawn mixed reactions nationally, regionally and internationally. While some have viewed it as insufficiently based on sound legal reasoning, the government of Uganda has been at pains to portray it as legitimate. This article sought to test the legal explanations the government has advanced and has concluded that partial justification can be found from the invitation which the Uganda government received from the legitimate government of South Sudan to intervene in the conflict. Nevertheless, the most plausible grounds for the intervention, which Uganda should have advanced, are economic. These grounds have not been strongly asserted, however. In the end, all the reasons advanced by the government, with the exception of the partial justification of being invited by the legitimate government of South Sudan, point to an illegal intervention. The participation of Ugandan troops in fighting on the side of the Kiir government further renders the intervention illegal.

Acknowledgements

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Notes

- 1 Ugandan troops deployed in South Sudan Capital: report, *The East African*, 20 December 2013, <http://www.theeastafrican.co.ke/news/Ugandan-troops-deployed-in-South-Sudan-capital/-/2558/2119918/-/1m4vhh/-/index.html> (accessed 13 January 2014). The report stated that 'Ugandan soldiers have been deployed in the South Sudan's capital Juba following a request by the country's government to help secure the city'.
- 2 Interview with a Senior UPDF Officer, Kampala, 20 December 2013.
- 3 South Sudan: Kiir says ready for dialogue with Machar, *All Africa*, 19 December 2013, <http://allafrica.com/stories/201312190258.html> (accessed 30 January 2013).
- 4 Ibid.
- 5 For example, government spokesman Ofwono Opondo proffered the following explanation for the intervention *inter alia*, stating the following: 1. Under Section 39 of the UPDF Act 2005 the president can deploy soldiers outside the country through consultation with the Speaker of the Parliament. This was done pending an opportunity for Parliament to convene, in order to be briefed and perhaps endorse the move (Ugandan Parliament was in recess at the time); 2. The Ugandan president indeed sent a small but robust contingent of UPDF troops at the request of the legitimate government of South Sudan under President Salva Kiir on 16 December 2013, which is allowed under the UN charter and protocol if a friendly country asks for assistance; 3. Uganda is a member of IGAD, and it is IGAD, currently chaired by Ethiopia, that is leading all initiatives in full consultations with the African Union (AU) and the United Nations Security Council (UNSC); 4. The UN Secretary-General, Ban Ki Moon, has said publically that he requested Museveni's help during the South Sudanese political crisis, depending on the situation on the ground. The bloodletting that was seen in the first two days made it clear there was a real possibility of South Sudan descending into real ethnic cleansing, genocide and failed-state status. See Athiaan Majak Malou, Understanding Museveni's intervention in South Sudan, *Sudan Tribune*, 12 January 2014, <http://www.sudantribune.com/spip.php?article49541> (accessed 15 January 2014).

- 6 South Sudan's Salva Kiir sacks cabinet, *BBC News Africa*, 24 July 2013, <http://www.bbc.co.uk/news/world-africa-23428557> (accessed 14 January 2014). See also the following presidential decrees: RSS/RD/J/49/2013 – Relieve of the Vice President of the Republic of South Sudan, 23 July 2013, <http://www.gurtong.net/LinkClick.aspx?fileticket=ZOejD0c-c1w%3d&tabid=124> (accessed 14 January 2014); RSS/RD/J/50/2013 – Relieve of National Ministers of the Government of the Republic of South Sudan, 23 July 2013, <http://www.gurtong.net/LinkClick.aspx?fileticket=7cD-9Y4z904%3d&tabid=124> (accessed 14 January 2014); RSS/RD/J/51/2013 – Relieve of National Deputy Ministers of the Government of the Republic of South Sudan, 23 July 2013, http://www.gurtong.net/LinkClick.aspx?fileticket=5U4kk_j44X0%3d&tabid=124 (accessed 14 January 2014); Gurtong, The latest republican decrees: dissolving South Sudan government, 24 July 2013, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/12210/categoryId/120/The-Latest-Republican-Decrees-Dissolving-South-Sudan-Government.aspx> (accessed 14 January 2014).
- 7 Andrew Green, South Sudan's president sacks cabinet amid party power struggle, *Reuters*, 23 July 2013, <http://uk.reuters.com/article/2013/07/23/uk-southsudan-government-idUKBRE96M0YQ20130723> (accessed 13 January 2013).
- 8 Ibid.
- 9 South Sudan's Salva Kiir sacks cabinet, *BBC News Africa*.
- 10 Ibid. See also Green, South Sudan's president sacks cabinet amid party power struggle.
- 11 South Sudan's Kiir moves to take down Machar and Amum, Khartoum says accords unaffected, *Sudan Tribune*, 23 July 2013, <http://www.sudantribune.com/spip.php?article47380> (accessed 12 January 2014).
- 12 See Presidential Decree SPLM/CPO/J/01/2013 – Suspension and the Formation of the Committee to Investigate the SPLM Secretary-General, 23 July 2013, <http://www.gurtong.net/LinkClick.aspx?fileticket=Gt3wGgMFxNI%3d&tabid=124> (accessed 12 January 2014).
- 13 Simon Tisdall, South Sudan president sacks cabinet in power struggle, *The Guardian*, 24 July 2013, <http://www.theguardian.com/world/2013/jul/24/south-sudan-salva-kiir-sacks-cabinet> (accessed 14 January 2014).
- 14 Ibid.
- 15 Simon Tisdall, South Sudan: two years old but nothing to celebrate, *The Guardian*, 4 July 2013, <http://www.theguardian.com/world/2013/jul/04/south-sudan-two-years-on?uni=Article:in%20body%20link> (accessed 13 January 2014).
- 16 Ibid.
- 17 Ibid.
- 18 Tisdall, South Sudan president sacks cabinet in power struggle.
- 19 Ibid.
- 20 Tisdall, South Sudan: Two years old but nothing to celebrate.
- 21 Ibid.
- 22 International Coalition for the Responsibility to Protect (ICRtoP), The crisis in South Sudan, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-south-sudan> (accessed 14 January 2013).
- 23 Daniel Kalinaki, Sudan 'on the brink of civil war' as Uganda sends troops to support Kiir, *The East African*, 21 December 2013, <http://www.theeastafrican.co.ke/news/Anxiety-engulfs-East-Africa-Will-South-Sudan-hold/-/2558/2121208/-/70vhtq/-/index.html> (accessed 14 January 2014).
- 24 Ibid. See also Machel Amos, Machar, Kiir fell out before independence, *The East African*, 18 January 2014, <http://www.theeastafrican.co.ke/news/Machar-Kiir-fell-out-before-independence/-/2558/2150918/-/6rwgfc/-/index.html> (accessed 19 January 2014).
- 25 See Barbara Among, Machar's fighters kill UPDF soldiers, *Daily Monitor*, 16 January 2014, <http://www.monitor.co.ug/News/National/Machar-s-fighters-kill-UPDF-soldiers/-/688334/2147572/-/gmK0ix/-/index.html> (accessed 16 January 2014). Museveni is reported to have said: 'Only the other day, January 13, the SPLA and elements of our army had a big battle with the rebel troops about 90km from Juba where we inflicted a big defeat on them Unfortunately, many lives were lost on the side of the rebels. We also took casualties and had some dead.'
- 26 Note that the towns of Bentiu and Malakal have changed hands between government and rebel forces a number of times.
- 27 See Kevin J Kelley, US issues stern warning on South Sudan conflict, *Daily Nation*, 16 January 2014, <http://www.nation.co.ke/news/africa/US-south-sudan-conflict-rebels-detainees-kiir-machar/-/1066/2148148/-/k9n4oez/-/index.html> (accessed 16 January 2014).

- 28 As war continues in South Sudan, ACT Alliance assists displaced families, *ACT Alliance*, 22 April 2014, <http://www.actalliance.org/stories/as-war-continues-in-south-sudan-act-alliance-assists-displaced-families> (accessed 6 May 2014).
- 29 International Crisis Group (ICG), *South Sudan: a civil war by any other name (Africa Report no. 217)*, Addis Ababa: ICG, 2014, 22.
- 30 Biong K Deng, New Sudan in the context of one country two systems, in Francis M Deng (ed), *New Sudan in the making?*, Asmara: The Red Sea Press, 2010, 396.
- 31 Andrew S Natsios, *Sudan, South Sudan and Darfur: what everyone needs to know*, Oxford: Oxford University Press, 2012, 79.
- 32 Kevin C Dunn, The Lord's Resistance Army and African international relations, *African Security* 3 (2010), 46–63, 49.
- 33 Paul Omach, The regionalization of rebel activities: the case of the Lord's Resistance Army, in Wafula Okumu and Augustine Ikelegbe (eds), *Militias, rebels and militants: human insecurity and state crises in Africa*, Pretoria: Institute for Security Studies, 2010, 294.
- 34 Mari Tripp, *Museveni's Uganda: paradoxes of power in a hybrid regime*, London: Lynne Rienner, 2010, 158.
- 35 Michael J Papa, Jeffrey Mapendere, and Patrick J Dillon, Waging peace through improvisational action: track-two diplomacy in the Sudan-Uganda conflict, *Southern Communication Journal* 75 (2010), 349–369, 350.
- 36 Omach, The regionalization of rebel activities, 298.
- 37 Ibid.
- 38 Papa et al, Waging peace through improvisational action, 350.
- 39 Agreement between the Governments of Sudan and Uganda (The Nairobi Agreement), 8 December 1999, <http://www.cartercenter.org/documents/nondatabase/nairobi%20agreement%201999.htm> (accessed 2 April 2014).
- 40 Robert L Feldman, Why Uganda has failed to defeat the Lord's Resistance Army, *Defense & Security Analysis* 24 (2008), 45–52, 48.
- 41 Matthew LeRiche and Matthew Arnold, *South Sudan: from revolution to independence*, London: C. Hurst, 2012, 204.
- 42 South Sudan crisis ripples across region, *IRIN*, 13 February 2014, <http://www.irinnews.org/report/99642/south-sudan-s-crisis-ripples-across-region> (accessed 30 March 2014). Note that there is no official Ugandan government figure of the number of troops the country has deployed in South Sudan.
- 43 See Yasiin Mugerwa, Museveni wants MPs to bless South Sudan deployment, *Daily Monitor*, 11 January 2014, <http://www.monitor.co.ug/News/National/Museveni-wants-MPs-to-bless-South-Sudan-deployment/-/688334/2141488/-/y8thrh/-/index.html> (accessed 14 January 2014).
- 44 Ibid.
- 45 See Status of Forces Agreement between the Government of the Republic of Uganda and the Government of the Republic of South Sudan, 10 January 2014, http://www.sudantribune.com/IMG/pdf/status_of_forces_agreement-2.pdf (accessed 2 April 2014). Note that the agreement was signed well after Ugandan troops had been deployed in South Sudan. This would mean that between the time of the troop deployment and when the agreement was signed, the Ugandan troops were operating in South Sudan illegally. See also Kadaga recalls Parliament over South Sudan UPDF deployment, *Red Pepper*, 10 January 2014, <http://www.redpepper.co.ug/kadaga-recalls-parliament-over-updf-south-sudan-deployment/> (accessed 2 April 2014).
- 46 Mugerwa, Museveni wants MPs to bless South Sudan deployment.
- 47 See UN, *Yearbook of the International Law Commission 1999, vol. II (Part One)*, A/CN.4/SER.A/1999/Add.1 (Part 1), New York, NY: UN, 2008, paragraph 234.
- 48 David Wippman, Military intervention, regional organizations, and host-state consent, *Duke Journal of Comparative & International Law* 7 (1996), 209–240, 214.
- 49 Malcolm M Shaw, *International Law*, 5th ed, Cambridge: Cambridge University Press, 2003, 1042.
- 50 At paragraph 246. The full record of the case can be found at <http://www.icj-cij.org/docket/files/70/6503.pdf> (accessed 26 January 2014).
- 51 There is debate as to whether the interim government possessed the legitimacy to do this. Some have argued that the legitimacy of President Diancounda Traore was contested, a fact that resulted in him being attacked in his office in May 2012 by supporters of Captain Sanago. However, the opposite view is that the transitional government was the internationally recognised government of Mali. For more on this debate, see Karine Bannelier and Theodore Christakis, Under the UN Security Council's watchful eyes: military intervention by invitation in the Malian conflict, *Leiden Journal of International Law* 26 (2013), 855–874.

- 52 A Coco, A Kaboré, and J B Maillart, The Malian conflict and international law, *Global: The Global Journal*, 13 February 2013, <http://theglobaljournal.net/article/view/996/> (accessed 15 January 2014).
- 53 Shaw, *International Law*, 1042.
- 54 Wippman, *Military Intervention*, 214.
- 55 Legally the term 'civil war' does not have any meaning but rather such kinds of conflicts in international law are called 'non-international armed conflicts'.
- 56 Michael W Doyle and Nicholas Sambanis, *International peace-building: a theoretical and quantitative analysis*, *American Political Science Review* 94 (2000), 779–801; Michael W Doyle and Nicholas Sambanis, *Making war and building peace: UN peace operations*, Princeton, NJ: Princeton University Press, 2006.
- 57 UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (A/8082), G.A. Res. 2625 (XXV), UN GAOR, 25th Sess., 1883rd Plenary Meeting, U.N. Doc. A/8082 (24 October 1970), 123, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement> (accessed 2 September 2014).
- 58 See Chatham House, *The principle of non-intervention in contemporary international law: non-interference in a state's internal affairs used to be a rule of international law: is it still?*, London: Chatham House, 2007, <http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/1280207.pdf> (accessed 16 January 2014). However, under the 1975 Wiesbaden Resolution on the Principle of Non-Intervention in Civil Wars (1975) of the Institute of International Law (IDI), which is non-binding, Uganda's intervention in South Sudan would be illegal, as the resolution in particular prohibits third-party states from giving assistance to parties to a civil war, such as 'sending armed forces ... to any party to a civil war, or allowing them to be sent or to set out'. The full text of the resolution can be found at http://www.idi-iil.org/idiE/resolutionsE/1975_wies_03_en.pdf (accessed 16 January 2014).
- 59 Solomon Arinaitwe, Minister fails to produce S. Sudan letter seeking UPDF intervention, *Daily Monitor*, 24 January 2014, <http://www.monitor.co.ug/News/National/Minister-fails-to-produce-S-Sudan-letter-seeking-/688334/2158046/-/ohvflvz/-/index.html> (accessed 25 January 2013); Deo Walusimbi, Generals clash with MPs over Kiir's letter, *The Observer*, 23 January 2014, http://www.observer.ug/index.php?option=com_content&view=article&id=29802:generals-clash-with-mps-over-kiirs-letter&catid=34:news&Itemid=114 (accessed 24 January 2014).
- 60 Paul Tajuba, South Sudan Speaker denies writing letter to Museveni, *Daily Monitor*, 27 January 2014, <http://www.monitor.co.ug/News/National/South-Sudan-speaker-denies-writing-letter-to-Museveni-/688334/2161502/-/b479q0z/-/index.html> (accessed 27 January 2014). Cf. Henry Sekanjako, S. Sudan Speaker explains UPDF's deployment, *New Vision*, 26 January 2014, <http://www.newvision.co.ug/news/651824-s-sudan-speaker-explains-updf-s-deployment.html> (accessed 27 January 2014), reporting that the Speaker defended the deployment saying their deployment followed a long-standing agreement (status of forces agreement) which was signed between the two countries some time back.
- 61 Tajuba, South Sudan Speaker denies writing letter to Museveni; Sekanjako, S. Sudan Speaker explains UPDF's deployment. See also Speaker: Kiir never wrote to Museveni over UPDF deployment, *Red Pepper*, 24 January 2014, <http://www.redpepper.co.ug/speaker-kiir-never-wrote-to-m7/> (accessed 25 January 2014).
- 62 Mugerwa, Museveni wants MPs to bless South Sudan deployment.
- 63 Yasiin Mugerwa and Mercy Nalugo, Legislators okay deployment of Ugandan troops in South Sudan, *Daily Monitor*, 15 January 2014, <http://www.monitor.co.ug/News/National/MPs-okay-deployment-of-UPDF-in-S-Sudan-/688334/2146298/-/19nfy/-/index.html> (accessed 17 January 2014).
- 64 Deo Walusimbi, Gen. Jeje Odongo faces MPs on South Sudan, *The Observer*, 13–14 January 2014, 25.
- 65 Ibid.
- 66 Charles Mwanguhya Mpagi, MPs turn on each other over UPDF mission in South Sudan, *Daily Monitor*, 12 January 2014, <http://www.monitor.co.ug/News/National/MPs-turn-on-each-other-over-UPDF-mission-in-South-Sudan-/688334/2142634/-/10d4lix/-/index.html> (accessed 15 January 2014).
- 67 Terry D Gill, Rescue of nationals, in Terry D Gill and Dieter Fleck (eds), *The handbook of international law of military operations*, Oxford: Oxford University Press, 2010, 217.
- 68 See for example Allegra Stratton and Tom Kington, Libya protests: UK deploys warship to help evacuate British citizens, *The Guardian*, 22 February 2011, <http://www.theguardian.com/world/2011/feb/22/libya-protests-uk-warship-evacuate-britons> (accessed 15 January 2014); UK Ministry of Defence, British military involvement in Libyan evacuation, *Defence Talk*, 2 March 2011, <http://www.defencetalk.com/british-military-involvement-in-libyan-evacuation-32463/> (accessed 15 January 2014).

- 69 Gill, Rescue of nationals.
- 70 Libya: Stranded foreign workers need urgent evacuation, *Human Rights Watch*, 3 March 2011, <http://www.hrw.org/news/2011/03/02/libya-stranded-foreign-workers-need-urgent-evacuation> (accessed 15 January 2014).
- 71 Barbara Among, Museveni reveals Uganda combat role in South Sudan, *The East African*, 16 January 2014, <http://www.theeastafrican.co.ke/news/Museveni-reveals-Uganda-army-role-in-South-Sudan/-/2558/2148476/-/qwlots/-/index.html> (accessed 19 January 2014); Barbara Among, UPDF helps South Sudan recapture Bor – says Ankunda, *Daily Monitor*, 20 January 2014, <http://www.monitor.co.ug/News/National/UPDF-helps-South-Sudan-recapture-Bor-says-Ankunda/-/688334/2152098/-/quut86/-/index.html> (accessed 20 January 2014).
- 72 Gill, Rescue of nationals, 217. Gill argued that there exists no right of states to rescue their nationals caught up in conflicts mainly because ‘[the right] is subject to abuse’.
- 73 See Julius Barigaba, Uganda now steps in, sends troops to South Sudan, *The East African*, 21 December 2013, <http://www.theeastafrican.co.ke/news/Uganda-now-steps-in-and-sends-troops-to-South-Sudan/-/2558/2121192/-/9xh17mz/-/index.html> (accessed 12 January 2014); Sulaiman Kakaire, Uganda: South Sudan war – UN appeals to Museveni, *The Observer*, 19 December 2013, <http://allafrica.com/stories/201312200534.html> (accessed 12 January 2013).
- 74 UN Charter, Article 24(1).
- 75 UN Charter, Article 39.
- 76 UN Charter, Article 99.
- 77 UNSC, Resolution 2132 (2013), Adopted by the Security Council at its 7091st meeting, on 24 December 2013, S/RES/2132 (2013), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2132%282013%29 (accessed 23 January 2014). Resolution 2132 is silent on Uganda’s intervention. The adoption of the resolution followed a letter by the Secretary-General to the Council requesting the beefing up of the UN Mission in South Sudan (UNMISS) with assets from other missions ‘to help ensure the protection of civilians and the protection of United Nations personnel and assets’; see UN Security Council, Letter dated 23 December 2013 from the Secretary-General addressed to the President of the Security Council, S/2013/758, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/758 (accessed 23 January 2014).
- 78 Uganda leader says helping South Sudan fight rebels, *The Daily Monitor (Ethiopia)*, 17 January 2014, 4 and 14.
- 79 South Sudan adventure is a big gamble, *The Observer*, 16 January 2014, http://www.observer.ug/index.php?option=com_content&view=article&id=29660:south-sudan-adventure-is-a-big-gamble&catid=35:editorial&Itemid=61 (accessed 17 January 2014).
- 80 Farahani Mukisa, Opposition blasts President over UPDF, *Daily Monitor*, 14 January 2014, <http://www.monitor.co.ug/News/National/Opposition-blasts-President-over-UPDF/-/688334/2142630/-/10l3nj4z/-/index.html> (accessed 14 January 2014).
- 81 Fredric Musisi, UPDF came to prevent a genocide – S. Sudan, *Daily Monitor*, 9 January 2014, <http://www.monitor.co.ug/News/National/UPDF-came-to-prevent-a-genocide—S—Sudan/-/688334/2139294/-/aml7wez/-/index.html> (accessed 13 January 2014).
- 82 Agreement establishing the Inter-Governmental Authority on Development (IGAD) (1996), Article 7 (g).
- 83 Tim Murithi, Inter-Governmental Authority on Development on the ground: comparing interventions in Sudan and Somalia, *African Security* 2 (2009), 136–157, 147.
- 84 Murithi, Inter-Governmental Authority on Development on the ground, 148.
- 85 Sally Healy, Seeking peace and security in the Horn of Africa: the contribution of the Intergovernmental Authority on Development, *International Affairs* 87 (2011), 105–120, 117.
- 86 Ricardo Real P De Sousa, *African Peace and Security Architecture (APSA) subsidiarity and the Horn of Africa: the Intergovernmental Authority on Development (IGAD), state and societal challenges in the Horn of Africa: conflict and processes of state formation, reconfiguration and disintegration*, Lisbon: Center of African Studies (CEA)/ISCITE-IUL, 2013, 73.
- 87 See IGAD, Communiqué of the 23rd Extra-ordinary Session of the IGAD Assembly of Heads of State and Government on the situation in South Sudan, Nairobi Kenya, 27 December 2014, paragraph 13, http://igad.int/attachments/725_23rd_Extra_Summit.pdf (accessed 15 January 2014).
- 88 Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969 (United Nations Treaty Series vol. 1155, no. 18232), Article 31(1), <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed 20 January 2014).
- 89 UN Charter, Article 52.
- 90 UN Charter, Article 53.

- 91 Carolyn M Shaw and Julius O Ihonvbere, Hegemonic participation in peace-keeping operations: the case of Nigeria and ECOMOG, *International Journal on World Peace* 13(2) (1996), 31–66, 35.
- 92 Ibrahim Gambari, The role of foreign interventions in African reconstruction, in William I Zartmen (ed), *Collapsed states: the disintegration and restoration of legitimate authority*, Boulder, CO: Lynne Rienner, 1995, 230.
- 93 UNSC, *UN Security Council Resolution 788 (1992)*, Adopted by the Security Council at its 3138th meeting, on 19 November 1992, S/RES/788 (1992). In operative paragraph 1, the Council ‘commend[ed] ECOWAS for its efforts to restore peace, security and stability in Liberia’.
- 94 Yutaka Yoshino, Grace Ngungi, and Ephrem Asebe, Africa trade policy notes: enhancing the recent growth of cross-border trade between South Sudan and Uganda (World Bank Policy Note No. 21), 2011, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTAFRREGTOPTRADE/0,contentMDK:22946813~pagePK:34004173~piPK:34003707~theSitePK:502469~isCURL:Y,00.html> (accessed 5 April 2014).
- 95 Ibid.
- 96 Ibid.
- 97 Ibid. See also ICG, *South Sudan: a civil war by any other name*, 17 (noting that South Sudan is Uganda’s biggest export market).
- 98 LeRiche and Arnold, *South Sudan: from revolution to independence*, 204.
- 99 Alon Mwesigwa, BoU fears South Sudan conflict could hurt economy, *The Observer*, 5 January 2014, http://observer.ug/index.php?option=com_content&view=article&id=29436:bou-fears-south-sudan-war-could-hurt-ugandas-economy&catid=38:business&Itemid=68 (accessed 5 April 2014).
- 100 See Muthoki Mumo, East African leaders agree on key infrastructure projects, *The East African*, 3 May 2014, <http://www.theeastafrican.co.ke/news/East-Africa-leaders-agree-on-key-infrastructure-projects/-/2558/2302524/-/fjaxk pz/-/index.html> (accessed 6 May 2014).
- 101 Cessation of Hostilities Agreement, Article 1 (1.2) (c).
- 102 Cessation of Hostilities Agreement, Article 1 (1.2) (e).
- 103 See Peter Clotey, Uganda considers troop withdrawal from South Sudan, *Voice of America*, 19 February 2014, <http://www.voanews.com/content/uganda-considers-troop-withdrawal-from-south-sudan/1855048.html> (accessed 1 April 2014).
- 104 Christine W Wanjala, We will not leave S. Sudan – UPDF, *Daily Monitor*, 10 April 2014, <http://www.monitor.co.ug/News/National/We-will-not-leave-South-Sudan—UPDF/-/688334/2274612/-/149rj48z/-/index.html> (accessed 11 April 2014).
- 105 Vienna Convention on the Law of Treaties 1969, Article 26.
- 106 Wanjala, We will not leave S. Sudan.
- 107 ICG, *South Sudan: a civil war by any other name*, 27.