

Common Heritage of Humanity and Permanent Sovereignty of the Democratic Republic of Congo over the Virunga National Park

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Abstract: *The Virunga National Park has been classified as a common heritage of humanity since 1979. Although it becomes a world heritage, sovereignty over this park remains totally under the control of the DR Congo. However, DR Congo must manage it rationally because it gets financial, logistical, scientific, support from other states and/or organisations by the fact that this park is registered as a common heritage of humanity.*

Keywords: Common Heritage of Humanity, Permanent Sovereignty, Virunga National Park, and Democratic Republic of Congo

1. Introduction

The Virunga National Park is one of the 7 national parks of the Democratic Republic of Congo and the oldest African park. It is located in the east of the country with an area of 800,000 Ha. The high-value resources make this park one of the best tourist destinations, despite the political unrest that the DR Congo has experienced over the last two decades until now. The Virunga National Park is home to unparalleled biological and scientific value and is a vital resource for local people living in and around the Park. This same park still has an undeniable appeal for many companies (LAURE MALCHAIRE, sine data). It is precisely because of this wealth that the Park was declared to be a "World Heritage Site" by UNESCO in 1979 (<http://www.cons-dev.org/africanature/djoudj/VIR/virunga.html>). Countries that list their assets as world heritage of humanity accept that these assets are within the reach of the humanity and that irrational use is not authorised. This is why the question of sovereignty arises because by adhering to a convention, one is obliged to strict observance of it by the principle of 'Pactasunderservanda'; yet DR Congo, being a developing country with ambitions to be developed, can nevertheless use its various resources or even those that are even classified areas if opportunity predisposes to it. Hence, the core question is: **What are the consequences, with regard to the sovereignty, of the natural resources when the Virunga National Park is listed as a common heritage of humanity?**

This research paper endeavours to demonstrate the consequences bound to the listing of the Virunga National Park as a common heritage of humanity with regard to the sovereignty on natural resources.

In this study, the legal method and the method of the legal systemics have been applied. The legal method is to be understood as "an application of interpretation of legal texts, jurisprudence and doctrines by confronting them with the facts in order to know its legality" (Cornu, 2007). It also consists of bringing together the legal texts in relation to the subject in order to know its authenticity, prioritize them,

proceed with the characterisation of the facts, interpret them and draw the reasonings and presumptions. It will allow me to analyse and interpret the legal and conventional constitutional provisions relating to the environment, the common heritage of humanity to which DR Congo is a member, as well as the national legal texts. The interpretation of these legal texts will be made possible by exegesis thanks to which I will be able to bring out the spirit and scope of these provisions.

The method of the legal systemics is used by taking into account the fact that the Virunga National Park is a whole in which interdependent relationships coexist and this allows to understand the reality as a whole because legally it is well defined as a comprehensive reserve that cannot undergo a change that could damage its traditional objectives and as a world heritage of humanity because it is at the service of all the citizens of the world.

The degree of complexity is a characteristic of what can be called the originality of the system that measures the richness of the information it contains. For the Virunga National Park, the presence of local communities from different tribes, land and weapons conflicts, poaching, the lack of accountability of local communities and the exploitation of oil makes the system complex.

The term "organization" is regarded as the structure of relations between the actors involved in the management of the Virunga National Park, knowing that each group of actors is organized (the state, local communities, international organizations and non-governmental organizations, trading companies).

Emergence: In the management of the Virunga National Park, each group has its interest and sometimes the interest of one may be in conflict with another group's, as the exploitation of oil advocated by the state and commercial companies, the conservation of nature by international organizations and NGOs as well as access to natural resources by the different communities. Hence it is important to thoroughly analyze them to harmonize the interests of all.

Globalism: I will therefore consider the Virunga National Park as a whole in which interdependent relationships coexist; this allows us to understand reality as a whole because legally it is well defined as an integral reserve that does not undergo a change that could damage its traditional goals and as a world heritage of humanity as it is at the service of all the citizens of the world.

Environment: The history of, and texts related to, park management would be a better approach to understanding why the park's protection is of interest.

As for techniques, these two have been used: (1) the documentary technique: to search for official documents, books, journal articles, (2) the direct observation: to detect certain realities and understand the implicit ideas.

1) The Virunga National park

The Virunga National Park was created by the Royal Decree of April 21, 1925. It is then called Albert National Park with an area of 20,000 ha centered on the extinct volcanoes Mikeno, Karisimbi and Visoke, in the Belgian Congo. However, the limits are not clearly stated in the legal text, leaving it to the Governor General¹ to set the limits after the decree is issued. The decree does, however, give general limits not to be exceeded. This law prohibited the hunting of gorillas in absolute terms, but also that of all other species, except in case of self-defense.

The Virunga National Park is a protected area, which by definition, is a protected area clearly defined, recognized, dedicated and managed geographically by any effective means, legal or otherwise, in order to ensure the long-term nature conservation and ecosystem services and associated cultural values (Article 2 point 2 of the Nature Conservation Act 2014).

In the same law, the national park is considered a category of protected areas consisting of a large natural or almost natural area set aside to protect large-scale ecological processes, as well as the species and characteristics of the region's ecosystems, which also provide a basis for visiting opportunities of a spiritual, scientific, educational and recreational nature, while respecting the environment and the culture of the local communities (Article 2 point 31 of the 2014 law relating to the conservation of nature).

The American naturalist Carl Akeley was one of the first scientists to visit the Virunga chain of volcanoes in 1923. He first came in search of mountain gorillas from which he was to collect specimens for American museums, but he later returned "sponsored" by the King of the Belgians, Albert I, to gather scientific information on this animal which fascinated him so much. So, his work ended up by discovering the Mountain Gorillas (*Gorilla gorilla beringei*) in the Virunga massifs. He then went to convince the King

¹This inaccuracy provides a great deal of information such as: The royal decree of April 21, 1925 created the PNV with an extent of 50,000 ha around the chain of extinct volcanoes (Mikeno and Karisimbi) in the southeast of the administrative area of Rutshuru for the conservation and protection of mountain gorillas discovered around 1900 in this region.

of the Belgians of the importance of protecting these primates, which he said, were endangered.

2) World Heritage of Humanity

Heritage is today a concept that everyone thinks they can easily accommodate, and yet it is not easy to define. The concept of heritage might suggest that it is simply the mere conjugation of the verb to have (Seriaux, 2014). In civil law, property is defined as a set of goods and debts constituting a universality of law².

Indeed, we can think of the notion of the common heritage of humanity as a new form of collective ownership of historical and cultural goods. The same goes for the environment (CODAP, 2013).

The concept of heritage in its acceptance of a collective property can be defined as the set of cultural, material and nonmaterial wealth belonging to a community, heritage of the past to witnesses of the current world (Sucharitkul, 1997).

At the legal level, the definition of the common heritage of humanity is found in the Convention concerning the protection of the world cultural and natural heritage, adopted by the General Conference of UNESCO on November 16, 1972. This convention describes "cultural heritage" as:

- Monuments: architectural works, monumental sculpture or painting, elements or structures of an archaeological character, inscriptions, caves and groups of elements, which have exceptional universal value from the point of view of history, art or science,
- Sets: groups of isolated or joined constructions, which, because of their architecture, their unity, or their integration in the landscape, have an exceptional universal value from the point of view of history, art or science,
- Sites: works of man or combined works of man and nature, as well as areas including archaeological sites which have exceptional universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2 stipulates that for the purposes of this Convention the following are considered "natural heritage" (Article 2 of the Convention on the common heritage of humanity):

- Natural monuments constituted by physical and biological formations or by groups of such formations which have exceptional universal value from an aesthetic or scientific point of view,
- The geological and physiographic formations and the strictly delimited zones constituting the habitat of endangered animal and vegetable species, which have an exceptional universal value from the point of view of science or conservation,
- Strictly delimited natural sites or natural areas, which have outstanding universal value from the point of view of science, conservation or natural beauty.

² Cours de droit civil français, tome IX, §575 à 583 : see la 5th Edition (1917)

With regard to the identification of sites, article 3 of the convention stipulates that it is up to each State party to this Convention to identify and delimit the various properties located on its territory and referred to in articles 1 and 2 - above.

3) Sovereignty over natural resources

Sovereignty is a supreme power recognised by the State to make its laws and put them into practice (<http://perspective.usherbrooke.ca/bilan/servlet/BMDictionary?iddictionary=1599>). The sovereignty of a State implies the monopoly of its legislative, executive and judicial powers³. A sovereign state thus differs from a colony which does not have exclusive control of its territory. Generally, the 1960s marked the decolonization of Africa and gave rise to the creation of sovereign states.

Sovereignty can belong to the people or to a monarch. Most often, sovereignty is assumed by representatives or holders of political power. Sovereignty is understood as a legal meta-prerogative, like the Kelsenian “fundamental norm” or “Groundnorm” (Barraud, 2017).

In public law and in public international law, sovereignty is the supreme and self-determined power of the State manifesting itself internally in the exercise of political authority (legislative, administrative, judicial).. translation mine. (Veyrassat, 2018).

Indeed, the legal concept of sovereignty is often defined through the extent, nature and modalities of the exercise of state powers. Most authors use these two concepts interchangeably and consider that the limitation of the exercise of sovereign powers by states constitutes a limitation of their sovereignty (Politis, 1925). On his behalf, Lider asserts that

Such an approach, however, leads to a relativisation of sovereignty. Indeed, if the concept of sovereignty is analysed in its material aspect from a certain number of competences which the State possesses at the international level, the extent and the meaning of this concept is likely to vary according to the State and according to its international commitments. Translation mine. (Lider, 2012).

4) Criteria for registering the Virunga National Park as a Common Heritage of Humanity

The major condition for inscribing a property as a Common Heritage of Humanity is that the property must have exceptional universal value. Thus, for a property to have outstanding universal value, this property must meet at least one of the 10 criteria (UNESCO, 2015). With regard to Virunga National Park, three criteria have been retained. These are criteria vii, viii and x that constitute outstanding universal value (WhiteandWeghe, 2008):

Criterion (vii): The Virunga National Park offers some of the most spectacular mountain landscapes in Africa. The Ruwenzori mountains, with their glaciers, and the volcanoes

of the Virunga massif are covered with Afro-alpine vegetation of tree ragwort and lobelia and their slopes, covered with dense forests, are places of exceptional natural beauty. The park also presents spectacular panoramas of the eroded valleys of Sinda and Ishango. It shelters important concentrations of wild fauna (elephant, buffalo, damalisque and cob of Thomas).

Criterion (viii): The Virunga National Park is located in the center of the Albertine rift, the western branch of the great Arab-African rift. In the southern part of the park, the rifting generated the Virunga, eight large central volcanoes, seven of which are totally or partially located in the park, and a multitude of adventurous volcanoes.

Criterion (x): The Virunga National Park contains the most representative and most important natural habitats for the in-situ conservation of biological diversity, including those where threatened species of outstanding universal value from a science or conservation perspective survive.

Due to its strong gradients in altitude (680 to 5,109 m), rainfall and soils, The Virunga National Park has a very wide variety of habitats and plant species which place it at the forefront of national parks with regard to its biodiversity.

Malchair asserts that the Virunga National Park is recognised worldwide as a unique site by the richness of the life it shelters but it is much more than that ... It constitutes a vital resource for the local populations living in and around the Park and presents still an undeniable attraction for many companies (Malchair, Sine data).

In 2013, an in-depth study was commissioned by WWF and carried out by Dalberg Global Development Advisors to analyze the social and economic value (current and potential) of the Park, as well as the implications of an exploration / exploitation of oil. Dalberg estimated that the economic value of Virunga could amount to more than \$ 1.1 billion per year (compared to \$ 48.9 million currently) in a stable situation characterised by the absence of conflict, secure access to the Park and sufficient resources to protect the ecosystem (Dalberg, 2013).

5) Advantages of registering a site as Common Heritage of Humanity

World Heritage sites lend themselves perfectly to demonstrating the common responsibility of humanity to preserve our heritage not only the most precious jewels and to promote sustainable development (Annette Froehlich et al., 2011). Indeed, the registration of a World Heritage site is prestigious, and its impact certainly has an effect on the tourism industry. However, it has little legal significance (Gabus, 2013).

Through the establishment of international protection, the idea of preserving is to continue to provide life. The question of economic development is not settled. Between economic spinoffs, openness to the world and decentralization, many advantages are often highlighted. Thus, in some cases, this emblem benefits the tourism industries more than the regions and the inhabitants (Glapa, 2010).

³ This concept also means ‘Free State’.

UNESCO World Heritage was created to protect and important "sites" of global significance. However, this registration also has potentially significant impacts on the socio-economic development of the areas where these sites are located. Truly, these real or perceived impacts are one of the main, perhaps the most important, drivers of the strong demand for the listing of this park. In the minds of the local elected officials who generally defend this request, being placed on the list is a promise and an instrument of economic development, that is to say of activities and jobs (Prud'Homme, Sine data).

The benefits from the exploitation of the world's heritage must be shared equitably. This requirement implies transfers of technology and international assistance from rich countries to poor countries. It also implies that internal, redistributive and transparent social policies are carried out. "Patrimonialising" is a political tool which calls into question the distribution of power and wealth (Smouts, 2005).

The World Heritage Convention has created a World Heritage Fund, the resources of which consist of a contribution equal to 1% of the contribution of Member States to the UNESCO budget which can reach \$ 12 million and can allocate to each site an amount of \$ 16,500 a year" (UNESCO, 2003).

In principle, because the Virunga National Park is listed as a world heritage site, other actors' interests should be taken into account by the fact that the international community advocates respect for rights acquired by third parties. For local communities, who are dispossessed of their lands and natural resources, this clause should provide an opportunity for compensation because of their 'lost' spaces. In November 2012, the Belgian federal parliament asked the Belgian government to plead with Paris and London "so that they effectively respond to the request made by UNESCO to do the needful to ensure that the oil companies and mining companies established on their territory (SOCO and Total) do not damage the properties on the world heritage list "and" to consider sanctions against the oil companies Total and Soco if they do not comply with the laws of the DRC and its international commitments, in particular vis-à-vis UNESCO" (Dalberg, 2013).

Due to the intense international and local mobilisation, the Congolese state suspended these permits and Total undertook not to enter the park's perimeter. It is only later in June 2014 that Soco ended up by committing not to undertake or commission any exploration or drilling activity inside the Virunga National Park, unless UNESCO and the Congolese State agree that such activities are not incompatible with the World Heritage status.

Although the convention is in force, it should be noted that it is not the convention which "protects" the sites, but the States which "protect" the sites on their territories, whether or not they are listed on the World Heritage repertoire, acting in accordance with the convention at national level. Obviously, there is an obligation of cooperation for the protection of World Heritage even if the third State is not legally bound. The legal norm will thus lead to the adoption

of a certain type of behavior. The obligation to respect the elements of the Common Heritage of Humanity has therefore acquired a customary dimension.

This is the reason why I assert that the fact that this park is on the list of goods of the common heritage of humanity, the other States, the international organizations and the other actors can intervene for the prohibition of its exploitation if the Congolese state does not renounce its national and international legal commitments.

6) What about the sovereignty of the DR Congo to the property declared World Heritage of Humanity?

a) Sovereignty over the Common Heritage of Humanity

In fact, by signing the UNESCO Convention concerning the protection of the world cultural and natural heritage on November 16, 1972, each of the States parties to this Convention recognizes that the obligation to ensure the identification, protection, conservation, enhancement and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and located on its territory, falls primarily to it. (Article 4 of the 1972 UNESCO Convention on the Common Heritage of Humanity). It endeavors to act to this end both by its own effort to the maximum of its available resources and, where appropriate, by means of international assistance and cooperation from which it may benefit, in particular, financially, artistically, scientific and technical. "International protection" essentially consists of setting up a system of assistance and cooperation aimed at assisting these States in their effort. (Smouts, Sine data)

There has been no violation of state sovereignty when the limitations on its sovereignty result from its free consent. International rules require that certain relations between States or international organizations be codified by certain instruments such as treaties, agreements, declarations, resolutions and others.

In the Democratic Republic of Congo, international treaties and agreements are organised under title VI of the Constitution. Its article 213 gives us the procedure of negotiation and ratification by stipulating that

The President of the Republic negotiates and ratifies the treaties and international agreements. The Government concludes international agreements not subject to ratification after deliberation in the Council of Ministers. He informs the National Assembly and the Senate of it. Translation mine. (Article 213 de la constitution de 2006 de la RD Congo).

Then article 214 goes further by saying that

Peace treaties, trade treaties, treaties and agreements relating to international organizations and to the settlement of international conflicts, those which engage public finances, those which modify the legislative provisions, those relating to the status of persons, those involving exchange and addition of territory can only be ratified or approved by virtue of a law. No transfer, no

exchange, no addition of territory is valid without the agreement of the Congolese people consulted by way of referendum. Translation mine. (Article 214 de la constitution de 2006 de la RD Congo)

According to article 2 of the Vienna Convention, the "term" treaty means an international agreement concluded in writing between States and governed by international law, whether contained in a single instrument or in two or several related instruments, and whatever its designation. Translation mine.

b) Sovereignty of the DR Congo with regard to the Virunga National Park

Article 9 of the constitution of 02/18/2006 states that

The State exercises permanent sovereignty notably over the soil, the subsoil, the waters and the forests, the air, sea, lake and river areas, the Congolese territorial sea, the continental shelf. The terms of management and concession are determined by law. Translation mine.

As the owner of the resource, the state decides its fate through its forest administration. It determines the method of allocation and the operating methods to guarantee sustainable and sustained exploitation of the resource and ensures the strict application of established management rules, generally set out in a management plan. (Ilunga, 2017).

This consideration of sovereignty over the soil, subsoil, waters and forests, over the Congolese air, river, lake and maritime spaces as well as over the Congolese territorial sea and the continental shelf also has its source in the ordinance n° 73/021 of July 20, 1973 relating to the general property regime, land and real estate regime and security regime, does not recognize ownership of customary land rights by its principle stipulated in article 53: 'the soil and the undersoil belong to the State'.

Article 2 of Law No. 82-002 of May 28, 1982 regulating hunting stipulates that wildlife consists of all wild animals of all categories: vertebrates and invertebrates, mammals, birds, reptiles and all other species wild animals. Zairian wildlife is owned by the state. It is part of the national heritage and must be managed in the interest of the nation.

The current Forest Code seems to draw its foundation from the land law of DR Congo. Indeed, its article 7, paragraph 1 stipulates that 'The forests constitute the property of the State. Their exploitation and use by natural or legal persons under private or public law are governed by the provisions of this law and its implementing measures. Translation mine'

According to informed jurists, the Congolese legislator resorts, by this provision, to a legal fiction to allow the State to exercise its imperium fully on the management of the country's natural resources, including ensuring their protection. Thus, the concept of the State is to be understood here as the entire Congolese nation or more precisely as the national community. The forest is therefore part of the

heritage of the State, which is responsible for its management by ensuring responsible use by all members of the national community. (Vundu and Kalambay, 2013).

The law relating to nature conservation published in February 2014, in its article 3 also stipulates that the State exercises permanent sovereignty over natural, biological and genetic resources, ecosystems, natural sites and monuments located on the national territory. It also protects and promotes traditional knowledge associated with biological and genetic resources and held in oral, documentary or other forms. The state, the province and the decentralised territorial entity ensure their conservation, within the limits of their respective powers, and ensure their sustainable management.

This sovereignty is reinforced by the Convention on the Common Heritage of Humanity in its article 6, which stipulates that:

- By fully respecting the sovereignty of the States on the territory of which the cultural and natural heritage referred to in Articles 1 and 2 is located, and without prejudice to the real rights provided for by national legislation on the said heritage, the States parties to this Convention recognise that 'it constitutes a universal heritage for the protection of which the entire international community has the obligation to cooperate.
- The States parties undertake, therefore, and in accordance with the provisions of this Convention, to assist in the identification, protection, conservation and enhancement of the cultural and natural heritage referred to in paragraphs 2 and 4 of article 11 if the State on whose territory it is located requests for it.
- Each of the States parties to this Convention undertakes not to deliberately take any measure likely to directly or indirectly damage the cultural and natural heritage referred to in Articles 1 and 2 which is located in the territory of other States parties to this Convention.

As I said above, the sovereignty of a state is also demonstrated by its capacity to conclude international agreements, this same sovereignty is also determined by the withdrawal of these agreements. In application of this principle, in accordance with the provisions which the treaty may have provided for, the termination of the treaty or the withdrawal of a party may take place following: the end of the term, the execution of the treaty, the occurrence of a resolutive condition, denunciation or withdrawal.

As for the convention on the common heritage of humanity, its article 35 stipulates that:

- Each of the States parties to this Convention will have the right to denounce the Convention.
- Denunciation will be notified by a written instrument deposited to the Director-General of the United Nations Educational, Scientific and Cultural Organization.
- The denunciation will take effect 12 months after receipt of the instrument of denunciation. It will in no way modify the financial obligations to be assumed by the denouncing State until the date on which the withdrawal becomes effective.

Nothing in the convention obliges a state to remain definitively in the convention. And as it is the properties of States which constitute the common heritage of humanity, it

is therefore possible that these properties change in the nature of their management.

The registration of a common heritage of humanity does not, in any way, remove the ownership of the property from the State's territory on this property is located, especially that article 6 of the convention refers to the internal laws regulating the situation of the real rights of the State over its resources. Therefore, although the Virunga National Park is registered on the list of common heritage of humanity, it nevertheless remains the exclusive property of the Democratic Republic of the Congo.

2. Conclusion

The UNESCO World Heritage Convention is particularly ambiguous in its effort to reconcile individual property rights, translated into public international law by the concept of territorial sovereignty, and the duty of conservation and transmission for humanity. It is the States on whose territory the World Heritage elements are located that have the obligation to identify, conserve, enhance and transmit this heritage. They are the ones who, through a proactive approach, request for the listing of a property located on their territory as a World Heritage site.

Thus, the DR Congo keeps its lasting sovereignty over the Virunga National Park and has the exclusive right to manage it. However, this exclusivity of the management right is possible at the legal level after having emptied the prerequisite. Indeed, the park is under the management of DR Congo even if it is a common heritage of humanity and this does not pose a problem. The problem could arise if this management goes against the very existence of this property, that is to say the facts which led to this property being registered on the list of Common Heritage properties of humanity. In this case, the prerequisite would first be to inform the World Heritage Committee of the probable withdrawal of this property from the list and to definitively confirm the withdrawal. Furthermore, in the case of the Virunga National Park, even if the World Heritage Committee is informed and the park removed from the list, the government must first clear up the internal legal inconsistencies. That is to say that there are legal provisions which have enshrined the park the status of the integral reserve and therefore, no activity which would remove its integral character can be carried out.

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