ACKNOWLEDGEMENTS

The War Report 2018 was supervised and edited by Dr Annyssa Bellal, Strategic Adviser on IHL and Senior Research Fellow at the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy). The different sections on selected armed conflicts were written by individual authors and copy-edited by Munizha Ahmad-Cooke. The War Report 2018 also builds on past editions since 2012. The Geneva Academy would like to thank the Swiss Federal Department of Foreign Affairs (DFAE) for its support to the Geneva Academy’s research on this issue.

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April 2019


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of International Humanitarian Law
and Human Rights
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INTRODUCTION

PART I: SUMMARY

1. WHAT IS AN ARMED CONFLICT?

2. INTERNATIONAL ARMED CONFLICT
   A. CRITERIA FOR THE EXISTENCE OF AN INTERNATIONAL ARMED CONFLICT
   B. THE GEOGRAPHICAL SCOPE OF AN INTERNATIONAL ARMED CONFLICT
   C. SUMMARY IHL RULES GOVERNING INTERNATIONAL ARMED CONFLICT
   D. SUMMARY IHL RULES GOVERNING A SITUATION OF BELLIGERENT OCCUPATION
   E. WHEN DOES AN INTERNATIONAL ARMED CONFLICT END?

3. NON-INTERNATIONAL ARMED CONFLICT
   A. CRITERIA FOR THE EXISTENCE OF A NON-INTERNATIONAL ARMED CONFLICT
   B. WHEN DOES A NON-INTERNATIONAL ARMED CONFLICT END?
   C. THE GEOGRAPHICAL SCOPE OF A NON-INTERNATIONAL ARMED CONFLICT
   D. RULES APPLICABLE IN A NON-INTERNATIONAL ARMED CONFLICT

4. WHICH ARMED CONFLICTS OCCURRED IN 2018?
   A. INTERNATIONAL ARMED CONFLICTS IN 2018
   B. NON-INTERNATIONAL ARMED CONFLICTS IN 2018

PART 2: KEY DEVELOPMENTS OF SELECTED ARMED CONFLICTS IN 2018

SELECTED INTERNATIONAL ARMED CONFLICTS

1. THE ERITREA-ETHIOPIA ARMED CONFLICT
   A. HISTORY OF THE CONFLICT
      1. Background
      3. The Peace Process and the Final Algiers Agreement
         a. The Organization of African Unity Framework Agreement and its Modalities
         b. The Agreement on Cessation of Hostilities
         c. The Algiers Agreement of December 2000
      4. The Deployment of the Peacekeeping Operation
      5. The Eritrea Ethiopia Boundary Commission (EEBC)
      6. The Eritrea Ethiopia Claims Commission (ERCC)
      7. Ethiopia’s Refusal to Withdraw Its Troops From Badme
B. PARTIES TO THE CONFLICT  50
C. KEY DEVELOPMENTS IN 2018  50
  1. Joint Declaration of Peace and Friendship, 9 July 2018  50
  2. The Ongoing Discussion Relating to Prisoners of War (POWs)  52
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS  53

2. THE ARMED CONFLICT BETWEEN GEORGIA AND RUSSIA IN ABKHAZIA:
   THE PREDOMINANCE OF IRRECONCILABLE POSITIONS  54
A. HISTORY OF THE CONFLICT  54
  1. The Georgian-Abkhaz Schism in the Early 1990s  56
  2. New Violence in 1998 and 2001  59
  3. The August 2008 War  59
  4. The EU Six-Point Agreement and its Implications  60
B. PARTIES TO THE CONFLICT  62
  1. Georgian Armed Forces  62
  2. Russian Armed Forces  62
  3. Abkhaz Forces  62
C. KEY DEVELOPMENTS IN 2018  63
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS  64

3. THE ARMED CONFLICT BETWEEN UKRAINE AND RUSSIA IN CRIMEA:
   BETWEEN ANNEXATION AND REUNIFICATION?  66
A. HISTORY OF THE CONFLICT  66
  1. Crimea: Historical Facts  66
  2. The Events in 2014  69
B. PARTIES TO THE CONFLICT  71
  1. Russian Armed Forces  71
  2. Ukrainian Armed Forces  71
  3. Self-Defence Crimean Forces  71
C. KEY DEVELOPMENTS IN 2018  72
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTION  72

SELECTED NON-INTERNATIONAL ARMED CONFLICTS  73
1. BRAZIL: HIGH LEVEL OF ARMED GANG VIOLENCE BUT
   NOT A NON-INTERNATIONAL ARMED CONFLICT  73
A. HISTORY OF THE CONFLICT  74
  1. Favela Violence: Gang Origins  74
  2. The Transition to Drugs  74
  3. Drug Trafficking and the Mão Dura Crackdown under Temer  75
  4. The Intensity of Violence  77
B. MAIN ACTORS  78
  1. The Level of Organization of the Armed Actors  78
C. KEY DEVELOPMENTS IN 2018  80
  1. Activist’s Murder Highlights Overlooked Urban Violence  80
  2. The Uptick in Violence and Army Powers Under Temer and Bolsonaro  80
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS  81

2. CENTRAL AFRICAN REPUBLIC: SECTARIAN AND INTERCOMMUNAL
   VIOLENCE CONTINUES  82
A. HISTORY OF THE CONFLICTS  82
B. PARTIES TO THE CONFLICTS  87
  1. MINUSCA  87
  2. Non-State Parties  87
    a. The Coalition  87
    b. Movement of Central African Liberators for Justice (MLCJ)  88
    c. Union for Peace in Central Africa (UPC)  88
    d. Return, Reclamation, Rehabilitation (RJ)  89
    e. Revolution and Justice (RJ)  89
    f. National Movement for the Liberation of the Central African Republic (MNLC)  89
    g. Muslim Self-Defence Groups in Bangui  89
    h. Anti-Balaka Local Groups  89
    i. National Coordination of the Ex-Anti-Balaka  89
    j. Democratic Front of the Central African People (FDPC)  90
C. KEY DEVELOPMENTS IN 2018  90
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS  91

3. DEMOCRATIC REPUBLIC OF THE CONGO: CONFLICTS
   IN THE EASTERN REGIONS  93
A. HISTORY OF THE CONFLICTS  93
B. PARTIES TO THE CONFLICTS  96
  1. Armed Forces of the Democratic Republic of Congo (FARDC)  97
  3. Ugandan Allied Democratic Forces–Nalu (ADF–Nalu)  97
  4. Democratic Forces for the Liberation of Rwanda (FDLR)  98
  7. National People’s Coalition for the Sovereignty of Congo (CNPS)  99
C. KEY DEVELOPMENTS IN 2018  99
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS  100
4. MALI: THE OVERLAP AND COMBINATION OF SEPARATIST, JIHADIST AND INTERCOMMUNAL CONFLICTS

A. HISTORY OF THE CONFLICTS
1. The Tuareg Rebellion in Azawad and Military Coup in Bamako
2. The Jihadist Takeover and Planned Regional Operation
3. French Intervention and The UN’s Robust Peacekeeping Mission
4. The End of the Tuareg Rebellion Alongside Relentless Jihadist Violence

B. PARTIES TO THE CONFLICTS
1. Malian Armed Forces (FAMa)
2. French Armed Forces
3. UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)
4. The G5 Sahel Joint Force (G5SJF)
5. Jama’at Nusrat al-Islam wal-Muslimin (JNIM)
6. Islamic State in the Greater Sahara (ISGS)
7. Movement for the Salvation of Azawad (MSA)
8. Imghad Tuareg Self Defense Group and Allies (GATIA)
9. Dan Nan Ambassagou
10. Alliance for the Salvation of the Sahel (ASS)

C. KEY DEVELOPMENTS IN 2018

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

5. THE SOUTH SUDAN ARMED CONFLICT: A NEW PEACE DEAL

A. HISTORY OF THE CONFLICT

B. PARTIES TO THE CONFLICT
1. Sudan People’s Liberation Army (SPLA)
2. SPLA-in-opposition or SPLA-IO/RM and SPLA-IO/TD

C. KEY DEVELOPMENTS IN 2018

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS
1. Attacks on Aid Workers
2. Attacks on Civilians and Civilian Property
3. Child Soldiers
4. Sexual Violence

6. THE SYRIAN ARMED CONFLICT: NEARING THE END?

A. HISTORY OF THE CONFLICTS

B. PARTIES TO THE CONFLICTS
1. International Armed Conflicts
   a. US-led Coalition
   b. Turkey
   c. Syrian Government
   d. Israel Versus Iran on Syrian Territory
   e. Free Syrian Army (FSA)
   f. Islamic State (IS)
   g. Ahrar al-Sham
   h. Hay’at Tahrir al-Sham
   i. Syrian Democratic Forces (SDF)
   j. YPG-YPJ

C. KEY DEVELOPMENTS IN 2018

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS
1. Attacks on Civilians and Civilian Property
2. Child Soldiers
3. Sexual Violence
This work identifies, describes and discusses situations of armed violence in 2018 that amounted to armed conflicts in accordance with the definitions recognized under international humanitarian law (IHL) and international criminal law (ICL). The purpose of The War Report is to collect information and data in the public domain and provide legal analysis under the framework of international law. The existence of an armed conflict is important because it has far-reaching implications. First and foremost, IHL governing the conduct of hostilities, which is markedly less restrictive in its prohibitions on the use of lethal force than is the international law of law enforcement, applies only in a situation of armed conflict. Notably, IHL does not prohibit the intentional use of lethal force against a member of the armed forces or a civilian ‘participating directly in hostilities’ (for the duration of such participation, see the ‘Summary IHL Rules’ sections in Part I). Second, war crimes may only be committed in connection with an armed conflict. Third, the International Committee of the Red Cross (ICRC) has a formal role in protection only in connection with armed conflicts.

No national or supranational body is authoritative in its determination or implication that a particular situation of armed violence constitutes an armed conflict; a situation threatening international peace and security is not a synonym for an armed conflict (although, unquestionably, the situations may coincide). Moreover, the existence of an armed conflict is an objective test and not a national ‘decision’. Consequently, whether a state affirms that a particular situation does, or does not, amount to an armed conflict is relevant information for the purposes of determining the applicable law, but is certainly not conclusive.

Further, as explained in more detail later, however significant (and tragic) loss of life may be in any state or territory, the qualification of a situation of armed violence as an armed conflict is not simply a numbers game. Indeed, armed violence within a state may claim not only hundreds, but even thousands, of lives – and may constitute crimes against humanity or even genocide – without necessarily crossing the threshold into armed conflict; other factors are also pertinent, especially the extent of clashes between armed forces, or between armed forces and organized armed groups (or between such groups themselves). Thus, reports detailing ‘wars’ based on, for example, 25 or 1,000 battlefield deaths annually can be valuable for political science purposes, but such categorizations do not, per se, have significance under international law.

1 Crimes against humanity are those crimes that ‘shock the conscience of humanity’. Under the 1998 Rome Statute of the International Criminal Court (Rome Statute), crimes against humanity occur where certain acts are undertaken as part of a widespread or systematic attack against a civilian population, of which attack the perpetrator has knowledge. Such acts are murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts. Art 7(1)(a)–(k), Rome Statute.

2 Genocide ‘means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.’ Art 6, Rome Statute; see also Art 2, 1948 Convention on the Prevention and Punishment of the Crime of Genocide.
Part I of this work lists and summarizes the armed conflicts that occurred in 2018 on the basis of explicit criteria that, we believe, best reflect existent international law, certain controversies and imprecision notwithstanding.

Part II focuses and details the situations of selected armed conflicts in 2018. For a complete overview of the history of all conflicts, the 2012, 2013 and 2014 editions of The War Report are recommended. The War Report 2018 may also be read in conjunction with the Rule of Law in Armed Conflicts portal of the Geneva Academy (rulac.org), an online database that identifies and classifies all situations of armed violence that amount to an armed conflict under IHL.3

3 At: http://www.rulac.org/.
In 2018, at least 69 armed conflicts occurred on the territory of 30 states, in Afghanistan, Azerbaijan, The Central African Republic, Colombia, Cyprus, the Democratic Republic of the Congo (DRC), Egypt, Eritrea, Georgia, India, Iraq, Lebanon, Libya, Mali, Mexico, Moldova, Myanmar, Nigeria, Pakistan, Palestine, the Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Turkey, Ukraine, Western Sahara and Yemen.

Of the 69 conflicts, international armed conflicts have been taking place in the territory of 7 states: between India and Pakistan, Ukraine and Russia, as well as Syria and the different states belonging to the United States-led coalition in Syria. In addition, there have been a series of short-lived international armed conflicts between Libya and Egypt, Israel and Syria, Israel and Iran (on Syrian territory) as well as Turkey and Iraq.

In addition, belligerent occupations continued in parts of 10 states and territories (Azerbaijan, Cyprus, Eritrea, Georgia, Lebanon, Moldova, Palestine, Syria, Ukraine and Western Sahara). These occupations are governed by the law of military occupation that also forms part of the law of international armed conflict. The occupation of Eritrea by Ethiopia is debatable, as discussed in the section on the conflict (p.37).

At least a total of 51 non-international armed conflicts occurred in 2018 in the territory of 22 states: Afghanistan, the Central African Republic, Colombia, DRC, Egypt, India, Iraq, Libya, Mali, Mexico, Myanmar, Nigeria, Pakistan, the Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Turkey, Ukraine and Yemen.

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1. WHAT IS AN ARMED CONFLICT?

In accordance with IHL (also called the law of armed conflict) and ICL, there are two categories of armed conflict: international armed conflict (IAC) and non-international armed conflict (NIAC). A valuable and widely cited general definition of the two categories was advanced by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in a 1995 decision in the Tadić case: an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.

Thus, in the view of the ICTY, an IAC exists whenever there is a resort to armed force between states, while a NIAC exists when there is protracted armed violence between governmental authorities and organized armed groups, or between such groups within a state. This means that the level of violence needed to trigger an IAC differs from – i.e., in general, significantly lower than – that necessary to constitute a NIAC. This issue is discussed below.

Furthermore, and even though this understanding is not universally shared, it is not a case of ‘either-or’ in any given geographical situation. Accordingly, several different armed conflicts, comprising one or both categories, may be ongoing at the same time and in parallel in any given state. This position, sometimes called the fragmentation of conflict theory, has been supported by the International Criminal Court’s (ICC’s) Trial Chamber judgment in March 2014 in the Katanga case. Such fragmentation is evidenced in a number of recent armed conflicts.

In any event, the existence of an armed conflict of either category is generally limited to the areas where the parties to the conflict are conducting hostilities against each other. War crimes may, however, be committed by a member of a party to the conflict in other areas that it controls. When an armed conflict is in progress, IHL generally applies throughout the territory of the state or states concerned. As a consequence, a number of fundamental rules, including those set out in Common Article 3 to the 1949 Geneva Conventions, apply throughout the territory of a state engaged in an armed conflict. Rules governing the conduct of hostilities are, though, limited to areas where combat is occurring. The 2016 ICRC Commentary confirms this interpretation, and notes that the applicability of humanitarian law in the whole of the territory of a State party to the conflict does not mean that all acts within that territory therefore fall necessarily under the humanitarian law regime. As noted by the ICTY, a particular act must be ‘closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict’ for that act to be committed in the context of the armed conflict and for humanitarian law to apply. The applicability of humanitarian law to a specific act therefore requires a certain nexus between that act and the non-international armed conflict. Acts that have no such connection to the conflict generally remain regulated exclusively by domestic criminal and law enforcement regimes, within the boundaries set by applicable international and regional human rights law.

2. INTERNATIONAL ARMED CONFLICT

A. CRITERIA FOR THE EXISTENCE OF AN INTERNATIONAL ARMED CONFLICT

According to Common Article 2 to the 1949 Geneva Conventions, each of the four Conventions ‘shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them’.

If understood strictly, the ICTY’s definition of an IAC in the Tadić case (whenever

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5 Views differ as to whether international humanitarian law (IHL) is a synonym for the law of armed conflict (LOAC). Today, this is the prevailing view, although it has been argued that ‘Geneva’ law (on the protection of those in the power of a party to conflict who are not, or no longer, participating directly in hostilities) is better termed IHL, while ‘ Hague’ law (on the conduct of hostilities) falls within the broader LOAC framework.

6 The European Union (EU) also uses the term ‘internal armed conflict’ to determine, for the purposes of protection under EU law, whether a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm ... and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country’. Art 2(e), EU Directive 2004/83. According to Art 15(c) of the Directive, serious harm consists of a ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’. In a decision in January 2014, the Court of Justice of the European Union (CJEU) determined that an internal armed conflict exists ‘if a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorized as “armed conflict not of an international character” under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict’. CJEU, Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides, Fourth Chamber, Judgment, Case nos C-285/12, 30 January 2014, §35, http://curia.europa.eu/juris/document/document.jsf?text=&docid=147061&pageIn dex=0&doclang=EN&mode=lst&dir=&acc=first&part=1&cid=460406. This decision has no influence on the IHL/ICL definition of armed conflict (last accessed 17 March 2019).


8 See, e.g., ICC, Prosecutor v Germain Katanga, Trial Chamber II, Judgment, ICC-01/04-01/07, 7 March 2014, §1197.


there is a resort to armed force between States”) is too narrow in its insistence that the armed force be between two or more states. It is undoubtedly true that, as Dietrich Schindler observes, ‘the existence of an armed conflict within the meaning of Article 2 common to the Geneva Conventions can always be assumed when parts of the armed forces of two States clash with each other. ... Any kind of use of arms between two States brings the Conventions into effect.’ But, consistent with jus ad bellum (the law governing interstate use of force), an IAC also exists whenever one state uses armed force against the territory of another state, irrespective of whether the latter state fights back. Thus, as Hans-Peter Gasser explains, ‘any use of armed force by one State against the territory of another triggers the applicability of the Geneva Conventions between the two States ... It is also of no concern whether or not the party attacked resists’.

As underlined by the ICRC Commentary on Common Article 2, ‘for international armed conflict, there is no requirement that the use of force between the Parties reach a certain level of intensity before it can be said that an armed conflict exists ... Even minor skirmishes between the armed forces, be they land, air or naval forces would spark an international armed conflict and lead to the applicability of humanitarian law.”

In addition, an IAC includes any situation in which one state invades another and occupies it, even if there is no armed resistance at all. This is set down in Article 2 common to the four 1949 Geneva Conventions. The precise moment at which a belligerent occupation occurs is, though, not finally settled. According to the ICRC, ‘[o]nly is the definition of occupation vague under IHL, but other factual elements — such as the continuation of hostilities and/or the continued exercise of some degree of authority by local authorities, or by the foreign forces during and after the phase out period — may render the legal classification of a particular situation quite complex.’

Article 42 of the 1907 Hague Regulations reads: ‘Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised’. According to Sylvain Vité, for occupation in the meaning of Article 42 to exist, ‘two conditions must be fulfilled: (a) the occupier is able to exercise effective control over a territory that does not belong to it; [and] (b) its intervention has not been approved by the legitimate sovereign’. Arguably, however, the threshold for the application of the 1949 Geneva Conventions is lower. According to Common Article 2, ‘the Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.’

Of course, where one state uses armed force on the territory of another state with the latter state’s consent, the two states are not engaged in an IAC. This is the case with respect to NATO’s military involvement in Afghanistan, for instance. But there may be factual and legal issues concerning whether and when an occupation occurs. In March 2014, the issue arose of whether or not the Russian Federation was occupying Ukraine, given that deposed Ukrainian President, Viktor Yanukovych, had seemingly authorized Russian military intervention in a letter dated 1 March. However, without prejudice to the legality of his removal under Ukrainian law, Mr Yanukovych did not effectively control the police or armed forces of Ukraine at the time of the letter and could not therefore be considered genuinely to represent the state. Subsequently, however, the facts on the ground demonstrated clearly that Russia had sought to annex part of Ukrainian territory (Crimea).

There may also be an IAC when one state supports an armed non-state actor (ANSA) operating in another state when that support is so significant that the foreign state is deemed to have ‘overall control’ over the actions of the ANSA. More controversially, an IAC may also exist where there is an armed conflict ‘in which peoples are fighting against colonial domination and alien occupation and against

15 Vité, “Typology of Armed Conflicts in International Humanitarian Law”, 74.
16 In the Katanga case, the ICC Trial Chamber cited with approval the ICTY trial judgment in the case against and identified a non-exhaustive list of factors to consider when determining whether an occupation was occurring; the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly; the enemy’s forces have surrendered, been defeated or withdrawn (in this respect, battle areas may not be considered as occupied territory); however, sporadic local resistance, even successful, does not affect the reality of occupation); the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt; a temporary administration has been established over the territory; the occupying power has issued and enforced directions to the civilian population. Katanga trial chamber judgment, §1180, citing ICTY, Prosecutor v Mladen Naletić, aka ‘Tuta’and Vinko Martinić, aka ‘Štefa’, Trial Chamber, Judgment IT-98-34-T, 31 March 2003, §217, footnotes omitted.
18 See, e.g., ICTY, Prosecutor v Tadić, Appeals Chamber, Judgment, IT-94-1-A, 15 July 1999, §§84 and 115 et seq. ICTY, Prosecutor v Blaškić, Trial Chamber, Judgment IT-95-14-T, 3 March 2000, §§149–50. See similarly the views of the Trial Chamber of the ICC in its judgment in the 2012 Lubanga case: ICC, Prosecutor v Thomas Lubanga Dyilo, Trial Chamber, Judgment, ICC-01/04-01/06, 14 March 2012, §§541. The Trial Chamber expressly approved the Tadić dicta on this issue. In the 2014 Katanga judgment, the ICC, Trial Chamber further approved this position: ‘Un conflit armé international existe dès lors que des hostilités armées opposent des États à travers leurs armées respectives ou à travers d’autres acteurs agissant en leur nom.’ (An international armed conflict exists whenever armed hostilities oppose states through their respective armies or through others acting on their behalf.” (Unofficial translation.) ICC, Katanga trial chamber judgment, §§1177 et seq.
racist regimes in the exercise of their right of self-determination.\footnote{See Art 1(4), 1977 Additional Protocol I. The US and a number of other states opposed this provision vociferously when it was adopted. It has never been applied in practice.}

The threshold of armed violence for such a conflict to occur is not settled, but is probably the same as for an IAC – that is, much lower than it is for a NIAC.\footnote{This is not, though, the position of the UK, which argues that the threshold is the same as for a NIAC regulated by Common Article 3. UK Ministry of Defence, The Manual of the Law of Armed Conflict, Oxford University Press, 2005, §3.4.2.}

**B. THE GEOGRAPHICAL SCOPE OF AN INTERNATIONAL ARMED CONFLICT**

The geographical scope of an IAC is potentially far broader than is the case for a NIAC (see below). Without prejudice to jus ad bellum, the rules of which apply in parallel to any IAC, where militarily necessary, states involved in an IAC may potentially target each other's armed forces anywhere.

**C. SUMMARY IHL RULES GOVERNING INTERNATIONAL ARMED CONFLICT**

The basic principles and rules of IHL applicable to the conduct of hostilities in an IAC are set out in the 1907 Hague Regulations and the 1949 Geneva Conventions and their 1977 Additional Protocols, and represent customary law applicable to all. The basis of the law of armed conflict is the rule of distinction. This rule obliges 'parties to a conflict' (in other words, the warring parties) to target only military objectives and not the civilian population, individual civilians or civilian objects (e.g. homes, hospitals and schools). Deliberately targeting civilians, provided they do not directly participate in hostilities, is a serious violation of IHL, as it is failing to distinguish in military operations between civilians and combatants (i.e. an indiscriminate attack), and both are war crimes under customary international law given the requisite intent (mens rea).\footnote{Civilians only lose their ‘general protection’ against hostilities if, and for such time as, they participate directly in hostilities.}

Although it is understood that civilian casualties may not always be avoided in the conduct of hostilities, international law also requires that parties to a conflict take all feasible precautions in any attack to minimize civilian deaths and injuries (and damage to civilian objects). In addition, according to the rule of proportionality, attacks against lawful military objectives that may be expected to cause deaths or injuries among the civilian population, or damage to civilian objects, which jointly or severally would be ‘excessive’ compared to the expected ‘concrete and direct’ military advantage, are prohibited.

Children must not be recruited into armed forces or armed groups nor allowed to take part in hostilities. Recruiting children under 15 years old is a war crime. The use of indiscriminate weapons,\footnote{Art 8(2)(a)(xx) of the Rome Statute refers to ‘inherently’ indiscriminate weapons, while the ICJ, in its 1996 Nuclear Weapons Advisory Opinion, referred to ‘weapons that are incapable of distinguishing between civilian and military targets’. It has sometimes been claimed that no weapons are ‘inherently’ indiscriminate, and certainly there is no general agreement as to which weapons might fulfil this criterion.} or weapons ‘of a nature to cause superfluous injury or unnecessary suffering’, is prohibited. In addition, among many other provisions, parties to an international conflict must respect and protect combatants who are hors de combat, because of sickness, wounds, detention or any other cause. Captured combatants (primarily, members of armed forces) are to be accorded the status of prisoner of war, with the associated rights and obligations.\footnote{Tadić appeals chamber decision, §70.} In providing assistance to the civilian population, women and children are to be granted preferential treatment.

**D. SUMMARY IHL RULES GOVERNING A SITUATION OF BELLIGERENT OCCUPATION**

Subject to the discussion above, during a belligerent occupation of foreign territory, applicable law is set out in the 1907 Hague Regulations (Articles 42–56), the 1949 Geneva Convention IV, the 1977 Additional Protocol I and customary international law. The underpinning of the law of military occupation is that it is supposed to be a temporary situation, which lasts until a political agreement is reached. During this period, the occupant does not enjoy sovereign rights over the territories it occupies and local law that was applicable prior to the occupation remains in force. At the same time, the occupying power is responsible for administering the local life of the population under its control, maintaining it as it was prior to the occupation as closely as possible and providing security (Article 43 of the Hague Regulations). In addition, international human rights law (HRL) is binding on the occupying state extraterritorially with regard to the territories it occupies.

**E. WHEN DOES AN INTERNATIONAL ARMED CONFLICT END?**

The precise duration of an international armed conflict is a difficult issue. The ICTY in the Tadić case suggested that IHL applies ‘from the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached’ in the case of an IAC.\footnote{These are set out, in particular, in 1949 Geneva Convention III.} While certain IHL obligations will clearly extend beyond the active cessation of hostilities, including those pertaining to the treatment of detainees, a notion that law of armed conflict rules governing the conduct of hostilities pertain to acts committed after the point at which active hostilities have effectively ceased is too expansive. Nonetheless, there will often be a fluctuation in the regularity and extent of armed violence during a situation of armed conflict without such an oscillation amounting to an active cessation of hostilities. In addition, IHL does not provide clear-cut standards for determining when an occupation starts and when its ends. According to Tristan Ferraro,
of the local governmental authority’s consent to the foreign forces’ presence, cumulatively, should be scrutinized when assessing the termination of occupation. If any of these conditions ceases to exist, the occupation should be considered to have ended.24

3. NON-INTERNATIONAL ARMED CONFLICT

A. CRITERIA FOR THE EXISTENCE OF A NON-INTERNATIONAL ARMED CONFLICT

In accordance with the definition in the Tadić case, a NIAC is a situation of regular and intense armed violence25 between the security forces of a state, especially the army, and one or more organized non-governmental armed groups. A NIAC will also occur in a situation of intense armed violence between two or more organized armed groups within a state. Situations of ‘internal disturbances and tensions’, including ‘riots, isolated and sporadic acts of violence’ and other acts of a similar nature, are explicitly determined not to amount to armed conflicts.26 Although not explicitly foreseen by the Tadić decision, a NIAC will also occur where intense armed violence occurs between two or more organized armed groups across an international border.

There are three cumulative requirements for a NIAC, according to the Tadić definition. First, there must be ‘protracted armed violence’; second, violence must be conducted by government forces and at least one organized non-governmental armed group (or between such groups within a state or across a state’s borders); and third, the violence must take place between the armed forces and at least one organized armed group, or between such groups. These elements are discussed in turn.

The requirement of ‘protracted armed violence’ means that a certain threshold of armed violence has been reached.27 According to the ICTY, “[i]n an armed conflict ... the violence must reach a certain level of intensity”.28

Organized armed groups are those with a command-and-control structure, who typically possess and use a variety of weapons and control a significant logistical capacity that gives them the capability to conduct regular military operations. When engaged in regular and intense armed confrontations with armed forces or other organized armed groups, such groups are ‘party’ to a NIACs,29 therefore, an organized armed group whose aim is purely lucrative, such as a drugs cartel or an organized crime network, can be a party to an armed conflict.30 This discussion takes place in The War Report 2017 with regard specifically to the situation in Mexico.

The third criterion is potentially controversial. Inherent in the notion of the words ‘conflict’ and ‘between’ is, The War Report argues, a requirement that there be actual combat.31 In its judgment in the Haradinaj case, the ICTY stated that indicative factors for an armed conflict include ‘the number, duration and intensity of individual confrontations’32.33 The San Remo Manual on the Law of Non-International Armed Conflict states that NIACs are ‘armed confrontations’ occurring within the territory of a single state.34 In the Limaj case, the ICTY Trial Chamber, in finding that an armed conflict existed in Kosovo before the end of May 1998 between the Kosovo Liberation Army and the Serb forces, stated that by the end of May 1998 KLA units were constantly engaged in armed clashes with substantial Serbian forces in areas from the Kosovo–Albanian border in the west, to near Pristina/Pristina in the east, to Prizren/Prizren and the Kosovo–Macedonian border in the south and the municipality of Mitrovica/Kosovska Mitrovica in the north ... The ability of the KLA to engage in such varied operations is a further indicator of its level of organisation.

Thus, an armed group that constructs and emplaces (or delivers to a target) improvised explosive devices (IEDs), landmines, vehicle-borne IEDs (VBIEDs) or body-borne IEDs (BBIEDs), but which does not engage in direct ‘hostilities’ with the armed or security forces of a state, is not engaged in a NIAC. Such situations appear to fall more accurately within the notion expressed by the ICTY in the Tadić case and cited above of ‘terrorist activities, which are not subject to international


26 In the trial judgment in Tadić and other cases, the ICTY confirmed that the specific meaning it gave to ‘protracted’ when qualifying armed violence was an insistence on the intensity of conflict (even though the word’s meaning in ordinary parlance is one of duration, not intensity). ICTY, Prosecutor v Tadić, Opinion and Judgment, 7 May 1997, §562; see also ICTY, Prosecutor v Ramush Haradinaj, Ljubuški, and Zaevi, Trial Chamber, Judgment, IT-04-68-T, 3 April 2008, §§40 et seq; ICTY, Prosecutor v Slobodan Milošević, Trial Chamber, Decision on Motion for Judgment of Acquittal, IT-02-54-T, 16 June 2004, §17.

27 Art 1(2), 1977 Additional Protocol II; see also Art 8(2)(d), Rome Statute.

28 As the ICRC has noted, ‘the violence must reach a certain level of intensity’. ICRC, ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflicts’, p 8.

29 Tadić appeals chamber decision, §70.


31 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, 78.

32 In cases before the ICTY, the Tribunal has tended to consider the number of clashes as part of the intensity criterion: ‘the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time’. See, e.g., ICTY, Prosecutor v Milorad Dodik, Mladen Radić, and Veselin Sijarić, Trial Chamber, Judgment, IT-95-13-T, 27 September 2007, §407 and sources cited in footnote 1592.

33 Haradinaj trial chamber judgment, §49.


35 Limaj trial chamber judgment, §172, footnote omitted.
humanitarian law. As Sandesh Sivakumaran has noted, upon ratification of the 1977 Additional Protocol I, the UK entered a declaration whereby ‘the term “armed conflict” of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes including acts of terrorism whether concerted or in isolation.’

B. WHEN DOES A NON-INTERNATIONAL ARMED CONFLICT END?

More complicated is the determination of when a NIAC is effectively over. According to the Tadić decision, IHL applies ‘in the case of internal conflicts [i.e. NIACs], [until] a peaceful settlement is achieved.’ This is too expansive. Identifying the ‘cessation of active hostilities’ in armed conflicts of a non-international character is particularly difficult, since an individual attack does not amount to an armed conflict as it may under the classification of IAC. Clashes between parties to a NIAC must be frequent but not necessarily daily or even weekly. Further, when an armed group that is party to such a conflict fragments or its senior commanders are killed or captured, the group may, as a consequence, no longer fulfil the criterion of organization. Establishing these situations as fact is clearly challenging, but when either criterion is no longer fulfilled, a NIAC can be said to have ended. This position has been advanced by Rogier Bartels: ‘NIACs do not necessarily end only by virtue of a peace settlement being reached, but rather by the more factual circumstance of the level of “organization” and “intensity” falling below the threshold set for the application of IHL.’

The 2016 ICRC Commentary on the Geneva Conventions of 1949 also specifies that a NIAC would end by the mere fact that one of the parties ceases to exist or in case of a lasting cessation of armed confrontations without real risk of resumption, despite the existence of a ceasefire.

C. THE GEOGRAPHICAL SCOPE OF A NON-INTERNATIONAL ARMED CONFLICT

Common Article 3 to the 1949 Geneva Conventions refers to a NIAC ‘occurring in the territory of one of the High Contracting Parties’. This can be taken to mean that an armed conflict is limited to the territory of a single state or that the provisions only apply to a situation in which the territory on which an armed conflict is ongoing is governed by the authority of a State Party. If it is the latter, given that, as of November 2016, all United Nations Member States were party to the Geneva Conventions, there is very little territory that would not be covered by the treaty provisions. Further, under customary law, there is arguably no such strict geographical limitation, at least with respect to ‘spill-over’ from one territory to another.

This position does not mean, however, that a globalized NIAC exists as a matter of international law. Some arguments were made in the past by the US, that it was engaged in a ‘global armed conflict’ against the Taliban, al-Qaeda, and associated forces. No such conflict exists under IHL/ICL. While a NIAC can certainly cross international borders, it is not possible under existing international law for a NIAC to be simply global. According to Sivakumaran, an armed conflict must have a territorial base… a global non-international armed conflict does not exist, at least, as a matter of law.

It is not contested here that an armed conflict may exist on ‘a single territory’, or that, today, it may have ‘a core territory plus spill-over onto different territory’, sometimes (unhelpfully) termed a ‘transnational armed conflict’. More controversial is the question of whether an armed conflict may exist across ‘multiple territories’ that are geographically unconnected. According to one theory, where a NIAC exists on the territory of one state against a non-state armed group, and that conflict involves foreign states intervening on behalf of that state, the law of armed conflict applies to any hostile act by the non-state party on the territory of any of those foreign states.


43 For example, in 2012 John Brennan, then Assistant to the US President, and Deputy National Security Advisor for Homeland Security and Counterterrorism (later, Director of the US Central Intelligence Agency from 2013–2017), stated: ‘As a matter of international law, the United States is in an armed conflict with al-Qa’ida, the Taliban, and associated forces, in response to the 9/11 attacks.’ The Ethics and Efficacy of the President’s Counterterrorism Strategy, Remarks of John O. Brennan, Woodrow Wilson International Center for Scholars, Washington, DC, 30 April 2012, http://www.lawfareblog.com/2012/04/brennanspeec/ (last accessed 6 March 2018). Later, however, the Obama administration started quietly dropping the reference to the Taliban.

44 Sivakumaran, The Law of Non-International Armed Conflict, p 234.

45 Indeed, the text of Common Article 3 refers to ‘armed conflict not of an international character occurring in the territory of one of the High Contracting Parties’ (emphasis added).


47 Ibid.

D. RULES APPLICABLE IN A NON-INTERNATIONAL ARMED CONFLICT

IHL is applicable to all parties to the conflict, whether state or non-state armed groups. This always includes Common Article 3 to the 1949 Geneva Conventions (by virtue of their universal application under customary international law) and all other provisions of the law of armed conflict applicable to a NIAC, as well as, in certain circumstances, the 1977 Additional Protocol II.49 States engaged in a NIAC are also bound by both applicable treaty50 and customary HRL. In areas where hostilities are being actively conducted, the law of armed conflict is widely regarded as the applicable law, while outside such areas, HRL is arguably the legal framework determining lawful use of force.

There is also increasing acceptance that non-state armed groups are also bound by at least peremptory HRL norms (e.g. prohibitions on summary or arbitrary executions, torture and enforced disappearances).51 They may also be bound by other customary human rights obligations, for example where they control territory. For instance, the UN Assistance Mission in Afghanistan (UNAMA) stated in February 2012 that ‘while non-State actors in Afghanistan, including non-State armed groups, cannot formally become parties to international human rights treaties, international human rights law increasingly recognizes that where non-State actors, such as the Taliban, exercise de facto control over territory, they are bound by international human rights obligations.’52

Accordingly, based on applicable rules of the law of armed conflict, during the conduct of hostilities it is prohibited to attack any civilian taking no direct part in hostilities, or any fighter who has laid down his arms or who is hors de combat because of sickness, wounds, detention or any other cause. Children must not be recruited into armed forces or armed groups, nor allowed to take part in hostilities.

49 The scope of application of 1977 Additional Protocol II is set out in Art 1. In its 1987 commentary on the article, the ICRC notes that the Protocol ‘only applies to conflicts of a certain degree of intensity and does not have exactly the same field of application as Common Article 3, which applies in all situations of non-international armed conflict’. ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1987, p 1348. Certain criteria are explicitly required for the application of 1977 Additional Protocol II, namely: confrontation between the armed forces of the government and opposing ‘dissident’ armed forces; that the dissident armed forces are under a responsible command; and that they control a part of the territory so as to enable them to ‘carry out sustained and concerted military operations’ and to implement the Protocol.

50 Derogations from other human rights in accordance with the 1966 International Covenant on Civil and Political Rights may only occur in ‘time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. Any derogation must only be ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin’.

51 See, e.g., Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/19/69, 22 February 2012, §106: ‘In this regard, the commission notes that, at a minimum, human rights obligations constituting peremptory international law (ius cogens) bind States, individuals and non-State collective entities, including armed groups. Acts violating ius cogens – for instance, torture or enforced disappearances – can never be justified.’


Recruiting children under 15 years old is a war crime. It is prohibited to attack civilian objects. Civilian objects are any buildings or areas that are not lawful military objectives. Indiscriminate attacks, namely attacks that do not distinguish between military objectives and civilians and/or civilian objects, are prohibited. Use of indiscriminate weapons, or weapons ‘of a nature to cause superfluous injury or unnecessary suffering’, is prohibited. Violating any of these rules may constitute a war crime.

Attacks against lawful military objectives (military personnel or equipment) are prohibited if they may be expected to cause ‘excessive’ harm to either civilians or civilian objects, or a combination of both, in relation to the concrete and direct military advantage anticipated. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

Enforced disappearances are prohibited. Hostages shall not be taken. Arbitrary deprivation of liberty is prohibited. Anyone detained by a party to an armed conflict must be treated humanely and in accordance with their sex, age, and religious beliefs. Murder, torture, rape, bodily injury or other cruel, humiliating or degrading treatment is prohibited. Summary or arbitrary executions are prohibited. No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. This includes a defendant’s right to know the charges against him/her, to understand the court proceedings, to have the opportunity to conduct a genuine defence and to be able to appeal against both conviction and sentence. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

4. WHICH ARMED CONFLICTS OCCURRED IN 2018?

The following tables summarize the 18 IACs and 51 NIACs that took place in 2018.

A. INTERNATIONAL ARMED CONFLICTS IN 2018

In addition to the conflict between India and Pakistan, The War Report considers, in line with the Rule of Law in Armed Conflicts project (ruleoflaw.org), that there is arguably a parallel international armed conflict between Ukraine and Russia, as well as a series of international armed conflicts between Syria and the different states composing the international coalition conducting airstrikes in Syria (the US, Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, Netherlands, Saudi Arabia, Turkey, the United Arab Emirates and the United Kingdom). In addition, there have been a series of short-lived international armed conflicts between Libya and Egypt, Israel and Syria, Israel and Iran (on Syrian territory) as well as between Turkey and Iraq.
### Table 1. Active Conflicts in 2018

<table>
<thead>
<tr>
<th>Conflict no</th>
<th>Location of conflict</th>
<th>Parties to conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>India and Pakistan</td>
<td>India v Pakistan</td>
</tr>
<tr>
<td>2</td>
<td>Ukraine</td>
<td>Ukraine v Russia</td>
</tr>
<tr>
<td>3</td>
<td>Syria</td>
<td>International coalition v Syria</td>
</tr>
<tr>
<td>4</td>
<td>Syria</td>
<td>Iran v Israel</td>
</tr>
<tr>
<td>5</td>
<td>Syria</td>
<td>Israel v Syria</td>
</tr>
<tr>
<td>6</td>
<td>Libya</td>
<td>Egypt v Libya</td>
</tr>
<tr>
<td>7</td>
<td>Iraq</td>
<td>Turkey v Iraq</td>
</tr>
</tbody>
</table>

### Table 2. Belligerent Occupations in 2018

<table>
<thead>
<tr>
<th>Conflict no</th>
<th>Location of occupation</th>
<th>Occupier</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Azerbaijan</td>
<td>Armenia</td>
</tr>
<tr>
<td>9</td>
<td>Cyprus</td>
<td>Turkey</td>
</tr>
<tr>
<td>10</td>
<td>Eritrea</td>
<td>Ethiopia</td>
</tr>
<tr>
<td>11</td>
<td>Georgia</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>12</td>
<td>Lebanon</td>
<td>Israel</td>
</tr>
<tr>
<td>13</td>
<td>Moldova</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>14</td>
<td>Palestine</td>
<td>Israel</td>
</tr>
<tr>
<td>15</td>
<td>Syria</td>
<td>Israel</td>
</tr>
<tr>
<td>16</td>
<td>Syria</td>
<td>Turkey</td>
</tr>
<tr>
<td>17</td>
<td>Ukraine</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>18</td>
<td>Western Sahara</td>
<td>Morocco</td>
</tr>
</tbody>
</table>

The occupation of Eritrea by Ethiopia is debatable as discussed in the section on the conflict (p.37)

### B. NON-INTERNATIONAL ARMED CONFLICTS IN 2018

At least 51 NIACs in 23 states occurred in 2018. Arguably, new conflicts broke out in 2018 between India and four different armed groups in the northeast of the country.

<table>
<thead>
<tr>
<th>Conflict no</th>
<th>Conflict location</th>
<th>Parties to conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Afghanistan</td>
<td>Afghanistan and the USA v Quetta Shura Taliban</td>
</tr>
<tr>
<td>20</td>
<td>Afghanistan</td>
<td>Afghanistan v Haqqani Network</td>
</tr>
<tr>
<td>21</td>
<td>Afghanistan</td>
<td>Afghanistan v Islamic State in Afghanistan (Khorasan branch, IS-K)</td>
</tr>
<tr>
<td>22</td>
<td>CAR</td>
<td>MINUSCA v the Coalition (FPRC, RPRC, MPC, Anti-Balaka, ML.C)</td>
</tr>
<tr>
<td>Conflict no</td>
<td>Conflict location</td>
<td>Parties to conflict</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>51</td>
<td>Philippines</td>
<td>Philippines v New People’s Army (NPA)</td>
</tr>
<tr>
<td>52</td>
<td>Somalia</td>
<td>Somalia, AMISOM, Burundi, Djibouti, Ethiopia, Kenya, Uganda and USA v al-Shabaab</td>
</tr>
<tr>
<td>53</td>
<td>S. Sudan</td>
<td>South Sudan v Sudan People’s Liberation Army (dissident faction)</td>
</tr>
<tr>
<td>54</td>
<td>Sudan</td>
<td>Sudan v SPLM/A-North</td>
</tr>
<tr>
<td>55</td>
<td>Sudan</td>
<td>Sudan v Justice and Equality Movement (JEM)</td>
</tr>
<tr>
<td>56</td>
<td>Syria</td>
<td>Syria, Russian Federation v Free Syrian Army</td>
</tr>
<tr>
<td>57</td>
<td>Syria</td>
<td>Syria v Jabhat al-Sham (former al-Nusra Front)</td>
</tr>
<tr>
<td>58</td>
<td>Syria</td>
<td>Syria v al-Qudrat al-Sham</td>
</tr>
<tr>
<td>59</td>
<td>Syria</td>
<td>Syria, Russian Federation v IS</td>
</tr>
<tr>
<td>60</td>
<td>Syria</td>
<td>YPG-YPJ v IS</td>
</tr>
<tr>
<td>61</td>
<td>Syria</td>
<td>Free Syrian Army v Hezbollah</td>
</tr>
<tr>
<td>62</td>
<td>Syria</td>
<td>Turkey v YPG-YPJ</td>
</tr>
<tr>
<td>63</td>
<td>Thailand</td>
<td>Thailand v Patani Malay National Revolutionary Front (BRN)</td>
</tr>
<tr>
<td>64</td>
<td>Turkey</td>
<td>Turkey v Kurdish Worker’s Party (PKK)</td>
</tr>
<tr>
<td>65</td>
<td>Ukraine</td>
<td>Ukraine v Donetsk People’s Republic and Luhansk People’s Republic</td>
</tr>
<tr>
<td>66</td>
<td>Yemen</td>
<td>Yemen, with the support of Bahrain, Jordan, Egypt, Kuwait, Saudi Arabia, Sudan, UAE, USA v al-Houthi</td>
</tr>
<tr>
<td>67</td>
<td>Yemen</td>
<td>al-Houthi v al-Qaeda in the Arabian Peninsula (AQAP)</td>
</tr>
<tr>
<td>68</td>
<td>Yemen</td>
<td>Yemen, with the support of USA and UAE v AQAP</td>
</tr>
<tr>
<td>69</td>
<td>Yemen</td>
<td>Yemen v the Southern Movement</td>
</tr>
</tbody>
</table>
SELECTED INTERNATIONAL ARMED CONFLICTS

1. THE ERIITREA-ETHIOPIA ARMED CONFLICT

Tadesse Kebebew

Classification of the Conflict

Eritrea and Ethiopia were engaged in an international armed conflict (IAC), which began in May 1998 and was formally brought to an end by an Agreement on 12 December 2000. However, the relevant rules of international humanitarian law (IHL), particularly those relating to the treatment of persons, continue to apply for protected persons. On 13 April 2002, the Eritrea-Ethiopia Boundary Commission (EEBC) decided that most of the disputed territory, in particular on the western front, belongs to Eritrea. Nevertheless, Ethiopia continues to occupy those parts of the territory, and thus, as enunciated under Common Article 2(2) to the Geneva Conventions (GCs) of 1949, the law of occupation applies.

A. HISTORY OF THE CONFLICT

1. Background

From the late 1880s, Italy consolidated its power around the coastal area at Assab and Massawa, and was able to settle in Eritrea without much difficulty. Between 1889 and 1941, Eritrea remained an Italian colony until Italy joined the Axis powers during World War II, which caused British forces to attack Italian forces and take control of Eritrea in 1941. Eritrea was then under British military administration until 1952. In 1950, the United Nations resolved to establish Eritrea as an autonomous entity federated with Ethiopia as a compromise between Ethiopian claims of sovereignty and Eritrean aspirations for independence. On 11 September 1952, with the ratification of the Federal Act by Emperor Haile Selassie of Ethiopia, the Eritrean Constitution entered into force and the Federation was formally established.

53 The selection of armed conflicts has been made according to relevant facts which, we believe, have an impact on the legal situation of the armed conflict concerned. For a complete list of armed conflicts, see pp 32-34 above.
However, 10 years later in 1962, the Federation was abrogated. For some, it was the Ethiopian parliament and Eritrean Assembly which unanimously passed the decision,64 while for others it was Emperor Haile Selassie who dissolved the Eritrean parliament and declared Eritrea’s federal status void.65 The dissolution of the Federation resulted in the incorporation of Eritrea into Ethiopia as its fourteenth province.66 The dissolution is claimed to have triggered a 32-year armed struggle for the independent state of Eritrea. In fact, it was before the dissolution that the armed resistance groups (the Eritrean Liberation Movement (in Sudan) and Eritrean Liberation Front (in Cairo)) were started in exile by groups who were anti-federation (the Independence Bloc) and others who claimed a systematic erosion of Eritrean rights under the Federation.67

The alliance of the Eritrean People’s Liberation Front and a coalition of Ethiopian resistance movements eventually defeated the forces of Haile Selassie’s communist successor, Mengistu Haile Mariam, in 1991. Two years later, a referendum was held in which Eritreans voted almost unanimously in favour of independence. Despite the establishment of a new Eritrean state, the boundary demarcation was not properly undertaken, and economic and social relations continued. Initial disputes on economic issues, however, soured the relationship. The porous and undelimited border increasingly became an issue. In May 1998, one of the bloodiest conflicts in Africa broke out between Eritrea and Ethiopia around the town of Badme, which later expanded across all the boundaries.


The referendum of 1993 and the ensuing secession of Eritrea left Ethiopia land-locked. Besides, little was done to develop institutions required to manage important interstate interests including trade, the use of ports and the question of citizenship.68 Following the reassertion of Ethiopian sovereignty over Eritrea in 1952 and unification in 1962, the colonial boundary was abolished and became an administrative division. Prior to the conflict, the border was poorly delimited.69 Generally, the border had ‘an unusually troubled history’.70

Gradually, the relationship between Eritrea and Ethiopia became tense, and at times relations deteriorated into open confrontation and clashes, which ruptured all informal channels of communication between the political elites of the two countries.71 In 1998, relations worsened unexpectedly and border skirmishes spiralled into a full-fledged war around a border village of Badme. The Eritrea-Ethiopia Claims Commission (EECC) confirmed that, in May and June 1998, Eritrea started the war by forcefully occupying border areas – some contested, others not – in violation of Article 2(4) of the UN Charter.72 In February 1999, fighting between the two countries resumed with each deploying hundreds of thousands of troops in trenches along the contested border,73 backed by heavy artillery from massive armaments on both sides.74

Between May 1998 and 2000, the two countries were involved in a devastating large-scale IAC along their common frontier, which was described by many as being as pointless as ‘two bald men fighting over a comb’.75 Though the figures given in different reports vary, the total number of deaths of both soldiers and civilians is estimated to be around 70,000.76 As per reports of international organizations, other war victims included an estimated 75,000 Ethiopians of Eritrean origin whom Ethiopia forcibly expelled on national security grounds without any hearing or appeal. Eritrea expelled and/or repatriated an estimated 70,000 Ethiopian residents, despite its claims that it had no official expulsion policy.77 The UN Secretary-General’s (UNSG) report estimates that the Eritrean and Ethiopian war displaced at least 1.2 million people, 70 percent of whom were women, children and the elderly.78

3. The Peace Process and the Final Algiers Agreement

a. The Organization of African Unity Framework Agreement and its Modalities

At the Algiers summit in July 1999, the Organization of African Unity (OAU) presented a Framework Agreement based on the following principles: the resolution of the present crisis and any other dispute through peaceful and legal means in accordance with the principles enshrined in the Charter of the OAU; the rejection of all informal channels of communication between the political elites of the two countries.79

62  This occurrence was described by some as the Ethiopian ‘annexation’ of Eritrea. See, e.g., Crisis Group, Ethiopia and Eritrea: Preventing War, p 2.
66  Healy and Paut, Ethiopia and Eritrea, p 3.

68  EECC, Partial Award, Jus Ad Bellum Ethiopia’s Claims 1–8, 19 December 2005, §16. The EECC rightly ruled that since there had been no armed attack against Eritrea, its attack on Ethiopia and the settling of border disputes by the use of force could not be considered lawful self-defence.
71  Crisis Group, Ethiopia and Eritrea: Preventing War, p 2.
tions, of substantive peace talks, under the auspices of the OAU, on the basis of the
ian populations of both countries. 81 On 17 May 2000, the UNSC imposed measures
the new outbreak of violence had serious humanitarian implications for the civil-
passed a resolution expressing concern over the renewed fighting and noted that
as Ethiopia launched another offensive. Then, the UN Security Council (UNSC)
Despite all the diplomatic efforts, on 12 May 2000, the fighting erupted again
by the OAU, the UN and the US. 80
parties accepted the Framework Agreement and the Modalities of Implementation
Both parties accepted the Framework Agreement and the Modalities of Implementation
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as Ethiopia launched another offensive. Then, the UN Security Council (UNSC)
resolved a resolution expressing concern over the renewed fighting and noted that the
new outbreak of violence had serious humanitarian implications for the civil-
On 17 May 2000, the UNSC imposed measures aimed at preventing the supply of weapons or arms-related assistance to the two
countries.84 It also demanded the earliest possible reconvening, without preconditions,
of substantive peace talks, under the auspices of the OAU, on the basis of the
Framework Agreement and its Modalities and the work conducted by the OAU so far, which would conclude a peaceful definitive settlement of the conflict.85
b. The Agreement on Cessation of Hostilities
Ethiopia’s massive offensive broke Eritrea’s defensive line in numerous places, bombing ports and airports, and disrupting supply lines, including those through which humanitarian aid was flowing, necessitating urgent diplomatic measures.86
The efforts culminated in the signing of a ceasefire agreement between Eritrea and Ethiopia on 18 June 2000.87
The agreement obliged the parties to immediately cease hostilities and redeploy forces to their positions before 6 May 1998. Eritrea was to maintain its forces at a distance of 25 kilometres from positions to which the Ethiopian forces were expected to be redeployed, creating a zone of separation called the ‘temporary security zone’.88 The agreement specified that violations of the ceasefire could trigger sanctions against the offending party.89 As Ambassador Legwaila Joseph Legwaila, Special Representative of the UNSG, told the International Crisis Group in 2005, ‘Ethiopia and Eritrea have been very faithful to their ceasefire’.90
The parties also called upon the UN, in cooperation with the OAU, to establish a peacekeeping operation to assist in the implementation of the agreement. They guaranteed free movement and access for the peacekeeping mission and its supplies, as required, through their territories and promised to respect its members, installations and equipment.91 On 31 June 2000, the UNSC decided to establish the UN Mission in Ethiopia and Eritrea (UNMEE), consisting of up to 100 military observers and the necessary civilian support staff in anticipation of a peacekeeping operation subject to future authorization.92 On 15 September 2000, the UNSC authorized the deployment of 4,200 troops for the UNMEE. In general, this agreement paved the way for the signing of the Algiers Peace Agreement (Algiers Agreement) on 12 December 2000.
c. The Algiers Agreement of December 2000
Following the ceasefire and the initial UNMEE deployment, the representatives of the two countries met for a second time in Algiers and signed a comprehensive

76 Ibid, paras 3, 5.
77 See Modalities for the Implementation of the OAU Framework Agreement on the Settlement of the Dispute between Ethiopia and Eritrea, endorsed by the the 35th OAU Heads of State and Government Summit in Algiers on Wednesday, 14 July 1999.
80 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 4.
82 UNSC Res 1298, 17 May 2000, §6(a).
84 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 4.
86 Ibid, §12.
87 Ibid, §14(a).
88 Cited in Crisis Group, Ethiopia and Eritrea: Preventing War, p 1.
89 Agreement on Cessation of Hostilities, §1.
peace agreement on 12 December 2000.\(^9\) Article 1 of the Algiers Agreement states that ‘[t]he parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.’ Thus, it formally ended the war between the two countries.

Building on the OAU Framework Agreement, the Algiers Agreement made provision for mechanisms to delimit and demarcate the border,\(^7\) provided for a Claims Commission to address war reparations and compensation claims (Article 5) and an independent commission to determine the root cause of the conflict (Article 3, this part of the agreement was not operationalized).\(^8\) The Algiers Agreement was a model of its kind, where parties involved in an armed conflict and their relationships already broken down were able to reach an agreement on setting up a commission to address an issue as sensitive as violations of IHL.\(^7\) Interestingly, both parties also agreed that the decision on delimitation and demarcation would be final and binding.\(^9\)

The International Committee of the Red Cross (ICRC), which promotes the application of and compliance with the GCs, was entrusted by the Algiers Agreement with the task of supervising the release and repatriation of prisoners of war (POWs) and other persons detained in connection with the conflict.\(^6\)

### 4. The Deployment of the Peacekeeping Operation

Under the Cessation of Hostilities Agreement, Eritrea and Ethiopia requested the deployment of a UN peacekeeping mission to monitor the cessation of hostilities, the redeployment of Ethiopian forces and the temporary security zone, and to ensure observance of the security commitments agreed to by the two parties.\(^7\) Welcoming the report of the UNSG, the UNSC decided to establish the UNMEE consisting of up to 100 military observers and necessary civilian support staff in anticipation of a peacekeeping operation subject to future authorization.\(^8\) Later, the UNSC authorized the deployment of up to 4,300 troops.\(^9\)

As outlined under UNSC Resolution 1320 (2000), the mandates of the UNMEE included, inter alia, the monitoring of the cessation of hostilities, the redeployment of Ethiopian and Eritrean forces and their positions once redeployed and the temporary security zone. Subsequent to the decision of the EEBC in April 2002, the UNSC decided to adjust the mandate of the UNMEE in order to assist the EEBC in the expeditious and orderly implementation of its delimitation decision, and included demining in key areas to support demarcation, and administrative and logistical support for the Field Offices.\(^10\) The subsequent resolution urged the parties to assume their responsibilities, fulfill their commitments under the Algiers Agreement and cooperate fully with the EBC.\(^11\)

Although both countries did not formally withdraw their consent, the UNMEE’s operational ability was gradually hamstrung due to the explicit and implicit withdrawal of support, which eventually led to untenable restrictions on its ability to perform its core mandate.\(^12\) As clearly pointed out in the report of the UNSG on 3 January 2006, there was a serious deterioration of the security and political situation in the UNMEE area as a result of ‘an accumulation of unresolved issues’, including the stalemate in the demarcation process caused by Ethiopia’s refusal to fully accept, without preconditions, the decision of the EBC and the increasing restrictions imposed on the UNMEE by the Eritrean authorities, including a ban on all its helicopter flights within Eritrean airspace.\(^13\) Eritrea also expelled 180 UNMEE staff from the USA, Canada and Europe, including the Russian Federation, in December 2005.\(^14\)

On account of the crippling operational and administrative restrictions imposed on the UNMEE, the UNSC unanimously adopted Resolution 1827 and terminated its mandate in 2008. The Resolution also called on both countries to ‘show maximum restraint and refrain from any threat or use of force ... and to avoid provocative military activities’.\(^15\) The termination of the UNMEE mandate was contrary to what was contemplated in the Algiers Agreement, i.e. ‘the mandate of the Peacekeeping Mission shall terminate when the delimitation-demarcation process of the border has been completed’.\(^16\) The UNMEE did not meet its final goal and a study revealed that the ‘UNMEE’s lack of a political component ... and its structural detachment from other instruments deemed central to the peace process were detrimental not only to the mission and the perception of UN, but also to the conflict, by shifting the focus from a comprehensive solution to the conflict and border issue’.\(^17\)

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92 Art 4, Algiers Agreement. Delimitation refers to the process of establishing the course of the border on maps, while demarcation is the physical identification of the border on the ground.
93 Crisis Group, Ethiopia and Eritrea: War or Peace?, p 6.
94 Healy and Plaut, Ethiopia and Eritrea, p 2.
95 Art 4(15), Algiers Agreement.
96 Art 2(2), ibid.
97 Agreement on Cessation of Hostilities, §3.
100 UNSC Res 1430, 14 August 2002, §1.
103 UNSC, Report of the Secretary-General on Ethiopia and Eritrea, UN doc S/2006/1, 3 January 2006, §2.
107 See Sande Lie, UNMEE.
5. The Eritrea Ethiopia Boundary Commission (EEBC)

The establishment of a neutral boundary commission composed of five members was one of the core components of the Algiers Agreement. The EEBC was mandated to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and ‘applicable international law’, but not *ex aequo et bono* (on the basis of justice and equity).108 The use of colonial treaties as the basis for determining borders is consistent with a regional customary law enshrined in Resolution AHG/Res.16(1) adopted by the OAU in Cairo in 1964. Notably, the Agreement stipulated that ‘the delimitation and demarcation determinations of the EEBC shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party’.109

The border area between Eritrea and Ethiopia had overlapping and competing influences and the border remains murky. Also, there was confusion over nomenclature, territorial reconfigurations and a variety of contradictory maps.110 As noted by the EEBC, ‘[t]here is no generally agreed map of the area depicting place names with any degree of reliability’.111 none of the boundaries were demarcated nor, to varying degrees, fully delimited.112

After examining the merits of the territorial claims of both countries, the EEBC delivered its delimitation decision on 13 April 2002. Yet, the location of the闪光点 town of Badme was initially not manifest, as the ruling failed to indicate it either in its text or accompanying maps (they only gave the coordinates of the line along which the border would run), which led to confusion as both sides claimed victory. The EEBC soon clarified its decision by affirming that Badme belongs to Eritrea.113 The manner in which the EEBC set aside the explicit text of the 1902 treaty by accepting River ‘Meete’114 as a point of reference for border delimitation instead of River ‘Maiteb’, raised some questions about its treaty interpretation.115

Eritrea accepted the decision. Invoking the language of the Algiers Agreement, Eritrea has always maintained that the EEBC’s ruling is final and binding and has to be implemented in full without any precondition.116 It has accordingly repeatedly called on the international community to enforce the Algiers Agreement and its ruling on the boundaries.117

Yet, Ethiopia denied to honour the award and after some time only accepted the decision ‘in principle’. However, it backtracked from its commitment and insisted on the need for further deliberation before withdrawing troops from the disputed areas.118 Ethiopia showed equivocation over a ‘final and binding’ delimitation by launching a subsequent legal and political campaign to reverse or alter the decision, and started a labyrinthine diplomatic brinkmanship to see if it could extract concessions at the demarcation stage.119 First, it submitted a Request for Interpretation, Correction and Consultation, claiming that errors had been made and adjustments would be required during the demarcation phase.120 Eritrea objected to the move, arguing that such a claim was inconsistent with the Algiers Agreement.121 The EEBC replied that ‘the provisions of Articles 28 and 29 of the Rules of Procedure neither allow substantive amendment nor affect the binding quality of the Decision as rendered on 13 April 2002. Re-argument of the case is not permitted’, and that Ethiopia’s request was inadmissible and no further action was taken upon it.122

Second, on 24 January 2003, Ethiopia submitted a 141-page document to the EEBC explaining that it had only accepted the Commission’s Decision on the understanding that the ‘straight-line segment between Points 6 and 9 (Badme line) would be refined during demarcation’ so as to put Badme inside Ethiopia.123 The Commission emphasized that in ‘a number of significant respects, the comments amounted to an attempt to reopen the substance of the April Decision’.124 For the Commission, the ‘main thrust of the Ethiopian comments [was] that the boundary should be varied so as to take better account of human and physical geography’, but went beyond its power as it could not decide matters *ex aequo et bono*.125

Third, Ethiopia suspended its cooperation with the EEBC and appealed instead to the UNSC on 19 September 2003. The letter from the Ethiopian Prime Minister, Meles Zenawi, to the UNSG referred to the EEBC’s ‘illegal, unjust and irresponsible decisions on Badme and parts of the Central Sector’ as ‘a blatant miscarriage of justice’. It requested ‘an alternative mechanism to demarcate the contested parts of the boundary in a just and legal manner so as to ensure lasting peace in the

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109 Art 4.15, Algiers Agreement (emphasis added).
111 EEBC, Decision Regarding Delimitation of the Border, §4.63.
112 EEBC, Decision Regarding Delimitation of the Border, §2.7.
113 Crisis Group, *Ethiopia and Eritrea: War or Peace?*, p 6 (the area known as the Badme Plains was largely Ethiopian, but the village of Badme was inside Eritrea); Healy and Plaut, *Ethiopia and Eritrea*, p 3.
114 EEBC, Decision Regarding Delimitation of the Border, §§5.42.
Finally, on 25 November 2004, Ethiopia came up with a ‘five-point peace proposal’, which, inter alia, called for an immediate start of a dialogue with a view to implementing the Boundary Commission’s decision in a manner consistent with the promotion of sustainable peace and brotherly ties between the two peoples.126 Ethiopia also maintained that this ‘does not mean going back to the drawing board, and it does not imply that we are introducing a precondition’.130 The International Crisis Group observed that there was no ‘new substance’ in such a proposal, and quoted Eritrea’s view on it: ‘a public relations exercise designed to gain international support.’131 The ‘reasonable-sounding plan’ brushed aside the exclusive mandate of the EEBC enshrined in the Algiers Agreement.132 Sir Elihu Lauterpacht, the President of the EEBC, pointed out that ‘Ethiopia is dissatisfied with the substance of the Commission’s Delimitation Decisions and has been seeking, ever since April 2002, to find ways of changing it.’133 It is worth mentioning that the UNSC passed numerous resolutions demanding that Ethiopia begin the implementation of demarcation by taking the necessary steps to enable the Commission to demarcate the border completely and promptly, without preconditions.134

In general, Ethiopia’s failure to cooperate, contrary to the Algiers Agreement, and objection in particular to the transfer of Badme, as well as Eritrea’s obstinacy during the demarcation stage, set the stage for a stalemate.135 When all avenues to progress were blocked, the EEBC, after giving notice to the parties about its intention to using ‘modern techniques of image processing and terrain modelling’, proceeded with virtual boundary demarcation, and ruled that the boundary described on the maps would automatically stand as demarcated and the mandate of the Commission would be regarded as fulfilled.136 On 30 November 2007, the EEBC sent maps indicating the demarcated boundary points to the Permanent Missions of Ethiopia and Eritrea to the UN and said it had fulfilled its mandate.137 While Eritrea accepted the virtual demarcation, Ethiopia, for its part, rejected the decision calling it a ‘legal fiction’.138

Apart from the reluctance of the parties to cooperate on the demarcation of the boundary, the EEBC also admitted that there were indeed some anomalies in its decision, but stated that it was unable to correct them unless the parties gave it an additional mandate.139 Meanwhile, the difficulties in the division were also noted by Lloyd Axworthy, former Canadian Minister of Foreign Affairs and former UN Special Envoy to Eritrea and Ethiopia, who characterized the decision of the EEBC as ‘something that has to be worked at’ and ‘needs to be developed’.140 Jendayi Frazer also suggested that ‘just and reasonable adjustments’ be made to the EEBC’s final and binding delimitation decision in demarcating the border.141

6. The Eritrea-Ethiopia Claims Commission (EECC)

Traditionally, claims commissions are rarely used for the disposition of war-related claims.142 Nevertheless, contemporary politics, with the prominence of human rights and IHL, appears to favour greater means of accountability.143 The Algiers Agreement of 2000, in an extraordinary move, included the creation of a Claims Commission with a mandate to ‘decide through binding arbitration all claims for loss, damage or injury by one Government against the other and by nationals … of one party against the Government of the other party’ arising from the war, or violations of the GCs or international law.144 In 2001, both countries filed claims relating to the conduct of military operations, the treatment of POWs and civilians and the impact of the hostilities on civilians and their property.
The decisions of the EECC dealt with highly controversial matters and threw more ‘light on the conduct of the war than had previously been available’. The issues included the lawfulness of the initial resort to force, the treatment of POWs and civilian internees, the legality of means and methods of warfare used in various localities, the seizure and destruction of private property and the treatment by each side of the nationals of the other. The work of the EECC has been lauded as principled and pragmatic in its approach in interpreting and applying IHL. It only addressed acts which were frequent or pervasive and consequently affected significant numbers of victims, but this approach is at variance with IHL stipulations that all violations shall result in responsibility and accountability. This has also been criticized by some authors.

Importantly, the EECC brought to light that IHL rules were mostly respected by both parties to the conflict. It set a good precedent that ‘third party establishment of the facts and impartial arbitration can show up wide-spread respect of IHL’ and at the same time exonerate parties to an armed conflict from unwarranted accusations of violations of IHL. The fact that the EECC had considered issues such as the economic constraints of the parties in assessing their liability is a practical and commendable effort. Locating such commissions closer to the countries whose conduct is being judged, and allowing affected people to participate in the process to increase their sense of ownership, as well as improved media coverage of the proceedings, need to be taken into consideration for the future.

7. Ethiopia’s Refusal to Withdraw Its Troops From Badme
As mentioned earlier, on 13 April 2002, the EEBC decided that one of the disputed areas and the flashpoint of the war, Badme and the surrounding area, belonged to Eritrea. Ethiopia rejected this decision and, consequently, refused to withdraw its troops from the area. Eritrea accuses Ethiopia of occupying the sovereign territory of Eritrea and has called on the international community to enforce the EEBC’s ruling, while Ethiopia insists that further border talks are necessary before the decision is implemented. The EEBC instructed Ethiopia that it should ‘remove from Eritrean territory persons of Ethiopian origin who have moved into that territory subsequent to the date of the Delimitation Decision’.

Under international law, for a territory to be considered occupied it must be under the authority of the hostile army. It is also generally understood that IHL rules on occupied territories apply whenever, during an armed conflict, a territory comes under the control of the enemy of the power previously controlling that territory. Occupation arises even when the occupier does not encounter armed resistance as such (Article 2(2) common to the GCs). In addition, the fact that the occupied territory is contested or its status is unclear does not have an impact on the test of whether or not it is under military occupation. What matters is that the state whose forces established effective control was not the rightful sovereign of the territory when the conflict broke out or an invasion took place.

For an occupation to exist, hostile foreign forces must exercise effective control. In this regard, three elements must be fulfilled. First, the armed forces of a foreign state should be physically present in the territory and the territorial state did not consent to their presence. Second, the presence of the foreign forces prevents the effective local government in place at the time of invasion from exercising its powers. Third, the foreign forces establish their own authority.

Despite the EEBC’s delimitation decision, Eritrea and Ethiopia remained locked in a stalemate for two decades marked by sporadic skirmishes. The EEBC did not demarcate the border (except the virtual demarcation), and in fact, no territory changed hands. The question is whether this raises the issue of belligerent occupation in the territories adjacent to the border between the two countries. The continued presence of Ethiopian troops in and around the Badme area satisfies the test for occupation, as long as the title to the territory belongs to Eritrea, and regardless of whether border is demarcated, the law of belligerent occupation applies to ter-

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145 Healy and Plaut, Ethiopia and Eritrea, p 7.
146 All the rulings by the EECC can be found on the website of the Permanent Court of Arbitration, https://pca-cpa.org/en/cases/71/ (last accessed 2 December 2018).
148 See EECC, Partial Award, Prisoners of War – Eritrea’s Claim 17, 1 July 2003, §56. The mandate of the EECC also covers ‘all claims for loss, damage or injury ... related to the armed conflict’.
153 Murphy et al, Litigating War, p 401.
156 Art 42, Hague Regulations; Art 2(1) common to the Geneva Conventions of 1949.
157 In this regard, the EEBC rightly stated that ‘even territory to which Eritrea had a valid claim according to the Boundary Commission, was occupied for the purposes of IHL if it had been invaded during the war’, EECC, Partial Award, Central Front – Ethiopia’s Claim 2, 28 April 2004, paras 28 and 29.
ritory that belongs to an enemy state.\textsuperscript{159} It is worth noting that there is a contrary view to this conclusion, which maintains that as long as the portion of the territory was not individualized through physical demarcation, and defined as ‘enemy territory’, and for instance, allows the ‘occupier’ to know how far to pull back, the situation cannot really be qualified as an occupation (emphasizing that the area under Ethiopia’s control was the same as that which existed before the war – no land changed hands).\textsuperscript{160}

**B. PARTIES TO THE CONFLICTS**

The parties to the conflict are Eritrea and the Federal Democratic Republic of Ethiopia.

Eritrea is estimated to have some 200,000 mobilized military personnel,\textsuperscript{161} while Ethiopia is estimated to have 162,000 active frontline military personnel.\textsuperscript{162} A wide array of conventional weaponry is possessed by both states.

**C. KEY DEVELOPMENTS IN 2018**

1. **Joint Declaration of Peace and Friendship, 9 July 2018**

Following Ethiopia’s refusal to accept the ‘unconditional’ implementation of the EEBC’s decision, the two countries were locked in a state of ‘no war, no peace’. Until very recently, the border dispute has rumbled on, with sporadic outbreaks of armed hostilities, including an attack on Eritrean military installations in 2012 and another on Tserona, the scene of one of the deadliest battles during the war, in June 2016.\textsuperscript{163}

With recent political developments and change of leaders in Ethiopia, the Ethiopian Government made an announcement in June 2018 to fully implement the Algiers Agreement and the rulings of the EEBC, which could involve ceding the disputed town of Badme.\textsuperscript{164} The Eritrean Minister of Information has said that ‘peace will indeed be beneficial to the two peoples but obviously, this must be predicated on respect of international law, which Ethiopia continues to flout to-date’.\textsuperscript{165} On 9 July, Eritrea and Ethiopia determined to close the very costly chapter of ‘no war, no peace’ and heralded a new era of rapprochement with the Joint Declaration of Peace and Friendship, which brings the state of war to an end.\textsuperscript{166} The Joint Declaration also stipulates that ‘the decision on the boundary between the two countries will be implemented’.\textsuperscript{167} This is an interesting development, but the scope of this commitment is not clear. Does it mean that the countries are ready to unconditionally withdraw their troops from the disputed areas? Will there be a release of and/or information provided about missing POWs?

In his historic visit to Asmera on 08 July 2018, the Ethiopian Prime Minister, Dr Abiy Ahmed, said ‘we will demolish the wall and, with love, build a bridge between the two countries’,\textsuperscript{168} and that Ethiopia is ‘keen to implement the terms laid out in the Joint Declaration to make up quickly for lost opportunities’.\textsuperscript{169} The Ethiopian Foreign Minister, Dr Workneh Gebeyehu, provided further details on the agreements reached and indicated that the two sides had already established ‘two commissions headed by the respective foreign ministers of both countries, and sub-committees which will work out in detail when and how each and every issue will be implemented’.\textsuperscript{170} He said a technical committee to be set up will ‘resolve the border dispute and help implement the Algiers peace agreement signed in 2000 and ‘follow-up the implementation of the border decision … and related issues’.\textsuperscript{171}

Recently, it was reported that Eritrea has started withdrawing its troops from the border lines for the first time in decades.\textsuperscript{172} However, there is no information about whether Ethiopia has followed suit and started to withdraw its troops from the contested areas. Hopefully, the declaration will result in implementation of the decision of the EEBC and will end the confrontation over the disputed border areas.

In support of the Joint Declaration, the UN noted that this represents a historic and significant development with far-reaching positive consequences for the Horn of Africa and beyond, and expressed its readiness to facilitate the successful implementation of the five-point plan.\textsuperscript{173}

\textsuperscript{159} Crisis Group, *Ethiopia and Eritrea: Preventing War*, p 14.
\textsuperscript{160} Anebo, ‘The Fallacy of Virtual Demarcation as a Primary Scheme of International Land Boundary Setting’, 260–261.
\textsuperscript{163} Pineau, ‘Eritrea-Ethiopia Peace’.
\textsuperscript{167} Ibid, §4.
\textsuperscript{170} Ibid.
\textsuperscript{171} Ibid.
2. The Ongoing Discussion Relating to Prisoners of War (POWs)

Under both treaty and customary IHL, the parties to an IAC are under unconditional obligation to release and repatriate POWs without delay upon the cessation of active hostilities.174 Though Eritrea and Ethiopia had signed the Cessation of Hostilities Agreement in June 2000, the EECC held that Article 118 of GC II came into operation only in December 2000 following the Algiers Agreement, which formally ended the war.175 Article 2(1) of the December Algiers Agreement states that ‘in fulfilling their obligations under international humanitarian law ... and in cooperation with the International Committee of the Red Cross, the parties shall without delay release and repatriate all prisoners of war’.176 The position adopted by the EECC regarding the release and repatriation of POWs was subject to criticism.177

One notable issue regarding POWs was the dispute on the missing Ethiopian pilot Colonel Bazbeh Petros. The EECC established that the pilot was captured and made a POW, but it did not receive any direct evidence concerning his fate (though Eritrea claimed that the pilot had died, without producing evidence of his death).178 Under IHL, when a POW dies, a state is under obligation to conduct an official inquiry and to take all measures for the prosecution of the person(s) responsible.179 Moreover, there are detailed procedures to be followed including the issue of a death certificate indicating the date and place of death, the cause of the death, the date and place of burial and all particulars necessary to identify the grave, and a medical examination of the body before burial.180

There are ongoing negotiations on the exchange of POWs181 and the Ethiopian Foreign Minister was explicit when he stated that ‘one committee would also study and propose solutions over prisoners of war captured during the 1998–2000 war’.182 It should be remembered that the EECC found Ethiopia in violation of its obligation to promptly repatriate the POWs it held, as required by law, for its delay of three months following Eritrea’s release of Ethiopian POWs in August 2002.183

Accordingly, talking about ‘captured POWs’ after almost two decades after the end of the war is legally unjustifiable, and a clear violation of the obligation under IHL to release and repatriate POWs without delay. The POWs continue to benefit from protections under IHL until their final release and repatriation.

D. War Crimes Allegations, Investigations and Prosecutions

International humanitarian law requires parties to an armed conflict to ensure respect and to conduct an effective investigation and punish serious violations thereof.184 The EECC has established that both sides were liable for serious violations of IHL regarding material destruction, killings, rape, ill-treatment and expulsions of protected persons during the war.185 To cite just one example, following Eritrea’s claim that Ethiopian troops committed numerous rapes of Eritrean civilian women, the Commission found Ethiopia liable for failure to take effective measures to prevent rape from occurring against innocent Eritrean civilian women.186 Though these acts may amount to war crimes, there have been no official reports regarding the measures taken to investigate and prosecute these serious violations. Moreover, as indicated in the preceding section, there are POWs who are not repatriated, and this unjustifiable delay to repatriate POWs is a serious violation of IHL.187

In addition, in the report of the UNSG, it was indicated that ‘on 25 June 2001, a group of 704 persons of Eritrean descent, mostly long-term residents of the Tigray region in Ethiopia, were sent to Eritrea without the assistance of ICRC. The latter withdrew from the process when it became clear that the manner in which these repatriations were carried out was not in accordance with international humanitarian law’.188

175 EECC, Partial Award, Prisoners of War – Eritrea’s Claim 17, §145.
176 Art 2(2), Algiers Agreement.
178 EECC, Partial Award, Prisoners of War – Eritrea’s Claim 17, paras 154–155.
179 Art 121, GC III.
183 EECC, Partial Award, Prisoners of War – Eritrea’s Claim 17, paras 156–158.
186 EECC, Partial Award, Central Front – Eritrea’s Claims 2, 4, 6, 7, 8 and 22, 28 April 2004, paras 80–81.
THE WAR REPORT: ARMED CONFLICTS IN 2018

2. THE ARMED CONFLICT BETWEEN GEORGIA AND RUSSIA IN ABKHAZIA: THE PREDOMINANCE OF IRRECONCILABLE POSITIONS

Grazvydas Jasutis

Classification of the Conflict

Georgia and the Russian Federation (RF) were involved in an international armed conflict (IAC) in 2018 by virtue of continued Russian occupation of territory in Georgia (Abkhazia and South Ossetia).

A. HISTORY OF THE CONFLICT

Georgia was engaged in an Abkhaz conflict in 1992–2008 with some respite. The Georgian regular Armed Forces and volunteers fought against the Abkhaz from the breakaway territory of Abkhazia and the Confederation of Mountain Peoples of the Caucasus in 1992–1993, which resulted in an Agreement on a Ceasefire and Separation of Forces signed in Moscow on 14 May 1994 (Moscow Agreement). The Moscow Agreement did not prevent further bloodshed and the conflict peaked again in 1998 and 2001, which drove a wedge further between Georgia and Abkhazia and complicated the process of reconciliation. In August 2008, RF forces along with Abkhaz security actors were embroiled in a conflict with Georgian armed forces, which turned the war into an IAC. In the aftermath of the conflict, over 200 civilian monitors were deployed to Georgia by EU Member States to contribute to the stabilization of the situation on the ground. They monitor compliance by all sides with the EU-brokered Six-Point Agreement of 12 August 2008, signed by both Georgia and the RF, and the Agreement on Implementing Measures of 8 September 2008. On 26 August 2008, Abkhazia was recognized as an independent country by the RF, followed by some Pacific and Latin American countries, with recent recognition declared by Syria. On 28 August 2008, the Parliament of Georgia passed a unanimous resolution declaring Abkhazia and South Ossetia to be territories occupied by the RF and the Russian peacekeepers an occupying force.

Although the conflict is far from a solution, the main actors on the ground remain committed to stability and conflict-related incidents are rare.

The Abkhaz are an ethnic group who live in the Caucasus region. Their language belongs to the Northwest Caucasian family of languages, and while some of them are Sunni Muslims, they belong to the Orthodox Christian Church. The Georgians speak a unique South Caucasian language and the majority belong to the Orthodox Christian Church. The Georgian historian Pavle Ingoroqva claimed that the ‘historical’ Abkhaz – the people to which authors used to refer as Abkhaz in the writings of previous centuries – were in reality Georgian tribes, while the contemporaneous Abkhaz descended from Adyghean tribes who had come from the North Caucasus to settle in Abkhazia in the 17th–18th centuries.

The Georgian-Abkhaz conflict stems from the turbulent period at the end of the First World War. On 25 May 1918, Georgian independence was declared, and in June of that year, an Abkhaz delegation went to Tbilisi to sign a treaty of union with Georgia. Abkhaz historians claim that the treaty was invalid because the delegation had not been empowered to sign it. Following this, on 17–22 June 1918, the Georgian Army with its commander, General Mazniashvili, was deployed to the whole seashore from Tuapse to Sochi to counter the Red Army threat. This aggravated the situation in Abkhazia as the military command of Mazniashvili ignored the local authorities and oppressed the local population, driving the first wedge between Georgia and Abkhazia. On 21 February 1921, the Parliament of Georgia adopted its constitution, which specified that Abkhazia (District of Sukhumi) was an integral part of Georgia that would nevertheless enjoy autonomy in the administration of its affairs.

However, after only a few days, on 25 February, Soviet rule was forcibly established in Georgia, and on 31 March 1921, the Soviet Socialist Republic (SSR) of Abkhazia was proclaimed. Both Soviet republics crafted a political union in December 1921, noting that foreign affairs would remain fully within the competence of the Georgian SSR.

In 1922, Georgia, Armenia and Azerbaijan formed the Federative Union of the Socialist Soviet Republic of Transcaucasia and Abkhazia entered the Federation as part of Georgia. In 1925, Georgia and Abkhazia adopted Soviet constitutions that again referred to political union: ‘The Abkhaz SSR, united on the basis of Union Treaty with the Georgian SSR, enters Trans-Caucasian Soviet Socialist Federative Republic through the Georgian SSR’ underlies the Constitution of the Abkhazian SSR. However, the term ‘autonomy’ in reference to Abkhazia was not used in official documents in the first Soviet decade (1921–1931). Abkhazia’s status was initially downgraded to autonomous republic within the Georgian SSR in 1931 when a resolution was passed on changing the Abkhazian Republic into the Abkhazian Autonomous SSR within the Georgian SSR; this proposal was con-
Georgian-Abkhaz relations in the Soviet period were tense due to the underlying political atmosphere and the anti-Abkhaz approach employed by the Soviet authorities. From 1933, Lavrenti Beria instituted an anti-Abkhaz policy that was maintained and strengthened until both his and Stalin’s deaths in 1953, including the abolition of the Abkhaz language, the introduction of the Georgian language and script, the forced importation of various nationalities and forced deportation of the Abkhaz intelligentsia. The Abkhaz population periodically requested the expansion of their rights and there was continuous low-level mistrust; however, the real schism between the Georgian and Abkhaz communities did not occur until 1989.

1. The Georgian-Abkhaz Schism in the Early 1990s

In 1988, Georgia adopted a programme with regard to the state language that stated that Georgian would be used for all official communication; this was incorporated into law. On 18 March 1989, the Popular Forum of Abkhazia, the Aidgylara, with the support of other Abkhaz groups from the village of Lykhny, gathered Abkhaz elders to sign a declaration demanding secession from Georgia and the upgrade of the region’s status to a republic. This led to protests and demonstrations organized by the pro-independence movement in Tbilisi in April, which were brutally dispersed by the Soviet Army. In the days following these events, the Soviet Georgian Ministry of Higher Education announced that it was opening a branch of Tbilisi University in Sukhumi, to be based in the Georgian sector of the existing Abkhazian State University. This resulted in a further series of ethnic clashes between Georgian and Abkhaz communities in Sukhumi on 15 July and Ochamchira on 16 July 1989.

The Abkhaz community continued its efforts to separate from Georgia. On 17 March 1991, Abkhazia participated in a Soviet referendum and voted in favour of remaining within the Soviet Union, while Georgia boycotted the referendum. In November 1991, the Third Congress of the Mountain Peoples of the Caucasus took place in Sukhumi and the participants adopted the Treaty for a Confederative Union of the Mountain Peoples of the Caucasus, the first article of which proclaims the new Confederation to be ‘the legitimate successor of the “Mountain Republic” created on 11 May 1918, of which Abkhazia was a part.’ Georgia declared its independence in April 1991 and was embroiled in a war with South Ossetia and later in a civil war between those who supported President Zviad Gamsakhurdia and his opponents.

In February 1992, the Parliament of Georgia voted to reinstate the constitution that the independent Georgian republic had adopted in 1921, which referred to Abkhazia as autonomous. In response, the Supreme Council of Abkhazia in Sukhumi voted on 23 July to reinstate the constitution that the Abkhazian SSR had adopted in 1925, which referred to Abkhazia as an equal member of the Georgian-Abkhaz union.

The first Georgian-Abkhaz conflict began in August 1992. There are two versions of why it started. According to the first, Georgia staged a military operation to ensure security of movement along the railroad connecting Russia with Georgia and Armenia (which passes through Abkhazia), the security of the main highways and the security of objects of strategic importance. The second version claims that Georgian national guards were sent to Abkhazia to release Georgian officials, including Deputy Prime Minister Alexander Kavsadze, who had been abducted by pro-Gamsakhurdia insurgents in western Georgia and were being held somewhere in Gali District. Nevertheless, Georgian Minister of Defence Tengiz Kitovani, who was commanding the operation, ignored clear instructions from President Eduard Shevardnadze and proceeded straight to Sukhumi to suppress the secessionist regime. After ferocious fighting, Georgian troops finally reached Sukhumi and the RF sponsored an initial ceasefire agreement, which was signed in Moscow on 3 September 1992. The parties agreed that Georgian territorial integrity would be preserved and the Georgian armed forces present in the conflict zone would not exceed the agreed level required for the protection of railway and strategic installations.

On 1 October 1992, Abkhaz forces, along with fighters from the Confederation of Mountain Peoples of the Caucasus military, were deployed in operations across Abkhazia and managed to regain control of Gagra, which ensured access to logistical and military support from North Caucasus. Throughout 1993, Abkhaz forces periodically attempted to regain control over Sukhumi, until on 27 July, a new ceasefire agreement was attempted. The agreement set out the non-use of force against each other in the conflict zone, the deployment of international observers and peacekeeping forces, the establishment of the trilateral Georgian-Abkhaz-Russian interim monitoring groups and the phased demilitarization of the conflict

200 Chervonnaya, Conflict in the Caucasus, p.121.
203 C. Francis, Conflict Resolution and Status, p. 72.
204 Ibid, p. 72.
205 Ibid, p. 74.
zone. On 24 August 1993, the United Nations Security Council (UNSC) decided to establish the UN Observer Mission in Georgia (UNOMIG), comprising up to 88 military observers, plus minimal civilian support staff, to verify compliance with the ceasefire agreement. Despite this, Abkhaz forces launched attacks and took control of Sukhumi on 27 September 1993, and in a few days controlled the whole of Abkhazia except Upper Kodori Gorge. Fierce fighting followed, with serious human rights violations committed by all sides, including civilians who cooperated with military forces.

According to the UN fact-finding mission report, grave human rights violations are reported to have taken place during each of the phases of the armed conflict, both during and in the aftermath of the attacks. Such violations are said to have included extrajudicial executions, torture, rape, looting, burning of houses and apartments as well as their unlawful occupation, often at gunpoint, and forced deportations. Each party to the conflict has also accused the other of carrying out ‘ethnic cleansing’ in the areas under its control. Civilians, including women, children and elderly persons, as well as combatants who were no longer actively participating in armed confrontations, were victims of violations of the right to life and physical integrity, the right to personal security and property rights.

The war resulted in significant casualties which, according to a Human Rights Watch report, included 4,000 Georgian individuals killed, 10,000 wounded and 1,000 reported missing. On the Abkhaz side, 4,040 were killed (2,220 combatants and 1,820 civilians), approximately 8,000 were wounded and 122 were marked as missing in action. The Office of the UN High Commissioner for Refugees has also been supervising the repatriation of some 200,000 displaced persons to Abkhazia since autumn 1994.

In the spring of 1994, Georgia and Abkhazia signed four documents that laid the groundwork for an Agreement on a Ceasefire and Separation of Forces. On 14 May 1994, the agreement was signed in Moscow. It established security zones (no armed forces or heavy military equipment) and restricted-weapons zones (no heavy military equipment). The parties agreed to the deployment of the peacekeeping force of the Commonwealth of Independent States (CIS). Under the supervision of representatives of the CIS peacekeeping force and UN observers, with the participation of representatives of the parties from the Kodori Valley, the troops of the Republic of Georgia would be withdrawn to their places of deployment beyond the frontiers of Abkhazia.

213 Ibid.


New violence sparked between Georgia and Abkhazia in Gali District in May 1998, where Georgian irregular forces (the White Legion and Forest Brothers) clashed with Abkhaz forces. On 25 May 1998, the Protocol on Ceasefire, Separation of Armed Formations and Guarantees on Inadmissibility of Forcible Activities were signed in Gagra. Both sides agreed to the ceasefire and, separately, Abkhazia committed itself to refraining from unlawful forcible acts against the peaceful population of the Gali region. The Georgian side undertook to take effective measures aimed at preventing the penetration of terrorist and subversive groups, armed formations and individuals into Abkhaz territory, activities that had had detrimental effects on the political processes in the region. In 1999, Abkhazia held a referendum and proclaimed independence, which profoundly affected attitudes towards the political settlement of the conflict.

Heavy fighting recurred in Abkhazia in October 2001, when the Chechen field commander Ruslan Gelayev, at the request of the Georgian authorities, attempted to advance into Abkhazia through Kodori Gorge. The operation failed, but it had several serious practical and political implications. Kodori became notorious again in 2006 for a police operation conducted by Georgian security forces. In 2004 and 2005, the Georgian Ministry of Defence took steps to abolish the three paramilitary groups (Monadire, Svaneti and Khevsureti) operating under the region’s control in Kodori Gorge. The Monadire leader, Emzar Kvitsiani (the former representative of the Georgian president in Kodori), defiantly announced that he would not disarm, and Tbilisi thus launched an operation to disarm the paramilitary organizations forcefully; Kvitsiani escaped capture, however. The UN acknowledged that the ‘new and tense situation’ had resulted, at least in part, from the Georgian special operation in the Upper Kodori Valley, and the UNSC urged the country to ensure that no troops unauthorized by the Moscow ceasefire agreement were present in that area.

3. The August 2008 War

The year 2008 was crucial for Georgian-Abkhaz relations. A declaration of independence in Kosovo affected the entire RF, prompting the development of a more intense relationship between Abkhazia and the RF. On 6 March 2008, the RF lifted the economic sanctions it had imposed on Abkhazia under the collective pressure
of the CIS in 1996 and, subsequently, the Russian president issued a decree authorizing the establishment of direct ties with Abkhazia and South Ossetia. Later, in April that year, a remotely piloted Georgian reconnaissance aircraft was destroyed by an air-to-air missile fired from a Russian fighter jet. Russia’s military denied any involvement in the episode. A UN report said the attack was ‘fundamentally inconsistent’ with Russia’s role as a peacekeeper and it criticized the Georgian Government, too, saying that the use of drones over Abkhazia violated the separation of forces agreement. The RF increased the number of peacekeepers in Abkhazia and a battalion of some 400 reportedly unarmed RF Railroad Troops was sent to Abkhazia to repair the railroad on 31 May without warning or the consent of the Georgian Government. The situation in Abkhazia became even more tense in July as a result of a deadly explosion in Gali, a clash between Georgian and Abkhaz forces in Kodori and the suspension of the tripartite meetings that had brought together the Georgians, the CIS peacekeeping force and UNOMIG.

The dramatic escalation of hostilities in South Ossetia on 7 and 8 August 2008 and the subsequent Georgian-Russian conflict profoundly affected the situation in the Georgian-Abkhaz zone of conflict. Following a UN report, on 8 August, the Abkhaz side began introducing heavy weapons into the restricted weapons zone in violation of the 1994 Moscow Agreement and a series of bombardments was carried out in the Upper Kodori Valley. On 12 August, the Abkhaz side launched a ground attack and established control over the Upper Kodori Valley. Meanwhile, on 9 August, Russian forces reportedly carried out aerial attacks in western Georgia, including on the Senaki military base and military targets in the port of Poti, as well as around the town of Zugdidi. On 10 and 11 August, the RF introduced large numbers of troops into the zone of conflict by road, rail and air. While the troops were initially deployed on the Gali side of the ceasefire line, they were later moved into the Zugdidi side of the zone of conflict and adjacent areas in Senaki and Poti. Russian navy ships were deployed along the coast. The RF called this introduction of troops a ‘peace enforcement operation’. The Government of Georgia characterized it as ‘aggression’.

4. The EU Six-Point Agreement and its Implications

The EU Six-Point Agreement was signed on 12 August 2008 by both Georgia and Russia alongside the Agreement on Implementing Measures on 8 September. The principles to which the parties have subscribed are:

1. Not to resort to force
2. To end hostilities definitively
3. To provide free access for humanitarian aid
4. Georgian military forces withdrawing to their usual bases
5. Russian military forces withdrawing to the lines held prior to the outbreak of hostilities; pending an international mechanism, Russian peacekeeping forces implementing additional security measures
6. The opening of international talks on the security and stability arrangements in Abkhazia and South Ossetia

Over 200 civilian monitors were sent by EU Member States to contribute to the stabilization of the situation on the ground following the August 2008 conflict through the EU Monitoring Mission in Georgia (EUMM) established in September. The CIS collective peacekeeping force was thus officially terminated on 15 October 2008, and in June 2009, the UNSC failed to extend the mandate of UNOMIG. On 1 October 2009, a UN team was established to support the UN Representative to the Geneva International Discussions. At a later stage, it was transformed into a Special Political Mission of the UN financed through its regular budget. It is also noteworthy that on 26 August, the RF recognized Abkhazia as an independent state. On 28 August 2008, the Parliament of Georgia passed a unanimous resolution declaring that its territories in Abkhazia and South Ossetia were being occupied by the RF, claiming that the Russian peacekeepers constituted an occupying force. The next day, the Government of Georgia declared the 1994 Moscow Agreement null and void.

Since then, Georgian-Abkhaz relations have reached a stalemate. The period 2008–2012 was marked by a series of murders targeting Abkhaz and RF security actors in Gali District, which made the security situation very tense and unpredictable. Since then, the security situation on the ground has been controlled to avoid conflict, with the exception of a few grave incidents such as the murder of Georgian citizen Giga Otkhozoria by an Abkhaz border guard in 2016. Georgia expressed serious concerns with regard to the decision of Abkhaz authorities to close two southernmost controlled crossing points at Nabakevi and Meore Otobaia in early March 2017, which limited its access to Abkhazia. Abkhazia participates in the Geneva International Discussions and is part of the Gali Incident Prevention and Response Mechanism (IPRM), which deals with incidents along the Adminis-
tutive Boundary Line (ABL). In the political domain, the ties between Russia and Abkhazia have been strengthened, culminating in the signing in November 2014 of a treaty declaring an ‘alliance and strategic partnership’, which discusses closer coordination in the areas of defence, foreign policy, customs and border control, law enforcement, education and social welfare. However, there is no consensus among either the Abkhaz elite or within Abkhaz society about the area’s future relationship with Russia, nor is a return to Georgia considered a viable option.

B. PARTIES TO THE CONFLICTS

1. Georgian Armed Forces

The number of personnel involved in the Georgian Armed Forces is about 37,000. The Georgian Armed Forces are made up of three armed branches – land forces, the navy and air forces. Land forces are deployed in three military districts: central (Sukhumi), eastern (Ochamchira) and western (Pitsunda). There are 2,200 active personnel, the Abkhazia Air Force is equipped with 5 L-39 jet trainers, 3 transport aircrafts and 6 helicopters. The Abkhazian Navy consists of 1 battalion (350 persons) and 15 motor boats.

2. Russian Armed Forces

According to a UN report, 9,000 troops and 350 units of armoured vehicles took part in the 2008 war on Abkhaz territory. The troops were not part of the CIS peacekeeping force and were therefore clearly acting outside the 1994 Moscow Agreement. The RF called this introduction of troops a ‘peace enforcement operation’.

On 17 February 2010, the Agreement Between the Russian Federation and the Republic of Abkhazia on an Integrated Russian Military Base on the Republic of Abkhazia’s Territory was signed in Moscow. The agreement’s provisions regulate the respective parties’ jurisdictions regarding the integrated Russian military base on Abkhaz territory. At the present time, Russia’s dominance of Abkhazia has become nearly total, with 4,000–5,000 Russian land, air and naval troops believed to be deployed in the region. There are also approximately 1,000 RF Federal Security Service border guards in Abkhazia.

On 21 November 2015, the Agreement between the Russian Federation and the Republic of Abkhazia on a Joint Group of Armed Forces of the Russian Federation and the Republic of Abkhazia was signed in Moscow. The agreement and the attached provisions set out the purpose of and the procedure for creating, deploying and using the Russian-Abkhazian Joint Group of Armed Forces.

3. Abkhaz Forces

The Abkhazian Armed Forces are made up of three armed branches – land forces, the navy and air forces. Land forces are deployed in three military districts: the

C. KEY DEVELOPMENTS IN 2018

The release of Georgian prisoner Giorgi Lukava, labeled a ‘war criminal’ by Sukhumi authorities, caused massive protests across Abkhazia in January 2018. The opposition condemned President Raul Khajimba for releasing a war criminal and called for his resignation. Both Georgian and Abkhaz participants have been engaged in the IPRM under the auspices of the UN. The case of the murder of Giga Otkhovoria remains high on the agenda and the EUMM reminds participants that justice was not served, underlining that impunity in such grave crimes remains unacceptable.

Abkhazia continues its cooperation with Russia and, in February 2018, the Abkhaz parliament ratified the agreement with Russia on medical services and assistance. Meanwhile, the Georgian Central Government reaffirmed the principled position of engaging in a direct dialogue with the ‘Abkhazians and Ossetians’, though no concrete steps have been undertaken to establish a platform for direct communication. Alternatively, in April the Georgian Government adopted a package of legislative amendments in the framework of its peace initiative, ‘A Step to a Better Future’, covering three main objectives: to ease and expand trade across dividing lines; to simplify education opportunities for the population living in Abkhazia and Tskhinvali region/South Ossetia and further ease access for the population of Abkhazia and Tskhinvali region/South Ossetia to the services and benefits created in the course of development and successful cooperation with partners, including in the process of European integration. The Abkhaz Ministry of Foreign Affairs regards this as another populist move by the Georgian side in order to impress Georgia’s western partners. Abkhaz-Georgian relations further deteriorated, particularly in June 2018 when the Government of Georgia approved the so-called Otkhovoria-Tatunashvili list, a decree authorizing its foreign affairs and justice ministries to work with foreign partners and international organizations on imposing visa restrictions for individuals included in the blacklist, and banning their

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235 UNSC, Report of the Secretary-General on the Situation in Abkhazia.


240 Ibid.


D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

The 2008 war negatively impacted Abkhazia and Georgian residents, who lived predominantly in Gali District and Kodori. The Organization for Security and Co-operation in Europe (OSCE) indicated that there were no reports of deaths from bombing or other combat operations and that few injuries or house destructions occurring in either area during the conflict or its aftermath were reported.245 The Upper Kodori Valley in northeast Abkhazia was taken over by Abkhazian forces during the military operation on 12 August 2008 and, as a consequence, 2,500 individuals, mainly from the Svan ethnic group, fled over the mountains into Georgia proper.246 Of these, only between 100 and 150 are reported to have returned.247 The Abkhaz Ministry of Foreign Affairs stated that there were no obstacles to return; however, the returnees had to understand that they would be returning to the ‘State of Abkhazia’.248 In practice, despite efforts undertaken by co-chairs in both Geneva International Discussions, hardly any progress has been made with regard to the return of these displaced persons.249 The situation has fundamentally still not changed. In fact, the Abkhaz authorities have introduced the multiple processes of borderization, fencing and passportization. The restriction of freedom of movement, security measures and irreconcilable positions have increased, creating further tensions in Georgian-Abkhaz relationships. Similarly, the Georgian Law on Occupied Territories imposes targeted restrictions on access, trade and communication in relation to Abkhazia, though the document envisages some flexibility in response to human rights and humanitarian needs.250

Following the OSCE report, ethnic Georgians in the Gali District were increasingly concerned not only about their security, but also about future prospects for preserving their identity, language and culture, as well as maintaining links with Tbilisi; in this regard, the question of passports and citizenship was one of the most troubling current issues for them.251 The Law on the Status of Foreign Citizens and the Law on the Procedures for Exit and Entry were adopted simultaneously in December 2015 in Abkhazia, affecting the residents of Gali and possibly slowly resulting in classifying Gali returnees as foreigners.252 Ethnic Georgians living in Gali are strongly advised to obtain Abkhaz passports or resident permits in order to benefit from Abkhaz services and cross the ABL without any hindrance. However, Abkhazia requires an official document issued by the Georgian Ministry of Justice proving that someone has renounced their Georgian citizenship in order to issue them with an Abkhaz passport.253 The lack of Abkhaz documents has had an impact on the Gali inhabitants’ property rights and those without Abkhaz passports have no possibility of making real-estate transactions, even in Gali.254 The majority of those residing in Abkhazia today, except most Georgian returnees to Gali, are simultaneously citizens of the RF.255 Russian citizenship formally entitles them to travel abroad; however, this has in practice been very complicated and has been heavily criticized by the Abkhaz authorities.256 Furthermore, the restrictions placed on ABL crossings continue to have a detrimental impact on access to education and commercial activities. A number of school children have been crossing into Gali on a daily basis, though the numbers have steadily decreased from some 128 in 2009–2010 to around 50 in 2014–2016 and 38 in 2016–2017.257 Currently, only 16 children are reported to be crossing, which is considerably less than in previous years.258 An average of 3,000 crossings per day are reported on the main bridge over the Inguri River, marking an increase that has presumably resulted from the closure of other points.259

Serious problems remain with regard to education in the mother tongue. The Georgian Central Government continued to object to the rules which oblige schools to use Russian as the language of instruction, allowing only for very limited access to the Georgian language.260 Georgian-language schools in the Gali and Tkvarcheli Districts formally shifted to Russian-language instruction in 1994; Georgian was taught as a foreign language or an elective subject.261

247 OSCE, ODIHR, Human Rights in the War-Affected Areas.
248 Ibid.
Detentions remain an additional key challenge in Abkhazia, and a significant concern. The Georgian authorities continue to resolutely protest against the so-called ‘borderization’ process and condemn it in strong terms, while Abkhaz authorities detain those who cross the ABL without proper documentation and penalize them for violating the state border.

3. THE ARMED CONFLICT BETWEEN UKRAINE AND RUSSIA IN CRIMEA: BETWEEN ANNEXATION AND REUNIFICATION?

Gražvydas Jasutis

Classification of the Conflict

Ukraine and the Russian Federation (RF) were involved in an international armed conflict in 2018 by virtue of the Russian occupation of territory in Ukraine (Crimea).

A. HISTORY OF THE CONFLICT

The case of Crimea has proven to be a thorny issue for the RF and Ukraine, re-surfacing after the political crisis and internal clashes in Kiev in 2013–2014. The process of annexation or reunification of the Autonomous Republic of Crimea and the city of Sevastopol (henceforth referred to as Crimea) lasted less than a month, from 20 February to 18 March 2014. There are two competing and completely contradictory approaches to classifying the situation in Crimea. The RF claims that Crimea declared independence from Ukraine in a referendum and expressed a wish to reunify with the RF. The RF recognized its independence and agreed to its request for reunification. Meanwhile, Ukraine accuses Russia of aggression against it and of illegally annexing Crimea.

1. Crimea: Historical Facts

Before it was called Crimea, the peninsula was known as ‘Taurica’ in the Greek and Roman empires, both of which incorporated the region at certain points. In the tenth century, Kievan Rus dominated the region; it lost control after 200 years and the Mongols settled in. The Tatars established the Crimean Khanate, a protectorate of the Ottoman Empire, and ruled the territory from mid-1400 to 1783. In the wake of the Russian-Ottoman war, Crimea became a part of the Russian Empire in 1783 and the territory underwent serious battles and mayhem.

Following the Russian Revolution and the ensuing turmoil in Russia, the Crimean National Republic was founded by the Tatars and existed from December 1917 to January 1918. The Bolsheviks immediately clashed with the Tatars and defeated them. In March–April 1918, the Taurida Soviet Socialist Republic (SSR) was proclaimed by the Bolsheviks. The troops of the Ukrainian National Republic gained military control over Crimea in April but were forced to hand it over to the German command. A puppet Crimean government was established with the support of the German Empire. From April 1919, Crimea again witnessed the invasion of the Bolsheviks and became a bone of contention between the parties in the Russian Civil War. This finally resulted in the establishment of the Crimean Autonomous Soviet Socialist Republic (ASSR) within the Russian SSR in October 1921. Its status was downgraded to autonomous district (oblast) in May 1945 after the forced deportation of the Crimean Tatars to Central Asia. In 1954, Crimea was transferred to the jurisdiction of the Ukrainian SSR.

After the collapse of the Soviet Union, Crimea remained in the hands of independent Ukraine and its status was upgraded to autonomous republic. In the early 1990s, some controversies and skirmishes occurred in Crimea, including the debate over the Russian Black Sea Fleet, a short-lived pro-Russian movement for independence and claims for the rights of Tatars. Internally, the return of Crimean Tatars, the revival of the pro-Russian movement and the dominance of both in the political landscape in Crimea made the situation difficult to control. Relations between Kiev and Simferopol became edgy in 1992. On 26 February, the Supreme Soviet of the Crimean ASSR, without the consent of the Ukrainian authorities, changed the official name of the land to the Republic of Crimea. On 5 May 1992, the Crimean parliament declared independence, and on 6 May 1992, it voted for a constitution establishing independence and providing dual citizenship with Russia for the Crimean population. It also passed a resolution calling for a referendum on independence from Ukraine. Though this was not accepted by Kiev, some concessions were made and Crimea was granted autonomy in economic relations. The demand for independence came up again with the election of ethnic Russian Yuri Meshkov as President of Crimea. On 13 May 1994, the Crimean Republic signed a framework agreement on economy and trade with the RF, which was not recognized by Kiev.

262 Ibid.
Externally, Ukraine was engaged in tense negotiations with the RF on the return of nuclear weapons to the RF and the partition of the Black Sea Fleet, which was based in Crimea. In January 1992, Vladimir Lukin, then Chairman of the Russian parliament's Committee on Foreign Affairs, suggested that in order to pressure Ukraine to give up its claim to the Black Sea Fleet, Russia should question the Ukrainian control over Crimea; in May 1992, the Russian parliament passed a resolution declaring the 1954 transfer of Crimea to Ukraine illegal.267

The conflict culminated on 9 July 1993, when the parliament of the RF issued a decree proclaiming the Ukrainian city of Sevastopol as belonging to the RF. At an urgent meeting of the United Nations Security Council (UNSC), the RF representative stated that this decree diverged from the policy of the President and the Government of the RF and underlined that his country remained dedicated to the principle of the inviolability of borders within the Commonwealth of Independent States.268 The status of the Black Sea Fleet was ultimately resolved through negotiations, which had started between President Yeltsin and the President Kravchuk of Ukraine in 1992. On 28 May 1997, the Partition Treaty (composed of three treaties) was signed between the RF and Ukraine, by which they split the Black Sea Fleet and decided that Russia would lease the ports in and around Sevastopol for 20 years. On 21 April 2010, the Kharkiv agreement was signed, extending the lease until 2042.269

Despite these agreements, a territorial dispute surfaced over the island of Tuzla in 2003. This began with the construction of a dyke by Russia to link the Russian Taman Peninsula with the Ukrainian island of Tuzla in the Kerch Strait on 20 October, when Moscow questioned Ukraine's sovereignty over the tiny island and demanded proof of the country's right to it.270 An agreement was reached after seven years in 2010, when President Yanukovych of Ukraine and President Dmitry Medvedev of the RF signed an agreement to build the Kerch Strait Bridge. In February 2014, the Russian First Deputy Prime Minister, Igor Shuvalov, ordered the Ministry of Transport to begin negotiations with Ukraine on starting construction work and commissioned Avtodor, the Russian Highways State Company, to conduct a feasibility study.271

The tension in Russian-Ukrainian relations was rekindled in the wake of the 2008 Georgian-Russian War. The then Ukrainian Minister of Foreign Affairs, Volodymyr Ogryzko, accused Russia's consulate on the Crimean peninsula of distributing Russian passports to the population there.272

2. The Events in 2014

The situation changed dramatically in the aftermath of the Euromaidan and political crisis in Ukraine from November 2013–February 2014. On 23 February, the President of the RF tasked the security agencies with starting working on the return of Crimea.273 Clashes between pro-Russian and pro-Ukrainian protesters broke out on 26 February 2014 in front of the parliament building in Simferopol. One day later, the Qurultay (Assembly) of Crimean Tatars voted in favour of the 'Implementation of the Right of Crimean Tatar People to Self-Determination in Their Historical Territory – Crimea' and decided to start political and legal procedures to restore the national-territorial autonomy of the Tatars in Crimea.274

On 27 February 2014, the Russian-speaking security actors without insignias entered the territory of Ukraine in Crimea. They took hold of strategic positions and later established control over the Crimean parliament and Council of Ministers and raised Russian flags, Crimean Berkut units and volunteers seized checkpoints and controlled the traffic.275

On 1 March 2014, the Russian parliament unanimously approved President Vladimir Putin’s request for authorization to use Russian armed forces in Ukraine (following a request on 1 March by Sergey Aksyonov, the pro-Russian Prime Minister of Ukraine’s Crimea region, for peacekeeping support).276 At the UNSC meeting, the Ukraine representative underlined that RF troops had already been in the country and their numbers were increasing, constituting an act of aggression, and the RF ambassador acknowledged that parliament had approved the use of force on Ukraine’s territory but not against Ukraine.277 In the following days, troops in what appeared to be Russian uniforms surrounded Ukrainian military bases and other installations; however, the President of the RF explained that they belonged to pro-Russian self-defence groups.278 This contradicts the report of the Interna...
On 16 March, the Crimeans participated in a referendum and voted in favour of joining the RF, which was declared invalid by the Ukrainian authorities. The then Chairperson-in-Office of the Organization for Security and Co-operation in Europe (OSCE), Didier Burkhalter, did not accept an invitation from Crimean’s authorities to send observers from the OSCE Office for Democratic Institutions and Human Rights, citing the unconstitutional nature of the referendum. The next day, the Crimean parliament declared independence and made an official application for Crimea to join the RF; on 18 March, President Vladimir Putin, Crimea’s State Council Chairman, Vladimir Konstantinov, Prime Minister Sergey Aksyonov and the Mayor of Sevastopol, Aleksei Chaliy, signed the treaty of accession to the RF at the Kremlin. According to the Kremlin, the decision to admit Crimea into Russia was based on the results of the all-Crimea referendum held on 16 March 2014, in which people supported the reunification of Crimea with Russia as a constituent member, the declaration of independence of the Autonomous Republic of Crimea and the city of Sevastopol, and the treaty between Russia and Crimea on the latter’s admission into the RF and the formation of new constituent members within it. Ukrainian military bases and ships were stormed by RF regular forces and Crimean security actors on 26 March, Russian Chief of General Staff, Valery Gerasimov, announced that the territory of Crimea was under full control of RF forces. On 27 March, the UN General Assembly approved a resolution describing the Moscow-backed referendum that led to Russia’s annexation of Crimea as illegal; however, this had almost no impact on the ground. Since then, Crimea has been under full control of the RF and started the process of reunification by extending Russian legislation and policies to Crimea. Crimea was fully integrated into Russia in July 2015, according to the statement of the RF Prime Minister, Dmitry Medvedev.

B. Parties to the Conflicts

1. Russian Armed Forces

The RF forces deployed in Crimea are part of the Southern Military District. The RF authorities admitted that special operations forces and intelligence were deployed in February and March but they did not disclose any figures. According to the analytics, an additional 22,000 soldiers of the Special Forces and the Southern Military District of Russia were deployed to engage in the operation of Crimea. The number of RF military forces in Crimea in 2018 is 2.7 times more than in 2013, based on the sources of the Ukrainian Ministry of Defence. Manpower has increased from 12,000 in 2013 to 32,000 in 2018; armoured vehicles from 92 to 680; artillery systems from 24 to 174 and aircraft from 22 to 113. The RF has deployed 40 tanks and 8 submarines that had not been there before. The Russian sources did not confirm this.

2. Ukrainian Armed Forces

The Ukrainian military personnel stationed in Crimea were not given orders to resist, and thus all 190 military installations and most weapons were surrendered to the RF forces. About 20,000 Ukrainian military personnel capitulated without a shot being fired. The Russian military also captured most of the Ukrainian Navy without resistance.

3. Self-Defence Crimean Forces

Alexandr Bochkarev, the then head of the pro-Russian self-defence forces of Crimea, claimed in March 2014 that there were 1,500 Crimeans in the self-defence forces (‘[this] isn’t much, but we don’t need more’). However, Ukrainian sources referred to the interview with Aksyonov, who said that the total number of members of self-defence units reached 11,000. The Crimean authorities aimed to legitimize them on 11 June 2014 by adopting a Law on the People’s Militia.


289 Bebler, ‘The Russian-Ukrainian Conflict Over Crimea’.


C. KEY DEVELOPMENTS IN 2018

From 2014–2017, the RF was repeatedly blamed for targeting the Crimean Tatar community, limited free expression, restricted peaceful assembly, the intimidation of those who have opposed Russia’s actions in Crimea and the unlawful activities of law enforcement agencies that have been involved in numerous incidents of human rights violations, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment and torture and at least one extrajudicial execution. 293

There have been no direct combat activities between the RF and Ukrainian forces in Crimea. A Ukrainian soldier and one member of of the Crimean self-defence unit were shot dead at an army base in Simferopol in March 2014 and a Russian soldier killed a Ukrainian naval officer in eastern Crimea in April 2014. 294 It is noteworthy that the Federal Security Service (FSB) of the RF announced that it had engaged in the shootout with alleged Ukrainian infiltrators in the town of Armyansk in northern Crimea in August 2016, which resulted in one FSB officer being killed and at least one Ukrainian being shot dead. 295 However, the operation of infiltration was firmly denied by the Ukrainian Ministry of Defence. 296

On 18 March, the Crimeans voted for the first time in the Russian presidential election and overwhelmingly supported Vladimir Putin. 297

In May 2018, President Putin opened Russia’s newly built bridge to the annexed Crimean peninsula, driving a truck across the span and drawing angry condemnation from Kiev, the European Union and the United States. 298 Most of the economic links with Ukraine are disrupted, which will ensure land transportation and logistics from Kiev, the European Union and the United States. 298

In military terms, it is noteworthy that in January 2018 Russia deployed a new division of S-400 surface-to-air missiles in Crimea. 299

In 2018, the international community continued to condemn the RF for the annexation of Crimea and serious human rights violations. 300 A 2018 UNESCO report highlights gross violations, particularly in the field of the protection of cultural heritage. 301

SELECTED NON-INTERNATIONAL ARMED CONFLICTS

1. BRAZIL: HIGH LEVEL OF ARMED GANG VIOLENCE BUT NOT A NON-INTERNATIONAL ARMED CONFLICT

Classification of the Conflict

The legal classification of the ongoing violence between drug gangs and police forces in the favelas (slums) of Rio de Janeiro, Brazil, is debatable. However, despite the intensity of the violence in the city, The War Report considers that the armed groups involved (gangs and militias) do not meet the requisite organization criteria. While it is important to note that there are other regions of Brazil that suffer

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS
from similar violence, it is mostly present in Rio de Janeiro, which is thus the geographical focus of this analysis.

A. HISTORY OF THE CONFLICT

1. Favela Violence: Gang Origins

Brazil’s gangs are deeply rooted in the history of Brazil itself, particularly in Rio de Janeiro. Through years of military dictatorship, political opposition groups emerged seeking representation and recognition. This phenomenon was particularly salient in the prison system of the 1960s, when the oldest and largest gang, the Red Command (CV), was born of the union of various inmates and political prisoners who banded together while in jail and discovered their shared origins in poverty and lack of political representation. At first, the CV’s profits went directly into supporting incarcerated members and their home communities with social services, although this would not always be the case. Since its conception, the CV has expanded to nearly 6,000 members in Rio, with offshoot gangs – Friends of Friends (ADA). Its arch rival is the Pure Third Command (TCP). Most importantly, the first gangs’ leftist, grassroots origins, while not always recognized as such, afforded them ironclad social ties with favela communities. Coming from the favelas and suffering from similar poverty, racism, police targeting and lack of political representation initially allowed gang members some degree of community protection and the possibility of expansion.

2. The Transition to Drugs

While the first gangs were born of sociopolitical motives, in recent decades funding has increasingly relied on drug trafficking, which has now become the defining feature of Brazil’s armed groups. Such operations are buoyed by ties with former police (militias) and police benefiting from the drug trade via exploitation or bribery. Brazilian gangs are also known to have ties with Colombia’s infamous yet largely demobilized Revolutionary Armed Forces of Colombia (FARC). In 2017, it was determined that the majority of the cocaine flowing out of Latin America at some point passed through Brazil, often in exchange for weapons. Despite the FARC’s reputation for trafficking, Brazil has in fact surpassed Colombia in its involvement with coca production.

3. Drug Trafficking and the Mão Dura Crackdown under Temer

As drug trafficking and community extortion proved to be lucrative for gang affiliates, numbers swelled. Favelas were the ideal territory for such groups because they are impassable for police cars and often even motorcycles, with little order or predictability. They are also amenable hosts due to their populations’ historical poverty and marginalization; favela residents are almost entirely people of colour, as are the gang members they host. This makes for easy targeting by police who, according to Human Rights Watch, allegedly not only kill more blacks than is proportionate to their population, but also shoot to kill more often than when their targets are white. Rio police have also been accused of taking corpses to hospitals in a farcical attempt to save them, thus shielding themselves from accusations of homicide, and planting weapons on dead black men, one case of which has led to prosecution.

According to the Brazilian Forum of Public Security, as of 2017 the homicide rate in Rio de Janeiro is 40 per 100,000 people, compared to Brazil’s overall homicide rate of 30.8 per 100,000. Of people aged under 29 killed each year in Brazil, according to Amnesty International, 77 percent are black; blacks make up half the population of Rio de Janeiro, but three-quarters of the victims of extrajudicial killings. If drug busts do not immediately lead to violence, police may take bribes.


316 Ibid.

317 Ibid.


322 HRW, “‘Good Cops Are Afraid’”.


305 Ibid.

306 Ibid.


308 Insight Crime, ‘Red Command’.


310 Insight Crime, ‘Red Command’.

or in some cases even work with gangs, thus themselves benefiting from the trafficking business.

Rio de Janeiro’s more than 1,000 favelas have always been notable for their high murder rates. However, after several years of improvement during Workers’ Party presidencies, the irregular assumption of power by conservative President Michel Temer in 2016 was accompanied by a spike in homicide rates. The number of murders surpassed 6,000, having remained below that threshold for several years, thus bringing homicide rates back to 2009 levels. This was at least partially caused by Temer’s signing an emergency decree handing Rio’s police over to the military, the first policy of its kind since the end of the last military dictatorship in 1985. Temer’s decision was in principle inspired by the 2016 Olympic Games hosted by Brazil, seen as an opportunity to lower street crime in the city through ‘social pacification’ missions. It instead resulted in increased police presence and a mão dura (heavy-handed) police and military crackdown on favela residents, whether or not they were criminals. In the first six months alone of the military intervention in 2018, there were a total of 3,479 murders, an increase of nearly 5 percent from the previous year.

Militias, or paramilitary groups, have also increased in numbers, having first emerged in the 1990s. They are composed of rent-seeking former or active police or penitentiary officers, who banded together to fill the opportunity gap between gang members and the over-zealous police and military. While initially acquiring some legitimacy in protecting communities from gangs, today’s militias are in practice identical to trafficking groups, exploiting locals in exchange for protection and some legitimacy in protecting communities from gangs, today’s militias are in practice identical to trafficking groups, exploiting locals in exchange for protection and some legitimacy in protecting communities from gangs.332 They have been effective against the militias because they provide communities with services and protection that the local authorities are unable to offer.333

4. The Intensity of Violence

The intensity of the violence in Rio de Janeiro can be measured by several factors such as homicide rate, material damage, impact on civilians and access to weapons. Given that Brazil is one of the countries with the highest homicide and murder rates, and Rio de Janeiro’s statistics are even worse, this challenge to the applicability international humanitarian law (IHL) is easily met. In 2017, in Rio alone, an estimated 1,115 people lost their lives as a direct result of ‘opposition to police intervention’. The intensity of violence may also be considered to have risen in 2018 due to the 35 percent increase in people killed by police in Rio state between February and July, compared to the same period in 2017. These statistics are unsurprising considering that the weapons used are not the small arms perhaps usually associated with armed drug gangs: in the past two years, a rising number of AK-47s and other military-grade arms have been confiscated or recorded as being imported from embattled Venezuela or the United States.336 These heavy-grade weapons total more than 4,000 for 15,000 gang members, and are often used in shootouts, firing thousands of rounds of ammunition at a time and indiscriminately killing their targets and passers-by.

Even if these events are sporadic, they leave residents in constant fear of leaving their homes, disrupt their daily lives and leave bullet holes to remind them of the state of violence in which they live. It is a normal occurrence for gangs to order even more killings.341
to drug wars.\textsuperscript{343} Considering that on average in Brazil, 175 people are killed per day, and the toll is much higher and less measurable in the favelas of Rio, the intensity of the situation, especially in terms of civilian protection, is undeniable.\textsuperscript{344} Civilian deaths are also difficult to measure, and thus more intense, because of the aforementioned tactics employed by officers to cover up the murder of those caught in police-gang (or militia) shootouts.

B. MAIN ACTORS

The major actors in Rio de Janeiro’s armed violence are the leaders and members of various gangs – the three primary ones being the CV, TCP and ADA – and the state police and military forces.\textsuperscript{344} A crucial third party is the officers and dissidents that have branched off into paramilitary militias, such as the League of Justice.\textsuperscript{345} It is difficult to ascertain these groups’ status as potential paramilitary or non-state armed groups because of their composition of both civilians and state forces personnel.\textsuperscript{346} Since 2016, the military and state police have operated within the same institutional framework dominated by the executive branch.\textsuperscript{347}

1. The Level of Organization of the Armed Actors

It is difficult to determine the organization and hierarchical composition of the armed gangs due to both the general lack of information and the broad range of such groups. Rather than there being just one or even two major groups, there are three (the CV, TCP and ADA), plus smaller offshoots and rogue factions. In general, the largest armed groups, such as the CV, have been described as ‘a network of independent actors’\textsuperscript{348} with warlords overseeing drug trafficking, several key officers upholding the business and the rest of the members acting as foot soldiers, patrolling favelas to exercise control and intimidation.\textsuperscript{349} There is no rigid command structure or ranking system. However, it is not uncommon for armed groups to hire former police or military officers as military advisors,\textsuperscript{350} thus meeting to some extent the level of organization required to coordinate military offences and defence. According to Rio’s public prosecutor, the militias are better organized than the drug gangs themselves,\textsuperscript{351} including in their intimidation tactics,\textsuperscript{352} although still relatively little is known about any hierarchical structure.

One could argue that the comandos exercise territorial control. While they do not have established headquarters, barracks or command offices, they effectively rule the favela(s) in which they work, living, working and conducting business from that zone.\textsuperscript{353} Different favelas and neighbourhoods are known by locals to be territorially controlled, though this is a de facto situation that evolves over time. As for an established set of rules guiding the groups’ actions, little information is available – perhaps a sign in and of itself of the groups’ lack of legitimacy. Any rules that guide militias’ activities are also unknown, though given the fact that 2 million people live under their control, they can also be said to exercise substantial territorial control, through military organization, over Rio residents.\textsuperscript{354}

Since the different comandos are numerous and often fight each other, it is unlikely that in the event of a peace agreement or negotiations with the state, they could speak with one voice and negotiate a certain political or social goal. Militias, meanwhile, are an entity that is hard to define: they work outside the law and yet law enforcement officials are often involved or complicit. At the same time, due to their organization, they cannot be considered merely haphazard gangs. Another problem is that the goal for both groups of actors can only be said to be financial gain and territorial control, since the days of the CV’s political stance are long gone. If the government were to launch peace negotiations, the other groups would have little to gain politically and would have too few commonalities to leverage any monetary or territorial demands. That said, nothing of the sort has been tried in Brazil, and the different drug gangs are often misunderstood to be one force, so only a negative result can be anticipated. Despite some doubts regarding the organization requirements of IHL, some scholars such as Sven Peterke suggest that even if all of the characteristics laid out by case law are not fulfilled,\textsuperscript{355} a ‘convincing combination of these indicators’ may be sufficient to trigger IHL, although such a claim cannot be made definitively at present.\textsuperscript{356}


\textsuperscript{343} Fórum Brasileiro de Segurança Pública, ‘Anuário Brasileiro De Segurança Pública 2018’.


\textsuperscript{346} Muggah et al, ‘Rio De Janeiro’s Militia on the Rise (Again)’.

\textsuperscript{347} Cowie, ‘Michel Temer Signs Security Decree’.

\textsuperscript{348} InSight Crime, ‘Red Command’.

\textsuperscript{349} Pramendorfer, ‘Favela Wars’, p 16.


\textsuperscript{351} Ibid.

\textsuperscript{352} Muggah et al, ‘Rio de Janeiro’s Militia on the Rise (Again)’.

\textsuperscript{353} Pramendorfer, ‘Favelas’, p 8.

\textsuperscript{354} Muggah et al, ‘Rio De Janeiro’s Militia on the Rise (Again)’.


C. KEY DEVELOPMENTS IN 2018

1. Activist’s Murder Highlights Overlooked Urban Violence

Perhaps the most important development in the political fabric of Brazil in the past year was the assassination in March 2018 of Rio activist Marielle Franco, which contributed not only to the political fervour in the country but also to the perception of war being waged against favela residents and activists. Franco was an outspoken, black, lesbian, feminist politician, known for being highly critical of police brutality and the extrajudicial killing of favela residents by militias and state forces. Her death, widely considered to be politically motivated due to her activism and the fact that the bullets were from a batch bought by the federal police, prompted protests around the world. The associated media coverage shed harsh light on the deterioration of the security situation in Brazil since 2016, yet no conclusion has been reached. In November 2018, eight months after Franco’s murder, the Brazilian Secretary of Public Security confirmed suspicions that the perpetrators were likely to be involved with militias and that the crime was politically motivated, but no arrests have been made.195

2. The Uptick in Violence and Army Powers Under Temer and Bolsonaro

Since Michel Temer assumed the presidency in 2016, the police forces have steadily settled into the hands of the army, taking over swathes of poor urban areas in Rio and exacerbating the violence. In November 2018, it was found that Brazil once again broke its own record for murders in 2017, up 3 percent from 2016.199 The security situation has intensified over the past three years, leading to the October 2018 election of President Jair Bolsonaro, on a campaign platform even more precarious than Temer’s. It is reasonable to assume that, given the new president’s open admiration for the brutal military dictatorship, torture, shoot-to-kill policing and racist comments,196 the violence in Rio will only worsen, taking more lives than ever and escalating in severity, building on the 30,000-strong military presence launched by Temer.999 Furthermore, legal recourse for extrajudicial police killings is sure to remain limited given that appeals to challenge the continued use of military tribunals have not yet been heard and could potentially be blocked again.199

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

The lack of investigations into the violence in Rio’s favelas is notable given the urban violence’s sheer intensity and longevity. According to the Igarapé Institute, a Brazilian think tank specializing in security issues, just 10 percent of homicides lead to arrest and only 4 percent result in charges.200 Importantly, even if charged with extrajudicial killing or other severe crimes, officers have in the past been able to return to the force201 or otherwise make a stable living by joining extrajudicial militias or collaborating with drug traffickers as advisors.202 In regard to the militias in Brazil, in 2018, 159 suspected members were arrested during a police raid, but no more than 20 were held due to supposed lack of evidence.203 Meanwhile, the police and military forces enjoy immunity from homicide convictions due to the fact that the Brazilian constitution has traditionally allowed military tribunals to carry out investigations of their own ranks (a legal vestige unaltered since the last dictatorship of the 1980s).204 In the 1990s, more attention was brought to the human rights concerns evoked by this judicial practice, inspiring a turn toward civilian tribunals, but appeals were left in limbo and military courts retained their oversight.205 President Temer’s expansion of military capacities in the ‘social pacification’ missions of Rio in 2016/2017 (extended through 2018), reversed any progress in this area since the enforcement of Law 13491, which gives military tribunals jurisdiction in cases of intentional homicide, including with intention to kill.206 Appeals regarding the constitutionality of this law are pending and have not yet been heard by the Federal Supreme Court.206 Civilians and victims of the violence are in the meantime left with little to no recourse.

The Brazilian judicial system is known to be inefficient in general, and the narrowing division between it and the other branches of government are worrying. Besides failing to properly regulate Rio police and prosecute most extrajudicial killings for decades, the judiciary has also neglected to fully investigate even a high-profile killing like that of Marielle Franco. Franco’s assassination was inescapably political in nature, yet there has been limited response from the government despite (or because of) potential evidentiary links between the branches of government, including state forces and militia allies. Meanwhile, violence in its...
political and military forms continues to intensify, leading Amnesty International to consider Franco’s assassination, at best, further evidence of the judicial branch’s inadequacy, or at worst, a police cover-up. The intimate political ties between police, army, militias and the executive and judiciary branches of government therefore both sustain impunity and complicate the potential of international law to aid Brazil’s recovery as a stable, democratic state. As put by the founder of Rio-based NGO, Fight for Peace, ‘This is not a war, but certainly not peace either.’

2. CENTRAL AFRICAN REPUBLIC: SECTARIAN AND INTERCOMMUNAL VIOLENCE CONTINUES

Giulia Marcucci

Classification of the Conflicts
Turmoil in the Central African Republic (CAR) has continued since the 2013 coup d’état. Attacks against civilians increased again in 2017, with armed groups controlling around 80 percent of the country and often competing for natural resources. Clashes occur between anti-Balaka groups, mostly Christian militias, and the ex Seleka, a predominantly Muslim umbrella group, as well as between and within factions of the Seleka coalition itself. Thus, the situation in the country remains a series of non-international armed conflicts (NIACs).

A. HISTORY OF THE CONFLICTS
The current violence in CAR, often referred to as the ‘forgotten’ conflict, has its most recent roots in 2013, when Muslim rebels from the Seleka umbrella group organized a coup d’état seizing power in a Christian-majority country.

From the end of 2012 to the beginning of 2013, the Seleka coalition, mainly composed of armed groups from northeastern CAR, including the Union of Democratic Forces for Unity (UFDR), Democratic Front of the Central African People (FDPC), the Patriotic Convention for the Country’s Salvation (CPSK) and the Convention of Patriots for Justice and Peace (CPJP), strongly opposed President François Bozizé for his failure to implement the disarmament, demobilization and reintegration programme in the northeast, investigate rebel and government crimes that had occurred since 2005, when Bozizé was officially elected, and for the general lack of governance in the region. After gaining control over some strategic towns in early 2013, it soon became clear that the Seleka’s purpose was to seize the capital, Bangui; nonetheless, neighbouring Chad along with the Economic Community of Central African States (ECCAS) managed to persuade the Seleka to negotiate with Bozizé’s government.

The negotiations led to the Libreville Agreement of January 2013, establishing a three-year power-sharing agreement. Furthermore, it provided that Bozizé would remain in power until 2016 but could not run for a third term.

However, the Libreville Agreement was mainly negotiated by regional heads of state while the leaders of the warring parties in CAR and the African Union (AU) itself played a marginal role. Thus, its actual implementation immediately proved to be a failure and the reforms required under the transition were never undertaken by Bozizé’s government. This generated frustration within the Seleka coalition, which decided to take action and, by 24 March 2013, gained control over Bangui and 15 of the country’s 16 provinces. As a result, Bozizé fled to Cameroon while the Seleka leader, Michel Djotodia, proclaimed himself President of CAR and suspended the constitution. ECCAS called for the creation of a Transitional National Council aimed at creating a new constitution and organizing elections within 18 months; Djotodia was eventually selected as interim President on 13 April 2013. In May, his government seemed to take a positive step by indicting Bozizé for crimes against humanity allegedly committed during his time in office; however, he was soon criticized at the international level as his Seleka fighters were also accused of serious crimes (i.e. the recruitment of child soldiers) allegedly committed while overthrowing Bozizé’s government, but were not brought to justice.

In September 2013, President Djotodia officially called for the dissolution of the Seleka coalition, stating that anyone acting in its name would be punished. Nonetheless, violence continued and, in response, many civilians decided to form primarily Christian self-defence militias known as the anti-Balaka (‘anti-machete’),

375 The disarmament, demobilization and reintegration programmes for former combatants formed part of the peace deals known as the Birao Peace Agreement and the Libreville Comprehensive Peace Agreement, respectively signed in 2007 and 2008, between the government of CAR and several rebel groups.
378 ICRtoP, ‘Crisis in the Central African Republic’.
loyal to former president Bozizé, as a means of counterattack.\(^{381}\) Interc communal clashes between former Seleka fighters and the anti-Balaka began in late September 2013 and quickly escalated. According to a Human Rights Watch report issued in December that year, the anti-Balaka specifically targeted Muslim communities and committed widespread abuses, particularly in Ouham province, north of Bangui.\(^{382}\) In retaliation, the ex-Seleka forces attacked Christian residents in the area.\(^{383}\) The fighting fueled longstanding rivalries between the Christian majority and the Muslim minority in CAR, thus adding a sectarian element to a conflict already characterized by lawlessness competition for natural resources among different armed groups.\(^{384}\)

On 10 January 2014, Djotodia resigned over criticism of his failure to stop the increasing violence and instability. A week later, Catherine Samba-Panza, former mayor of Bangui, took over as Interim President. A 2014 United Nations report found that Chadian citizens and peacekeepers were also responsible for mass killings in the country\(^{385}\) and for facilitating Seleka regroupings in northeastern CAR.\(^{386}\) In addition, Amnesty International also accused international peacekeepers of having failed to prevent the ethnic cleansing of Muslim civilians carried out in the western part of the country by anti-Balaka militias.\(^{387}\) In response, the interim government arrested 11 anti-Balaka officers and charged them with war crimes. By March 2014, more than 650,000 people had been internally displaced, with more than 232,000 in Bangui alone.\(^{388}\) Over 290,000 people had also fled to neighbouring Cameroon, Chad, the Democratic Republic of the Congo (DRC) and the Republic of Congo.\(^{389}\) In April 2014, the UN Security Council (UNSC), through Resolution 2149, established the UN Multidimensional Integrated Stabilization Mission in the CAR (MINUSCA) acting under Chapter VII of the UN Charter. This transformed the previous AU–led International Support Mission to the Central African Republic, known as MISCA, into a UN peacekeeping mission composed of 10,000 military personnel, which became operational on 15 September 2014. On 30 May 2014, the Government of CAR referred the situation in its territory since 1 August 2012 to the International Criminal Court (ICC).\(^{390}\)

In July 2014, ex-Seleka factions and anti-Balaka representatives signed a ceasefire agreement in Brazzaville leading, by the end of the year, to a de facto territorial partition of CAR with the Seleka controlling the north and anti-Balaka militias the south. Accordingly, hostilities slowly decreased but government control outside of the capital, Bangui, was very limited. In August, in the wake of this deal, the Muslim politician Mahamat Kamoun was appointed the first Muslim prime minister of CAR by President Samba-Panza; his appointment, however, was rejected by the Seleka group itself as he was not a Seleka member.\(^{391}\) Ex-Seleka fighters formed new militias, often fighting each other, and on 14 December 2015 the rebel leader Noureddine Adam declared the Autonomous Republic of Logone,\(^{392}\) which was immediately denounced by CAR’s interim government. General elections were held in December 2015 and former prime minister Faustin-Archange Touadéra was elected President in February 2016. The elections marked the return to constitutional order after two years of transitional government, and the newly appointed government immediately emphasized the importance of the disarmament, demobilization, reintegration and repatriation, and the security sector reform processes as well as the need to set up the Special Criminal Court (SCC).\(^{393}\) However, the appointment also led to discontent within the Muslim community and among armed groups because of their insufficient representation in the institutions; the security situation in Bangui deteriorated significantly from June 2016 onwards.\(^{394}\)

At the end of 2016, tensions erupted in Bambari and the surrounding region of Ouaka within the Seleka group, divided into two main branches: on one side, the Ali Darassa Union for Peace in Central Africa (UPC)\(^{395}\) and, on the other, a coalition of Adam’s Popular Front for the Rebirth of Central Africa (FPRC)\(^{396}\) and Ali Katim’s Central African Patriotic Movement (MPC), aimed at defeating the UPC in order to establish the capital of their future northeastern CAR state in Bambari.\(^{397}\) By the beginning of 2017, violence again rose to the levels of the 2013 crisis. MINUSCA reinforced its troops to prevent the FPRC taking the city and, in February 2017,

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383 Ibid.
389 Ibid.
394 Ibid.
395 Mainly composed of Muslims from the Fulani ethnic group of Bambari.
396 Mainly composed of Muslims from the Gula and Runga ethnic communities.
the FPRC’s Chief of Staff, Joseph Zoundevo, was killed by the Blue Helmets. At the same time, MINUSCA negotiated the UPC leader Ali Darassa’s removal from Bambari so as to create an ‘armed group-free zone’ in CAR’s second largest city. The UPC departure meant that MINUSCA was no longer obliged to protect the Muslim community against the anti-Balaka forces of Gaëtan Boade; however, it also caused the fighting to spread from urban to rural areas. Additionally, MINUSCA relied on Ugandan and American special forces deployed in the country to eliminate the Lord’s Resistance Army in order to keep the peace in the southeast, but their mission ended in April 2017 after five years of fighting.

By the second half of 2017, the fighting shifted to the southeast where the UPC reorganized and clashed with the FPRC as well as anti-Balaka groups. On 19 June 2017, an ‘immediate ceasefire’ mediated by the Roman Catholic peace group Sant’Egidio was signed in Rome between the CAR Government and 14 armed groups. Under the agreement, armed groups were to be given representation in the political arena in exchange for an end to attacks. A day after its signing, however, around 100 people were killed in fighting involving mainly an anti-Balaka militia and the FPRC in the major town of Bria. A pattern of reprisal killings targeting ethnic Muslim Fulani on one side and Christians on the other became evident; thus, the UN stated that ‘the early warning signs of genocide’ were present. In October 2017, another ceasefire was signed between the UPC, the FPRC and anti-Balaka groups.

In November 2017, the leader of the Christian Revolution and Justice (RF), Clément Bélanga, was killed by members of the National Movement for the Liberation of the African Republic (MNLC), allegedly backed by Fulani fighters from Chad. Accordingly, tensions between the two groups erupted in northwestern CAR, around Paoua. Meanwhile, the UPC and the FPRC keep battling for control in the Ouaka and Haut-Kotto regions. Finally, most armed groups including the anti-Balaka and the FPRC have been boycotting president Touadéra’s disarmament efforts.

B. PARTIES TO THE CONFLICTS

Within the current context of lawlessness characterizing the violence among different armed groups in the country, rebuilding a mixed army – Central African Armed Forces (FACA) – representing the diversity of CAR’s ethnic groups, is among President Touadéra’s most urgent tasks. As the army still has limited power and control outside of the capital, Bangui, it is not considered to be a party to the current conflict in the following analysis.

1. MINUSCA

The increasing involvement of MINUSCA in joint operations with the FACA in order to dismantle militia bases in Bangui led, in April 2018, to some direct fire confrontation between the UN mission and armed groups in the PK5 neighbourhood. One could argue that the confrontation reached the intensity threshold required for MINUSCA to be considered a party to the conflict with PK5 groups. This nevertheless remains controversial.

2. Non-State Parties

Currently, a wide array of armed groups characterized by different degrees of organization control most of the country. The following list attempts to identify the most important and active ones: among these, some (i.e. the Coalition, the UPC and the FACA) seem to reach the organizational threshold required for the application of international humanitarian law of NIAs, while the same claim for the others is not unequivocal.

a. The Coalition

The Coalition formed in September 2016 to strengthen the negotiating power of its members, expand the de facto partition of the country and allow for the exploitation of its resources to benefit its leaders. It has systematically targeted the UPC, which refused to join it, as well as the Puhl/Fulani communities accused of being foreigners. The Coalition is composed of various armed groups, including ex-Seleka factions (i.e. the FPRC, Assembly for the Renaissance of Central Africa (RPRC) and the MFC) and an anti-Balaka group (anti-Balaka – Mokom wing) associated with former president Bozizé:

- **Popular Front for the Rebirth of Central Africa (FPRC)**

The FPRC was created in August 2014 from the previous Seleka coalition and Nourredine Adam and Michel Djotodia, the previous Seleka leader and

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404 Kleinfeld, “‘People Are Dying Every Day’”.


Assembly for the Renaissance of Central Africa (RPRC)
The RPRC formed in November 2014 having been previously affiliated with the FPRC. One of the MPC leaders, Mahamat al-Khatim, has been the Coalition’s Chief of Staff since May 2017. Additionally, since 2016 the MPC has also had an alliance with RJ, mainly based on sharing economic revenue in areas they both control. They share the same political agenda as the Coalition, which they are members of, and also seek to ensure the inclusion of CAR citizens with Chadian origin in the political system.

Anti-Balaka – Mokom wing (associated with Bozizé)
The Anti-Balaka – Mokom wing formed in 2015 and is mainly composed of previous members of Bozizé’s presidential guard as well as army officers under his regime and in self-defence groups. Its main leaders are François Bozizé and Maxime Mokom and its particular aim is to bringing Bozizé back to power. It is part of the Coalition and, since January 2015, the Mokom wing has also formed an alliance, the so-called ‘Alliance of the Nairobists’, with the FPRC so as to increase their leverage against the central government and the international community.

b. Movement of Central African Liberators for Justice (MLCJ)
The MLCJ dates back to 2008, when it splintered from the UFDR, and was then part of the Seleka coalition in 2012 and 2013. Its leaders support the FPRC’s agenda and, according to some, the MLCJ is unofficially part of the Coalition.

c. Union for Peace in Central Africa (UPC)
The UPC was formed in October 2014 by Ali Darassa and is mainly composed of Muslims from the Fulani ethnic group of Bambari. In 2016, it was the strongest armed group in CAR, thus creating tensions with other ex-Seleka factions. It then became the main target of the Coalition’s attacks and, in March 2017, was forced to leave its stronghold in Bambari. It now occupies the Alindao area, the southeast part of the country, and remains strong thanks to its military command and access to arms from the region, particularly Sudan and the Democratic Republic of the Congo. The leaders of the UPC declare that their purpose is not to overthrow the central government but rather to maintain and expand their territorial control as well as be integrated within the government and the national armed forces.

d. Return, Reclamation, Rehabilitation (3R)
3R was formed towards the end of 2015 by General Sidiki Abass with the initial purpose of protecting the minority Muslim Peuhl populations from attacks by Christian anti-Balaka militias. It is made up of mostly Muslim cattle herders and has no known links with Seleka rebels. 3R also claims to fight against RJ combatants threatening the Fulani/Peuhl communities who live in southwest CAR. However, it seems to be a Cameroonian or Central African group whose real purpose is to maintain the de facto partition of the country so as to keep benefiting from its resources through taxation and kidnapping.

e. Revolution and Justice (RJ)
RJ was created in 2015 with other self-defence groups located in northwestern CAR, mostly by members of the presidential guard of former president Patassé. It has built its power on a system of taxation and de facto partition of the territories under its control. In such territories, RJ cohabitates with the MPC.

f. National Movement for the Liberation of the Central African Republic (MNLC)
The MNLC was founded in October 2017 under the command of Mahamat Bahar, a former member and co-founder of the FPRC and MPC, and is allegedly backed by Fulani fighters from Chad. It divided the territory in the northwest with RJ, but tensions erupted after the killing of RJ leader Clément Bélanga in November 2017.

g. Muslim Self-Defence Groups in Bangui
These groups emerged in December 2013 in Bangui’s Muslim neighbourhood PK5 (also known as KM5) to protect the Muslim community from anti-Balaka attacks. In 2015, ex-Seleka leaders took control of the PK5 area and Muslim self-defence groups were used for political gain. In August 2016, after the departure of the FPRC leaders from PK5, four self-defence groups remained active but became less powerful. In April 2018, they were involved in violent fire confrontations with MINUSCA.

h. Anti-Balaka Local Groups
Such groups were initially created around 1980–1990 in northern CAR and have joined the anti-Balaka movement since 2013 to counterattack the Seleka. They do not have a specific political agenda, nor specific military training.

i. National Coordination of the Ex-Anti-Balaka
The National Coordination of the Ex-Anti-Balaka emerged in 2014 to protect the non-Muslim community from the threat of ex-Seleka factions. Thus, it refuses to

411 Ibid.
412 ‘Centrafrique: au moins 25,000 nouveaux déplacés dans le nord-ouest’. 
disarm as long as the Seleka groups remain armed. It is led by Patrice-Édouard Ngaïssona, whose candidacy was rejected by the transitional government.

### j. Democratic Front of the Central African People (FDPC)

The FDPC first emerged in 2003 with the main purpose of overthrowing Bozizé’s regime, then briefly joined the Seleka coalition in 2013. Its military stronghold is in western CAR, near the border with Cameroon. Currently, it does not have a specific political agenda.

#### C. Key Developments in 2018

At the beginning of 2018, around 60,000 people fled northern CAR ending up in the town of Paoua to escape clashes between RJ under the command of Armel Ningtouloum Sayo and the MNLC under the command of Mahamat Bahar, thus provoking a humanitarian crisis in the sub-prefecture of Paoua. According to MINUSCA’s investigations, members of RJ have intentionally killed civilians, specifically targeting the Muslim and Peuhl communities. The MNLC, on the other hand, was believed to be responsible for the destruction of several villages north of Paoua and the resulting displacement of populations in such areas. Accordingly, MINUSCA conducted an operation to oust the armed groups around Paoua in order to establish a secure area and enable the return of displaced populations. Furthermore, in January 2018 the UNSC extended the CAR arms embargo against non-state actors for another year, threatening further sanctions. In March 2018, a deadly confrontation between the anti-Balaka and elements of the UPC occurred in the village of Tagbara, located 70 km from Bambari, left an unspecified number of people dead and resulted in several injuries and significant displacement of the civilian population.

During the night of 7–8 April 2018, following continued violence and abuses against civilians perpetrated by self-defence groups controlling the predominant- ly Muslim neighbourhood of PK5 in Bangui, MINUSCA and the FACA conducted a joint operation aimed at dismantling the militia bases in the area. This quickly turned into a violent fire confrontation between the UN stabilization mission and the armed groups, resulting in at least 18 people dead, among whom was one peacekeeper, and 46 wounded. On 11 April, protestors placed the bodies of 17 people who died during the fire confrontation in front of the UN headquarters in Bangui, claiming they were civilians killed by UN peacekeepers; a UN spokesman denied the accusations, arguing that they were armed criminals who had been targeting peacekeepers and government forces. On 1 May 2018, at least 15 people, including a priest, were killed and 99 were injured in an attack directed against the Notre-Dame de Fatima church in Bangui, near the PK5 area. According to a MINUSCA spokesperson, violence renewed after a suspected member of a PK5 rebel group was arrested. Furthermore, attacks against aid workers are drastically increasing. According to the UN Office for the Coordination of Humanitarian Affairs, from April to June 2018, 118 incidents affected humanitarian workers (including armed robberies, murder and kidnapping), compared with 63 in the first quarter of the year.

On 15 November 2018, the UPC, together with large numbers of armed Muslim civilians, carried out an attack on an internally displaced people’s camp in the town of Alindao in the Basse-Kotto region. According to a growing perception within the Muslim community, this camp was used by anti-Balaka fighters as a refuge. Between 70 and 100 camp residents including women, children, older people and people with disabilities have been killed and the UN peacekeepers mandated to protect civilian lives on the site have been harshly criticized for their failure to contain the violence.

#### D. War Crimes Allegations, Investigations and Prosecutions

CAR ratified the Rome Statute on 3 October 2001 and has twice referred the situation in its territory to the ICC.

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414 Ibid.

415 Ibid.

416 In December 2013, the UN Security Council unanimously adopted Resolution 2127 imposing an arms embargo on non-state actors in CAR, which has since been extended annually. It bans all supplies of arms and related material to the country except to its security forces, if previously approved by the relevant UNSC sanctions committee. See Stockholm International Peace Research Institute, ‘UN Arms Embargo on the Central African Republic’, https://www.sipri.org/databases/embargoes/un_arms_embargoes/Central-African-Republic (last accessed 9 August 2018)


425 Ibid.
The first ICC investigation in CAR (CAR I)426 focused on alleged war crimes and crimes against humanity committed within the context of a NIAC between the government and rebel forces since 1 July 2002, with a peak of violence in 2002 and 2003. It has produced one main case against Jean-Pierre Bemba Gombo,427 President and Commander-in-Chief of the Movement for the Liberation of Congo, also operating in CAR and allied with the then president, Ange-Félix Patassé, but he was acquitted on 8 June 2018 by a majority decision of the ICC Appeals Chamber, which reversed Trial Chamber III’s decision of 21 March 2016.428

The second ICC investigation in CAR (CAR II)429 was opened in September 2014 and currently focuses on war crimes (i.e. murder, rape, pillaging, attacks against humanitarian missions and the use of child soldiers under 15) and crimes against humanity (i.e. murder, rape, forced displacement and persecution) allegedly committed by both the Muslim Seleka coalition and Christian anti-Balaka groups in the context of renewed violence since 1 August 2012. The only case opened so far is against Alfred Yekatom, alleged commander of a group of 3,000 members which operated within the anti-Balaka movement.430 Furthermore, on 12 December 2018, Patrice-Edouard Ngaïssona, leader of the National Coordination of the Ex-Anti-Balaka, was arrested by the French authorities pursuant to an ICC arrest warrant.431

On 3 June 2015, the then interim President of CAR, Catherine Samba-Panza, promulgated organic law 15/003 establishing the SCC, a hybrid tribunal integrated into the Central African justice system.432 The SCC is authorized to investigate, prosecute and try serious human rights and humanitarian law violations (i.e. the crime of genocide, crimes against humanity and war crimes) allegedly committed in CAR since 1 January 2003. It officially launched its investigations on 22 October 2018.433

3. DEMOCRATIC REPUBLIC OF THE CONGO: CONFLICT IN THE EASTERN REGIONS

Giulia Marcucci

Classification of the Conflict

Violence in the Democratic Republic of the Congo (DRC) involving the Armed Forces of DRC (FARDC), supported by the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), and a wide array of rebel groups has escalated in the last two years, especially in the eastern regions (Ituri and North and South Kivu provinces). Thus, the situation in DRC remains a series of non-international armed conflicts (NIACs).

A. HISTORY OF THE CONFLICT434

The current violence in DRC, qualified as one of the world’s worst active humanitarian crises, has its origins in the massive refugee crisis that resulted from the 1994 genocide in Rwanda.435 After Rwanda’s genocidal regime was overthrown in June 1994, more than 2 million Hutus fled to neighbouring DRC fearing reprisals by the newly established Tutsi government led by Paul Kagame. They allied themselves with Mobutu Sese Seko, military dictator and President of DRC since 1965, and began to attack the Tutsi population who had been living in the country for generations.436 In response, Rwanda’s Tutsi government started to back Tutsi militias led by Laurent Kabila, thus marking the beginning of the so-called First Congo War (1996–1997). Kabila gained support from neighbouring countries such as Uganda, Rwanda and Burundi, which merged into the Alliance of Democratic Forces for the Liberation of Congo-Zaïre (ADFL), allowing him to lead a full-scale rebellion against President Mobutu. In December 1996, he began a slow movement westward, taking control of border towns and mines. By mid-1997, the ADFL marched on Kinshasa, overthrew Mobutu’s government and installed Kabila as President.

However, Kabila immediately faced substantial obstacles to governing the country. He failed to expel the Hutu militia and his foreign allies in the ADFL proved to be unwilling to leave the country when asked. By 1998, his allies supported new rebellions, this time with the aim of ousting him: Rwanda backed the Rally for Congolese Democracy (RCD) while the Movement for the Liberation of Congo (MLC) was backed by the Government of Uganda. Kabila, on the other hand, man-

427 See ICC, The Prosecutor v Jean-Pierre Bemba Gombo, ICC-01/05-01/08.
429 See ICC, ‘Central African Republic II’.
aged to obtain support from other countries, i.e. Angola, Namibia and Zimbabwe and, accordingly, for the following five years a war involving all six countries was fought on Congolese land, the so-called Second Congo War (1998–2003). In addition, other foreign armies and at least 16 armed groups took part in the conflict.

The conflict was thus categorized as a combination of national conflicts (i.e. the M23 against Kabila’s government and MLC against Kabila’s government) and international conflicts (i.e. the conflict between Uganda and Rwanda on Congolese territory as well as the clashes between the Rwandan and Ugandan armies on one side and the Congolese army on the other).

In July 1999, the six main African countries involved in the conflict signed a ceasefire accord in Lusaka, which was then also signed by the MLC and RCD rebel groups. By 2000, the UN authorized a force of 6,537 troops, known by the French acronym MONUC, to monitor the ceasefire, nonetheless, fighting continued between rebels and government forces as well as between Rwandan and Ugandan forces. Furthermore, in January 2001, Kabila was shot dead by a bodyguard and his son, Joseph Kabila, was sworn in as President to replace him. The new president and the Rwandan President Kagame met in Washington and agreed, along with Uganda and the rebels, to a UN pullout plan. In April of the same year, a UN panel of experts conducted an investigation concluding that the warring parties, i.e. Rwanda, Uganda and Zimbabwe, were deliberately prolonging the conflict in the country in order to exploit its resources (diamonds, cobalt, coltan and gold) and recommended that the UN Security Council (UNSC) impose sanctions.

In 2002, under the auspices of South Africa, a series of peace talks were held in the country from April to December. In April, the DRC Government signed a power-sharing deal with Ugandan-backed rebels, according to which the MLC leader was to be the premier. Rwanda and Congo agreed to sign a peace deal as well. Finally, in December a global and all-inclusive agreement was signed between the DRC Government and the main rebel groups. This agreement marked the formal end of the Second Congo War and put in place a plan for transitional governance with the purpose of reuniting the country, disarming and integrating the warring parties and holding democratic elections within two years.

However, the transitional government formed by President Kabila to lead until the upcoming elections, had to face continuous instability: the former warring parties refused to give up their power and elections had to be postponed. Three main areas of conflict remained between government forces and rebel groups: North and South Kivu, Ituri and Northern Katanga. The DRC Government decided to refer the situation in the eastern part of the country (the Ituri region and North and South Kivu provinces) to the International Criminal Court (ICC) in April 2004.

Moreover, in December 2005, the International Court of Justice ruled that DRC’s sovereignty had been violated by Uganda during the Second Congo War and, accordingly, the latter had to compensate the Kinshasa government. The first free elections in four decades were held in July 2006 but there was no clear winner in the presidential vote between Kabila and the opposition candidate, Jean-Pierre Bemba. After the second round held in October of the same year, Kabila was declared the winner with the general approval of international monitors.

In January 2008, the DRC Government and the rebel militias signed a peace deal with a view to ending years of violence in the east but renewed waves of conflict kept destabilizing the wider Great Lakes region. Therefore, in July 2010, the UNSC, through Resolution 1925, re-established the peacekeeping operation as MONUSCO, adding ‘stabilization’ to its previous mandate so as to reflect the new phase reached in the country. In March 2013, the UNSC created, through Resolution 2098, a specialized Force Intervention Brigade (FIB) with the mandate of neutralizing armed groups and contributing to reducing their threat to state authority and civilian security in eastern DRC. Indeed, the M23, a rebel group composed of ethnic Tutsis and allegedly backed by the Rwandan Government, was fighting the Congolese army and, in November 2012, successfully took the major city of Goma.

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438 Ibid.

439 Ibid.


448 UNSC Res 2098, 28 March 2013.
located in North Kivu province, forcing civilians to flee. Only a strong offensive conducted by the Congolese army, significantly supported by the FIB, caused the M23 rebels to ultimately surrender and a peace deal was signed in December 2013. Other rebel groups such as the Democratic Forces for the Liberation of Rwanda (FDLR) nonetheless took the opportunity to regroup and strengthen their power.

Recent violence was mainly linked to the country’s worsening political crisis and turmoil. Since the 2005 constitutional referendum, the Congolese Constitution limits the presidential term to a maximum of two consecutive periods of five years in office. In December 2016, Kabila was approaching the end of his second and final five-year term; however, he refused to step down and showed determination to postpone the organization of democratic elections. Accordingly, a series of negotiations between Kabila’s ruling coalition and the opposition took place under the aegis of the influential Catholic Church and the Saint Sylvester Agreement, envisaging a political transition with presidential elections to be held by the end of 2017, was signed on 31 December 2016. The compromise also called for the implementation of ‘confidence building measures’ such as the release of political prisoners, the return of political leaders living in exile, a more open access to media and the lifting of the ban on peaceful political protests and meetings. In November 2017, however, the national electoral commission announced a new calendar, scheduling elections for 23 December 2018 and thus extending Kabila’s rule for at least another year. The growing frustration of this political impasse led several armed groups to ally their forces, with the overarching goal of ousting Kabila.

B. PARTIES TO THE CONFLICT

Given the continuous proliferation of different armed groups in eastern DRC (most of which do not meet the level of organization required for the application of international humanitarian law of NIACs), determining the parties to the conflict is not straightforward. Around 120 armed groups have been counted in North and South Kivu provinces alone. The following list attempts to identify the most prominent.

1. Armed Forces of the Democratic Republic of Congo (FARDC)

The FARDC is the state organization responsible for defending DRC, and it is currently estimated to have 144,625 active military personnel. It was rebuilt as part of the peace process following the end of the Second Congo War in July 2003 through a process called ‘brassage’ (‘mixing up’) in which soldiers from formerly warring rebel groups are placed together in order to enhance integration. However, there have been many investigations and reports on human rights abuses, especially sexual violence, perpetrated by FARDC recruits.


MONUSCO was established by UNSC Resolution 1925 on 1 July 2010, taking over from the earlier UN peacekeeping operation known as MONUC. The new mission was authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence, and to support the DRC Government in its stabilization and peace-consolidation efforts. Future re-configurations of the mission would be determined according to the evolution of the situation on the ground. This mandate was further detailed by UNSC Resolution 2053. As continuous conflict in eastern DRC kept destabilizing the country and the wider Great Lakes region, on 28 March 2013 the UNSC decided to create, through resolution 2008, a specialized ‘Force Intervention Brigade’ (FIB), operating under direct command of the MONUSCO Force Commander with the mandate of neutralizing armed groups and reducing their threat to state authority and civilian security. Thus, the FIB has provided military support to the FARDC against offensives conducted by several armed groups; this active involvement in combat activity led to MONUSCO’s qualification as a party to the conflict. It also represented a radical change in UN peace efforts: a shift away from traditional peacekeeping towards active peace enforcement and even beyond.

3. Ugandan Allied Democratic Forces–Nalu (ADF–Nalu)

The ADF originally emerged as an armed group in opposition to the Ugandan Government. After the union with the National Army for the Liberation of Uganda (NALU) under the leadership of Jamil Mukulu, it transformed into an Islamist movement mainly based in DRC. Its main military camps are located in Beni ter-
4. Democratic Forces for the Liberation of Rwanda (FDLR)\textsuperscript{459}

The FDLR was formed in 2000 through an amalgamation of Hutu groups, including the former Army for the Liberation of Rwanda (ALIR), with the original purpose of casting aside their association with the Rwandan genocide. The FDLR is the political wing of the organization, while the armed wing is the Abacunguzi Fighting Forces (FOCA). It reached the peak of its military and economic strength in the early 2000s and then suffered some defections as well as a series of anti-FDLR military operations conducted by the Congolese army, although the latter was on many occasions hampered by collusion with the FARDC. On 13 July 2012, the ICC issued an arrest warrant against FDLR military commander, Sylvestre Mudacumura, for nine counts of war crimes allegedly committed in the Kivu provinces of DRC from 20 January 2009 to the end of September 2010; however, he is still at large.\textsuperscript{460} In 2016, a significant internal split led to the creation of another faction, the National Council for Renewal and Democracy (CNRD–Ubwiyunge), which took over all the FDLR’s South Kivu units. Since then, the FDLR’s activities and capacity have been limited, and its strength in late 2017 was estimated to be between 500 and 1,000 fighters.

5. National Council for Renewal and Democracy (CNRD–Ubwiyunge)\textsuperscript{461}

The CNRD is the group that emerged in May 2016 after the split with the FDLR due to longstanding disagreements over political issues, i.e. the fate of the Rwandan refugee community in eastern Congo. Initially, it supported negotiations with the Rwandan Government, calling for the immediate repatriation of Rwandan refugees. Such a moderate stance allowed the CNRD to gain the favour of various groups as well as the FARDC itself against the FDLR; however, it recently lost such support as well as some territories in North Kivu, the FARDC arrested several of its senior leaders and it is now estimated to have around 500 fighters.

6. Nduma Defense of Congo (NDC–R)\textsuperscript{462}

The NDC–R was created in 2015 by Guidon Shimiray, a former FARDC officer, then deputy commander of the NDC armed group,\textsuperscript{463} which he deserted along with most of the group’s combatants to form the NDC–R. After taking over NDC’s former strongholds in Walikale territory (North Kivu), the NDC–R began attacking the FDLR and gained control over numerous mining sites. In coalition with other rebel groups under the umbrella term Mai-Mai Mazembe, Guidon’s faction managed to push the FDLR out of most of northeastern Walikale; nonetheless, the coalition broke up by mid-2017, thus resulting in several clashes between the NDC–R and various Mazembe factions. Since 2016, it has expanded its influence and become involved in the lucrative gold trade in areas previously controlled by the FDLR, among other groups. It has also consistently been accused of receiving FARDC support in its military campaigns.

7. National People’s Coalition for the Sovereignty of Congo (CNPSC)\textsuperscript{464}

The CNPSC emerged towards the end of 2016 as an umbrella group formed by over 10 armed militias sharing the overarching goal of ousting president Kabila after his refusal to step down in December 2016. Currently, it represents one of the broadest Mai-Mai coalitions active in eastern Congo (i.e. Fizi territory) and is led by veteran militia commander William Amuri Yakutumba. Since June 2017, it has repeatedly clashed with the FARDC, taking control of several villages along Lake Tanganyika. In September 2017, it managed to carry out a serious offensive in Uvira territory; however, joint FARDC–MONUSCO operations caused considerable losses for the group and pushed it back into Fizi territory.

C. KEY DEVELOPMENTS IN 2018\textsuperscript{465}

Within the context of Kabila’s government’s lack of legitimacy and consequent political disorder due to the continuous delay of democratic elections, security forces have been repeatedly accused of using unnecessary and excessive force against civilians and interethnic conflict has intensified.

The end of 2017, marking one year since the signing of the Saint Sylvester Agreement between the government and the opposition, was particularly characterized by protests against the government harshly repressed by the police. Demonstrations in Kinshasa were organized by the Collective of Lay Catholics, while smaller protests taking place in the Kivus were often led by youth groups and civil society. During nationwide protests on 31 December 2017, 21 January and 25 February 2018, Congolese security forces fired live bullets and tear gas into Catholic Church grounds.\textsuperscript{466} On 25 April 2018, they also brutally repressed a protest led by the citizens’ movement Struggle for Change (LUCHA) in Beni, arresting 42 people and injuring 4 others. A few days later, 27 activists were arrested during another LUCHA protest in Goma. According to Human Rights Watch, ruling party officials also recruited 100 youths to infiltrate Kivu Security Tracker. See Kivu Security Tracker, ‘Reports’, https://kivusecurity.org/reports.


\textsuperscript{459} Ibid.


\textsuperscript{461} Kivu Security Tracker, Armed Groups.

\textsuperscript{462} Ibid.

\textsuperscript{463} The NDC, emerging from the Nyanga community, was one of the main Mai-Mai groups, local and community-based militias active in Congo and formed to defend its local territory. It was created by Sheka Ntabo Ntaberi, a former mineral trader in Walikale territory (North Kivu), who surrendered himself to MONUSCO in mid-2017. It is unclear whether the original group still exists and operates.
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

The DRC Government ratified the Rome Statute in April 2002, and in April 2004 it referred the situation in its territory since the entry into force of the Rome Statute to the ICC, thus giving the Court jurisdiction over crimes listed in the Rome Statute committed in the territory of DRC or by its nationals from 1 July 2002 onwards.470

The ICC investigations have focused on alleged war crimes and crimes against humanity including, among others, enlisting and conscripting child soldiers under the age of 15, murder, attacking civilians, rape, sexual slavery, mutilation and forcible transfer of populations, committed mainly in eastern DRC, in the Ituri region and the North and South Kivu provinces. As a result of such investigations, six cases were opened against: Thomas Lubanga, former President of the Union of Congolese Patriots/Patriotic Forces for the Liberation of Congo (UPC/FPLC); Bosco Ntaganda, alleged Deputy Chief of Staff and Commander of Operations of the FPLC; Germain Katanga, Commander of the Patriotic Resistance Force in Ituri (FRPI); Calliste Mbarushimana, alleged Executive Secretary of the Democratic Forces for the Liberation of Rwanda–Ahacunguzi Fighting Forces (FDLR–FOCA); Sylvestre Mudacumura, alleged Supreme Commander of the FDLR, and Mathieu Ngudjolo Chui, leader of the National Integrationist Front (FIN). While Lubanga and Katanga were convicted, the charges against Mbarushimana were not confirmed by Pre-Trial Chamber I, Ngudjolo Chui was acquitted, Mudacumura is still at large and the Ntaganda trial is still ongoing.471

In March 2017, the current ICC Prosecutor Fatou Bensouda expressed her concerns472 regarding several reports issued by human rights NGOs such as the International Federation for Human Rights,473 alleging serious acts of violence in DRC, i.e. a large number of killings of civilians not directly participating in hostilities, kidnappings and summary executions mainly committed by the FARDC but also by the Kamuina Nsapu militia, particularly in the Kasai provinces. She emphasized that as an ICC investigation into DRC has been open since 2004, the Office of the Prosecutor continues to carefully monitor the situation in the country, including current acts that could constitute crimes within the jurisdiction of the ICC.474

In May 2018, the ICC Prosecutor visited DRC to begin an investigation into possible crimes against humanity allegedly committed during the country’s ongoing political and ethnic violence, exacerbated by president Kabila’s refusal to step down.475 This investigation, however, seems to be still on hold. In September 2018, the DRC Government officially threatened to withdraw from the ICC.476

470 ICC, ‘Democratic Republic of the Congo’.
471 Ibid.
474 ICC, Statement of the Prosecutor of the International Criminal Court.

The conflict remains a decentralized one, with over 120 armed groups active especially in the eastern regions without an overarching narrative. The ADF and other armed groups have increasingly targeted UN and government installations, including Kabila’s private residence, in Beni territory. An attack against the UN operating base in Beni occurred on 7 December 2017, widely attributed to the ADF, and resulted in the death of 17 UN peacekeepers. Following several attacks carried out in the second half of 2017 by armed groups against security forces in Beni, Lubero, Uvira and Fizi territories, the FARDC decided to launch large-scale military operations. On 13 January 2018, it conducted ‘Usalama II’ operations in Beni territory against the ADF and affiliated armed groups. These operations were immediately followed by counterattacks, the deadliest of which took place on 19 January 2018 in Parkingi and resulted in at least 24 dead and 13 wounded among the FARDC and the ADF.

In April 2018, 20 people were killed in attacks allegedly perpetrated by a combination of several armed groups including the ADF, Mai-Mai groups and other local militias. The FARDC, on the other hand, killed leaders of two armed groups in South Kivu province. On 19 January 2018, the FARDC also launched the ‘Kamatakama’ operations in Fizi territory, which resulted in violent clashes between the latter and Mai-Mai Yakutumba.468 A further consequence of such operations was the significant influx of Congolese refugees into Burundi across Lake Tanganyika. In June 2018, the FARDC pursued its operations against the ADF in the northeastern part of the Beni territory while targeting other Mai-Mai groups in the southeastern part. As a result, these groups seem to have strengthened their alliance with the ADF. Additionally, the NDC–R arrived in the area south of Beni allegedly to support the FARDC and protect Kabila’s ranch in Kabasha. However, in August, the dynamic shifted as the FARDC launched an offensive against the NDC–R in the territory of Lubero.

Finally, tensions have risen as the historic presidential elections approach. In the first half of December 2018, a fire destroyed about 7,000 of the 10,000 voting machines due to be used in Kinshasa for the elections on 23 December. Opposition supporters have accused Kabila’s regime of trying once again to postpone the vote.469

467 Ibid.
468 This was created in 2006 by former FARDC officer William Amuri (aka Yakutumba), and soon became one of the major and brutal Congolese armed groups in South Kivu. In late 2016, it joined the ONPC.
4. MALI: THE OVERLAP AND COMBINATION OF SEPARATIST, JIHADIST AND INTERCOMMUNAL CONFLICTS

Alessandro Mario Amoroso

Classification of the Conflict

Mali, supported by France, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and by militias of the Movement for the Salvation of Azawad (MSA) and the Imghad Tuareg Self-Defense Group and Allies (GATIA), continued to be involved in a non-international armed conflict (NIAC) on its territory against Jami’aat Nusrat al-Islam wal-Muslimin (JNIM) and the Islamic State in the Greater Sahara (ISGS). According to the War Report, intercommunal clashes between Dan Nan Ambassagou and the Alliance for the Salvation of the Sahel also reached the threshold of a NIAC during the last year.

A. HISTORY OF THE CONFLICT

Mali has been plagued since 2012 by a series of consecutive and overlapping NIACs. Originally a Tuareg rebellion for the independence of the northern regions, the insurgency was quickly hijacked by Islamist groups aiming to impose Sharia law across the country. It recently unleashed a hitherto unknown level of community violence, which extended the fight to the central regions and contributed to keeping the conflict active in 2018. The Mali civil war was marked, in rapid progression, by a failed secession, a military coup, the emergence of Salafi jihadism, the destruction of a UNESCO World Heritage site, a foreign intervention, a regional peace enforcement operation, a robust UN peacekeeping mission, two war crimes trials before the International Criminal Court (ICC) and, eventually, the creation of a regional task force in the Sahel with a counter-terrorism mandate.

Despite repeated Tuareg uprisings, the unprecedented combination of separatist claims with jihadist extremism and intercommunal clashes represents a novelty in Mali and stands in stark contrast to the recent past of the country. The history of the conflict can be divided into four phases.

1. The Tuareg Rebellion in Azawad and Military Coup in Bamako

The Mali civil war was triggered by a Tuareg insurgency in the north, the fourth in the country’s history since its independence from France in 1960. Previous peace agreements led to the creation of a self-governing Kidal region in the northeast, populated primarily by Tuareg, and committed the central government to investing in the development of the new region. The inadequate implementation, however, failed to remove the root causes of Tuareg resentment towards Bamako, which lay largely in a feeling that the north was politically and economically marginalized to the benefit of southern dominance in the aftermath of decolonization. In late 2011, political and economic factors combined with the return from Libya of well-equipped Tuareg fighters who had been trained in Gaddafi’s Islamic Legion and/or fought on both sides of the Libyan civil war. They coalesced in October 2011 with former separatist rebels to found the National Movement for the Liberation of Azawad (MNLA), claiming the independence of Azawad, the northern territory of Mali comprised of the regions of Gao, Timbuktu and Kidal.

The conflict in northern Mali started on 17 January 2012 when the MNLA attacked the small town and military garrison of Ménaka. During the following weeks, two Islamist groups known as al-Qaeda in the Islamic Maghreb (AQIM), already active in the region, and Ansar Dine, which appeared in late 2011, joined the conflict, conducting simultaneous attacks, sometimes in coordination with the MNLA.

By the end of March 2012, the Malian Armed Forces (FAMA) were pushed out of key centres and lost control of nearly one-third of the country’s territory. At this point in the conflict, the conditions for the applicability of the 1977 Additional Protocol II (AP II) to the 1949 Geneva Conventions seemed to be met.

On 20 March, the African Union Peace and Security Council (PSC) held an emergency ministerial-level meeting in Bamako. The following night, a mutiny in the military barracks of Kati, outside the capital, turned into a military coup against President Amadou Toumani Touré, just one month before the scheduled presidential elections. On 12 March, it was announced that the armed forces, led by Captain Amadou Sanogo, had seized power, suspended the Constitution of 1992 and

481 Chaoual and van Damme, The Roots of Mali’s Conflict, pp 17-29.
485 Art 1, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (AP II), 8 June 1977.
established a National Committee for the Restoration of Democracy and State. The declared remit of the junta was to remedy the government’s incapacity to tackle the conflict in the north and save the country from dissolution before handing over power to new democratically elected institutions.487

The coup immediately revealed ‘a spectacular own-goal’.488 Besides being unani-
mously condemned at the international level, leading to the suspension of Mali
from the African Union (AU)489 and the imposition of sanctions and an embargo
by the Economic Community of West African States (ECOWAS),490 the putsch
provoked the collapse of the FAMA, who abandoned all the main centres in
the north. On three consecutive days (30 March–1 April 2012), the rebels entered
Kidal, Gao and Timbuktu, the three regional capitals and biggest cities of Azawad.

The balance of power on the ground at that moment appears blurred, with the Isa-
lamists of AQIM and Ansar Dine, joined by a splinter faction of AQIM known as
the Movement for Oneness and Jihad in West Africa (MUJAO), in control of the
main centres, where they started to impose Sharia law.

On 6 April 2012, a Framework Agreement was brokered with the mediation of
ECOWAS, achieving a political transition in Bamako. Captain Sanogo and Presi-
dent Touré agreed to resign and transfer power to the National Assembly’s Speak-
er, Diouncounda Traoré, appointed interim President.491 On that same day, in an
interview with France 24, an MNLA spokesman declared the entire north liber-
ated and proclaimed the independence of Azawad.492

2. The Jihadist Takeover and Planned Regional Operation

The proclaimed independence of Azawad and the power transition in the capital could have reasonably led to a resurgence of violence between Bamako and the MNLA. How-
ever, the following months were marked by internal chaos on both fronts.

In the aftermath of the declaration of independence, a new Arab militia, the Na-
tional Liberation Front of Azawad (FNLA), was formed in Timbuktu to fight the
MNLA and oppose the secession. On 26 May 2012, however, the MNLA and An-
sar Dine announced a Memorandum of Understanding, according to which both


nn=2012 (last accessed 20 January 2019).


agreed to dissolve and found the Transitional Council of the State of Azawad, the
first step towards the creation of an Islamic State of Azawad. The deal crumbled a
few days later. On the one hand, most of the MNLA leadership refused to disavow
the group’s traditional secularism by signing off the imposition of Sharia law in
Azawad. On the other, the Islamists had strengthened their ranks while moving
south to territories populated by other ethnic groups more sensitive to jihadist
propaganda than to the independentist agenda of the MNLA.

The first clashes between the MNLA and Ansar Dine reportedly occurred on 8
June 2012, in the surroundings of Kidal,493 triggering a parallel NIAC between Tu-
areg and Islamist rebels. By the end of the month, Ansar Dine, MUJAO and AQIM
repelled the MNLA from major cities in the north. On 30 June, members of An-
sar Dine began the systematic destruction of the ancient mausolea and Muslim
shrines of the World Heritage site Timbuktu.494

During the same months, the fragile interim institutions established by the 6 April
Framework Agreement remained under permanent threat from the military. At
the end of April, the ex-junta repelled a counter-coop led by the Red Berets, an
elite unit of paratroopers loyal to ousted President Touré. Allegations of torture,
forced disappearances and extrajudicial killings of detained Red Berets495 were
later confirmed by the discovery of mass graves outside the capital.496 On 21 May,
pro-junta demonstrators stormed the presidential palace and wounded President
Traoré. In December 2012, Prime Minister Cheick Modibo Diarra, chairing a gov-
ernment of national unity, was arrested by soldiers of the ex-junta and forced to
resign. He was replaced by Django Sissoko, appointed by President Traoré.

With the political and military institutions of Mali in a state of disarray, ECOWAS
and the AU prepared to intervene militarily to eradicate the jihadist menace in
Mali. On 12 June 2012, the PSC authorized the deployment of a peace operation
led by the ECOWAS Standby Force.497 The expected deployment of the mission
within three weeks, subject to authorization by the UN Security Council (UNSC),
was slowed down by the initial refusal of the UNSC to endorse the operation and
provide UN funding. The stalemate lasted until December, when all conditions
imposed by the UNSC concerning mandate, planning, mission management and


news/africa/2012/06/2012630101748795606.html.


497 PSC, Communiqué of the 323rd Meeting of the Peace and Security Council, PSC/PR/COMM(CCCXXIII), 12
accountability were met. In Resolution 2085 of 20 December 2012, the UNSC invoked Chapter VII of the UN Charter to authorize the African-led International Support Mission to Mali (AFISMA). With a strength of 3,300 personnel, AFISMA was tasked with a peace enforcement mandate “[t]o support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups.”

3. French Intervention and The UN’s Robust Peacekeeping Mission

Preparations for AFISMA were expected to take several months. In the first days of 2013, however, the situation in Mali changed once again. On 10 January, militants of Ansar Dine captured the city of Konna and advanced to within a few kilometres of Mopti and Sévaré, a strategically important military garrison and airport in the centre of Mali. When the fall of Bamako appeared imminent, President Traoré resolved to request immediate French military intervention. On 11 January 2013, France launched Operation Serval, progressively deploying more than 4,000 personnel within a few days. Backing the FAMA with air and ground support, the French troops swiftly managed to repel the Islamist offensive and disband the rebels. On 28 January, Islamists fleeing Timbuktu from approaching French and Chadian forces set fire to the Ahmed Baba Institute, but fortunately only a limited number of its manuscripts were destroyed. On 30 January, after Gao and Timbuktu, French soldiers entered Kidal. On 2 February, French President François Hollande and President Traoré appeared together in Timbuktu to celebrate the recapture of the north.

By reversing the power balance on the ground, the French intervention seemed to bring the conflict close to a military and political solution. The rapid territorial gains obtained by France induced ECOWAS and the AU to accelerate AFISMA’s deployment in order to help the Malian army retain control over the recaptured areas. The first troops – contributed by Nigeria – arrived on 17 January. On the same day, the European Union established a multinational military Training Mission in Mali (EUTM Mali). On the following day, Chad joined the conflict with a contingent of 2,000 soldiers – the Chadian Armed Forces Intervention in Mali (FATIM) – who initially fought under national command alongside French troops, only being integrated into AFISMA in March.

At this point, the conflict entered a guerrilla phase. Ansar Dine and AQIM retreated to the Adrar des Ifoghas in the northeast, chased by French and Chadian troops. MUJAO remained in the Gao region, conducting sporadic attacks. A splinter group of Ansar Dine calling itself the Islamic Movement for Azawad (MIA) declared its rejection of terrorism and demanded the start of negotiations for a peaceful settlement of the conflict. The Tuareg front was not immune from realignments either. The MNLA, which at the end of 2012 had dropped its separatist claims, rejected of Ansar Dine calling itself the Islamic Movement for Azawad (MIA) declared its rejection of terrorism and demanded the start of negotiations for a peaceful settlement of the conflict. The MNLA, which at the end of 2012 had dropped its separatist claims, refused to request immediate French military intervention. On 25 April 2013, UNSC Resolution 2100 authorized the deployment of MINUSMA, comprising up to 11,200 military and 1,440 police personnel. Established under Chapter VII of the UN Charter, MINUSMA was provided with a widely robust mandate including the authorization to ‘stabilize key population centers … and deter threats and take active steps to prevent the return of armed elements to those areas’. Given the security situation in Mali, the UNSC also authorized French troops to operate as a parallel force alongside MINUSMA, using ‘all necessary means … to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General’.

On 18 June 2013, the government and the Tuareg rebels of the MNLA and the HCUA signed a preliminary peace agreement in Ouagadougou, which paved the way for the definitive peace agreement signed in September 2015.

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500 Identical letters dated 11 January 2013 From the Permanent Representative of France to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN doc S/2013/17, 11 January 2013.
way for presidential elections and inclusive peace talks. The agreement created the political conditions for the deployment of MINUSMA, which started on 1 July 2013 with the transfer of authority over AFISMA’s personnel. MINUSMA’s first task was to oversee the two turns of the 2013 presidential elections in July and August, which saw the victory of Ibrahim Boubacar Keita. A few months later, Captain Sanogo, leader of the March 2012 military coup, was arrested and charged with crimes committed during the putsch.\footnote{511 Accord préliminaire à l'élection présidentielle et aux pourparlers inclusifs de paix au Mali ( Accord de Ouagadougou), 18 June 2013, https://peacemaker.un.org/mali-accord-preliminaire-elections2013 (last accessed 20 January 2019).}

### 4. The End of the Tuareg Rebellion Alongside Relentless Jihadist Violence

The fragile ceasefire signed in June 2013 fell apart rapidly. In September, the MNLA, the HCUA and the Arab Movement of Azawad (MAA, the new designation of the FNLA) suspended negotiations with Bamako, faced with the government’s refusal to discuss the autonomy of Azawad.\footnote{512 P.-F. Naudé, ‘Les négociations avec les rebelles achoppent sur l’autonomie du Nord’, 27 September 2013, https://www.jeuneafrique.com/168211/politique/mali-les-négociations-avec-les-rebelles-achoppent-sur-l’autonomie-du-nord/.} In November, the MNLA announced its resumption of the fight. The truce finally broke down in May 2014, when the Tuareg recaptured Kidal and, repelling an army counter-offensive, occupied Ménaka, Léré and other cities in the north.\footnote{513 R. Carayol, ‘Mali – Moussa Ag Acharatoumane: «Nous avons créé le MSA pour représenter tous les Azawadiens», 22 May 2014, http://www.rfi.fr/fr/afrique/20140522-mali-kidal-cessez-feu-instaure-gouvernement-malien/.} Following the recent debacle of the FAMA, in August 2014 Tuareg of the Imghad tribe announced the creation of the GATIA, aligned with the government to oppose the rebels. The GATIA joined the loyalist wing of the MAA and other organizations of the Platform, a coalition of loyalist armed groups created in June 2014. In the second half of 2014, the Platform started a campaign against the MNLA, the HCUA and the rebel faction of the MAA, who in turn formed a military alliance: the Coordination of Azawad Movements (CMA).

Facing a different configuration of forces on the ground, with the Islamists no longer controlling a fixed territory but taking advantage of desert areas to operate across the borders, France announced the conclusion of Operation Serval and its replacement with Operation Barkhane as of 1 August 2014. With 3,000 personnel, Operation Barkhane was not limited to Mali but tasked longer controlling a fixed territory but taking advantage of desert areas to operate across the borders, France announced the conclusion of Operation Serval and its replacement with Operation Barkhane as of 1 August 2014. With 3,000 personnel, Operation Barkhane was not limited to Mali but tasked longer controlling a fixed territory but taking advantage of desert areas to operate across the borders, France announced the conclusion of Operation Serval and its replacement with Operation Barkhane as of 1 August 2014. With 3,000 personnel, Operation Barkhane was not limited to Mali but tasked with fighting Salafi jihadism in the entire Sahel.\footnote{514 Ministère des Armées, Dossier de presse – Opération Barkhane, December 2018, file:///C:/Users/amorea/Download/20181218_NP_EMA%20CABCOM_DP%20BARKHANE_vf.pdf.}

In 2015, the northern Mali conflict seemed to move forward towards a solution. After negotiating a ceasefire in February, an Agreement for Peace and Reconciliation was finally reached in Algiers, granting more autonomy to the north, providing for rebels’ reintegration in the national security forces and promising better represen-

tation. Initially accepted only by loyalist groups and international mediators on 15 May, the agreement was finally signed by the CMA on 20 June 2015.\footnote{515 Accord Pour la Paix et la Réconciliation au Mali – Issu du Processus d’Alger (Accord d’Alger), 20 June 2015, https://peacemaker.un.org/node/2681 (last accessed 20 March 2019).}


On 31 March 2016, the National Assembly of Mali passed a law establishing interim authorities in the north. Yet, hopes of a smooth implementation of the peace deal were shattered in 2016 by a reawakening of past tensions and the appearance of new threats. The state of emergency, having expired on 31 March, was restored on 19 July after an attack by the MLF on the Nampala army base, which killed 17 soldiers. In the same month, a report by the International Crisis Group drew attention to the escalation of violence in central Mali, the first intercommunal clashes between Bambara and Fulani self-defence militias.\footnote{520 International Crisis Group, ‘Central Mali: An Uprising in the Making?’, Africa Report no 238, 6 July 2016, https://www.crisisgroup.org/africa/west-africa/mali/central-mali-uprising-making (last accessed 20 January 2019).} In August, the conflict between rival Tuareg factions broke out again, with frequent confrontations between the CMA and the GATIA. As a result, in September former members of the MNLA, the HCUA and the MAA founded the MSK, seeking to strengthen the peace process and halt community violence.\footnote{521 R. Carayol, ‘Mali – Moussa Ag Acharatoumane: «Nous avons créé le MSA pour représenter tous les Azawadiens», Jeune Afrique, 9 September 2016, https://www.jeuneafrique.com/355863/politique/mali-moussa-ag-acharatoumane-avons-cree-msa-representer-azawadiens/.}

At the beginning of 2017, the peace process came under attack. On 18 January, a suicide bombing claimed by AQIM hit a military camp in Gao, killing 77 people. The base housed government troops and former rebels of the CMA and the Platform taking part in joint patrols under the Operational Coordination Mechanism,
established in the framework of the peace agreement.522 On 1 March 2017, Ansar Dine, Al-Mourabitoun, the MLF and the Saharan branch of AQIM merged to form Jamaat Nusrat al-Islam wal-Muslimin (JNIM), which became the official branch of Al-Qaeda in Mali.523 At the same time, a series of attacks on civilians were claimed by ISGS, a splinter group of Al-Mourabitoun professing allegiance to the Islamic State.524 More than five years after the beginning of the conflict, the threat posed by Salafi jihadism had reached a new level and required the enhancement of military efforts. On 6 February, Burkina Faso, Chad, Mali, Mauritania and Niger, which in 2014 had established an institutional framework for cooperation known as G5 Sahel, agreed to establish a Joint Force (G5SJF) operating under a clear counter-terrorism mandate. On 1 November 2017, the G5SJF launched its first mission, codenamed Hawbi.

On 20 September 2017, after months of escalating tensions, the CMA and the Platform signed a ‘document of commitments’, providing for a definitive cessation of hostilities and the finalization of the peace process.525 Their demobilization and integration in the security forces followed soon thereafter.

B. PARTIES TO THE CONFLICT

1. Malian Armed Forces (FAMa)

The FAMa are comprised of the army and the air force, as well as two paramilitary corps, the Gendarmerie and National Guard. All forces are under the control of the Ministry of Defence and Veterans. Their current estimated strength is 17,800 troops – 10,000 military and 7,800 paramilitary personnel.526 The defence budget is around 2 percent of the GDP.527 The FAMa suffered a collapse after the Tuareg rebellion and the military coup of March 2012. They have since been reorganized with the support of French troops, EUTM Mali and the EU Capacity Building Mission in Mali.

2. French Armed Forces

French military engagement in Mali started on 11 January 2013 with Operation Serval, deploying up to 4,500 troops in the country. Although different legal justifications were cited by French authorities,528 the operation relied on the invitation of the Malian Government. After the adoption of UNSC Resolution 2100, the use of force by France in Mali also rests on UNSC authorization, when French troops ‘intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General’.529 Operation Serval was replaced on 1 August 2014 by Operation Barkhane. Aiming to fight terrorism in the entire region, Operation Barkhane keeps 1,000 of its 4,500 troops in Mali.530 It was designed to cooperate at the military level with forces of the G5 Sahel, and to coordinate with MINUSMA and EUTM Mali. It also conducts joint actions with Tuareg militias of the MSA and the GATIA. French as well as Chadian intervention in an early stage of the conflict supported the Government of Mali and did not turn the NIAC into an international armed conflict.

3. UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)

Established under Chapter VII of the UN Charter by UNSC Resolution 2100 of 25 April 2013, MINUSMA was formed on 1 July 2013. On that date, the 6,500 troops of AFISMA were re-hatted as a UN force.531 With an initial authorized strength of 12,640 uniformed personnel, MINUSMA’s troops were later increased to the current 13,883, making it the third biggest ongoing UN mission. MINUSMA is also the most dangerous ongoing operation, having suffered 177 fatalities in five and a half years.532

The robustness of MINUSMA’s mandate is one example of the evolution of the traditional peacekeeping principles of impartiality and limited use of force. Resolution 2100 authorized MINUSMA, inter alia, ‘to stabilize the key population centres, especially in the north of Mali and, in this context, to deter threats and take active steps to prevent the return of armed elements to those areas’.533 Nevertheless, MINUSMA’s mandate did not match the extent of authorized use of force granted one month earlier to the Force Intervention Brigade (FIB) within the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). Responding to Russia’s concerns that the FIB’s peace enforcement mandate might become standard practice, the UNSC carefully avoided any reference to the ‘neutralization’ of armed groups.534 MINUSMA’s mandate was therefore understood as excluding offensive or counter-terrorism operations.535 In 2016, Resolution 2295 requested MINUSMA ‘to move to a more proactive and robust posture to carry out its mandate’.536 To this end, MINUSMA was authorized ‘to anticipate, deter and counter threats, including asymmetric threats, and to take robust and active steps to pro-

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527 Ibid.
tect civilians ... and to prevent the return of armed elements to those areas, engaging in direct operations pursuant only to serious and credible threats. MINUSMA’s mandate makes it a party to the conflict in Mali following a support-based approach. Indeed, MINUSMA intervened in a pre-existing NIAC to support one party to the conflict (the Government of Mali), pursuant to official UNSC authorization, and its logistical and intelligence assistance to Malian and French troops constitute activities related to the conduct of hostilities.

4. The G5 Sahel Joint Force (G5SJF)

The G5 Sahel was established in 2014 by five countries (Burkina Faso, Chad, Mali, Mauritania and Niger) as an institutional framework for regional cooperation based on a common understanding of the bonds between economic development and security. In February 2017, member countries announced the creation of a Joint Force to fight jihadist organizations in their territories, often operating across the borders. The G5SJF, strongly encouraged by France to progressively hand over security in the region to local authorities, was authorized by the PSC. With Resolution 2359 of 21 June 2017, the UNSC welcomed the G5SJF, but fell short of providing it with a UN mandate to use force. Despite the initial difficulty in gathering the necessary funding, the G5SJF was eventually deployed and launched its first operation in November 2017. It currently comprises 5,000 troops, divided into seven battalions. Wether G5SJF is as of 2018 yet a party to the armed conflicts in Mali.

5. Jama’at Nusrat al-Islam wal-Muslimin (JNIM)

JNIM (the group for the support of Islam and Muslims) is a Salafi jihadist organization created in March 2017, when Iyad Ag Ghaly, leader of Ansar Dine, announced the merger with the MLF, Al-Mourabitoun and the Saharan branch of AQIM. After swearing allegiance to Ayman al-Zawahiri, JNIM became the official Al Qaeda affiliate in Mali. Bringing together an estimated strength of 800 fighters, the merger was supposedly aimed at containing the expansion of ISGS in Mali. The UNSC ISIL and Al-Qaida Sanctions Committee added JNIM to its sanctions list on 4 October 2018. All its founding organizations, with the exception of the MLF, were already on the list.

6. Islamic State in the Greater Sahara (ISGS)

Despite its early appearance in May 2015 as a splinter group of Al-Mourabitoun, ISGS was only officially recognized as an affiliate by the Islamic State of Iraq and the Levant on 30 October 2016. Initially counting on a few dozen active fighters, in 2017 and 2018 the group proved its remarkable capacity to conduct attacks on both the FAMA and civilians. It is mainly active in the region of Gao. Its leader, Adnan Abu Walid al-Sahraoui, was the spokesman of MUJAO before joining Al-Mourabitoun.

7. Movement for the Salvation of Azawad (MSA)

The MSA emerged in September 2016 when a group of Tuareg fighters abandoned the CMA, the military alliance reuniting Tuareg rebels, to found an independent group supporting the Algiers peace process. The MSA condemned intercommunal conflicts and has lent its support to the FAMA since its inception. It is today one of the main counter-insurgency partners in Operation Barkhane. It claims to have 3,000 fighters.

8. Imghad Tuareg Self-Defense Group and Allies (GATIA)

The GATIA was founded in August 2014 as a Tuareg self-defense group after the Malian army again lost control over large parts of the northern regions. It joined the conflict against the CMA, alongside the Platform, a coalition of loyalist groups supporting Bamako. The GATIA remained active after the end of the Tuareg re-

537  Ibid, §19.
539  Since the establishment of the All Source Information Fusion Unit (ASIFU) in April 2014, MINUSMA is the first UN mission equipped with a centralized military intelligence structure acting at operational level under the control of the Force Commander.
541  UNSC Res 2359, 21 June 2017, §1.
billion as a counter-insurgency force partnering with French troops in the fight against Salafi jihadists.

9. Dan Nan Ambassagou

Dan Nan Ambassagou (‘the hunters who confide in God’) is a self-defence group founded in late 2016 to protect the Dogon, a community of hunters living in the central region of Mopti. The group brought together several self-defence militias after the murder of Théodore Soumbounou, head of the Dogon hunting society.553

Claiming to count on several hundred fighters, Dan Nan Ambassagou has a clear military hierarchy.114 It gained prominence in 2018, after clashing with the Fulani group, the Alliance for the Salvation of the Sahel. A report of the International Federation for Human Rights indicates that Dan Nan Ambassagou received logistical and financial support from Bamako and collaborated with the FAMa in the past.555

10. Alliance for the Salvation of the Sahel (ASS)

The ASS emerged in May 2018 as a self-defence group protecting Fulani from the attacks of Dogon hunters. Its intention to gather existing village-based self-defence militias held senior positions in the public administration. 557

Despite the end of the armed conflict against and between Tuareg armed groups in 2017, in 2018 the Mali civil war continued against jihadist groups and acquired a new dimension when intercommunal clashes in the central regions reached the threshold of a separate NIAC.

French troops of Operation Barkhane helped the FAMa secure the region of Ménaka and control the area of Liptako, located on the border between Mali, Niger and Burkina Faso and, for this reason, used as a refuge by the Islamists.558 Military operations coordinated with the MSA and the GATIA sought to neutralize JNIM and ISGS.559 Islamist groups no longer exercise stable control over portions of Malian territory—one condition for the applicability of AP II is therefore no longer met.560 Yet, they were able to carry out a long series of attacks targeting Malian, French and UN troops, as well as civilians.561 On 26 and 27 April, two attacks by ISGS on the Tuareg camps of the MSA and the GATIA in Andéramboukane killed more than 40 people. Since ISGS fighters are mainly Fulani, the attacks were also explained as motivated by intercommunal hatred.562

This event showed how the use of ethnic-based militias and the exploitation of ethnic grievances eventually contributed to igniting a new NIAC between community-based armed groups. Violence grew exponentially in the region of Mopti in central Mali, a territory which was not covered by the Algiers agreement and where MINUSMA was not present. At the end of March 2018, the UN Secretary-General expressed concern over increasing civilian casualties caused by community violence.563 In the second half of 2018, two ethnic-based self-defence groups started clashing and quickly became the ‘main perpetrators of recent violence’ in Mali.564 Dan Nan Ambassagou, a Dogon militia, and the ASS, protecting the Fulani community. Intercommunal violence intensified in the run-up to the presidential elections in July and was the root of the lowest turnout registered in the central regions.565 A first peace agreement signed by Dogon and Fulani village chiefs on 28 August was rejected by Dan Nan Ambassagou.566 A unilateral ceasefire announced by the same group on 27 September was crushed by its military wing in late November.567

President Ibrahim Boubacar Keïta sought and obtained a second term in the presidential elections held in July–August 2018. A complaint filed by the opposition candidate, Soumaila Cissé, was rejected by the Constitutional Court.568 All the main political forces agreed to postpone parliamentary elections to 2019 and to extend the state of emergency, in place since 20 November 2015, until 31 October 2019.569


554 Ibid.


556 HRW, “We Used to Be Brothers”.

557 FIDH, In Central Mali, Civilian Populations Are Caught Between Terrorism and Counterterrorism, p 51.


D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Mali ratified the Rome Statute of the ICC on 16 August 2000. The ICC therefore has jurisdiction over crimes in its Statute committed on the territory of Mali or by its nationals from 1 July 2002 onwards, provided national courts are inactive, or unwilling or unable to prosecute.

On 18 July 2012, the Malian Government referred ‘the Situation in Mali since January 2012’ to the ICC, with no end date. Based on the outcome of its preliminary examination, the Office of the Prosecutor determined that there was a reasonable basis to believe that war crimes within the jurisdiction of the Court had been committed in the country.570 The ICC has so far heard two cases originating from the situation in Mali.

On 18 September 2015, the ICC Pre-Trial Chamber I (PTC I) issued a warrant of arrest against Ahmad al-Faqi al-Mahdi. An alleged member of Ansar Dine, al-Mahdi was accused of being involved in the destruction of nine mausoleums and one mosque in Timbuktu, between 30 June and 10 July 2012. He was charged with the war crime of intentionally directing attacks against historic monuments and buildings dedicated to religion. Surrendered to the ICC by the authorities of Niger on 26 September 2015, he pleaded guilty at the trial’s opening on 26 August 2016. On 27 September, Trial Chamber VIII unanimously convicted al-Mahdi as a co-perpetrator and sentenced him to nine years’ imprisonment.571 His case was the first

A second warrant of arrest was issued by the ICC PTC I on 27 March 2018 against Al-Hassan Ag Abdoul Aziz, suspected of committing crimes against humanity and war crimes in Timbuktu between April 2012 and January 2013. Considered the de facto chief of the Islamic police in Timbuktu, Al-Hassan was allegedly involved in the work of the Islamic court in the city and participated in the execution of its decision. Mali surrendered him to the ICC on 31 March 2018. The confirmation of charges hearing is scheduled for 6 May 2019.572

5. THE SOUTH SUDAN ARMED CONFLICT: A NEW PEACE DEAL

Marija Sulce

Classification of the Conflict

The South Sudanese Government has been involved in a series of non-international armed conflicts (NIACS) with various armed opposition groups since December 2013. As South Sudan has ratified the Geneva Conventions of 1949 and Additional Protocols II (1977) and III (2005), the parties are bound by the law set out in them – namely Article 3 of the Geneva Conventions and Additional Protocol II on non-international armed conflicts – as well as customary international humanitarian law (IHL).573

A. HISTORY OF THE CONFLICT

South Sudan became independent from Sudan in 2011, making it the youngest country in the world. The young country did not enjoy peace for long as it descended into civil war in December 2013, when forces loyal to South Sudanese President, Salva Kiir, clashed with the then Vice President, Riek Machar’s, opposition. The confrontation took place following Machar’s criticism in early 2013 of Kiir’s leadership and his announcement that he would run against Kiir in the 2015 presidential elections.574 These comments led to the eventual ousting of Machar from office. The country remained calm for most of the year but clashes erupted in December. It is unclear what really happened: Kiir claimed that Machar had attempted a coup, while Kiir’s side was accused of trying to disarm guards on the ex-Vice President’s side.575 It should be noted that the ethnic dimension is crucial to this conflict. South Sudan is ethnically very diverse with the two largest ethnicities being Dinka (around 35.8 percent of the population) and Nuer (around 15.6 percent), President Kiir is of the majority Dinka ethnicity, while Machar is Nuer.576 The war has inflamed the ethnic tensions in the country, feeding on long-existing differences.

The latest reports suggest that since the beginning of the five-year-long conflict, around 383,000 people have been killed – a shocking increase from the previously estimated 50,000.577 Furthermore, around 4 million people have been displaced, while the conflict has also led to severe food shortages for at least 5 million people, greatly devastating the South Sudanese economy.578 In 2017, the United Nations declared a famine in the country, warning that around 100,000 people were facing starvation and 1 million were classified as being on the brink of famine, while 4.9 million people were in urgent need of food, agriculture and nutritional assistance.579 Although humanitarian aid reversed the 2017 famine, currently around 570 Office of the Prosecutor, International Criminal Court (ICC), Report on Preliminary Examination Activities 2013, November 2013, §§230–231.
70 percent of families in the country go hungry. Even more people (6.3 million) are food insecure and the number is not expected to decrease any time soon.\textsuperscript{580} Furthermore, the rainy season and conflict have made it difficult to deliver food aid, with Oxfam reporting that people have started to eat weeds and grass out of desperation, making themselves sick.\textsuperscript{581}

\section*{B. Parties to the Conflict}

Though the conflict started off as a confrontation between the forces of President Kiir and ex-Vice President Machar, it has become more complex with groups splintering and fighting more and more based on ethnicity.

\subsection*{1. Sudan People’s Liberation Army (SPLA)}

On the one side are the government forces, known as the official SPLA, standing behind President Kiir. It was estimated in 2013 that the SPLA had a troop strength of 210,000;\textsuperscript{586} Nevertheless, throughout the war the group has suffered losses and defections, bringing the current number of troops down to around 197,500.\textsuperscript{581} The SPLA has its roots in Sudan’s civil war, during which it fought for the self-determination of South Sudan. It was formed in the 1980s and was originally a rebel group fighting for the independence of South Sudan’s southern region. After independence, it became the official South Sudanese military; nevertheless, as already mentioned, the current South Sudanese civil war has seen other armed groups claiming to stem from the SPLA as well, questioning the legitimacy of the national forces.\textsuperscript{584}

\subsection*{2. SPLA in-opposition or SPLA-IO/RM and SPLA-IO/TD}

The opposition is split into two groups: one supporting ex-Vice President Riek Machar (SPLA-in-opposition or SPLA-IO/RM), and the second loyal to First Vice President Taban Deng (SPLA-IO/TD).

Around these main parties are various armed groups, supporting their chosen organization, such as the Dinka Mathiang Anyoor and the Nuer White Army.\textsuperscript{585} It is not known how many troops the opposition has. It is estimated that there are around 40 smaller armed groups fighting in the region, but none as big and as organized as the main three.\textsuperscript{586}

\section*{C. Key Developments in 2018}

There is a sense of the tide changing in the South Sudanese conflict. At the end of June 2018, the parties to the conflict signed a ceasefire, agreeing to open passages for humanitarian aid, release war prisoners and disengage their forces. These measures seemed to be paving the way for an eventual peace agreement.\textsuperscript{587} Though the ceasefire appears to have been violated within hours,\textsuperscript{588} the conflict has still moved towards a peace agreement and the summer was dedicated to brokering a permanent peace deal. An agreement was finally reached and a power-sharing deal was signed at the beginning of August, while the peace deal was signed in September by President Salva Kiir and Riek Machar. Under the power-sharing agreement of 5 August, Riek Machar will return to the capital, Juba, as one of the five vice presidents and the opposition forces will merge with government forces to form one national army.\textsuperscript{589} Once the final deal is signed, the two sides will have three months to form a transitional government, which will be in power for 36 months, at the end of which elections will be held.\textsuperscript{590} The president has commented that he believes in this peace deal more than in any in previous years as it has come from South Sudan itself and has not been imposed on the country by foreign powers.\textsuperscript{591} The signing ceremony of the final agreement took place on 12 September. Called the ‘final final’ peace deal, it was mediated by Sudan and signed in Ethiopia’s Addis Ababa.\textsuperscript{592} The President of Sudan, Omar Hassan Ahmed al-Bashir, and Yoweri Museveni, the President of Uganda, are the guarantors of the agreement. The agreement itself is a sharing of power among the many tribes of South Sudan – the two major tribes of Dinka and Nuer, followed by the smaller ones.\textsuperscript{593} Under it, each area of South Sudan will have to be marked as belonging to one of the tribal homelands. Even areas with several tribes will have to be defined as belonging to one of the tribes, most likely the largest.\textsuperscript{594}

A promising development a few days after the power-sharing deal was signed on 5 August could be a sign of a real change of tide in the conflict – President Kiir

\begin{itemize}
\item \textsuperscript{589} S. Mednick, ‘South Sudan Claims Civil War Is Over but Skepticism Abounds’, AP, 20 August 2018, https://apnews.com/e636b1275f423e98625692a05c501.
\item \textsuperscript{594} Ibid.
\end{itemize}
offered an amnesty to all involved in the conflict and granted a pardon to Riek Machar. He also reminded his forces to observe the new peace deal and cease all action.605 It remains to be seen whether this deal will be able to end the conflict and allow the country to rebuild itself.

Nevertheless, criticism of the ability of this deal to end the conflict abounds. There have been previous failed efforts to bring peace to the country, the most notable being the 2015 peace deal. In August 2015, the UN threatened South Sudan with sanctions in order to encourage peace. President Kiir signed a peace deal with the rebels, committing to stop the fighting immediately, order military forces to leave Juba and let rebels take up the post of ‘first vice-president’.606 Nevertheless, the deal collapsed a year later, leading to Machar fleeing Juba. Some analysts see the current deal as being the same as the 2015 agreement.607 Another significant attempt at a ceasefire was in December 2017, encouraged by the Intergovernmental Authority on Development, an African trade block of eight states that South Sudan is part of. That called for the freezing of troops in their locations, ceasing actions that could lead to confrontation, and the release of political detainees, women and children. Nevertheless, the agreement was violated within a few days.608 Regarding the latest peace deal, the UN is already investigating reported clashes that violated the agreement just a few days after it was signed in September.609 It has also been criticized as being imposed on South Sudan by foreign countries and making the young nation an informal protectorate of Sudan and Uganda. Their role of official ‘guarantors’ of the South Sudanese peace deal shows how strategically important the two countries are to the future of South Sudan. Uganda’s troops are physically present in South Sudan in support of Kiir’s faction, while Sudan has provided significant support to opposition groups, including Machar’s efforts.600 Another sticking point will probably be the requirement to define the country’s areas by dominant tribes. This could inflame ethnic grievances even more and infringe on minority rights.601

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

South Sudan is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol; the Convention on the Rights of the Child and the African Charter on Human and People’s Rights.602 Nevertheless, this participation in an array of international treaties and conventions has not helped to make the South Sudanese war less horrible for civilians. The conflict has been marred by human rights abuses and war crimes committed by both sides.

1. Attacks on Aid Workers

The UN has described South Sudan as one of the most dangerous places in the world for aid workers. The Aid Worker Security Database put South Sudan at the top of the list of the most violent countries in which to deliver aid.603 Around 100 aid workers have been killed since the conflict started in 2013 and 22 have been abducted since December 2017.604 Detention of aid workers, physical assaults and armed robberies of aid are also an issue.605 Aid workers are protected against attacks under customary IHL and harming them or raiding aid supplies is a violation of the law. It not only affects the aid workers, but also people who depend on their supplies. The danger of being attacked or the aid being stolen can mean that aid workers have to withdraw from certain areas and are unable to help people in need of medical help, food and water. Aid was key in relieving the famine in 2017, but experts have warned that the country is once again on the brink of starvation and that humanitarian aid could again be crucial in avoiding famine.606

2. Attacks on Civilians and Civilian Property

There is evidence to suggest that the SPLA – the government forces – have directed many attacks against civilians and civilian buildings, where no opposition forces were present to justify an attack. The evidence has suggested that civilians have been targeted simply because they lived in opposition-controlled areas, were sympathetic to the opposition or were of a different ethnicity.607 For example, a recent report by the UN Office of the High Commissioner for Human Rights and UN Mission in South Sudan documents the violations in southern Unity, where it has found the SPLA to have attacked at least 40 villages or settlements between April and the end of May 2018, raping around 120 girls and women, killing 232 civilians and burning 65 individuals alive, among whom were numerous children and elderly and disabled people. Almost 2,000 people are estimated to have been displaced due to this vio-

600 Mamdani, ‘The Trouble With South Sudan’s New Peace Deal’.
601 Ibid.
604 Jenssen, ‘Five Things You Should Know About the Conflict in South Sudan’.
605 Norwegian Refugee Council, ‘South Sudan Declared Most Violent for Aid Workers for Third Straight Year’.
606 Ibid.
3. Child Soldiers

Recruiting children as soldiers appears to be a common practice by both the government and opposition forces. This is illegal under the law of conflict and was condemned in May 2018 by the European Parliament, which called for accountability in the South Sudanese conflict and supported establishing a hybrid court to review the abuses. It also called for the European Union to pursue an international arms embargo. In April 2018, the United Nations Children’s Fund (UNICEF) organized a symbolic ‘laying down of arms’ ceremony, during which 112 boys and 95 girls of various ages, some as young as 14, were freed. At that point, UNICEF had already freed around 500 child soldiers in 2018 and was planning to release 1,000 more. According to the organization, there are around 19,000 children serving in the armed forces of the government and various armed groups in the country.

4. Sexual Violence

Sexual violence has been central to the South Sudanese civil war. The UN has documented numerous accounts of rape, gang rape, forced stripping, castration and mutilation of genitalia, perpetrated by both the government and most of the armed groups. The areas with the highest rates of sexual violence have been the Greater Upper Nile, the Equatoria region and Greater Bahr el Ghazal. It appears that sexual violence has been used as a weapon to terrorize and oppress civilians. According to UNICEF, around 1,000 children were sexually assaulted in the first three years of the conflict. Around 72 percent of women, residing in protected sites or areas for displaced people, say they have been raped.

The situation is aggravated by the fact that no one is held accountable for the crimes committed as the policing of sexual crimes is non-existent – police and soldiers often being the ones perpetrating sexual violence. In September 2018, 10 government soldiers were sentenced to prison for murders and rapes they carried out in July 2016. The soldiers attacked the Terrain Hotel in Juba, murdered a journalist and raped foreign aid workers, while attacking others. The case was seen as a breakthrough for human rights and humanitarian law in the country; nevertheless, many argue that the compensation for the victims was not sufficient.

According to the March 2018 report of the Commission on Human Rights in South Sudan, there is sufficient evidence to conclude that the SPLA, both SPLA-IO groups and other armed groups that support the parties to the conflict are ‘deliberately targeting civilians on the basis of their ethnic identity and by means of killings, abductions, rape and sexual violence, as well as looting and the destruction of villages.’ The ethnic dimension has led the conflict to become a war of ‘them against us’, dehumanizing the other side. Certain acts during the conflict point to evidence of persecution on ethnic grounds, meaning that the parties have carried out war crimes and crimes against humanity under IHL. Furthermore, the sexual violence during the conflict, which has included rape and mutilations of sexual organs, and has targeted girls, boys, women and men, has eroded the social fabric. The acts, often carried out in front of family and community members, have traumatized people and could lead to even more conflict in the future. Because of these horrific crimes, it will take a long time for the South Sudanese communities to heal.

6. The Syrian Armed Conflict: Nearing the End?

Marija Sulce

Classification of the Conflict

There are many parallel armed conflicts taking place in the Syrian war, which began as a civil war in 2011 between the Assad regime and rebel groups. Currently, the Syrian Government, with the support of Russia and Iran, is engaged in non-international armed conflicts (NIACs) with various rebel groups, while the rebel groups are also engaged in conflicts with each other, as well as with Turkey, Israel and the United States-led coalition. There is also an international armed conflict (IAC) between the US-led coalition and the Syrian Government as Syria did not consent to the coalition being on its territory. The US together with the UK and France have attacked alleged chemical weapon and research facilities of the Syrian Government, following an alleged chemical attack.


609 Ibid.


613 HRW, ‘South Sudan: Events of 2017’.


616 Ibid.


618 Ibid.

619 Ibid.
There is also arguably an international armed conflict between Israel and Iran on Syrian territory.

A. HISTORY OF THE CONFLICT

The War Report 2016 provides a more detailed history of the conflict. Here, only the most important points are discussed regarding the beginning and evolution of the war.

The Syrian armed conflict began in 2011 as a civil war, stemming from the Arab Spring protests. The Syrian people started protesting in March 2011 in Daara against the corruption of President Bashar al-Assad's government, lack of political freedom and unemployment. The demonstrations took an ugly turn when the regime tried to crush the dissent by force. After the forceful response to the demonstrations, protests against the regime erupted nationwide. The regime's opponents started taking up arms and the unrest began its descent into civil war in July 2011, when a group of defectors from the Syrian military began forming the Free Syrian Army (FSA) with the aim of overthrowing President Assad’s regime. During the almost eight years of ensuing civil war, many parties have joined the conflict, including many rebel groups as well as other states, highly complicating the war. The FSA with other opposition groups have controlled vast areas of Syrian territory, including the strategically important city of Aleppo, throughout most of the civil war. An important change came when Aleppo was retaken by the government in 2016.

The political unrest revealed the great religious divisions within Syrian communities, of which the largest are Sunni Muslims, representing around 74 percent of the population in 2011. Other Muslim religions, such as the Alawites, Ismailis and Shia, represented 13 percent, while Christians constituted 10 percent, and Druze 3 percent. Religious differences have fueled the conflict and have provided a platform for hardline groups, such as Islamic State (IS) to become key players. In 2013 and 2014, IS controlled more than 88,000 square kilometers across Iraq and Syria. Nevertheless, as the year 2018 unfolded, there appeared to be a flicker of light at the end of the dark seven-year tunnel, suggesting that the conflict might be entering its final stages.

B. PARTIES TO THE CONFLICTS

1. International Armed Conflicts

a. US-led Coalition

The US-led coalition of 77 states was formed in 2014 to combat IS in Iraq and Syria. The most notable states in the coalition are: Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, the Netherlands, Saudi Arabia, Turkey, the United Arab Emirates, the United Kingdom and, of course, the US. Though the coalition’s purpose is to fight terrorism, since the Syrian Government has not consented to this foreign-troop presence, there is an IAC between the US-led coalition and the Assad government, as established by The War Report 2016. There are currently around 2,000 US troops on Syria’s territory.

622 Ibid.
626 ‘Syria’s Civil War Explained from the Beginning’.
Direct confrontation between Syria and the coalition took place for the first time in April 2017 when the US carried out a missile strike on a Syrian Government air base after the government had used chemical weapons on its own population.632 Another direct confrontation took place almost exactly a year later in April 2018, when the US, Britain and France launched airstrikes against Syrian chemical weapons storage, military and research facilities after another suspected chemical attack by President Assad near Damascus.633

Though the US has been playing with the idea of withdrawing from Syria for a while, its most recent stance has shifted as the Trump administration has vowed to stay in Syria until the end of the war as a way to halt Iran’s expansion across the Middle East.634

b. Turkey

Turkey is part of the US-led coalition, but it is also acting unilaterally against the Syrian Kurds, thus arguably meriting a separate mention for being in a NIAC with Kurdish militant groups, and also in an IAC with Syria as the government has not accepted Turkish presence on its soil. Turkey has been present in the conflict since 2016 and President Erdogan has recently said that Turkish troops will remain until a general election is held in Syria.635

c. Syrian Government

At the beginning of the war, the Syrian Army numbered between 250,000 and 300,000 troops; nevertheless, over the years of the conflict, due to casualties, defections and desertions, this number has greatly decreased.636 It is difficult to know the current number of the troops, but according to Global Firepower rankings, the number of active Syrian military personnel is currently around 154,000.637

d. Israel Versus Iran on Syrian Territory

There is arguably an IAC between Israel and Iran within Syrian territory, further complicating the situation. Iran is on Syrian territory to aid the Assad government’s fight against rebel groups. In February 2018, an Iranian drone went into Israeli airspace from Syria and prompted a subsequent Israeli strike on the Iranian command centre, which had allegedly launched the drone. As this triggered Syrian anti-aircraft fire, Israel resorted to a broader wave of strikes on Syrian and Iranian targets.639 There was another alleged Israeli airstrike on Syria’s air base at the beginning of April that killed 7 Iranian military personnel, which Israel has not confirmed.640 At the end of April, there were more strikes targeting Syrian military positions in Hama and Aleppo, reportedly hitting two Iran-linked bases. It is not clear where the attack came from, but US officials have pointed the finger at Israel, warning that this is ‘the latest sign that Israel and Iran are moving closer to open warfare’.641

2. Non-International Armed Conflicts

There are various parallel NIACs, the main players in which are the Syrian Government, assisted by Russia and Iran, the US-led coalition and various rebel groups, the most important being the FSA, IS, Hay’at Tahrir al-Sham and the YPG-YPJ. Turkey should also be mentioned separately as it is engaged in a NIAC with the Kurdish militias, which are supported by the US, putting great strain on US-Turkish relations.

a. Free Syrian Army (FSA)

The first organized opposition to the Syrian Government, the FSA, came into being in 2011 when defectors from the Syrian Army organized themselves into a militant group. Since its beginnings, the FSA has expanded and become a loose umbrella term for many armed groups, with little coordination, organized military planning or cohesive ideology. Without support from the Turkish military through intelligence, aerial support and logistics, the FSA would be unable to overpower other militant groups.642 The FSA together with Turkey have been heavily involved in fighting the Kurdish militia in northern Syria, also known as the People’s Protection Units (YPG) who are backed by the US. In March, the FSA took the YPG-controlled city of Afrin.643 Though several FSA branches have shifted alliances, one of their goals is to reduce the influence of the Syrian Democratic Force (SDF) at Turkey’s southern border.644 As the FSA is a very loose organization with no clear coordination, it is not possible to know how many troops it has.

The most recent attempt to unite the splintering FSA as well as some other rebel groups has come from Turkey with the creation of the United National (or Syrian) Army (UNA) in mid-2017. The various groups that comprise the army are widely dispersed across Syria and are located in such areas as the South, Ghouta and around Aleppo and Idlib. The UNA has repeatedly clashed with other rebel groups, namely the SDF, IS and Hay’at Tahrir al-Sham. Though the purpose of the union was to unite different rebel groups under one banner, it has not been successful as infighting between different groups continues.

b. Islamic State (IS)

The Islamic State in Iraq and Syria (ISIS), or simply IS, is an extremist group that detached itself from al-Qaeda in 2014 to form its own organization with the aim of creating an Islamic state (caliphate) across Iraq and Syria, which would be governed by Sharia law. It has been extremely successful in recruiting members from across the world with the help of the internet and social media to diffuse its ideas and propaganda. In its prime, IS controlled 34,000 square miles in Iraq and Syria in 2014 and, in 2015, it was believed to be holding around 3,500 people as slaves. It is also one of the wealthiest militant groups in terrorist organization history – in 2014 alone, it earned around $2 billion from its oil fields, mineral mines, taxes and the banks it controlled.

By 2017, the group had lost most of its territory, leading to proclamations that the end had come for IS. In October 2017, after the last of the group’s strongholds – Raqqa – had fallen to Kurdish fighters, Brett McGurk, US Special Presidential Envoy for the Global Coalition to Defeat ISIS, tweeted that IS ‘once purported as fierce, now [is] pathetic and a lost cause’. However, this claim could have been premature as the latest reports claim that there remain anywhere between 20,000 and 30,000 IS troops in Iraq and Syria. Therefore, it remains a significant threat in both countries.

c. Ahrar al-Sham

Ahrar al-Sham or Harajat Ahrar al-Sham al-Islamiyya (the Islamic Movement of the Free Men of the Levant) is a Sunni Salafist armed group that aims to replace Assad’s regime with an Islamic government. It was formed in 2011 with its first attack taking place in 2012. The group worked together with IS until internal fighting pitted them against each other at the beginning of 2014. It has been one of the more powerful and persevering opposition groups throughout the conflict, boasting an estimated 20,000 troops.

In February 2018, the group merged with Nour al-Din al-Zenki to form the Syrian Liberation Front (SLF) in the governorate of Idlib. This is thought to be an attempt by the two groups to counter Hay’at Tahrir al-Sham’s influence in Idlib.

d. Hay’at Tahrir al-Sham

Hay’at Tahrir al-Sham is a union of five different rebel Islamist organizations, which aims to overthrow the Assad regime and introduce Sharia law in Syria. It is based primarily in the northwestern region of Syria and emerged roughly at the end of 2016/beginning of 2017 when Jabhat Fath al Sham (previously the Al Nusra Front) merged with four other Islamist groups in the summer of 2016. It is currently forming one of the strongest opposition groups to Assad’s government. It has also been at war with IS in Idlib and Aleppo, announcing in March 2018 that it had taken 25 villages from IS and was in control of most of the area. The group has between 7,000 and 11,000 troops.

e. Syrian Democratic Forces (SDF)

Dominated by the YPG, the SDF is a US-backed alliance of Arab, Turkmen, Armenian and Kurdish fighters. Founded in 2013 to fight IS and other rebel groups, its stated aim is the establishment of a democratic and federal Syria in the northern Rojava region. The Kurdish YPG and its allies pushed IS out, took over a large northern area during 2017 and now controls almost a quarter of Syria. In an interview with Russia Today in May 2018, President Assad stated that ‘the only problem left in Syria is the SDF’. He continued by saying that there are two options to deal with the SDF: negotiations, which the government claims to have started, or retaking SDF-controlled areas by force. Assad sounded a warning that the US, which is backing the SDF, should learn from Iraq and remove its troops from Syr-
There is no confirmed information on the number of fighters within the SDF, but rough estimates put the number at 60,000–75,000 personnel. 664

### f. YPG–YPJ

The most important part of the SDF, the Kurdish People’s Protection Units, are separated into two groups: the People’s Protection Units – Yekîneyên Parastina Gel (YPG) – and the Women’s Protection Units – Yekîneyên Parastina Jîne (YPJ). The YPG was created in July 2012 and the YPJ in April 2013. They prefer to be referred to as two separate entities and the YPJ joined the SDF separately from the YPG.

Both groups aim to ‘protect the Kurdish people and their cultural, political, and social existence’. 665 The forces of the two groups are estimated to stand at around 20,000–30,000 fighters. They have generally depended on the Kurdistan Worker’s Party (PKK) for their training and military planning. 666

### C. KEY DEVELOPMENTS IN 2018

#### 1. The Decline of Islamic State

Islamic State territory has changed immensely since the peak of the group’s power in 2014, when it controlled 34,000 square miles of land across Syria and Iraq. By 2016, 13,000 square miles had already been taken from the group. 667 In July 2017, the Iraqi Government retook Mosul from IS, which had been part of the latter’s territory since 2014. 668 But the most important moment was the fall of Raqqa – the heart of the IS-proclaimed caliphate – in October 2017. Part of IS territory since 2014, the city was cleared of the group through heavy airstrikes by the US-led coalition and SDF troops. 669 The airstrikes left the city in ruins.

Currently, almost 96 percent of IS-held territory has been retaken. 670 Iraq’s government announced that its war against IS was over in December 2017, while President Trump followed suit, declaring the group ‘militarily defeated’ in January 2018. 671 At the start of 2018, IS was holding a small part of the Jazeera Desert and a few towns along the Euphrates River in Syria, a total of around 1,900 square miles. 672

Nevertheless, the threat of IS has not been dissipated and claims that the group no longer poses a threat could be premature. Between 20,000 and 30,000 IS fighters may still exist across Syria and Iraq according to the U.S. Department of Defense and a United Nations panel of experts. 673 It has been suggested that though IS has become less present on the battlefield, it is simply moving underground and switching to more insurgency-like practices rather than open fighting and governing, which it exercised during most of the Syrian conflict. The strength and attractiveness of IS ideology appears to have allowed the group to survive and remain great in number even after decisive losses on the battlefield. This means that ISIS could remain a problem for many years to come, moving underground when it becomes weak and coming back when its strength is replenished. 674

#### 2. Assad’s Territorial Gains

Currently, Assad appears to be emerging as the winner of the Syrian conflict. Of course, the conflict is not over and more battles are probably still to come; nevertheless, the Syrian Government, with the help of Iran-backed militias and Russian aerial bombings, has reclaimed most of Syrian territory from the rebels. Between February and May 2018, the Syrian Government cleared the cities of Homs and Damascus. Meanwhile, between February and April, it retook Eastern Ghouta, ending its five-year siege, the longest in modern history. The campaign was based on continuous bombardment, which reportedly killed more than 170,000 of the 400,000 civilians that resided in the city within eight weeks. 675 As this was the last rebel stronghold near the capital Damascus, it is an important achievement for Assad. Finally, in July 2018, Assad managed to retake control of the southern Syrian district of Deraa, which has been under rebel control since the beginning of the war. This is an important strategic and symbolic win for Assad as Deraa is considered to be the ‘birthplace’ of the 2011 revolt against him. Strategically, reclaiming all these areas has meant that the government has regained its border with Israel and Jordan, which will facilitate international trade. 676

Assad’s government’s territorial gains have been huge and the Syrian as well as Russian and US governments appear to be slowly shifting towards discussions

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664 Ibid.
667 Ibid, p. 15.
668 Ibid, p. 4.
674 Ibid, p. 15.
675 Ibid, p. 4.
679 ‘Almost 100 Percent’ Defeat of ISIS, What About Its Ideology? (YPG) – and the Women’s Protection Units – Yekîneyên Parastina Jîne (YPJ). The YPG was created in July 2012 and the YPJ in April 2013. They prefer to be referred to as two separate entities and the YPJ joined the SDF separately from the YPG.
681 Ibid, p. 15.
682 Ibid, p. 4.
on how to rebuild Syria and when and how to start sending Syrian refugees back home. At this year’s UN General Assembly, Syria’s Deputy Prime Minister, Walid al-Moallem, claimed that Syria’s fight with terrorism is almost over and the country is getting ready to welcome back more than 5 million refugees who fled during the seven-year war.

The remaining pockets of rebel control are the Idlib province in the northwest, parts of the northeast and the southwest, which looks the most vulnerable as there are no foreign forces stationed there. Still, Idlib, a stronghold of Hay’at Tahrir al-Sham, is the key area for Assad in order to end the war, but reassuring it threatens to be a GTA-style disaster for the roughly 2 million civilians that have fled there in search of a safer place. Luckily, a demilitarization deal was struck in September over Idlib’s control in order to avoid the humanitarian catastrophe that would have ensued if there had been a Syrian military assault. The brokers of the agreement – Russia and Turkey, who are on opposite sides in the conflict – stated that all fighters should leave a designated demilitarization zone and pull out their equipment by mid-October. A retreat by rebel forces from the zone has already started. It remains to be seen if the agreement will hold.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

The Syrian conflict has been marred by human rights abuses and crimes committed by many of the parties involved.

The Syrian Government has been accused of using chemical weapons on several counts. The first accusation came in 2013 when Assad’s government used a nerve agent in Eastern Ghouta, near Damascus, killing 1,400 people. The US president pushed for a strike but could not convince Congress. Nevertheless, the UN Security Council decided on a diplomatic solution, ordering Assad to destroy Syria’s chemical weapons and sign the 1993 Chemical Weapons Convention (CWC). Syria agreed to sign the CWC, which prohibits countries from using, stockpiling or developing chemical weapons. Around 1,300 tonnes of chemical weapons were destroyed; nevertheless, not all the stockpile was eliminated, leaving Syria with the possibility of replenishing its stores. Since then, chemical attacks have not stopped, the most notable of which took place in April 2017, leading to US airstrikes in retaliation and, in April 2018, leading to strikes by the US, France and Britain. IS has also used chemical weapons on at least two counts in 2015 and 2016. The Commission of Inquiry on the Syrian Arab Republic has counted, as of January 2018, at least 34 documented incidents of the use of chemical weapons by various parties to the conflict.

In July 2018, the Syrian Government published documents with the names of prisoners that have died while in government custody. No comment on how the prisoners died and how many there are overall has been made. The Syrian Network for Human Rights has confirmed 312 recent cases but claims that the government has detained at least 800,000 people, so more names will follow. Most of the documents show that these people died years ago, at the beginning of the conflict. Human rights groups say that since the conflict began, many people have disappeared in the government’s jails, where torture and mistreatment are rife.

Furthermore, a recent report on human rights violations during the siege and recapture of Eastern Ghouta has been produced by the Commission of Inquiry on the Syrian Arab Republic. According to the report, when recapturing the city, which was subject to the longest siege (five years) in modern history, government forces carried out war crimes, such as launching indiscriminate attacks and protecting or attacking protected objects. Government missiles have fallen on homes, markets and hospitals. It is estimated that between 18 February and 11 March 2018, attacks by pro-government forces killed around 1,700 civilians and injured 4,000. For example, on 19 March, pro-government forces launched an airstrike, hitting a school and killing at least 17 children, 4 women and 1 man. Access to food and medicine for the citizens under siege has also been denied, which the Commission has called a ‘crime against humanity of inhumane acts causing serious mental and physical suffering’. Hospitals have been targeted so often that it has been suggested that the forces intend to completely erode the health services in opposition areas. Collective punishment was carried out by the government by deliberately starving the besieged civilians and denying them humanitarian aid. Between July 2014 and February 2017, citizens mostly survived because of the existence of a manmade tunnel, which enabled the smuggling of food and medicine. The report concludes that the government’s attacks aimed to instil terror in civilians as well as the opposition.

681 HRC, The Siege and Recapture of Eastern Ghouta.
682 Ibid.
The report also discusses the indiscriminate attacks carried out by armed groups, especially between February and April 2018. As the government regained more and more territory, these acts only increased in number and severity. On 20 February, opposition attacks killed 13 civilians; on 20 March, a rocket landed in a food market, killing 44 civilians and injuring hundreds. Arbitrary arrests were also prevalent, often leading to ‘cruel treatment and torture, and outrages upon personal dignity’. The report concludes that just like the government, opposition forces also aimed to instil fear in civilians.

The US-led coalition has also been accused by human rights groups of having committed war crimes during the conflict. During the campaign to retake Raqqα in 2017, the coalition used more than 30,000 artillery rounds and several thousand airstrikes between June and October 2017. The destruction left the city in ruins; nevertheless, the coalition claimed to have only killed 23 civilians, which Amnesty International, for example, does not consider ‘accurate, credible, [or] serious’. After conducting an investigation on the ground, the organization argues that the strikes killed hundreds and injured thousands and were disproportionate and indiscriminate. While British and French forces were involved, most (around 90 percent) of the strikes came from US forces.

1. The International, Impartial and Independent Mechanism of Syria

In December 2016, the UN General Assembly adopted a resolution establishing an International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (the Mechanism). According to the resolution, the purpose of the Mechanism is ‘to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses’ in order to prepare files and facilitate trials in courts or tribunals that have or may in the future have jurisdiction over these crimes.

In its second report to the General Assembly, the Mechanism reported having already collected around 4 terabytes of evidence consisting of almost 900,000 records. Material that could assist ongoing national criminal justice processes is prioritized. The Mechanism is also collecting information and evidence to try to ‘map crime patterns, examine the contextual elements of core international crimes and understand the links between crimes and individuals, ranging from direct physical perpetrators to perpetrators wielding power and authority over the events’. Some of its other work has focused on developing strategies to address sexual and gender-based violence and gender issues more broadly. The Mechanism has been engaging extensively with civil society and has been receiving requests for assistance from national criminal justice actors.

7. THAILAND’S DEEP SOUTH: A CONTINUOUS NON-INTERNATIONAL ARMED CONFLICT

Classification of the Conflict

Thailand and its armed forces continued to be involved in a non-international armed conflict (NIAC) with, at least, the Patani Malay National Revolutionary Front (BRN) and the coalition of armed groups, the Patani Consultative Council (Mara Patani).

A. HISTORY OF THE CONFLICT

The most recent waves of intense violence in Southern Thailand have their starting point in 2004; however, the origin of the conflict can be traced back to 1909 and the Anglo-Siamese Treaty. With its signature, the Malay Sultanate of Pattani, historically governed by Muslim rulers who paid tribute to Siam, was placed under the direct rule of Bangkok.

This subjugation was reflected in forcible assimilation policies in the southern provinces. It increased when a military-led nationalistic regime came to power in the late 1930s. As a result, public resentment grew, the government removed local laws and discriminated against the use of the Pattani Malay language and.

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687 Ibid, p. 4.
689 Ibid, p. 6.
armed campaigns—separatist movements—did not take long to appear in the mid-1990s with ongoing tensions over the following 60 years.\footnote{699} By the same token, the current military regime's denial of Muslim Malay identity, conservative linguistic policies\footnote{700} and its condemnation of the population's resistance to assimilation should be acknowledged.\footnote{701}

The history of the south of Thailand has thus been marked by attempts at dialogue, coups détat and sporadic incidents that suggest that the NIAC is not about to end, despite its relative diminution. In fact, 2018 revealed that the active armed non-state actors (ANSAs) have the military capacity to destabilize the region and coordinate strikes to push towards their goals.

1. Understanding the Area

The Deep South of Thailand is the battleground of the interplay between the Thai forces and a variety of ANSAs. It borders Malaysia and encompasses three Thai southern provinces (Pattani, Yala and Narathiwat), as well as parts of the neighbouring Songkhla Province.\footnote{697}

An important cultural, religious, ethnic and linguistic frontier, it is also among the poorer regions of Thailand. What is more, these provinces have historically been unstable and predisposed to periodic insurgencies that have escalated at times when central control over the area has increased.\footnote{698} The region's proclivity for clashes is explained by its ethnic composition, the lack of will to be part of Thailand and the central government's non-recognition of Malay identity. Malay Muslims constitute a majority in the area, representing 80 percent of its population, though they are a small minority in a largely Buddhist country.\footnote{699}

Policies for assimilation through language, for instance, as well as the persistent economic cleavages within the area,\footnote{700} are some reasons, among others, why the NIAC is said to be ethnically motivated.\footnote{701} It is the ‘desire of the Pattani-Malay people to maintain their unique cultural and linguistic identities and live autonomously’.\footnote{702}

Thus, in order to comprehend the complex setting of the Thai Deep South, it is vital to outline the dynamics of these longstanding tensions, while pinpointing the multiple periods of increased violence, the active parties to the conflict, the latest developments during 2018 and the alleged violations of international rules these gave rise to.

2. The Start of a Long-Simmering Insurgency and the Increase in Violence Since 2004

Armed separatist movements in Thailand's Deep South surfaced in the 1960s and went under in the late 1980s. The conflict resurfaced and escalated again in mid-2001, but was not officially acknowledged until 2004 when insurgents raided an army depot in Narathiwat on 4 January.\footnote{703} This was followed by more violence: on 28 April 2004, when a dozen checkpoints throughout the region were subject to concurrent attacks, in addition to a symbolic storming of the Kru Se Mosque\footnote{704} and the Tak Bai massacre in October of the same year, ‘where 78 unarmed Malay Muslims demonstrators died from suffocation after they were stacked one on top another in the back of military transport trucks’.\footnote{705} Nonetheless, most casualties resulted from daily acts of violence using small arms, explosives and arson attacks, which also contributed to the steady escalation of the conflict,\footnote{706} reaching its peaks in 2007 and 2010.\footnote{707}

The situation worsened around 2012 when ANSAs began deliberately targeting civilians from differing minorities as well. They intentionally planned attacks that caused distrust and hate towards the majority Muslim population and retaliation by Thai forces.\footnote{708}

Later, in 2014 the Thai army staged its thirteenth coup, claiming to resolve the decade-long political conflict.\footnote{709} Still, almost five years after the coup, Thailand’s junta continues to delay elections, which are currently scheduled for March 2019.\footnote{710}

706 Engvall and Andersson, The Dynamics of Conflict in Southern Thailand’, 179.
In 2014, the level of violence remained consistently high, even with large-scale counter-insurgency measures taken by government forces over the year. Notwithstanding the government’s crackdowns, ANSAs have proved to be innovative, adaptive, unpredictable and heavily reliant on the use of improvised explosive devices such as car bombs, which have become larger and more sophisticated since 2012. Attacks have generally focused on security force patrols, thus mostly featuring targeted killing and attacks on police and army bases, but also including civilian targets. In 2013 and 2014, the average toll claimed by conflict was 50 lives per month, with an even higher number of people injured.

Even though 2017 saw a record low of 235 people killed, 2018 led to a finale of numerous bouts of violence. Armed violence has continued over the years and persists to this day, with civilians often caught in the middle. Since 2004, the conflict has resulted in more than 6,000 deaths, with some 20,000 documented attacks.

### B. PARTIES TO THE CONFLICT

Economic and political concerns, linked with harsh policies of suppression and assimilation, have helped fuel local resistance, the demands of which have been ‘mostly limited to some degree of autonomy and improved respect for minority rights’. This resistance was non-violent until the 1960s.

Armed violence *sensu stricto* surfaced with the appearance of three main ANSAs: the Patani National Liberation Front (BNPP), the BRN and the Patani United Liberation Organization (PULO). Along with other smaller actors, these three carried out low-level armed activities until the 1980s, when they started to dwindle. Nevertheless, factions and therefore new actors emerged and reorganized underground, leading to the aforementioned intensification of military operations on both sides from 2004.

The structure and composition of currently active ANSAs in Southern Thailand is difficult to determine. On the whole, none claim responsibility for attacks carried out during the last decade ‘and the rationale for their struggle has been articulated mainly through word of mouth, banners, leaflets and graffiti in public places’. Moreover, the identified strategies are based on clandestine methods and systems of secrecy in which not all members are aware of the name of the group they belong to or the names of their leaders, and their knowledge of counterparts is too restricted for direct channels of communication.

Yet, it is generally stressed that the BRN is the dominant ANSA currently active, while other minor actors have decided to take part in peace talks since 2015. Therefore, the struggle is largely between the Thai Government and the highly fractured ANSAs, embodied by two main groups: the BRN and the Mara Patani, an umbrella entity.

#### 1. The Royal Thai Armed Forces

Since the thirteenth military coup on 22 May 2014, Thailand has remained under the rule of the military junta, the National Council for Peace and Order (NCPO). This is headed by Prayut Chan-o-cha, who also serves as the Prime Minister of Thailand.

Consequently, the state armed forces have a pivotal role not only in public security, but also in politics. By the beginning of 2018, 61,000 troops were present in Thailand’s Deep South and it was promised that 3,000 would be withdrawn from February 2018. Alongside these estimations, it is vital to highlight the ethnic composition of the military forces. According to a 1964 study, 94 percent of soldiers in the army were Buddhist, while 6 percent were Muslim, and there is no evidence of any growth since then in the number of Muslim soldiers in the military.

Moreover, the Royal Thai Armed Forces have received extra military support from an array of irregular forces engaged in parallel military activities. These forces, along with village militias, were mainly formed by volunteers with better local knowledge – of the terrain, language and culture – who were the protagonists in policing and counter-insurgency, particularly against communist and separatist guerillas during the 1970s and 1980s. However, during the early 2000s, these actors took on new roles including ‘the suppression of separatist violence in the South’ and since the eruption of violence in 2004, the army enhanced the strength of the Thahan Phran (Rangers). Still, as in the case of the regular forces,
The second most well-known irregular force is the Or Sor (Volunteer Defence Corps), established by the Volunteer Corps Act 1954 and under the command of the Ministry of Interior (MOI). Yet, the largest force since 2004 is the Chor Ror Bor (Village Defence Volunteers), which has been the main security force in most villages. As a result, the Thai military has been supported by local villagers across the region, working in isolated teams.

In late 2017, the NCPO began to re-organize the Tambon Defense Force in the border region. In contrast to the abovementioned bodies, a tambon is an administrative subdivision below the district and provincial levels. It is a local government unit that comprises a group of villages, and is commanded by a kamnan who falls under the MOI chain of command. In other words, the kamnan and his/her team – all receiving salaries from the MOI – ‘will connect all 262 tambons in the Deep South under the army’s security grid’.

2. Armed Non-State Actors

The presence of ANSAs continues, particularly in rural villages, despite their weakening over the last few years.

a. The Patani Malay National Revolutionary Front (BRN)

The BRN is an ANSA operating in Southern Thailand, being based in northern Malaysia. It was originally established on 13 March 1963 by Haji Abdul Karim Hassan as a splinter group of the BNPP. Although the latter is alleged to be founded by Tengku Abdul Jalal in 1959, it traces its origin to a local revolt which took place in 1947 in Narathiwat Province.

The BRN was active in the 1970s and early 1980s. However, in the 1980s it split into three political factions:

- BRN-Congress (BRN K)
- BRN-Coordinate (BRN C)
- BRN-Ulema

At present, the only active faction in the Deep South is the BRN-C, whose ideology is Salafism. It claims that the annexation with Siam was the end of both national sovereignty and Malay identity. Thus, its primary aim was to drive out the Thai state from what was the Sultanate of Pattani. Some analysts assert that the BRN-C’s objective of seeking an independent Pattani state has evolved, which has brought autonomy into the discussion.

Since its emergence, the BRN-C has altered its strategies following the mistakes of its precursors. Consequently, its main focus has been ‘a systematic mass indoctrination of the local southern population to build a solid political base before eventually launching its violent struggle’. Thus, BRN-C’s political strategy is primarily centred on building mass support to gain control over the population and destroy the state’s legitimacy while provoking violent reactions from the security forces. Allegedly, it has control over part of a secessionist youth movement, Pemuda, which is believed to be liable for day-to-day sabotage, shootings and bombing attacks.

With no social media, except for self-promoted videos, a key principle of BRN-C is to maintain total secrecy and usually never claim responsibility for its actions. As proved by former Pattani ANSAs, claiming responsibility is lethal as it enabled security agencies to target them successfully.

On 4 January 2004, the BRN-C attacked the Chulaporn military army camp in Narathiwat. This was its largest attack in three decades and led to the escalation of armed violence in the region.
In terms of organizational structure, the BRN is far from having a guerrilla style. Some analysts maintain that it is decentralized, composed of autonomous cells which operate independently.745 Meanwhile, Thai military intelligence analysts argue that it has a well-organized structure with a leadership council known as the Dewan Pimpinan Parti (DPP) and two main chains of command – political and military – serving as a nexus between leaders and the general population at the local level.746 According to this, the military chain of command is divided into three military areas based in the three southern provinces, each led by a military commander.747 The DPP is responsible for foreign relations as its seven councils are in charge of the military, the economy, youth, foreign affairs, propaganda, religious and political-administrative functions.748

At the February 2013 peace talks, the BRN representative referred to a ‘shura council’ as a body that makes collective decisions on the movement’s direction.749 In spite of the existence of the DPP, according to the movement’s Indonesia-based Information Department, some members act on their own and without the DPP’s consent.750 In fact, it has been asserted that members are organized in squads operating as small-group units and as independent cells for small operations.751 Undoubtedly, ‘this mode of operation provides a challenge to state security agencies in separating friend from foe while employing traditional counterinsurgency tactics’.752

Given the secretive nature of the ANSA and its strategies, it is difficult to estimate the number of individuals involved in the BRN.753 Until 2011, the military wing was estimated to have around 3,000 fighters.754 Yet, Thai military officials claim the number has recently risen towards 6,000.755 The accuracy of the estimates is open to question.

Following the death of Masae Useng756 in May 2016 and death of Sapae-ing Basoe in January 2017,757 the BRN endured its first full change of leadership since its inception. Abdullah Wan Mat Noor (Doonloh Wae-Mano), former military commander, was designated the new Chairman on 17 January.758

b. The Patani Consultative Council (Mara Patani)759

Mara Patani, created in 2014, is an umbrella actor encompassing, as a sole unified voice, six political liberation organizations in the Deep South: the BRN Action Group, the Islamic Liberation Front of Patani (BIPP), the three factions of the PULO (PULO-P4, PULO-DSP and PULO-MKP) and the Pattani Islamic Mujahideen Movement (GIMP).760

Its aim is to achieve effective dialogue with the Thai Government.761 Even though it was an initiative of pro-dialogue BRN members as a proactive step towards the negotiation table, today it is unclear how much support this group has from the mainstream BRN or its military wing.762

- **The BIPP:** Known as the former BNPP, it changed its name to BIPP in 1986, accentuating its own commitment to Islam. Its main channel of recruitment was religious teachers, followed by basic military training in local areas or overseas.763 Its armed strategies started to shift towards political efforts, with it ceasing its operations in 1990 and re-emerging in 2002.764

- **PULO-P4, PULO-DSP and PULO-MKP:** These are alleged factions of the PULO. This was created in 1968 and distinguishes itself from other organizations by its attempt to create an independent Muslim state through armed struggle based on religion, nationalism, homeland and humanitarianism.765 The 1970s and 1980s saw its extended separatist campaign, relying on traditional guerrilla warfare conducted from jungle bases.766
The GMIP: Formed in 1995 by Nasoree Saesaeng and Cheku Moe Abdul Rahman, the GMIP is a splintered faction of the earlier, now inactive, Pattani Mujahdeen Movement (GMP).767 With aspirations for a Muslim Pattani state, it is inspired by widespread international jihad.768

3. Stalled Peace Talks

On 28 February 2013, the Thai Government agreed to hold talks in Malaysia with the BRN to seek an end to the armed conflict.769 The talks began under the democratically elected government of Prime Minister Yingluck Shinawatra, ousted in 2014 by the military in the name of ending political turmoil.770

Although there was no sharp drop in violence and casualties, 2013 saw the lowest rate of civilian deaths since the resurgence of violence in 2004.771 However, the talks failed with the retirement of the BRN in 2015, purportedly due to the government’s lack of concessions,772 and the negotiations with Mara Patani, which were made public.773

At present, Mara Patani, along with a minority of BRN members who do not have the support of their top leaders,774 and the Thai Government are engaged in a stalled Malaysian-facilitated peace process,775 still at a confidence-building stage. Even though Mara Patani wanted to discuss measures like the recognition of the distinct identity of the Pattani people or granting some level of self-government to the provinces, the focal point during the process has been the establishment of several safety zones which it was not possible to develop until now.776


768 ‘Chapter IV: Melayu-Muslim Movements in Southern Thailand’, p 150.


775 Johnson, ‘Thai Insurgents Revive Ahead of New Polls’.


C. KEY DEVELOPMENTS IN 2018

At the beginning of 2018, the situation in the Thai Deep South seemed to be improving, given the withdrawal of troops since 2016, the apparent decline in violence in 2017 and the promise of the withdrawal of more than 3,000 troops in 2018.777 The year passed with ups and downs, witnessing violent actions in parallel with peace negotiations with Mara Patani. Armed violence even spiked compared to some months in 2017, while the faint indicators of the BRN’s connections with the Islamic State continued to be part of the debate.778

One event that offered hope of a decline in armed violence was the announcement in mid-February 2018 of the agreement to create safety zones in order to launch a ceasefire in five districts in the three Deep Southern provinces (two each in Yala and Narathiwat and one in Pattani).779 These are meant to be designated areas where state forces and ANSAs have agreed to a ceasefire. However, simultaneously, an incident took place injuring three school girls, three defence volunteers and four civilians when a bomb was set off near the road leading to the Pracha-utt school in Muang district.

In April 2018, the Cho-I-rong district in Narathiwat Province was announced the first territory to create a pilot safety zone to aid the peace talks.780 However, this announcement led to the suspension of the talks by Mara Patani in August, which felt belittled by the way the Thai Government had gone about it.781 Subsequently, the peace process suffered its second setback of the year when the armed wing of the BRN ratified its refusal to participate in the peace talks.782

The most recent incidents occurred during the last week of 2018: the detonation of a roadside bomb hidden in a gas cylinder; two bomb explosions in a popular tourist site near Songkhla Province and, on Friday 28 December, seven separate events in three districts of Narathiwat Province (two bomb attacks in Sri Sakhon district, four in Chanae district and a base ambush in Rangae district using grenades).783


781 Pathan, ‘Thailand: Junta Has Little to Show for Deep South Peace Efforts’.


According to Zachary Abuza, a specialist on the ongoing conflict and a professor at the National War College, ‘one reason why the fighting continues today is due to a lack of meaningful dialogue or compromise between the military and the separatists’.\(^{784}\)

There has been no indication of the conflict becoming less intense in 2019. The first week of the year saw multiple incidents that warned of an escalation of armed violence ahead of the general election on 24 March.\(^{785}\) Meanwhile, the new chief of the Thai negotiation team, General Udomchai Thammasaroraj, began the official dialogue with a variety of meetings, mainly with Malaysian peace facilitator Abdul Rahim Noor, appointed in August 2018. While it has been stressed that independence is not a possible solution, other forms of power decentralization are on the table.\(^{786}\)

The incidents at the end of 2018 and the beginning of 2019, as well as the recent attempts by the government to move the peace process out of the deadlock, are signs of a new moment for Southern Thailand: an escalation of armed violence or the attempt to convince the armed wing of the BRN-C to come to the negotiating table, which has been futile thus far.\(^{787}\)

While the delegates at the table talk about how to move forward, the 15-year anniversary of the official escalation of violence in the area has been marked by an announcement by the BRN-C confirming its willingness to continue the fight for freedom if the will of the Thai state to achieve peace proves to be absent.\(^{788}\) Despite the unrelenting refusal of the hardcore elements of the BRN-C to stay away from the Mara talks, it must be acknowledged that it is the most influential and well-armed ANSA in the southern provinces, which has demonstrated the capability of its leadership to exercise control over local commanders on the ground.\(^{789}\)

The last violent episode registered, at the time of writing, was reported on 10 January 2019: four civil defence volunteers guarding a school were shot to death.\(^{790}\) In this incident, six people were killed and seven were injured in attacks carried out across the region since 1 January 2019.\(^{791}\)

From January 2004 to December 2018, there were 20,163 incidents, in which 6,921 people died and 13,511 were injured. From December 2018 to 4 January 2019 alone, there were 54 incidents, with 41 casualties, 18 dead and 23 injured. Of these incidents, 23 are alleged to have a nexus with separatism, 24 are unclear, 6 are connected with organized crime and 1 with drugs; 19 of these incidents were bombings and 12 were shootings.\(^{792}\)

The persistence of violence is demonstrated by the 548 incidents in 2018 (killing 218 and injuring 265), of which 240 are related to separatism/independence and 241 remain unclear. The coordinated attacks and the normal tit-for-tat violence between the BRN and Thai security forces\(^{793}\) evidence the clear existence of violence, despite the fact that such acts have been commonplace for years and a decline has been reported since the 2010 peak, when there were a total of 2061 incidents.\(^{794}\)

In sum, the events in 2018, along with several episodes during the first month of 2019, cannot be disregarded. This is a stark reminder that a NIAC not only continues to be a reality, taking its toll mostly on the civilian population, but that it can easily worsen and threaten to reach a tipping point as in 2004 and subsequent years.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTION

The context in Thailand’s Deep South has been characterized by alleged international humanitarian law (IHL) and human rights violations, carried out by all parties. These allegations include torture, extrajudicial killings, deliberate attacks on civilians, the recruitment and use of children and the use of landmines.

While the Internal Displacement Monitoring Centre recorded 35,000 people displaced due to violence and conflict as of April 2015,\(^{795}\) approximately 6,800 people have been killed in the ongoing armed conflict in Thailand’s southern border provinces, the majority of whom are civilians.\(^{796}\) Religious leaders have become targets of violence for both parties. There have been decapitations of unarmed Buddhist monks,\(^{797}\) and Islamic leaders taken into custody by security agencies have disappeared or have been extrajudicially executed.\(^{798}\) Security agencies or irregular forces, such as the Rangers, also resorted to extrajudicial killings and abductions,\(^{799}\) mainly in 2007.

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784 Quinley, ‘The Artists Promoting Peace in Thailand’s Conflict-Plagued South’.
785 Johnson, ‘Thai Insurgents Revive Ahead of New Polls’.
787 Watcharasakwet, Rakkanam and Mustafa, ‘Southern Thai Peace Talks’.
788 Johnson, ‘Thai Insurgents Revive Ahead of New Polls’.
791 Ibid.
793 Pathan, ‘Where Next for Peace Talks in Thailand’s Deep South?’
797 HRW, No One is Safe.
Similarly, the renewed bombings against civilians in 2016, 2017 and 2018 may amount to crimes against humanity due to their widespread and systematic nature.800 In addition, reports of attacks on health workers and health facilities emerged in the course of 2018.801

One of the main alleged situations that remains a concern due to the lack of appropriate responses is the recruitment and use of children by ANSAs. In fact, different UN bodies have reported the training of children as young as 13 years old in the use of weapons, and the detention of children for alleged association with ANSAs.802 NGOs have reported how ANSAs “used them to participate in hostilities, either in active fighting or in supporting roles, such as lookouts and informers”.803 Nevertheless, no direct evidence has been found of under-18s being forcibly recruited into the ranks of the BRN.804

Last but not least, both victim-activated and command-detonated landmines have been used over the past decade and reports in 2018 accused the BRN of using landmines and placing them near civilians and civilian objects. Allegedly, civilians have been increasingly affected by landmines with some casualties reported in rubber plantations.805

In sum, based on the continuance of hostilities and the persistent presence of ANSAs such as the BRN-C, it must be said that the situation in the Thai Deep South still amounts to a NIAC, even if the Thai Government denies its existence.806 This said, all parties to the conflict are bound by IHL rules including the prohibition of anti-personnel landmines banned by the Ottawa Treaty,807 along with customary IHL rules prohibiting child recruitment and the use of children in hostilities, and ratified treaties on the subject such as Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.808

8. THE CONFLICT IN EASTERN UKRAINE (DONBASS): DIRE CONSEQUENCES AND ZERO RECONCILIATION

Grażydas Jausitis

Classification of the Conflict

Georgia and the Ukraine were involved in a non-international armed conflict in 2016 in which the armed forces of the Government of Ukraine were fighting against pro-Russian separatist armed groups, which proclaimed themselves the Donetsk People's Republic (DPR) and the Luhansk People’s Republic (LPR), in the east of the country. The conflict meets the threshold for applicability of the 1977 Additional Protocol II.

Ukraine clearly states that the Russian Federation (RF) is directly participating in the conflict.809 This is denied by Moscow, though the occasional detention of RF security actors,810 the alleged appearance of RF military equipment,811 the flow of Russian military volunteers,812 the constant economic support provided to separatists and the case of Crimea might imply Russian engagement in the conflict. It is noteworthy that, speaking at an annual televised press conference in 2015, President Vladimir Putin denied that Russian regular forces were involved in the Donbas conflict, but conceded that people dealing with tasks in the military sphere had been present.813

804 Ibid.
805 HRW, ‘Thailand: Insurgents Use Landmines in South’, 4 July 2018, https://www.hrw.org/news/2018/07/04/thailand-insurgents-use-landmines-south (last accessed 20 December 2018); ‘By July 2017, the Kingdom of Thailand had an estimated 410km2 of suspected mined area. In 2016, a total of 28.19km2 of landmines (of which 99% (27.72km2) was cancelled by non-technical survey, just over 0.70km2 was reduced by technical survey and 0.39km2 was cleared, with the destruction of 1,231 antipersonnel mines. Land release results for 2016, including clearance, were a decrease from 2015’, ‘Thailand Mine Action’, Landmine & Cluster Munition Monitor 11 December 2017, https://www.them-monitor.org/en/gb/reports/2017/thailand/mine-action.aspx (last accessed 12 February 2019).

807 Thailand ratified this treaty on 27 November 1998.
808 See Rules 136 and 137, International Committee of the Red Cross, Customary IHL Database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39 (last accessed 12 February 2019); Thailand is also part of OPAC, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratified on 27 February 2006.
A. HISTORY OF THE CONFLICT

In Donbass, Russian-speaking residents and Ukrainians did not have prior conflicts and deadly clashes. They cohabitated peacefully during the Soviet period and the communities did not face significant ethnic challenges. In the early 1990s, small numbers of fringe intellectuals championed the establishment of Novo Rossiya (New Russia) as an ethnic state, and an organization formed advocating that Donetsk and other Russian-speaking areas join Russia; however, the eruption of war in Donbass is predominantly explained through geopolitical narratives.

A well-coordinated attack on local administrative buildings by pro-Russian activists in the eastern Ukrainian cities of Donetsk, Kharkiv and Lugansk began on 6 April 2014. Local police forces did little to stop the rioting, while local government buildings and the Security Service headquarters were ransacked and occupied. The next day, Donetsk separatists proclaimed the establishment of the DPR. Following instability and unrest in other towns in Donbass, the acting President of Ukraine, Oleksandr Turchynov, announced the beginning of an anti-terrorist operation (ATO) against pro-Russian separatists. However, this did not bring the expected results and the instituting of the LPR, another breakaway entity, took place on 28 April 2014.

By the end of April, Turchynov announced that the Ukrainian Government was no longer in full control of the provinces of Donetsk and Luhansk, declared that the country was on ‘full combat alert’ and reinstated conscription to the armed forces by decree. Both the LPR and DPR pledged to hold a referendum regarding the country’s way forward. On 11 May, the referendums were held and, in both, an overwhelming majority voted in favour of independence and sovereignty. On 12 May, both regions declared independence, while Donetsk appealed to Moscow to be incorporated into the RF. The same day, Donetsk separatist leaders announced they would take control of all armed and security forces in the oblast, expelling those who refused to pledge allegiance to the new state and destroying any armed groups that resisted. By the end of May, both the Donetsk and Luhansk Republics officially announced that they had formed a confederation called the Federal State of New Russia (Novo Rossiy), which was abandoned in May 2015. On 25 May, the Ukrainians elected Petro Poroshenko as President; however, the election did not take place in the eastern part of the country. The intense fighting continued in Donbass during the summer, including the shooting down of a civilian air jet on 17 July. A report by the Dutch-led Joint Investigation Team said there was ‘no doubt’ the missile that downed the plane was brought in from Russia and fired from rebel-controlled territory, which led to European Union and United States sanctions against the RF.

The fierce fighting persisted on the ground and the battle in Illovaisk in August was particularly cruel. It was further fueled by the Russian decision to send humanitarian convoys to Donbass without the express permission of the Ukrainian authorities.

1. Two Ceasefire Agreements: Quo Vadis?

In On 5 September 2014, the Minsk Protocol was signed, which included, inter alia, the immediate bilateral cessation of the use of weapons; monitoring and verification by the Organization for Security and Co-operation in Europe (OSCE) of the non-use of weapons; decentralization of power, including by means of enacting the Law of Ukraine “[p]etition respect to the temporary status of local self-government in certain areas of the Donetsk and the Lugansk regions” (Law on Special Status); permanent monitoring of the Ukrainian-Russian state border; the holding of early local elections in accordance with the Law on Special Status; and the removal of unlawful military formations, military hardware and militants and mercenaries
from the territory of Ukraine. The implementation parameters were laid down in the follow-up memorandum.

However, the ceasefire agreement was immediately violated and skirmishes continued. Additional problems surfaced with regard to the elections organized by the DPR and LPR in March and May 2014, as the factions continued to control territory outside the ATO zone. The OSCE, in its 2015-2017 Special Monitoring Mission to Ukraine, reported on the ceasefires and the withdrawal of heavy weapons from the frontlines, to be monitored by the OSCE. An ‘all-for-all’ prisoner exchange, local elections and amnesty for fighters are to follow; both sides are to ensure the safe delivery of humanitarian aid and to work toward the socio-economic reintegration of the separatist-held territories. Ukraine promises to implement constitutional changes to provide for ‘decentralisation’; in exchange, all ‘foreign armed formations’ will be withdrawn and Ukraine will regain control of its state borders. Nevertheless, the continued violence brought the conflicting parties to the negotiation table and a new ceasefire agreement was signed on 11 February 2015.

The so-called Minsk II agreement provided for a ceasefire and the withdrawal of heavy weapons from the frontlines, to be monitored by the OSCE. An ‘all-for-all’ prisoner exchange, local elections and amnesty for fighters are to follow; both sides are to ensure the safe delivery of humanitarian aid and to work toward the socio-economic reintegration of the separatist-held territories. Ukraine promises to implement constitutional changes to provide for ‘decentralisation’; in exchange, all ‘foreign armed formations’ will be withdrawn and Ukraine will regain control of its state borders. Nevertheless, the rebels advanced on Debaltseve in spite of the recent ceasefire agreement and Ukrainian troops had to make an organized withdrawal. The ICC’s assessment attributed the increased fighting from August 2014 to February 2015 to alleged violations of the ceasefire agreement by the rebels. The conflict continued after the battle of Debaltseve and, again, fierce fighting occurred in Avdiivka and Yasynuvata in January–February 2017. Small-scale skirmishes continued after the battle of Debaltseve and, again, fierce fighting occurred in Avdiivka and Yasynuvata in January–February 2017.

Al Jazeera
BBC News
UNIAN
The Washington Post
Reuters


2. Russian Armed Forces

The Ukraine Government estimates that at least 6,000 Russian soldiers are operating in Donbass, with tens of thousands more stationed along the Russian-Ukrainian border since June 2017.\(^{844}\) According to different sources cited in a Royal United Services Institute report,\(^{847}\) Russian troops in Ukraine numbered between 3,500 and 6,000–6,500 by the end of August 2014. That number fluctuated, reaching approximately 10,000 at the peak of direct Russian involvement in mid-December 2014. The Russian Ministry of Defence had to involve 117 combat and combat-support units to generate the approximately 42,000 troops rotating in the vicinity of the Russo-Ukrainian border – either stationed there, delivering artillery fire against Ukrainian territory from Russian soil or directly participating in combat operations on Ukrainian sovereign territory.\(^{848}\)

Recently, the Ukrainian military prosecutor underlined that the number of Russian nationals fighting alongside separatists in Ukraine’s Donbass region now totals 11,000, including 3,000 regular combat troops.\(^{849}\) The RF has never admitted that its regular troops were operating in Donbass.

3. Non-State Armed Groups: The Self-Proclaimed Donetsk People’s Republic and Luhansk People’s Republic

According to Franklin Holcomb’s report published in September 2017,\(^{850}\) separatist units are primarily comprised of Russian mercenaries, intelligence and military personnel; marginalized locals from economically distressed areas; radical groups from Russia and the former Soviet Union, including Cossack bands, Russian Orthodox Christian radicals, Russian nationalists and communists; sports hooligans; defectors from Ukrainian security forces. There are about 40,000 separatists in Donbass according to the Ukrainian armed forces.\(^{851}\)

C. KEY DEVELOPMENTS IN 2018

On 18 January 2018, Ukraine’s parliament passed a bill that aims to reintegrate the eastern territories. The bill describes the areas in Ukraine’s Donets and Luhansk regions as ‘temporarily occupied’ by the ‘aggressor country’ Russia. The Russian Ministry of Foreign Affairs said in a statement, ‘You cannot call this anything but preparation for a new war’, and warned that the bill ‘risked a dangerous escalation in Ukraine with unpredictable consequences for world peace and security’.\(^{852}\) On 16 March, President Poroshenko noted that, according to the Donbass reintegrative law, the ATO format was changing to a Joint Forces Operation and thereby terminated the ATO.\(^{853}\)

The security situation on the ground remains challenging and fragile. On 26 March, the Trilateral Contact Group on the settlement of the situation in Donbass agreed on a comprehensive, sustainable and unlimited ceasefire starting from 30 March.\(^{854}\) The ceasefire parameters were immediately violated and fighting persisted. The OSCE Special Monitoring Mission voiced concern over skirmishes near Horlivka, where the Ukrainian army retook Chihari village in May.\(^{855}\) It is noteworthy that the US has confirmed its delivery of Javelin antitank missile systems to Ukraine.\(^{856}\)

On 11 June, the foreign ministers of Russia, Ukraine, Germany and France met in Berlin to discuss the implementation of a fragile ceasefire for Ukraine and the deployment of a UN peacekeeping mission in the country’s conflict zone. Russia and Ukraine agreed in principle to a UN peacekeeping mission, but their ideas about how to implement it were still ‘very much apart’.\(^{857}\)
D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

On 17 April 2014, the Government of Ukraine lodged a declaration under Article 12(3) of the Rome Statute of the ICC accepting the jurisdiction of the ICC over alleged crimes committed in its territory from 21 November 2013 to 22 February 2014. On 25 April 2014, the ICC Prosecutor, Fatou Bensouda, opened a preliminary investigation into allegations of war crimes and crimes against humanity in the country.

In its report on the human rights situation in Ukraine covering the period from 16 November 2018 to 15 February 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) documented 315 human rights violations during the reporting period, which affected 202 victims. According to the OHCHR, this represented an increase of documented violations compared with those documented during the previous reporting period of 16 August to 15 November 2018. Of the violations, the OHCHR underlined that the Government of Ukraine was responsible for 126 violations and the self-proclaimed Donetsk People’s Republic and Luhansk People’s Republic were responsible for 154.

Finally, three inter-state cases initiated by Ukraine concerning Russia’s actions in Crimea and Eastern Ukraine are currently pending before the European Court of Human Rights.

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