



FACULTY OF LAW  
Lund University

Sanna Skarbro

# Solid Squares and Dynamic Circles, A Humanitarian Assessment of Prolonged Hostilities in Central Africa

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Supervisor: Markus Gunneflo

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# Summary

The thesis examines the contemporary conflict in the Central African Republic and its neighbouring countries, in particular the region comprising north-eastern Central African Republic, eastern Chad and western Sudan (the CCS-region). Having caused numerous civilian casualties and left countless societies entirely ruined, the conflict is one of major concern for the international community. The conflict is generally considered to be governed by the humanitarian legal framework of non-international armed conflict. It is however argued in the thesis that by categorizing the situation as a purely internal conflict intrinsic characteristics of the situation are ignored.

Categorizing hostilities in terms of international humanitarian law necessitates an analysis of the actors involved in the conflict and the geographical scope of the same. Chapter 2 outlines the fundamental humanitarian framework and emphasizes that the application of humanitarian norms requires certain presuppositions; distinguishable armed forces and confined territories.

Chapter 3 addresses the historical background to and practical context in which the conflict takes place. A result of European colonization of the CCS-region in the early 20<sup>th</sup> century was national coherency of the three states in theory, but fragmented communality in practice. All three states suffer from prolonged hostilities and it is argued that the CCS-region presents an intertwined and regionalized conflict embracing territories and actors from all three states. It is emphasized that the regionalized context in which the conflict takes place is difficultly compatible with the context required for correct application of humanitarian norms as both the requirement of distinguishable armed forces and the requirement of confined territories are essentially missing. By pinpointing that the conflict can neither be characterized as an international armed conflict, nor be easily accommodated within the framework regulating non-international armed conflicts, the chapter enlightens that characterizing the conflict and subsuming it under the international humanitarian framework is a challenging undertaking. The thesis finds that the conflict occurring in the CCS-region constitutes a from previously recognized conflict-typology distinguished type of conflict: a post-colonial regionalized conflict, difficultly compatible with the contemporary humanitarian framework.

From the finding that the conflict constitutes a regionalized conflict it becomes extraordinarily difficult to distinguish who are and who aren't the legitimate holders of the exclusive right to use violence and coercion within the states. It becomes difficult to hold persons and groups accountable for misconduct and potential war crimes, when simply characterizing the persons and groups involved in hostilities is in the nearest impossible. As a deplorable consequence it is found that severe crimes against the civilian population may not only go unpunished, but continue as it appears unclear who should, and has the exclusive right, to put an end to the violence.

# Sammanfattning

Uppsatsen analyserar den pågående konflikten i Centralafrikanska republiken och dess angränsande länder, med särskilt fokus på regionen omfattande nordöstra Centralafrikanska Republiken, östra Chad och västra Sudan (CCS-regionen). Med anledning av dess orsakande av avsevärda civila förluster och dess efterlämnande av åtskilliga förstörda samhällen utgör konflikten en betydande angelägenhet för det internationella samfundet. Konflikten anses generellt omfattas av det humanitärrättsliga ramverket för inomstatliga väpnade konflikter. I uppsatsen framförs dock argumentet att vid en kategorisering av situationen som en nationellt begränsad konflikt bortses från väsentliga aspekter av konflikten.

Kategorisering av en strid i enlighet med international humanitär rätt kräver en analys av de involverade aktörerna och den geografiska omfattningen av konflikten. Kapitel 2 presenterar det grundläggande humanitärrättsliga ramverket och belyser att tillämpningen av humanitärrättsliga normer erfordrar särskilda förutsättningar: urskiljningsbara väpnade grupper och avgränsade territorier.

Kapitel 3 presenterar den historiska bakgrunden till och den praktiska kontexten i vilken konflikten pågår. Ett resultat av den europeiska kolonisationen av CCS-regionen i början av 1900-talet var nationell koherens för de tre staterna i teorin, men fragmenterad samhörighet i praktiken. Alla tre staterna har lidit av långvariga konflikter och det argumenteras i kapitlet att CCS-regionen utgör en sammanflätad, regionaliserad konflikt omfattande territorier och aktörer från alla tre staterna. Det belyses att den regionaliserade kontexten i vilken konflikten utspelar sig är tveksamt kompatibel med den kontext som förutsätts för korrekt tillämpning av humanitärrättsliga normer eftersom såväl kravet om urskiljningsbara aktörer som kravet om avgränsade territorier saknas. Genom att tydliggöra att konflikten varken kan kategoriseras som en internationell väpnad konflikt eller med enkelhet omfattas av ramverket för interna konflikter belyses att karakteriseringen av konflikten och tillämpningen av det humanitärrättsliga ramverket i enlighet därmed, är problematiskt. Uppsatsen konstaterar att den pågående konflikten i CCS-regionen utgör en från tidigare erkända konflikt-typologier särskild typ av konflikt: en postkolonial, regionaliserad konflikt, svårligen angripbar med tillämplig internationell humanitär rätt.

Från slutsatsen att konflikten utgör en regionaliserad konflikt följer dock svåra bedömningar avseende vem som är och vem som inte är rättmätig innehavare av statens exklusiva, legitima rätt att utöva våld. Det blir svårt att utkräva juridiskt ansvar för potentiella krigsbrott när själva utpekandet av särskilda personer och grupper i sig är högst problematiskt. Uppsatsen avslutar med att konstatera att beklagansvärda konsekvenser av detta inte enbart är att allvarliga brott mot den civila befolkningen kan förbli ostraffade, utan dessutom tycks kunna fortsätta ohindrat då det förefaller oklart vem som borde, och vem som innehar den exklusiva rätten att sätta stopp för våldet.

# Abbreviations

AI	Amnesty International
APRD	Armée Populaire pour la Restauration de la République et la Démocratie (Popular Army for the Restoration of the Republic and Democracy)
AU	African Union
A2R	Alliance pour la Renaissance et la Refondation (Alliance for the Rebirth and Rebuilding)
BONUCA	United Nations Peace-building Office in the Central African Republic
CAR	Central African Republic
CCPR	Human Rights Committee
CCS-region	The region comprising north-eastern Central African Republic, eastern Chad and western Sudan
CEN-SAD	Community of Sahel Saharan States
CIPO	Center for International Peace Operations
CPJP	Convention des Patriotes pour la Justice et la Paix (Convention of Patriots for Justice and Peace)
CPSK	Convention Patriotique du salut du Kodro (Patriotic Convention for the Salvation of Kodro)
CSRC	Crises States Research Centre
DDR-program	Disarmament, demobilization and reintegration-program
DRC	Democratic Republic of Congo
EUFOR	European Union Force
FACA	Force Armées Centrafricaines (Central African Republic's Army)
FDPC	Front Démocratique du Peuple Centrafricain (Democratic Front of the Central African People)
FEA	French Equatorial Africa
FOMUC	Force Multinationale en Centrafrique
HRW	Human Rights Watch
HSBA	Human Security Baseline Assessment
IAC	International Armed Conflict
ICG	International Crisis Group
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Persons

IHL	International Humanitarian Law
IL	International Law
IPIS	International Peace Information Service
JEM	Justice and Equality Movement
LOAC	Laws of Armed Conflict
MICOPAX	Mission de Consolidation de la paix en Centrafrique
MINURCA	United Nations Mission for the Central African Republic
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
MISAB	Inter-African Commission to Monitor Implementation of the Bangui Accords
NIAC	Non-International Armed Conflict
PKO	Peace-keeping operation
RFC	Rallye des Forces pour le Changement
UFDR	Union des Forces Démocratiques pour le Rassemblement (Union of the Democratic Forces for Unity)
UFR	Union des Forces Républicaines (Union of Republican Forces)
UN	United Nations
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNSC	United Nations Security Council
UNSG	United Nations Secretary General

# 1 Introduction

## 1.1 Aim and research question

Multiple violations of international humanitarian law and (...) widespread human rights violations and abuses, including those involving extrajudicial killings, enforced disappearances, arbitrary arrests and detention, torture, sexual violence against women and children, rape, recruitment and use of children and attacks against civilians, in particular but not limited to Muslims, and attacks against places of worship, denial of humanitarian access, committed by both former Seleka elements and militia groups, in particular the “anti-Balaka”.<sup>1</sup>

Concerns expressed by the United Nations Security Council (UNSC) in April 2014 summarize one of the main humanitarian challenges – not to say failures – of our time. Referred to as ‘the forgotten human rights crisis’<sup>2</sup> the armed conflict in the Central African Republic (CAR) has previously been given scarce international attention. Having the last year furthered the internal displacement of hundreds of thousands residents, caused countless disrupted communities and left numerous societies entirely perished, the continuously sprawling conflict has now finally gained increased importance on the international agenda. The designation of the conflict as ‘a threat to international peace and security’<sup>3</sup> and the forthcoming employment of a peace-keeping operation (MINUSCA) under the auspices of the United Nations (UN) clearly stress the gravity of the situation.

The complexity of the conflict cannot be ignored. Media repeatedly emphasizes the belligerency between Muslim and Christian communities.<sup>4</sup> Although acknowledging the sectarian utterances of the hostilities, the conflict comprises significantly more intricate problems. Composed of critical historical and geo-political factors the religious aspect of the conflict is in fact nothing but a recent pretext for the prolongation of hostilities. Even though seemingly confined to the Central African Republic, the conflict has articulated consequences for and effects also on neighbouring states, not least Cameroon, Chad and Sudan.<sup>5</sup> What has, contrary to the effects of the conflict, not been given significance in international reports are the underlying causes of the hostilities. These will be addressed in the present article.

An inevitable consequence of analyzing the roots of the conflict is the questioning of the normative framework allegedly regulating the hostilities. Intentions to characterize the conflict in terms of international humanitarian law (IHL) as stated in the Geneva Conventions<sup>6</sup> (GC) and its Additional Protocols<sup>7</sup> (AP) reveals significant lacunas of the legal

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<sup>1</sup> United Nations Security Council, Security Council Resolution 2149 (2014), Adopted by the Security Council at its 7153rd meeting, S/RES/2149(2014), 10 April 2014. p. 2.

<sup>2</sup> Human Rights Watch, “*I can still smell the dead*”. *The Forgotten Human Rights Crises in the Central African Republic*, New York, Human Rights Watch 2013, p. 1.

<sup>3</sup> S/RES/2149(2014) [n 1] p. 5 and § 18 on p. 7.

<sup>4</sup> <[www.bbc.com/news/world-africa-25811250](http://www.bbc.com/news/world-africa-25811250)> Accessed 7 May 2014;

<[www.reuters.com/article/2014/05/05/us-centralafrica-fighting-idUSBREA440OW20140505](http://www.reuters.com/article/2014/05/05/us-centralafrica-fighting-idUSBREA440OW20140505)> Accessed 7 May 2014.

<sup>5</sup> International Crises Group, ‘Policy Briefing, Central African Republic: Better Late Than Never’ (2013) 96 Crises Group Africa Briefing, p. 7.

<sup>6</sup> Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949; Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea, Geneva, 12 August 1949; Convention (III) relative to the Treatment of

framework. It highlights the insufficiency of the judicial field as the conflict in the region comprising north-eastern CAR, eastern Chad and western Sudan does not possess certain in IHL presupposed requirements.

The examination evolves from and intends to answer two main research questions. Firstly: How to characterize the conflict in north-eastern CAR, eastern Chad and western Sudan in terms of international humanitarian law? Secondly: Is the historical context in which the conflict takes place compatible with the context required for correct application of the international humanitarian framework?

In order to answer the research-questions, a number of interrelated sub-questions must be addressed: Who are the main parties involved in the conflict? What is the geographical scope of the conflict? Which are the alternative ways of characterizing conflicts in accordance with international humanitarian law? Does the conflict take place in a particular historical context? Does international humanitarian law require a certain context for its applicability? And finally, if the conflict does not take place in a context compatible with that required for correct application of the humanitarian framework, which consequences follow?

The aim of the study is threefold: Firstly, to analyze the conflict sprawling in the Central African Republic and its neighbouring countries, as it constitutes an armed conflict of current actuality, presenting increasingly horrific crimes against humanity each day that passes. Secondly, to enlighten that international humanitarian law, stated in the Geneva Conventions, requires a certain context and certain underlying presuppositions for its applicability. Thirdly, to demonstrate that the conflict lacks such presuppositions and presents a context different form that required by the Geneva Conventions, thereby significantly challenging the humanitarian framework. By comparing the case-specific context in which the conflict takes place with the case-specific context required for appropriate application of international humanitarian law, significant incoherency will be enlightened.

## 1.2 Material, method and delimitations

In order to answer the research question stated above a number of interrelated steps must be taken. Primarily, the situation in the Central African Republic must, if possible, be categorized and defined, posing particular questions of international humanitarian law in relation to the characterization of conflicts. It will be argued in the present article that the conflict takes place in a regionalized context, rather than a purely internal or international setting. There are numerous academic sources available on the distinction between international armed conflict and non-international armed conflicts. Literature providing for in-depth analysis as well as academic journals broadening the scope of the subject has been reviewed in this regard. Sources referring to the concept of regionalization on the other hand are scarce within humanitarian literature. The notion of regionalized conflict can be found in certain academic articles, however none explicitly related to the field of international humanitarian law. Rather, the conceptualization is common within the field of peace- and security studies. Working for the prevention of conflicts and maintenance of peace, contributions by the International Crisis Group (ICG), International Peace Information Service (IPIS), the Crises States Research Centre (CSRC), the Human Security Baseline

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Prisoners of War, Geneva, 12 August 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

<sup>7</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.



Assessment (HSBA) and the Center for International Peace Operations (CIPO) provides important examples in this regard. Available sources consequently do not in particular concern the current field of examination and the analysis necessitates cross-fields considerations. While the focus of the article is the role of the humanitarian framework and the therein inherent dichotomy in a regionalized, post-colonial setting, the available sources are either related to other previously recognized versions of hybrid types of armed conflicts in the field of humanitarian law, or related to other academic studies such as the mentioned field of peace- and security studies. As a result, notions common to the sociopolitical field as well as ideas specifically common to African studies will be used and applied in a humanitarian setting in order to conceptualize different aspects of the conflict.

When analyzing the social, political, economical and historical context in which the conflicts takes place it is thus inevitable to turn to other academic fields than that explicitly dealing with international humanitarian law. Works by professors of political science, general African studies and social anthropology provides valuable information on the situation and case-specific features of the conflict. With particular focus on the mentality and psychological characteristics of the militias active in the CCS-region, Marielle Debois, professor in political science makes an important contribution to understanding underlying tendencies of the sprawling, dynamic conflict. By reviewing the historical background to and socioeconomic context in which the conflict occurs the different parties involved will be pinpointed, providing for an understanding of the situation's multifaceted character.

In comparing case-specific characteristics of the conflict with typical aspects of other armed conflicts also challenging the humanitarian framework differences will be shown and the quaintness of the current conflict may be enlightened. A certain selection of conflicts from which the comparison may evolve has been required in this regard. As contemporary conflicts occurring in particular settings are characterized differently by scholars, practitioners and politicians with diverse underlying intentions, the categorizations and definitions may serve highly politicized purposes. More or less distinct objectives may be elucidated if sufficiently scrutinizing the way in which certain conflicts are framed. With the intention of providing an as neutral while at the same time comprehensive description as possible of different types of conflicts placed so to say in-between international armed conflicts and non-international armed conflicts, the typologies noted by Jelena Pejic, working for the International Committee of the Red Cross (ICRC), has been chosen. The division and short description of the conflict typologies elucidates a wide spectrum of conflicts. Arguably, other ways of framing hostilities and belligerency may not unusually be possible to comprise within some of the hybrid typologies. The typologies will be used as a way of measurement. By reviewing and analyzing the case-specific characteristics of the current conflict in light of the characteristics of previously recognized conflict typologies, distinct differences will be shown. From this the conclusion can be drawn that the conflict presents yet another challenge to the humanitarian framework than those previously recognized.

The legal framework employed will be confined to the Geneva Conventions, in particular Common Articles 2 and 3 and the Additional Protocols. Whether the weaknesses of the humanitarian framework shown by hybrid typologies may be overcome by the application of customary law, or if the categories actually enlightens deficiencies not easily rejected in practice is an ongoing and highly important discussion. Existence and whereabouts of customary law as such will however not be debated but assumed to support and recognize the legal principles discussed. In addition to treaties and academic literature, sources of value for the examination are reports by non-governmental organizations, of which the work by the ICRC and the United Nations' actions are intrinsically interesting. Recent statements by the General Assembly (UNGA) and Secretary General (UNSG), as well as discussions by the Security Council on acute and future actions in relation to the Central African Republic are as

well important in this regard. The State Report from 2006 and responses by the Human Rights Committee (CCPR) provides an extended analysis on the situation in the Central African Republic. Further, reports by Amnesty International (AI), the Human Rights Watch (HRW) and other non-governmental organizations add valuable non-judicial information, by directly addressing the current situation and recent history of the conflict.

It must be emphasized that due to the widespread reports by media and non-governmental organizations of the violence occurring in the Central African Republic, acknowledgements conducted by high-profile authorities within and outside of the region as well as statements by the UN and the UNSC; it is in the article assumed that the conflict unquestionably reaches the threshold of armed conflict within international humanitarian law. It will thus not be discussed whether the situation should be classified as merely internal tensions or occasional disturbances or given any other classification with regards to the intensity of the violence instead of being characterized as an armed conflict.

With regards to international involvement in the conflict under examination, such will be confined to the involvement of the states in close proximity with or directly related to the CCS-region. Several international actors and organizations have had significant importance in the development and history of the conflict, for instance the actions and peace-keeping operations (PKOs) by MISAB, MINURCA, BONUCA, FOMUC, MICOPAX and EUFOR. Notwithstanding the importance and consequences of their involvement, analyses on such operations lie beyond the scope of the present article. Specific methods and political sanctions employed by for instance the African Union (AU) and the European Union (EU) will neither be addressed.

Focusing on the history of the Central African Republic, while simultaneously intending to pinpoint certain important aspects and particularities of the wider CCS-region, it should be acknowledged that an argument may be raised regarding a conflict of interests. If the intention is to analyze a region comprising areas of three different states, then what purpose does it serve to describe the history and context of merely one single state? While the intention of the present article is to elucidate the role of the international humanitarian framework in relation to the post-colonial regionalized conflict occurring in the CCS-region, alternative ways of presenting findings furthering theoretical conclusions may be discussed. The temporal and spatial extent of the work however requires certain delimitations. An all-embracing analysis of the pre-colonial, colonial and post-colonial judicial, political and military history of all three states would require extensive resources and lies beyond the scope of the present article. By enlightening specific actors and events of the CAR; characteristics of the CCS-region hence will be exemplified rather than comprehensively elucidated. Thus, while accepting alternative ways of addressing the problem, the present thesis will, by narrowing the study to one state, the Central African Republic, exemplify case-specific characteristics by which it is possible to elucidate tendencies of the complexity of the wider region.

# 2 Characterization of conflicts in accordance with IHL

## 2.1 Crystallizing the problem

The Central African Republic (CAR), being a former French colony, has suffered from years of prolonged war. Since independence in 1960, the state has faced numerous confrontations between opposing political parties and the governance has shifted repeatedly. Despite intense foreign involvement, the conflict has been and is still largely considered to constitute a conflict not of an international character. As such, the situation is mainly governed by the judicial framework of non-international armed conflicts. But by categorizing the situation as a purely internal conflict, intrinsic characteristics of the geo-political reality on the ground are left aside. Central Africa, for the present purpose referring to north-eastern Central African Republic, eastern Chad and western Sudan (hereinafter referred to as the CCS-region) still to this day is burdened with a heavy colonial legacy, apparent not least in the continuous involvement by former foreign colonizers, particularly France.<sup>8</sup> Most obviously, the ever-present post-colonial heritage is found in the states' constant struggles for national coherency in accordance with territorial delimitations set by previous colonizers.

Defining the situation in terms of IHL is however not as simple as bluntly characterizing it as an internal conflict. It is rather a quite challenging undertaking. The in IHL inherent dichotomy of international armed conflicts (IACs) and non-international armed conflicts (NIACs) is rightly criticized among academics<sup>9</sup> and in international jurisprudence<sup>10</sup> as it is no longer sufficient in the laws of armed conflict. In the words of for instance representatives of the ICRC: 'the traditional dichotomy between international and non-international (internal) armed conflicts does not quite match the complexity of modern-day constellations'.<sup>11</sup> Likewise noted by Odermatt: 'War is no longer a duel between competing states, but comprises a complex mix of internal and international elements, taking place in a globalized context involving an ever-greater number of state and non-state actors. In such conflicts, the traditional dichotomies upon which the law of armed conflict is based are simply outdated'.<sup>12</sup>

That IHL may be argued to provide considerable, not to say immense, lacunas in terms of applicability has become inevitably apparent the last decade. The efficiency of the framework was righteously questioned after 9/11 and subsequent events and the need for a

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<sup>8</sup> Noteworthy is that French troops were specifically authorized by the Security Council 'to use all necessary means' to support the forthcoming peace-keeping operation MINUSCA. S/RES/2149(2014) [n 1] § 47.

<sup>9</sup> James G. Stewart, 'Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict' (2003) 85[850] *International Review of the Red Cross*; Geoffrey S. Corn, 'Hamdan, Lebanon, and the Regulation of Hostilities: The Need to Recognize a Hybrid Category of Armed Conflict' (2007) 40[2] *Vanderbilt Journal of Transnational Law*; David E. Graham, 'Defining Non-International Armed Conflict: A Historically Difficult Task' in: Watkin K. and Norris A.J. (eds), *Non-International Armed Conflict in the Twenty-first Century*, Vol 88 *International Law Studies*, Newport Rhode Island, U.S. Naval War College 2012,.

<sup>10</sup> ICTY, *Prosecutor v Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, (Appeals Chamber) 2 October 1995, (Prosecutor v Tadić, Interlocutory Appeal) para. 97.

<sup>11</sup> Andreas Paulus, Mindia Vashakmadze, 'Asymmetrical War and the Notion of Armed Conflict – a Tentative Conceptualization' (2009) 91[873] *International Review of the Red Cross*, p. 100.

<sup>12</sup> Jed Odermatt, 'Between Law and Reality: 'New Wars' and Internationalised Armed Conflict' (2013) 5[3] *Amsterdam Law Forum*, p. 31.

broad survey on possibilities to develop the regulations applicable to warfare and potential addition of new categories embraced by IHL has been repeatedly enlightened.<sup>13</sup> The current examination does however not relate to a common, general questioning of the sufficiency of the humanitarian framework, as such have been elucidated by scholars, practitioners and academics since the very initiation and emergence of the same. Neither does it concern the discourse on the appropriateness of having a broad and in-depth judicial foundation for dealing with international armed conflicts compared to the scarce regulations pertinent to armed conflicts not of an international character, even though the latter has in fact outnumbered the previous considerably since the mid 20<sup>th</sup> century.<sup>14</sup> What is the focus of the present article is instead the fact that IHL presupposes a certain context for its applicability, which does not fit the circumstances in the CCS-region and that this furthers undesirable consequences. How the international humanitarian framework – and the therein inherent dichotomy of IACs and NIACs – applies to prolonged conflicts occurring in regionalized post-colonial settings is insufficiently elucidated in humanitarian doctrine. The current article therefore addresses this particular issue. In order to exemplify the problem in practical terms, the particular field of examination is that of the Central African Republic and the neighbouring states Chad and Sudan because of the regions endurance of precisely such a regionalized, prolonged post-colonial conflict.

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When colonial powers forcibly comprised the CCS-region within linear cartographical boundaries set in accordance with their own preferences, distinct characteristics of the African societies were left unconsidered. Traditional ways of living contrasting the European societies in the late 19<sup>th</sup> century with regards to communal, political and economic structures were ignored. That ethnicity rather than nationality, cross-border trade rather than internal economies as well as regional rather than national hierarchical association still make up important features of the societal landscape in the CCS-region is consequences of that ignorance and underlies every part of the prolonged conflict. As will be enlightened in chapter 3; the European understanding of nation states did not and still does not fit the territorially, ethnically and socially dynamic region. The concept of nation states essentially emerges from the Treaty of Westphalia, concluded in 1648.<sup>15</sup> At the time, the state ‘framed the respective component elements of *territory, population, and government*’.<sup>16</sup> Noted by Hassan, the importance of territorial sovereignty:

Was finalized by the Treaty of Westphalia in 1648, which is recognized as the first treaty of modern international law. It confirmed that within its own territory, each State is sovereign /.../ all Governments are the exclusive authority and their decisions and arguments are exclusively carried out within their territorial limit, as the concept of Westphalian sovereignty is tied

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<sup>13</sup> Dale Stephens, ‘Blurring The Lines: The Interpretation, Discourse and Application of The Law of Armed Conflict’ (2009) 12 Yearbook of International Humanitarian Law; Jelena Pejic, ‘The Protective Scope of Common Article 3: More Than Meets the Eye’ (2011) 93[881] International Review of the Red Cross. Further discussed in section 2.4.

<sup>14</sup> Emily Crawford, ‘Blurring the Lines between International and Non-International Armed Conflicts – The Evolution of Customary International Law Applicable in Internal Armed Conflicts’ (2008) 15[1] Australian International Law Journal, p. 53; Pejic [n 13] p. 189.

<sup>15</sup> Orla Marie Buckley, ‘Unregulated Armed Conflict: Non-State Armed Groups, International Humanitarian Law, and Violence in Western Sahara’ (2012) 37[3] North Carolina Journal of International Law & Commercial Regulation, p. 810.

<sup>16</sup> Matthew Craven, ‘Statehood, Self-Determination, and Recognition’ in: Evans M.D. (ed), *International Law*, 3rd ed., Oxford, Oxford University Press, New York, 2010, p. 210 (emphasis added).

to State territory. According to territorial sovereignty, within a territory there is only one absolute temporal power, the Government of that territorial State.<sup>17</sup>

In line with this, the authority to assert rights and duties over the population within a state lies exclusively within the powers of the Government, while the Government's authority in itself is confined within the territorial borders of the state. From this territorially confined authority, the rights of the Government and state apparatus of using force and coercion within the state is drawn. Upholding of the rule of law, national security and control over civilians consequently lies exclusively in the hands of the Government of the sovereign state. This is in itself not a problem. But as will be illuminated, the conflicts occurring in eastern Chad, western Sudan and north-eastern CAR cannot be conceived of as three distinctly separated internal conflicts, but must rather be assessed as one, interrelated and regionalized conflict. Territorial boundaries are dynamic and porous in the CCS-region, challenging the very basic foundation for the territorial sovereignty discussed by Hassan. Further, neither governmental nor non-governmental armed forces are structured or merely engaged in hostilities confined within the territorial limits of one single state, but are spread over indeterminate territories and are engaging combatants with shifting loyalties. When the official militaries in the states are closely intertwined or practically mixed with the non-governmental militias functioning across national borders, ascertaining who the righteous holder of the exclusive right to use violence in the conflict is; is extremely difficult.

As contemporary international humanitarian law relies upon this Euro-centric Westphalian idea – and the inherent dichotomy of purely national and international wars – the regionalized conflict is questionably compatible with the normative framework. Not only is the conflict theoretically difficult to address from an academic's perspective as *the main presuppositions for conflict-assessments in accordance with the available IHL framework are lacking*; the presuppositions being those of clearly delimited international entities, distinct populations, coherent governments and nationally confined armed forces. An even more important consequence is that the conflict presents practical *difficulties regarding the allocation of legitimate use of violence and the designation of accountability in cases of misconduct*. Diane Davis' social theory on irregular armed forces and fragmentation of sovereignty will be proven to have clear accuracy in relation to the conflict in the CCS-region:

Non-state armed actors in imagined communities pose a challenge to national-state sovereignty and to the state's capacity to monopolize the means of coercion /.../ Over time, de facto bonds of commitment develop among families and nearby neighbors, who operate as a fragmented set of constituencies each with their own coercive force /.../ Connections and loyalties to state – or at least to the police and legal institutions charged with the de jure capacity for protection and justice – diminish. Such developments not only undermine the state's effective sovereignty and its legitimate capacity to dispense justice and guarantee a rule of law; they also make it more difficult for the state to solve problems of violence, in no small part because it is increasingly less clear who has the legitimate right to provide security.<sup>18</sup>

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<sup>17</sup> Daud Hassan, 'The Rise of the Territorial State and The Treaty of Westphalia' (2006) 9 Yearbook of New Zealand Jurisprudence, pp. 64 – 67.

<sup>18</sup> Diane E. Davis, 'Irregular Armed Forces, Shifting Patterns of Commitment, and Fragmented Sovereignty in the Developing World' (2010) 39[3] Theory & Society, pp. 6 – 9.

By acknowledging that the conflict in the CCS-region can neither be addressed with the dichotomy of IAC/NIACs due to the in IHL presupposed Westphalian context from which certain required presuppositions stem, nor can be comprised within any hybrid version of non-international armed conflict established by previous scholars – as also the latter requires the same presumptions – the conclusion can be drawn that the situation in the CCS-region presents a certain type of conflict distinct from the in IHL-doctrine previously debated. The conflict enlightens an additional applicability-gap of the IHL framework with undesirable consequences; unclear possession of the exclusive right to use violence within a state and difficulty in allocating accountability for misconduct and war crimes.

## 2.2 A regionalized conflict

Situated in the heart of the African continent, the Central African Republic is currently in what appears to be a state of complete chaos. Suffering from years of internal disturbances and a deplorable humanitarian situation, the year of 2013 and the beginning of 2014 gave evidence of increased social deterioration. By using the notion of ‘catastrophic’<sup>19</sup> the previous Prime Minister of the CAR, Nicolas Tiangaye acknowledged that the situation in the country was about to spin out of control before the UNGA already in September 2013. Not merely requesting the international community to act and react upon the escalating national violence, Tiangaye emphasized the risk of the conflict spreading outside of the country, potentially destabilizing a wider African region and forming a foundation for ‘new criminal and terrorist networks’.<sup>20</sup>

Comprising 9000 villages organized into 16 dynamic provinces CAR’s societal organization is multifaceted. With a population of 4,6 million people of diverse ethnic origin the amount of persons in acute need of humanitarian aid as a result of the recent conflict which reached 2,2 million in April 2014 constitutes a considerably percentage of the population.<sup>21</sup> Not only has a major quota of the population been internally displaced with all the dire consequences following, countless civilians have died as a result of deliberate killings or indirect causes of the conflict and dozens of villages have been pillaged or entirely ruined.<sup>22</sup> Hundreds of thousands are lacking access to food, water and sanitation, thousands of children are estimated to have been recruited into irregular armed militias and sexual violence is sprawling without apparent hindrance.<sup>23</sup> Addressing the situation in November 2013 the Deputy UNSG Jan Eliasson stated:

The population is enduring suffering beyond imagination. As we see far too often, women and children are bearing the brunt. Human rights violations are mounting. The use of child soldiers is rising. Sexual violence is growing.

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<sup>19</sup> <[www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U)> Accessed 24 January 2014.

<sup>20</sup> Ibid.

<sup>21</sup> Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Second Periodic Report, Central African Republic*, CCPR/C/CAF/2004/2, 21 September 2005 §§ 13 – 15, 21; <[www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U)> Accessed 24 January 2014; <[www.un.org/apps/news/story.asp?NewsID=47716#.U2fHhPI\\_u3U](http://www.un.org/apps/news/story.asp?NewsID=47716#.U2fHhPI_u3U)> Accessed 5 May 2014.

<sup>22</sup> HRW, “*I can still smell the dead*”, *The Forgotten Human Rights Crises in the Central African Republic* [n 2] pp. 31 – 63; Human Rights Watch, *They came to kill. Escalating Atrocities in the Central African Republic*, New York, Human Rights Watch 2013, pp. 17 – 35.

<sup>23</sup> <[www.un.org/apps/news/story.asp?NewsID=46157&Cr=central+african+republic&Cr1=#.UsVXe\\_TuK3U](http://www.un.org/apps/news/story.asp?NewsID=46157&Cr=central+african+republic&Cr1=#.UsVXe_TuK3U)> Accessed 24 January 2014.

There are widespread reports of looting, illegal checkpoints, extortion, illegal arrests and detentions, torture and summary executions (...) The CAR is becoming a breeding ground for extremists and armed groups in a region that is already suffering from conflict and instability. If this situation is left to foster, it may degenerate into a religious and ethnic conflict with longstanding consequences, a relentless *civil war* that could easily *spill-over* into neighbouring countries.<sup>24</sup>

Mr. Eliasson pinpoints several important issues, in particular by emphasizing that not merely ethnical but also religious factors are prevailing in the conflict. A division among the population has recently taken an increasingly religious aspect; Christianity and Islam are used as pretexts for a continuation and evolvement of the confrontations between armed groups within the territory. Clashes along religious lines are however by no means a particularity of the conflict in the CAR and the recent turn taken must necessarily be conceived of as merely a new expression of the underlying instability of the state. Rather than particularly focusing on the sectarian utterance of the ongoing conflict, even though acknowledging its significance, the main attention should instead be given Mr. Eliasson's very last finding. The last sentence recognizes the possibility of the risk of the civil war spilling over into states bordering the CAR, also noted by Mr. Tiangaye. Notwithstanding this bluntly accurate analysis, it arguably enlightens the problematic situation from a questionable perspective.

Initially, it may well be discussed whether the concept of civil war is at all applicable to the violence sprawling in a territory lacking clear boundaries. Referring to insurrectional uprisings within a nationally bound, demarcated area the concept hardly comprises the multifaceted dimensions of the present conflict. On the same line, assessing the situation as a case of a spill-over war, no matter the correct terminology, means pointing out domestic disturbances as the cause having international consequences as a side effect. This is a misleading and simplifying explanation of the actual events taking place. Especially so since violent clashes are and have for many years sprawled in the surrounding states as well, not least in the Darfur region of western Sudan. In the following, the starting point will thus not be that of Mr. Eliasson, approaching the conflict from a classical Western perspective. Instead, the analysis evolves from the idea that the prolonged war cannot be considered to be confined within cartographic borders and the roots of the conflict are not all related to the domestic affairs of a single state.

With the intention of using an alternative terminology for defining the conflict under study; conceptualizing the situation as a 'regionalized conflict'<sup>25</sup> rather than as a civil war (or more accurately under the framework of international humanitarian law as a 'conflict not of an international character'<sup>26</sup>) is efficient. Using this broader definition, Giroux et al have presented an examination on important features underlying the complexity of the case.<sup>27</sup> By using the notion 'The Tormented Triangle'<sup>28</sup> the authors examined the region comprising eastern Chad, north-eastern Central African Republic and Darfur in the western Sudan. The study's main focus related to the non-domestic character of the wars occurring in each state, arguing that the conflicts sprawling in the three countries 'have become so interwoven that

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<sup>24</sup> <[www.un.org/apps/news/story.asp?NewsID=46588&Cr=Central+African+Republic&Cr1=#.UsVXAfTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46588&Cr=Central+African+Republic&Cr1=#.UsVXAfTuK3U)> Accessed 24 January 2014 (emphasis added).

<sup>25</sup> Jennifer Giroux, David Lanz, Damiano Sguaitamatti, 'The Tormented Triangle: The Regionalisation of Conflict in Sudan, Chad and the Central African Republic' (2009) 2 Crisis States Research Centre, LSE Development Studies Institute, p. 2.

<sup>26</sup> GC CA 3 [n 6].

<sup>27</sup> Giroux [n 25].

<sup>28</sup> Giroux [n 25] p. 1.

they form one system of conflict rather than three distinct conflicts'.<sup>29</sup> The idea of a necessarily regionalized approach to the conflicts is shared by several practitioners and academics, in particular in the fields of peace- and security studies.<sup>30</sup> In order to use a more neutral wording than 'The Tormented Triangle', the region of eastern Chad, north-eastern CAR and western Sudan will as mentioned be referred to as the CCS-region.

When assessing the conflict, the situation must arguably be addressed from another perspective than that of Mr. Eliasson and Mr. Tiangaye among others. It cannot be stated that the problems of the region have merely emerged from internal disputes and tensions. Taking into consideration the geographical, historical, political and ethnical interlinking bonds of the territory and population in the CCS-region, previous authors and scholars have accurately found that the contemporary war is a consequence of several international and regional factors rather than a result of merely domestic causes. To argue that the sprawling war in the CAR is nationally delimited, without any further interaction with the conflicts occurring in the surrounding countries other than in the form of a potential risk of the conflict spilling over to the latter due to its proximity, is ignorant. If anything it is a regionalized conflict having domestic consequences rather than the other way around. The analysis must therefore take a stand in the inter-communal dynamics of the population in the CCS-region as well as the traditional and nomadic ways of living without static borders, practiced for generations in order to efficiently assess the context in which the contemporary conflict takes place. Practical and concrete issues must be taken into account such as weather conditions and the proximity of the provinces compared to the considerable distance from the hinterland to the capitals as the places for domestic governance. These and other factors are analyzed in chapter 3.

Approaching the situation from the perspective presented by Giroux et al, as a regionalized conflict, is summarily the most appropriate. Notwithstanding the unambiguous reasons for this, which will be further addressed later on, adapting the idea of characterizing the situation as a regionalized conflict inaugurates several difficulties, especially in relation to international humanitarian law. Describing the clashes occurring in the CAR as events parts of and indicative of an all-over hostile environment taking place in the CCS-region, or as a 'manifestation of a process of armed regionalization that has connected the crises in Darfur, eastern Chad and north-eastern CAR'<sup>31</sup>, as such is hardly difficult. What makes the idea problematic is the application of legal rules and the characterization in terms of international law. As the concept of regionalized conflict is unknown to the framework of IHL, which instead deals with purely inter-state and intra-state conflicts the mere classification of the situation in the CCS-region poses difficulties.

## 2.3 International and non-international armed conflicts

Having the intention to elucidate the conflict currently sprawling in the Central African Republic it is inevitable to initially review a very basic dichotomy of the humanitarian legal framework. Any contemporary assessment of armed conflicts evolves from the

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<sup>29</sup> Giroux [n 25] p. 2.

<sup>30</sup> For instance: International Crises Group, 'Central African Republic: Anatomy of a Phantom State' (2007) 136 Crises Group Africa Report; Peter Berg, 'The Dynamics of Conflict In the Tri-border Region of the Sudan, Chad and the Central African Republic' (2008) Country conflict-analysis studies, Africa Department, Friedrich Ebert Foundation.

<sup>31</sup> Giroux [n 25] p. 1.



characterization of a situation as either inter-state or intra-state. Summarily recapturing the provisions regulating situations of armed conflict is therefore useful before any further examination of the implications attached thereto. Even though the framework of IHL comprises numerous bilateral and multilateral treaties, conventions and declarations<sup>32</sup>, the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 make up the legal framework essentially addressed here. For further notice, the Central African Republic has been a party to the Geneva Conventions since 1966 and to the Additional Protocols I and II since 1984.<sup>33</sup> The Common Articles 2/3 – paradigm defines the material field of application and produces and enlightens the dichotomy from which several difficult assessments of contemporary conflicts arise.

### 2.3.1 GC CA 2 and AP I

In addition to the provisions which shall be implemented in peacetime, the present Convention 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.<sup>34</sup>

Geneva Conventions Common Article 2 (GC CA 2), intended to obviate former concerns on the applicability of the framework of IHL, such as the pre-1949 non-applicability of the regulations in cases where no formal initiation of war had been declared or in cases when either of the parties did not officially recognize the belligerent as a sovereign state, sets the requirements for applicability of the Geneva Conventions at an objective level.<sup>35</sup> Rather than meeting subjective opinions, CA 2 and the thereto attached set of humanitarian norms thus applies straight from the objective initiation of an armed conflict between two High Contracting Parties, without the need for any solemn declaration of war. As such, the initiation of CA 2 and the broad judicial framework attached thereto requires the existence of an armed conflict between two international subjects defined as states. While the notion of armed conflict has not been defined or specifically regulated, the words nevertheless are of importance for any examination relating to international humanitarian law and the laws of armed conflict. Explained by the ICRC: ‘any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2’.<sup>36</sup> In relation to this, the notion of armed forces should be understood in a broad sense and

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<sup>32</sup> For instance: Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980; Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris, 13 January 1993, etc.

<sup>33</sup> International Committee of the Red Cross, ‘States Party to the Following International Humanitarian Law and Other Related Treaties’, available at: <[www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesHistoricalByCountry.xsp](http://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesHistoricalByCountry.xsp)> Accessed 25 May 2014.

<sup>34</sup> GC CA 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. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provision thereof’ [n 6] (emphasis added).

<sup>35</sup> International Committee of the Red Cross, ‘Commentary on Geneva Conventions (I-IV)’, available at: <[www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp](http://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp)> Accessed 26 May 2014.

<sup>36</sup> Ibid.

the duration of the conflict or the number of casualties is of no importance for the existence of an armed conflict.<sup>37</sup>

While one of the pillars in the inauguration of an international armed conflict is the objective existence of an armed conflict, the other pillar is the internationalization of the conflict in the meaning that the parties to the conflict are two or more international subjects in the sense that they are sovereign states. Without comprehensively elucidating the multifaceted dimensions of the concept of statehood in this particular setting, it may summarily be noted that international subjectivity is a highly contested and undefined. Nevertheless, the notion of statehood will inevitably have to be addressed later on, as colonization and decolonization is closely related to the notion of statehood.

In sum, when the armed forces, understood in a wide sense, of two distinct entities conceptualized as international subjects in the form of states, are in a violent confrontation with each other, CA 2 of the Geneva Conventions is activated. As will be enlightened, contextualizing the conflict in the CCS-region as an international armed conflict in accordance with GC CA 2 and applying the attached regulatory framework is inaccurate. In relation to Geneva Conventions Common Article 2, Additional Protocol I (AP I) Article 1 should also be mentioned:

This Protocol, which *supplements the Geneva Conventions* of 12 August 1949 for the protections of war victims, shall apply in the situations referred to in *Article 2 common to those Conventions*.<sup>38</sup>

Emphasized in the Commentary to Additional Protocol I is the *supplementary* function of Article 1 in the Protocol. ‘This paragraph literally repeats Article 1 common to the Conventions’.<sup>39</sup> As it will be clear that the conflict under examination cannot be characterized as an international armed conflict in accordance with Geneva Conventions Common Article 2 and AP I Article I mainly reiterates the regulations therein, it will not be given further attention.

### 2.3.2 GC CA 3 and AP II

In the case of *armed conflict not of an international character occurring in the territory of one of the High Contracting Parties*, each Party to the conflict shall be bound to apply, as a minimum, the following provisions.<sup>40</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> AP I Article 1 § 3 [n 7] (emphasis added).

<sup>39</sup> ICRC, ‘Commentary on Geneva Conventions (I-IV)’ [n 35].

<sup>40</sup> GC CA 3: ‘(...) (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of

In the case under examination – as in numerous other situations – the parties involved in the confrontations may not be subsumed under the characterization of international subjects in the commonly understood sense. Contemporary conflicts does not unusually involve multiple, highly diverse parties, of which a great amount does not entail international subjectivity. More or less organized militias and fractions of armed forces have gained increasing importance on the international agenda. The confrontations today often involves opposing non-governmental militias or concerns states’ confrontations with uprising rebel groups, rather than purely inter-state clashes. Geneva Conventions Common Article 3 (GC CA 3) is intended to regulate such situations involving subjects not appropriately subsumed under the characterization within Common Article 2.

Regarding CA 3 there are three main requirements for applicability. There must exist an armed conflict, it may not be international in character and it must be confined within the territorial borders of one single state, a High Contracting Party. The applicability of the article is by no means dependent on formal agreements. Like the previously mentioned article, CA 3 applies objectively and automatically when the requirements stated therein are fulfilled. As noted in relation to CA 2, the notion of armed conflict has not been defined within the framework of international humanitarian law, thus the same uncertainty as to the content of the concept as found relating to CA 2 applies to CA 3. In fact, as the armed conflict cannot be of an international character, the expression provides an even greater challenge. Even though criticized for being way too vague the concept was not explicitly elucidated by the drafters of the Geneva Conventions. While at the time of ratification suggestions on potential clarifications of the expression included for instance the necessity for a rebel group of having an organized military force or the requirement that the militia controlled certain parts of the territory; no such exemplification was enacted.<sup>41</sup> Nevertheless, the examples may serve as indicative presuppositions for a characterization of armed forces as well as for a differentiation between armed conflicts within the meaning of CA 3 and other situations of internal instability not reaching the threshold of violence required for applicability of CA 3. These exemplified presuppositions will be addressed in section 3.5.2 as they acknowledge and support the argument stated in the present article.

A favorable view, as presented by the ICRC suggests that the article should have the widest field of application possible, as no disadvantageous effects can be related thereto. The main fear raised with regards to a broad applicability of the article relates to the risk that the application of CA 3 in certain cases would imply acceptance of uprising rebel groups as legally recognized subjects under international humanitarian law and thereby affording the members of the militia the privileges attached to that characterization.<sup>42</sup> Notwithstanding the interesting features of such reasoning, the issue is not of particular focus in the present examination. Even so, it may shortly be recognized that the application of the rules within Common Article 3 does not affect the legal status and characterization of the parties to the conflict. An important aspect of Common Article 3 on the other hand is the fact that the rules therein applies to all parties to the conflict, even if one of the parties is not a High Contracting Party to the Geneva Conventions. When there exist different parties, and there has occurred an armed conflict between them within a High Contracting Party, the regulations in Common Article 3 applies to all parties involved, whether or not they are subjects able to commit to international obligations.<sup>43</sup>

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special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict’ [n 6] (emphasis added).

<sup>41</sup> ICRC, ‘Commentary on Geneva Conventions (I-IV)’ [n 35].

<sup>42</sup> Paulus [n 11] p. 104.

<sup>43</sup> ICRC, ‘Commentary on Geneva Conventions (I-IV)’ [n 35].

Similar to applying the regulatory framework attached to Common Article 2 to the present conflict, is it inaccurate to subsume it under the umbrella of Common Article 3 as the basic premises for its appropriate application are missing. Stated above, AP I *supplements* and principally reiterates the norms regulated in GC CA 2. In this aspect, the field of application for Additional Protocol II (AP II) in relation to GC CA 3 is different. AP II not merely supplements GC CA 3, but *develops and supplements* the regulations:

1. This Protocol, which *develops and supplements Article 3 common to the Geneva Conventions* of 12 August 1949 without modifying its existing conditions of applications, shall apply to *all armed conflicts* which are *not covered by Article 1 of the Protocol Additional to the Geneva Conventions* of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) and which takes place *in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.*
2. This Protocol shall *not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.*<sup>44</sup>

While GC CA 3 is difficulty applied in several circumstances, as in the present, AP II provides for an even narrower field of application, ‘the threshold is higher under Additional Protocol II’<sup>45</sup> as the article explicitly requires non-governmental armed forces engaged in a conflict not of an international character to be organized, have responsible command, exercise certain territorial control and have the means to implementing the Protocol. Neither of the criteria is sufficiently fulfilled and the Protocol will not be elucidated further.

## 2.4 Hybrid typologies of non-international armed conflicts

Having reviewed the basic foundations from which conflict-assessments in accordance with available IHL norms evolves, (‘the traditional Geneva Convention-based law-triggering paradigm’<sup>46</sup>) it is inevitable to note the narrow sphere of application they present. While it is assumed in this particular setting that the level of violence occurring in the CCS-region is sufficiently serious as to reach the threshold of applicability, namely that it reaches a level of protracted armed violence<sup>47</sup>, based on reports by the UN<sup>48</sup> HRW<sup>49</sup> and AI<sup>50</sup>; the requirements

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<sup>44</sup> AP II Article 1 [n 7] (emphasis added).

<sup>45</sup> Michael N. Schmitt, Charles H.B. Garraway and Yoram Dinstein, ‘The Manual on the Law of Non-International Armed Conflict with Commentary 2’ (2006) International Institute of Humanitarian Law, p. 3 § 4.

<sup>46</sup> Corn [n 9] p. 300.

<sup>47</sup> ICTR, *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, Judgment (Trial Chamber I), 2 September 1998, (Prosecutor v Akayesu) paras. 619 – 620; ICTY, *Prosecutor v Tadić*, Case No. IT- 94-1-A, Judgment (Appeals Chamber), 15 July 1999, (Prosecutor v Tadić, Appeals Chamber) paras. 120, 145. See also Paulus [n 11] p. 106; Pejic [n 13] p. 193; Graham [n 9] p. 48.

<sup>48</sup> UN News [n 19, 21, 23, 24].

<sup>49</sup> HRW, “*I can still smell the dead*”. *The Forgotten Human Rights Crises in the Central African Republic* [n 2]; HRW, *They came to kill. Escalating Atrocities in the Central African Republic* [n 22].

on the actors involved and the geographical sphere of a conflict set by the Geneva Conventions are problematic in relation to the present case. Noted in section 2.1, the conflict is generally considered to constitute a conflict not of an international character, but as will be enlightened in chapter 3; *neither the territorial nor the personal requirement for NIACs is fulfilled in the conflict sprawling in the CCS-region.*

However, international armed conflicts and non-international armed conflicts does no longer present a clear-cut polarized figure, but rather a non-linear scale with diffusely escalating or fading aspects of armed conflicts and involved parties. When concluding that the basic premises under the IAC/NIAC-dichotomy cannot sufficiently address the case-specific regionalized conflict it becomes relevant to examine alternative ways of contextualizing the situation. Discussing extraordinary versions of non-international armed conflicts is then of interest.

Noted in section 1.2 Jelena Pejic has presented a scheme of such armed conflict-typologies with diverse characteristics beyond and in between the obvious scope of the Common Articles 2/3-paradigm in the Geneva Conventions.<sup>51</sup> They are all what can be referred to as hybrid versions of non-international armed conflicts as they all evolves from the idea of conflicts somehow originating from within a distinct state. Each and all present challenges to the available humanitarian framework, more or less acknowledged in legal doctrine. It should be noted that the importance of this section lies not in the pinpointing of general lacunas within the humanitarian framework, as such have been previously elucidated by among others Graham<sup>52</sup>, Corn<sup>53</sup>, Odermatt<sup>54</sup> and Buckley<sup>55</sup>. Rather, by review of and comparison with common perceptions of diverse conflicts posing problems to and challenging the humanitarian framework the argument stressed in this article – that the conflict in the CCS-regions presents a differentiated, distinct type of conflict – finds essential support.

Firstly, it should be noted that armed violence between governmental armed forces and non-governmental armed forces within a particular state constitute the main ‘traditional’<sup>56</sup> field of application for the humanitarian framework regarding conflicts not of an international character. Embracing political insurrection, rebellion and military opposition such conflicts are not unusually expressions of the intention to overthrow a state’s government or an expression of a group’s willingness to form a distinct and independent society. Emphasized by Karlshoven and Zegveld; GC CA 3 applies to ‘all’<sup>57</sup> such conflicts not of an international character, as long as the conflict occurs within the territory of one single state. Even if looking beyond or ignoring the fluid loyalties of the non-governmental groups discussed in chapter 3 and the dynamic features of the armed forces engaged in the hostilities within the CCS-region, the situation in the CAR and the wider CCS-region is inappropriately subsumed under this umbrella. The main problem regarding this traditional typology in relation to the conflict in the CCS-region – which is a common issue for other types as well – is the requirement that the conflict be confined within the territory of one state.

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<sup>50</sup> Amnesty International, ‘Central African Republic, Human Rights Crises Spiralling out of Control’ (2013) Amnesty International Publications; Amnesty International, ‘Ethnic Cleansing and Sectarian Killings in the Central African Republic’ (2014) Amnesty International Publications.

<sup>51</sup> Pejic [n 13].

<sup>52</sup> Graham [n 9].

<sup>53</sup> Corn [n 9].

<sup>54</sup> Odermatt [n 12].

<sup>55</sup> Buckley [n 15].

<sup>56</sup> Pejic [n 13] p. 193.

<sup>57</sup> Frits Karlshoven, Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, International Committee of the Red Cross, 4th ed., Cambridge, New York, Cambridge University Press 2011, p. 67.

The second typology includes a couple of different scenarios, none of which is conveniently applicable to the case at hands. One situation would be that of a state lacking clear governance due to its partial or complete failure of national control, with diverse non-governmental groups gaining increased geographic, political, military and social control over the state; referred to as ‘the failed state scenario’<sup>58</sup>. Stating that the CAR is a failed state may as such not be controversial. When governmental finances, basic education, health care and infrastructure are consistently deficient<sup>59</sup> and the security situation for civilians is deplorable to say the least, the failed state scenario may in fact present a tenable characterization. However, as with the first typology and the second of the alternatives in the present category, that of a ‘parallel occurrence of a non-international armed conflict between two or more organized armed groups alongside an international armed conflict’<sup>60</sup> the conflicts discussed are such as takes place within the territory of one state. Already noted and as will be illuminated later on, the current conflict cannot be conceived of as being comprised within the territorial boundaries of one single state.

Being the first typology to acknowledge that internal conflicts may have consequences outside the territory of one single state; the third category concerning ‘spill over’<sup>61</sup> conflicts is the first to be somewhat relevant for the present case. However, Pejic does not explain the concept any further than noting that ‘certain NIACs originating within the territory of a single state between government armed forces and one or more organized groups have also been known to “spill over” into the territory of neighbouring states’<sup>62</sup>. Even though potential effects on surrounding areas are acknowledged, the category thus also takes a starting point in the idea that the conflict has internal roots, and that the causes of the conflicts are in essence national, intra-state. As such, arguing in favor of characterizing the conflicts prevailing in north-eastern CAR, eastern Chad and western Sudan as three distinct and separate conflicts which may spill over to each other illuminates the precise ignorance noted in section 2.1. As the main idea of the present article is that the conflict in the CCS-region must be addressed from another perspective, namely that it must take a starting point from within the regionalized, common characteristics of the CCS-region, embracing areas of all three countries which have been disrupted by colonial interference, rather than being approached from outside, which this category as well as several others do, the typology of spill over conflicts is inconvenient for the case at hands.

The fourth typology, and simultaneously the second of moderate interest for the conflict under consideration, concerns ‘cross border’<sup>63</sup> conflicts. Such conflicts ‘exists when the forces of a state are engaged in hostilities with a non-state party operating from the territory of a neighbouring host state without that state’s control or support’<sup>64</sup>. The belligerency between Israel (‘the forces of a state’) and Hezbollah (‘non-state party’) originating and acting from Lebanon (‘neighbouring host state’) has been alleged to present an eligible example of this conflict-typology.<sup>65</sup> Notwithstanding the transnational character of such wars, the cross border characterization also upholds the underlying state-centric presuppositions forming the basis of IHL just like any other typology familiar to the humanitarian framework. It enlightens borders between nations, for instance between Israel and Lebanon and emphasizes the state-transgressing character of clashes and parties involved.

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<sup>58</sup> Pejic [n 13] p. 193.

<sup>59</sup> See for instance United Nations Development Program, available at <<http://hdr.undp.org/en/data>> Accessed 26 May 2014.

<sup>60</sup> Pejic [n 13] p. 194.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Pejic [n 13] p. 195.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid. See also Paulus [n 11] p. 111.

Displayed in chapter 3; the CCS-region does not present a territorial and human context corresponding to such trans-boundary simplification and is thus inadequately characterized under the cross border typology.

Two additional categories relates to involvement of multinational forces into internal conflicts, basically in the form of PKOs. While situations when ‘armed forces are fighting alongside the armed forces of a host state – in its territory – against one or more organized armed groups’<sup>66</sup> are referred to as a ‘multinational NIACs’<sup>67</sup>, the sixth typology constitutes ‘a subset of multinational NIACs’<sup>68</sup> engaging military personnel instead employed by an international organization such as the UN or the AU. Notwithstanding the fact that both versions of international engagement have taken place in the CAR and the CCS-region, none of the categories lie within this study’s sphere of examination.<sup>69</sup> Likewise is the last of Pejic’s typologies irrelevant in the case at hands as the conflict in the CCS-regions is not specifically connected with the so called ‘global war on terror’<sup>70</sup>.

Summarily, the typologies in IHL discourse of potential relevance are the spill over and the cross border categories. However, neither of them nor any of the other categories noted sufficiently recognizes the arguably case-specific characteristics of the CCS-region. All hybrid versions of non-international armed conflicts evolve from the idea of clearly delimited territories and somewhat distinct actors and parties. Thus, they all have the same conceptual starting point as the very basic IHL dichotomy in the Common Article 2/3-paradigm. In the words of David E. Graham, who has addressed the problematic field of application of humanitarian regulations to non-international armed conflicts: ‘it is essential to recognize that (...) discussion regarding the nature and scope of non-international armed conflicts has centered on violence – that is hostilities – occurring within the boundaries of a State’.<sup>71</sup>

It is nevertheless important to note that other, additional typologies and hybrid versions of NIACs have been discussed in international jurisprudence and legal discourse than those already mentioned, especially the concepts of asymmetrical wars, transnational wars, mixed conflicts and internationalized internal armed conflicts. Due to the general character of the concept ‘asymmetrical war’<sup>72</sup> which arguably embraces one or several of the above mentioned typologies it will not be specifically addressed here. The same goes for the notion of ‘transnational armed conflicts’<sup>73</sup> discussed by for instance Graham and Corn. ‘Internationalized armed conflicts’<sup>74</sup> noted by Stewart and the concept of ‘mixed conflict’<sup>75</sup> introduced by the ICTY in the Tadić-case<sup>76</sup> on the other hand must be given some attention. One of the main concerns in relation to such characterizations is the extent of military and financial support provided by one state party to non-governmental groups acting in another state in order to internationalize an otherwise internal conflict.

Already in the Nicaragua-case<sup>77</sup> was there a discussion on the potential internationalization of the conflict – which finally was characterized as being not of an

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<sup>66</sup> Pejic [n 13] p. 194.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> See section 1.2.

<sup>70</sup> Pejic [n 13] p. 195. See also Corn [n 9]; Stephens [n 13].

<sup>71</sup> Graham [n 9] p. 50.

<sup>72</sup> Paulus [n 11] p. 109.

<sup>73</sup> Corn [n 9] pp. 306, 327, 331; Graham [n 9] p. 52.

<sup>74</sup> Stewart [n 9] p. 315.

<sup>75</sup> Sylvain Vité, ‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations’ (2009) 91[873] *International Review of the Red Cross*, p. 86.

<sup>76</sup> ICTY, *Prosecutor v Tadić*, Case No. IT-94-1-T, Opinion and Judgment (Trial Chamber II), 7 May 1997, (Prosecutor v Tadić, Trial Chamber II) para. 562; *Prosecutor v Tadić*, Appeals Chamber [n 47] para. 84.

<sup>77</sup> ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*. Merits, Judgment. I.C.J. Reports 1986 (Nicaragua v United States of America).

international character<sup>78</sup> – due to the involvement by the USA in the conflict in Nicaragua through support to the *contras*. According to the ICJ, for a state (the USA) to be responsible for acts committed by paramilitary forces (the *contras*) within another state (Nicaragua) and for the conflict thereby to have an international character, the state would have to have ‘effective control’<sup>79</sup> over the armed forces.

It was similarly clarified that an internal conflict may be characterized as internationalized by either a state’s interventions with its concrete military troops or through active participation by combatants on behalf of the intervening state in an otherwise internal conflict, in the trial in the ICTY against Tadić.<sup>80</sup> The Appeals Chamber in the Tadić-case overruled the effective control – criteria established in the Nicaragua-case and instead implemented the criterion that the intervening state should have ‘overall control’<sup>81</sup> over the militias involved in the otherwise internal conflict.

While it was stated in the Tadić-case that the intervention by troops of a State may internationalize an otherwise internal conflict in another state, it was added in the Blaskić-case<sup>82</sup> that such intervention could be proved factually. It was shortly concluded that involvement of 3000 – 5000 Croatian soldiers was enough to internationalize the conflict occurring in Bosnia and Herzegovina.<sup>83</sup> Similarly, the Kordić & Čerkez-case<sup>84</sup> confirmed that even indirect Croatian involvement, in the form of placing troops in places of ‘strategic importance’<sup>85</sup> had the effect of internationalizing the conflict. Finally, the Naletilić-case<sup>86</sup> affirmed that the conflict ‘must be looked upon as a whole’<sup>87</sup>.

Notwithstanding the confirmations of the Tadić-principle in the Blaskić, Kordić & Čerkez-case and Naletilić-case, they did little to expound on or explain the amount of involvement required for an intervening state to turn an internal conflict into an international one. The understanding of the overall control criterion in the Tadić-case therefore has continuous validity.

There will be reason to come back to the requirements set by the criterion later on. If fulfilled, the criterion could have the effect of internationalizing the conflict under consideration (and thereby justifying the employment of the great humanitarian framework attached to such characterization) generally considered to constitute an internal conflict. However, as the argument in the present thesis is that the conflict cannot even be comprised within the framework of non-international armed conflicts as it takes form in contemporary humanitarian law, the justification for an in-depth analysis on the potential internationalization of such is vague.

By in the following chapter tracing the underlying causes of the conflict back in time as well as pinpointing the difficulties that the CAR and the wider region contemporarily faces as a result thereof, while simultaneously contrasting the findings with the already established conflict-typology noted in this section; it will be possible to crystallize the quaintness of the situation current in the CCS-region. It will be illuminated that when

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<sup>78</sup> *Nicaragua v United States of America* [n 77] para. 219.

<sup>79</sup> *Nicaragua v United States of America* [n 77] paras. 115 – 116.

<sup>80</sup> *Prosecutor v Tadić*, Appeals Chamber [n 47] para. 84.

<sup>81</sup> *Prosecutor v Tadić*, Appeals Chamber [n 47] para. 137.

<sup>82</sup> ICTY, *Prosecutor v Blaskić*, Case No. IT-95-14-T, Judgement, (Trial Chamber) 3 March 2000, (*Prosecutor v Blaskić*).

<sup>83</sup> *Prosecutor v Blaskić* [n 82] paras. 76, 89 – 90.

<sup>84</sup> ICTY, *Prosecutor v Kordić & Čerkez*, IT-95-14/2-T, Judgement, 26 February 2001 (*Prosecutor v Kordić & Čerkez*).

<sup>85</sup> *Prosecutor v Kordić & Čerkez* [n 84] paras. 108 – 109.

<sup>86</sup> ICTY, *Prosecutor v Naletilić et al*, IT-98-34-T, Judgement, (Trial Chamber) 31 March 2003, (*Prosecutor v Naletilić et al*).

<sup>87</sup> *Prosecutor v Naletilić et al* [n 86] para. 194.



correctly contextualizing the individuality of the region; the in IHL inherent dichotomy – and even the discourse on unofficial hybrid versions of the same – is insufficient in yet another aspect than those already pointed out in legal doctrine.

### 3 Challenging the normative framework

While chapter 2 outlined the theoretical starting point for a conflict-analysis the present chapter intends to more intricately discuss the CCS-region from a historical, social and geopolitical perspective. When exemplifying and assessing the case-specific features of the situation, it will be clear that ordinary contextualization of conflicts in accordance with the typologies outlined in the previous chapter cannot be considered to clearly embrace the regionalized conflict in the north-eastern Central African Republic, eastern Chad and western Sudan. Correct application of the Geneva Conventions requires a certain context. The context being that of a European-inspired territorially delimited area and a Westphalian conceptualization of communality. As will be enlightened, the characteristics of the region however show other, multifaceted dimensions of communality and regionalism. The CCS-region presents a psychological and geographical integrity beyond colonially delimited borders and as such presents a challenge to the Westernized humanitarian framework. The currently sprawling conflict is regionalized rather than nationalized or internationalized and thereby difficult to access from the perspective of international humanitarian law as it takes form in the Geneva Conventions. Not only so, attempts to subsume the currently sprawling conflict in the Central African Republic under any of the unofficial hybrid versions of conflicts is just as difficult, as they all evolves from the same ideas of Westphalian states and thereto related humanitarian law. The in-between typologies presented in the previous chapter thus also evolves from ideas of clearly delimited states, territorial boundaries and fixed armed groups and are equally improper for addressing the conflict. Notwithstanding certain similarities with the conflict-typologies noted above, the conflict in the CAR and the wider CCS-region possess additional elements which cannot be overlooked, especially the involuntary colonial heritage and the violent postcolonial history.

#### 3.1 Perspectives of escalating hostilities

Formed by diverse rebel groups<sup>88</sup>, the Seleka-militia, headed by Mr. Djotodia, emerged in late 2012 in the northeast of the CAR. With the intention of overthrowing then-President Bozizé the Seleka forcibly and violently gained increasing territorial control over the CAR in 2012/2013. As of late March 2013 the Seleka had taken control over 15 of the 16 provinces in CAR as well as over the capital and had forced then-President Bozizé to resign. This was the initiation of the last year's spiraling hostilities in the CAR.<sup>89</sup> Already before the seizure of power had the Seleka-force caused significant humanitarian suffering on the raid through the country towards Bangui. However, the emergence of what can only be described as major human rights atrocities and immense destruction of property and humanitarian resources particularly evolved after the seizure of power in March 2013. HRW and AI provides

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<sup>88</sup> Convention of Patriots for Justice and Peace (CPJP), Patriotic Convention for the Salvation of Kodro (CPSK), Union of Democratic Forces for Unity (UFDR), Union of Republican Forces (UFR), Alliance for the Rebirth and Rebuilding (A2R), HRW, "I can still smell the dead". *The Forgotten Human Rights Crises in the Central African Republic* [n 2] p. 29.

<sup>89</sup> Seleka means 'alliance' in Sangu, <[www.bbc.co.uk/news/world-africa-25683279](http://www.bbc.co.uk/news/world-africa-25683279)> Accessed 3 February 2014; <[www.amnesty.org/en/news/qa-central-african-republic-s-human-rights-crisis-2014-04-09](http://www.amnesty.org/en/news/qa-central-african-republic-s-human-rights-crisis-2014-04-09)> Accessed 7 May 2014.

evidence of mass destruction of villages, wounded populations fleeing from their homes into the bush as well as malnutrition, lack of access to humanitarian relief and medical services and numerous civilian casualties.<sup>90</sup>

Mr. Djotodia was – after his self-imposed presidency – officially sworn in as interim President of the CAR in August 2013 and dissolved the Seleka-militia the following month, although firmly denying any allegations of human rights abuses committed by them. Notwithstanding the so called ‘symbolic’<sup>91</sup> dissolution, considerable fractions of the Seleka group continued and still continue to act as if they were in military power of the CAR.<sup>92</sup> The unorganized remains of the Seleka militia continuing to conduct atrocities were soon referred to as the ‘ex-Seleka’<sup>93</sup>.

In response to the continuation of unofficial military raids against the population by the ex-Seleka; a civil counterforce emerged in the autumn of 2013. From the beginning loosely referred to as ‘elements loyal to [the previous President] Mr. Bozizé and self-defense militias’<sup>94</sup> by the international society; the opposing groups gained increasing support and were categorized under the heading of ‘anti-Balaka’<sup>95</sup> by the Deputy UNSG later the same year. Just before Mr. Eliasson acknowledged the anti-Balaka as constituting a sufficiently organized human construction as to be placed under a united, separate category of militia within the CAR (notwithstanding the lack of a clear structure of command), the UNHCHR Navi Pillay emphasized the tensions between ethnic communities and increased religious polarization along the lines of Christians and Muslims within the CAR.<sup>96</sup>

While the ex-Seleka force mainly consists of Muslims, the opposing anti-Balaka is predominantly made up of Christians. In retaliation of the abuses committed by the Seleka, the anti-Balaka increasingly and indiscriminately attacked inhabitants of Muslim communities and villages during late 2013. In the same way, the ex-Seleka attacks evolved from random acts of pillage, deliberate killings and looting into attacks specifically directed at the Christian population. Adding weight to the conflict between the opposing ex-Seleka and anti-Balaka groups and their associates are several aspects, of which two should initially be mentioned. The political factor refers to the fragments of the anti-Balaka who were previous soldiers and members of the former official military Force Armées Centrafricaines (FACA) under the Bozizé regime. Recapturing power and reinstalling Mr. Bozizé as President tends to underlie their actions rather than religious hatred, even though the previous FACA members and the wider anti-Balaka group are closely interrelated.<sup>97</sup> The second aspect is partly of economic character and in a wider perspective a factor relating to heritage and diverse ways of living. Closely related to differences in religion in the CAR are the differences in cultures of residency. While considerable parts of the nomadic groups living in the CAR are Muslims,

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<sup>90</sup> HRW, “*I can still smell the dead*”. *The Forgotten Human Rights Crises in the Central African Republic* [n 2] pp. 5 – 13; AI, ‘Ethnic Cleansing and Sectarian Killings in the Central African Republic’ [n 50] pp. 19 – 24.

<sup>91</sup> The ICG has characterized the dissolution as merely a symbolic gesture done by Mr. Djotodia to distance himself from the crimes committed by his former associates over whom he had lost control. ICG Policy Briefing [n 5] p. 3.

<sup>92</sup> HRW, *They came to kill. Escalating Atrocities in the Central African Republic* [n 22] p. 6.

<sup>93</sup> <[www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46054&Cr=general+debate&Cr1=#.UsVXlvTuK3U)> Accessed 24 January 2014.

<sup>94</sup> Ibid.

<sup>95</sup> Anti-Balaka means ‘anti-machete’/‘machete proof’ in Sangu, HRW, *They came to kill. Escalating Atrocities in the Central African Republic* [n 22] p. 11; <[www.amnesty.org/en/news/qa-central-african-republic-s-human-rights-crisis-2014-04-09](http://www.amnesty.org/en/news/qa-central-african-republic-s-human-rights-crisis-2014-04-09)> Accessed 7 May 2014;

<[www.un.org/apps/news/story.asp?NewsID=46588&Cr=Central+African+Republic&Cr1=#.UsVXAfTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46588&Cr=Central+African+Republic&Cr1=#.UsVXAfTuK3U)> Accessed 24 January 2014.

<sup>96</sup> <[www.un.org/apps/news/story.asp?NewsID=46449&Cr=Central+African+Republic&Cr1=#.UsVXXfTuK3U](http://www.un.org/apps/news/story.asp?NewsID=46449&Cr=Central+African+Republic&Cr1=#.UsVXXfTuK3U)> Accessed 24 January 2014.

<sup>97</sup> The issues of dynamic armed forces and fluid loyalties are discussed further in section 3.4.2.

moving their livestock from place to place as practiced in generations, the culture of farming and agriculture are usually practiced by Christians. In the search for water and nutrition for their cattle the nomads, especially the Mbororo, often comes in conflict with the Gbaya, farmers of Christian origin. Confrontations are common between the two and the escalation of sectarian violence related to the ex-Seleka and the anti-Balaka, has not gone unnoticed for these groups.<sup>98</sup>

Hence, without having been previously involved in the confrontations or even having supported the Seleka, civilians happening to be of Muslim origin have repeatedly been the object of attack by the anti-Balaka militia since the autumn of 2013. At the same time, the dissolved Seleka force (the ex-Seleka), has without apparent organization, hierarchy or structure continued to conduct horrific atrocities either indiscriminately or against Christians and the Gbaya population in particular.

What was initially an uprising by the Seleka-coalition against the previous Bozizé presidency has thus turned into a severe sectarian conflict. However, it is of significance to note that there are not merely religious factors underlying the violence, even though the religious polarization of Muslim and Christians communities was specifically emphasized by the UNHCHR as an underlying cause of the conflict.<sup>99</sup> What is even more important than the sectarian feature of the violence is the historical background of the current conflict. Ethnicity and divergent traditional ways of living and holding residency are undeniable underlying factors for the prolongation of the hostilities. Further, the conflict cannot arguably be stated to be confined within the territory of the Central African Republic. Recent events are in fact nothing but expressions of and a continuation of a much deeper regionalized conflict, the prolongation of which leads back to the time of decolonization in the mid 20<sup>th</sup> century. Hence, for a correct understanding of current hostilities it is necessary to make a historic review of the CAR and the surrounding region.

## 3.2 Colonization and its consequences

### 3.2.1 Pre-colonial and colonial era

The predecessors of the population living in the Central African Republic today, moved to the territory in the middle of the 18<sup>th</sup> century. Then called Oubangui-Chari the area became inhabited by ethnic groups without apparent governance, organization or political structure, moving in from diverse African territories. As such, the groups were not unusually involuntarily forced to become slaves of the neighbouring sultanates having developed basic societal structures.<sup>100</sup>

Bangui was established as the capital in 1889 by Frenchmen and the following decade was characterized by increasing French influence inaugurating the colonization of Oubangui-Chari in 1903, as a part of French Equatorial Africa (FEA). FEA was divided amongst about 40 French private companies granted the opportunity to invest in the territory as they preferred, of which about 17 companies gained control over and split Oubangui-Chari. Notwithstanding the natural resources available in the fertile region, the territory and its inhabitants were mainly used and exploited for the rubber industry and later on for the construction of railways. With a rainy season of 8-10 months a year, Oubangui-Chari was an

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<sup>98</sup> HRW, *They came to kill. Escalating Atrocities in the Central African Republic* [n 22] pp. 12 – 33. The issue of religious influence on the conflict is discussed further in section 3.2.2.

<sup>99</sup> See [n 96].

<sup>100</sup> Berg [n 30] p. 18.

unattractive place of residence for the French colonizers. Thus, in the beginning of the 1900s and the colonial era merely about 150 foreigners established a permanent or occasional living in Bangui (no information provides that foreign establishment took place outside of Bangui), with the foreign presence having increased to a few thousands at the end of the colonization. Even so and although no exact numbers are available of the amount of Africans living in the territory during the time of colonial subordination or before that, it is estimated that half of the African population in Oubangui-Chari died as a direct consequence of colonization, either due to violent killings, inhuman slave-conditions or by diseases transmitted from the foreigners.<sup>101</sup>

The division of the territory characterized as French Equatorial Africa has had effects of the geo-political climate of the Central African Republic, Chad and Sudan until the present day.

### 3.2.2 Porous borders and distant capitals

Addressing firstly the concrete geography of the CAR it is noteworthy that as a direct consequence of the colonial impingement Bangui and the second greatest city Bimbo are both located in the south/south-western CAR, about 800 kilometers from the Vakaga province in the north-eastern part of the country. This distance is not unimportant for the contemporary polarization of and the all-over hostile environment in the country. The geographical distance in combination with the weather conditions of the CAR furthers an extraordinary separation between the population in the south/south-west and the north-east of the CAR. Transportation by land between the two areas is impossible during the rainy season and the route could take months to travel even during the dry season due to underdeveloped infrastructure and lack of resources to build sustainable roads.<sup>102</sup> While the infrastructure within the country has continuously been substandard, transnational transportation in relation to the neighbouring states Chad and Sudan is and always has been frequent and unproblematic. Giroux et al states that imagining a painted map over the CCS-region: ‘reveals deceptively clear state boundaries that are challenged by the reality of porous borders, which allow goods and people to travel between states, contributing to the patchwork nature of this region’.<sup>103</sup>

Geographical and socio-economic distance between a province (in the CAR the province Vakaga) and the administrative and economical centre focused around the capital is not exclusively a problem for the Central African Republic. Chad and Sudan shows similar distances and faces similar challenges, important factors in the communality of the CCS-region. Just as the Vakaga province is located hundreds of kilometers from Bangui and is inaccessible during most of the year, is there a geographical sphere of hundreds of difficultly travelled kilometers between parts of eastern Chad and the Chadian capital N’Djamena. Likewise, the territorial and psychological distance between Darfur and the Sudanese reign elite placed in Khartoum is undeniable. Thus, the area of eastern Chad, western Sudan and north-eastern CAR are territorially closer to each other than they are connected to their respective capitals.<sup>104</sup> Territorial boundaries drawn by the former colonizers, France and the United Kingdom<sup>105</sup> are poorly governed, frequently crossed and may be conceived of as

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<sup>101</sup> CCPR/C/CAF/2004/2 [n 21] § 77; ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] pp. 2 – 3.

<sup>102</sup> ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] p. 3; Berg [n 30] p. 24.

<sup>103</sup> Giroux [n 25] p. 3.

<sup>104</sup> Giroux [n 25] p. 10.

<sup>105</sup> Giroux [n 25] pp. 4 – 5. Chad and CAR were subsumed under the French federation FEA: Afrique Équatoriale Française, while Sudan was colonized by the UK.

theoretical at best, not to say fictional. The situation has accurately been described by the International Crises Group:

The extreme north east of the CAR (...) is a world where Sango, the national language is hardly spoken and where Muslims are in the majority. It is an arid savannah that has always looked more towards Abéché, in Chad, and Nyala, the capital of South Darfur, the two spiritual centres and seats of power to which local chiefs have traditionally given their alliance (...) The CAR shares a 1200 km border with Sudan. There are only two border posts (...) which are 700 km apart from each other.<sup>106</sup>

An additional aspect of importance for understanding the regionalized communality of north-eastern CAR, eastern Chad and western Sudan is the religious tensions prevailing in the countries. Looking at the example of the CAR; along with the enterprises and merchants establishing businesses in Oubangui-Chari in the late 19<sup>th</sup> century followed Christian missionaries, founding schools and churches. As the foreign presence, both economical and ecclesiastical in the CAR was clearly confined to Bangui; an all the more well-educated Christian minority evolved in the capital. Similar events and preferential treatment of certain areas and communities took place in Chad.<sup>107</sup> Economic enhancement within Bangui was a result of the strengthened foreign presence and investments in combination with a development of the rubber industry. The rubber industry not only increased the centralization of economics and administration to Bangui, slaves from outside of the capital were violently forced to work as collectors of rubber vine; furthering an increased social separation of the population.<sup>108</sup> A clear polarization could consequently be mapped between the Christian administrative, financial and societal structures emerging within Bangui – and the contrasting undeveloped, uneducated indigenous population in the rest of Oubangui-Chari already in the early colonial era. As a consequence a distinct separation emerged between the Christian population and other religious groups already in the early colonial years, from which the roots of the enmity between Christians and Muslims witnessed in contemporary CAR can be traced.<sup>109</sup>

In the Vakaga province the great majority of the population is Muslim; a simultaneous cause and effect of the proximity to the neighbouring state's populations also belonging to Islam.<sup>110</sup> Taking into account that 80 percent of CAR's population today belongs to Christianity, the Muslim population in the Vakaga province constitutes a clear religious minority within the CAR.<sup>111</sup> When addressing the issue of religion it is however necessary to also bear in mind the divergent ways of living practiced among different ethnic groups. Already mentioned in section 3.1 a particular concern in this regard is the clashes occurring between the Muslim nomadic group Mbororo and the Christian agricultural group Gbaya. Human Rights Watch, states that the antagonism between the two has become increasingly palpable in recent years.<sup>112</sup> Introduction of Christianity within the CAR society is not to be pointed out as the sole cause from which the contradictions between the different groups has emerged and religion is not today and most certainly has not been the single source of contention in the history of the CAR. Nonetheless, the introduction of Christianity was an

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<sup>106</sup> ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] p. 25.

<sup>107</sup> Berg [n 30] p. 10.

<sup>108</sup> ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] pp. 2 – 4; Berg [n 30] p. 18.

<sup>109</sup> Described in section 3.1.

<sup>110</sup> ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] p. 25; Berg [n 30] p. 24; Giroux [n 25] p. 5.

<sup>111</sup> HRW, *They came to kill. Escalating Atrocities in the Central African Republic* [n 22] p. 12.

<sup>112</sup> Ibid.

unequivocal expression and consequence of foreign, colonial impingement. Just as the African continent and in particular in this case the CCS-region was to be organized into political structures similar to and following the European structure under the colonial ruling, was the society simultaneously to be indirectly subsumed under the umbrella of Christianity. As mentioned, along with foreign Christian missionaries came financial investments, building of schools and churches as well as establishment of permanent societies confined within certain territorial areas. Agriculture evolved as an alternative way of living to the previously common way of living by herding cattle and practicing traditional nomadism, as had been done by the indigenous people and the Muslim communities in the pre-colonial time. In this way the financial, educational and agricultural development went hand in hand with Christianity. Ethnic groups such as the Gbaya mainly present in the southern parts of the CAR turning to the, in the colonial years, new religion thus gained a certain advantage withheld from the non-Christian ethnic groups such as the Mbororo, in particular located in the arid north-eastern parts of the CAR.

### **3.3 Decolonization and the emergence of Westphalian-inspired states**

#### **3.3.1 The process of decolonization**

Decolonization was to a great extent inevitably interrelated with the notion and emergence of the nation-state. As noted by Herbst<sup>113</sup> structuring and organizing a population within a defined territory under the heading of the nation-state has for long been the ordinary mode within international law. Even though the notion of nation-state can initially be drawn from the Treaty of Westphalia in 1648, it was in the mid 20<sup>th</sup> century as the concept gained major significance by the decolonization of States around the world. The difficulties attached to the emergence of sovereignty can most easily be noted in the African region.<sup>114</sup> By attempting to comprise the previous social structures of the African region into the western, mainly European standardized form of the nation-state difficulties arose. While embracing the right to self-determination and sovereignty, the newly developed nation-states positioned in the aftermaths of years of colonial ruling cannot but have faced structural and organizational problems. Their prerequisites for state-building were profoundly different from the European states having developed societal structures long before.

But before immersing into the structural and administrative problems of nation-building in the mid 20<sup>th</sup> century, a recap of the concept of colonialism as such is of importance. Looking beyond the imperialistic and racially segregating conceptions of colonization in Africa, it should be emphasized that a great amount of interaction between the European colonizers and the leaders of the African communities which were to be colonized, took the form of formal, official treaties and agreements. In the words of Matthew Craven:

From the early 1880s onwards European exploration of the interior of Africa was to be marked, among other things, by the systematic and widespread

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<sup>113</sup> Jeffrey Herbst, 'The Future of Existing Nation-States' in: Danspeckgruber, W. (ed), *The Self-determination of peoples, Community, Nation, And State In An Interdependent World*, Boulder: Lynne Rienner in association with the Liechtenstein Institute on Self-Determination, Princeton University, 2002, pp. 15 – 16.

<sup>114</sup> Ibid.

conclusion of treaties with local kings and chiefs providing for ‘Protection’ or for the ‘cession’ of sovereignty.<sup>115</sup>

Questions soon arose of which the answers still appear uncertain in the legal doctrine, the most obvious relating to the determination of statehood, sovereignty and national self-determination. Leaving the question of the highly doubtful consciousness and free will of the leaders of territories about to become colonies as a result of the alleged protective agreements for now, the present focus regarding the alleged agreements relates instead to the characterization of the parties involved in the conclusion of the treaties. If, as Craven suggests the concluded agreement between a European state and a leader of an African community furthered the cession of sovereignty, there must necessarily have existed a sovereignty which the African community was able to yield. Following this not unreasonable finding, the interrelation between the colonizer and the colonized however is difficultly assessed. At the same time as the African communities were conceived of as lesser developed and uncivilized territories unequal to the civilized European states and without a righteous claim of self-determination, the African communities were clearly conceived of as entities sovereign enough as to conclude treaties on the passing of sovereignty.<sup>116</sup> In this ambiguous approach to the African communities it is difficult to assess the very essence, the actual characterization of the communities becoming colonies.<sup>117</sup>

The characterization of the legal status of the colonies became even more questionable in the beginning of the 20<sup>th</sup> century, as the Covenant on the League of Nations<sup>118</sup> initiated the Mandate system. In article 22 the Covenant refers to territories and communities no longer under the sovereignty of previous colonizers.<sup>119</sup> By this reference it appears clear that the former colonies after the adoption of the Covenant of the League of Nations were no longer conceived of as subsumed under the sovereignty of the foreign colonizers. On the other hand, no explicit reference was made to any other characterization of the territories and communities which could be taken as an acknowledgment of the independent sovereignty of the former colonies. Instead, the concept of Mandates was used, which in itself had to be judicially assessed and clarified. As it was clear by the wording of Article 22 that the

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<sup>115</sup> Craven [n 16] p. 212.

<sup>116</sup> The African communities were considered sufficiently sovereign as to be able to commit to valid agreements. If they had not so been, it would have meant that the European States concluded treaties on governmental and territorial relations with entities not formally recognized as international subjects able to conclude such agreements, rendering the latter invalid. On the other hand, every agreement inevitably enlightened the subordination of the colonies, and the inequality permeating the interrelationship between the colonizer and the colonies. Craven [n 16] pp. 212 – 214.

<sup>117</sup> Craven [n 16] pp. 212 – 214.

<sup>118</sup> League of Nations, Covenant of the League of Nations, 28 April 1919.

<sup>119</sup> League of Nations, Covenant of the League of Nations, 28 April 1919, Article 22: ‘To those colonies and territories which as a consequence of late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League. The character of the mandate must differ (...) peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to maintenance of public order and morals, the prohibition of abuses such as slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.’



sovereignty of the former colonies was not held by the former colonizer, while at the same time the Covenant showed no pretention of acknowledging self-determination or sovereignty for the communities themselves, the designation of the sovereignty of the previous colonies appears unclear at this stage.

The difficulty of assessing the character of the territories and affording sovereignty to one part or the other furthered the necessity of redefining the wider concept. Rather than focusing on the problematic features attached to the notion of sovereignty the international society began to use the concept of legal personality to describe international entities. Personality in this sense meant the capacity and ability to make agreements with other international entities, which all international subjects enjoyed on an equal basis.<sup>120</sup> Thus, the former colonies were considered equal with the former colonizers in the sense that they had equal legal personalities and capacities to enter into agreements and take on obligations – while the Mandate system could at the same time be justified by the very fact that as the former colonies had equal legal personality they had the possibility to give up the sovereignty of the territory to others. The capacity afforded to them by the recognition of legal personality was thereby, among others, the capacity to righteously give up sovereignty.<sup>121</sup> Notwithstanding the new way of conceiving of the international entities, the questions of statehood and independence of the former colonies remained.

When, after the Second World War decolonization emerged as an all the more concrete idea, the inherent characterization of the former colonies, which had not yet sufficiently been answered, was once again brought up on the international agenda.<sup>122</sup> Noted by Craven, what became the predominant way of tackling the situation was for the formerly dominant state to ‘creating the necessary legal space for the new State to then assert its rights over the territory and population concerned’<sup>123</sup>.

### 3.3.2 Socio-political structures

Now, the importance of the previous section lies not explicitly in the literary discourse of statehood and sovereignty as such, but in the deeper implications following and the deplorable outcomes of the decolonization process. The main point here is that the African territories and populations conceived of as having gained independence and having been afforded the legal space for building new states were the territories and populations in the understandings of the former colonizers and Mandate holders. However, neither the delineation of territories as colonies in the late 19<sup>th</sup> century and the following classification of Mandates nor the subsequent process of decolonization took into account the actual situation of the peoples concerned.

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<sup>120</sup> As such, it could be argued that all states were equal, effectively undermining any arguments on the inappropriateness of domination and subordination of communities on the international arena. At the same time, the concept implied the right and possibility of every defined legal personality to enter into relations with other personalities in the intention to give up the so called sovereignty. Craven [n 16] pp. 214 – 217.

<sup>121</sup> Craven [n 16] pp. 214 – 217.

<sup>122</sup> When the territories and communities suffering from colonial domination was about to gain independence and national self-determination, the inevitable question arose as to whom could righteously claim the power of declaring and affording independence to another international entity. From the finding that a former colonizer would have the power to declare independence for its colonies followed the line of thought that so could only be done if the latter was conceived of as subordinated the prior. If the former colony on the other hand had the individual right to declare self-determination without any additional recognition by others, it would imply that national insurgents could declare independence without further notice. Both ways of addressing the problem eventually came down to the issue of whom had the righteous claim over certain territory and none of the alternative ways of dealing with the problem appeared appropriate. Craven [n 16] pp. 218 – 219.

<sup>123</sup> Craven [n 16] p. 218.

When the African communities were organized into sociopolitical structures following those of European States and the societies and inhabitants were subsumed under the features of European-inspired statehood; fundamental characteristics of the original communities were denied. Controversies on the allocation of sovereignty, the ambit of independence and the assignment of self-determination were in fact merely different utterances of applying the Euro-centric understanding of nation-building to the so called new states. As mentioned in section 2.1 the concepts emerged from and within the context of nation-building in the late medieval Europe (essentially from the Treaty of Westphalia in 1648) – far from the reality of African societies in the 20<sup>th</sup> century. Applying the in Europe then well functioning principles of state-building to the highly different circumstances in Africa is largely to be blamed for the failure of organizing functioning entities in the latter.

Linear territorial boundaries drawn by previous colonizers took no account of the factual boundaries in between communities, thus challenging original social delineations. Geographical demarcations forcibly separated religious and ethnic groups under administrative and hierarchical structures while bringing others involuntary together. Nevertheless, in practice, separation of tribes and societies appears to have been mainly theoretical, creating for the population artificial lines. Just as several nomadic groups residing in central Africa have firmly kept their traditional way of living throughout the colonial era until today, have commerce and trade continued in regions functioning beyond colonially linear boundaries. In the words of Giroux et al:

The borders of many African states were drawn arbitrarily by the colonial powers, dividing areas that had strong historic links and bringing them under the rule of separate distant capitals (...) in many large post-colonial states in Africa, the hinterlands are historically, economically, politically and culturally dissociated from their capitals and oriented towards neighbouring areas across the border.<sup>124</sup>

Social, financial and geo-political distance between the population and the governing elite usually situated in the capital of the state is here pointed out by Giroux et al as a main factor behind weak political governance and ruling of African states. The idea may easily be applied to the situation prevailing in the CAR and the wider CCS-region.

Consequently, when the demarcation of territory was conducted in the process of colonization, no consideration was given the regionalism reign in the CCS-region. If geographical factors and natural assets as well as demographical, linguistic, religious and ethnical bonds had been taken into account in the colonial era and the subsequent process of decolonization, the boundaries drawn would have looked utterly different. The delimited territories would have been given different forms, potentially furthering less unsatisfactory consequences for the newly emerged states. Geographical proximity of the countries' regions (north-eastern CAR, eastern Chad and western Sudan) and porous, almost invisible borders discussed in section 3.2.2 in combination with the ignored socio-political structures outlined in this section are all factors of great importance for understanding that characterizing the conflict in line with any of the hybrid typologies noted in section 2.4 above is difficult. Several of the typologies require clear and distinct territorial boundaries. Clearly, the CCS-region does not present a situation of such required distinct clarity. Colonially drawn national delimitations have had the effect of politically and administratively separating the region's inhabitants under the authority of three different capitals, in theory. In practice on the other hand the residents in the CCS-region appears to have continuously regarded the territorial sectioning as in the nearest fictional and social and communal activities on a regional basis

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<sup>124</sup> Giroux [n 25] p. 10.

have been continuously upheld. The borders supposed to be crossed in accordance with established conflict typology are basically absent. Subsuming a situation under a typology presupposing a transgressing character of the conflict, when there are in practice no borders to transgress is thus somewhat meaningless. As a consequence, characterizing the situation and ongoing conflict under the heading of for instance ‘spill over’ or ‘cross border’ hostilities is inevitably pointless. Such conceptualizations simply become eviscerated when the underlying premises are inexistent.

## 3.4 Post-colonial developments

### 3.4.1 Prolonged post-colonial hostilities

Described above, one heritage from the colonial era in the Central African Republic was a clear division between the capital and the hinterlands. As the foreign colonizers had almost exclusively settled in Bangui the financial, administrative and societal development in the capital were years ahead of the developmental situation in the rest of the country at the time of independence. Involvement by Christian missionaries, input of foreign finances, establishment of missionary schools and focus on political administration within the capital furthered the evolvement of a politically centralized and educated Christian minority in Bangui.<sup>125</sup> Christian influence also had significance for the very independence of the country by the fact that the Oubangui-Chari’s first Catholic Priest Barthélemy Boganda was the first person to initiate a political party disputing the French colonial domination. Boganda further became the country’s first prime minister in 1958, when the Oubangui-Chari was granted internal autonomy.<sup>126</sup> However, ecclesiastical influence tends to have been continuously entangled with the multifaceted question of ethnicity; already mentioned in relation to the groups Gbaya and Mbororo. CAR’s post-colonial presidents have all used ethnicity in order to gain military and political strength with significant socio-political consequences following. It should be reiterated that the events and actors assessed here shows tendencies and exemplifies issues from the Central African Republic in relation to the CCS-region, without intending to comprehensively describe all angles of the ethnic complexity of the region.

The 13 August 1960 was the day of independence for Oubangui-Chari and it was also the day Boganda died under unclear circumstances, leaving the presidential post open. Supported by the previous French colonizers, Mr. David Dacko violently took control over the parliament and was installed in the presidential seat. Starting his political carrier by placing the opponent presidential candidate in house arrest and implementing a series of restrictive regulations, Dacko initiated the since then continuously instable era of the country. He was the first in a series of political leaders adapting to the same lines of thought and actions. By profiting adherents and supporters to the respective presidents, while violently fighting and avenging any political opponents, the political climate in the Central African Republic became increasingly incused by a mentality of vengeance and ethnic manipulation during the last decades of the 20<sup>th</sup> century.

Following Dacko, Jean-Bedel Bokassa, having previously been a captain of the French army, forcibly took power in 1965. Gathering the official and military powers in his

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<sup>125</sup> There was about 3,500 ‘baptised’ within the whole Oubangui-Chari in the mid 20<sup>th</sup> century. A similar development could be seen in the neighbouring state Chad, which had a clear division between a prioritized Christian minority in the fertile southern parts of the country and a severely neglected Muslim population in the northern territory. Berg [n 30] pp. 10, 18.

<sup>126</sup> ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] pp. 2 – 4; Berg [n 30] p. 18.

own hands and converting to Islam in order to gain support from Libyan Colonel Quaddafi, Bokassa changed the constitution of the CAR and created the Central African Empire (a constitution which remained throughout his presidency). Having provoked and strained the population, his own followers and the previous French support during more than a decade, Bokassa met increasingly violent opposition initially led by his previous prime-minister Ange-Félix Patassé and the former president David Dacko. Bokassa was overthrown with the help of a French intervention in 1979.

French-supported Dacko was reinstated as president, but he was unable to handle Bokassa's heritage of developmental and financial backlog and subsequently gave up power to the FACA General Kolingba. The following ruling under Kolingba was marked by the former colonizer's recurrence and presence. The French secret service practically controlled the political affairs of the CAR in the 1980s while Kolingba merely ostensibly governed the country. Referred to as the 'inventor of ethnicity'<sup>127</sup> he was the first president to clearly conduct ethnic manipulation amongst the military and presidential delegation and the ethnic tensions within the country became increasingly palpable during his ruling. While the previous colonizers extended and regained control over the CAR, Kolingba dedicated himself to rearranging the FACA. Belonging to the ethnic group Yakoma, Kolingba was focused on installing and recruiting his ethnic family into the political spheres of the state apparatus as well as into FACA and the Presidential Guard (the part of FACA having responsibility over the President's personal security) thus concentrating political and military power to his equals.

After an unsuccessful coup against the Kolingba ruling conducted by Ange-Felix Patassé (prime-minister of the former President Bokassa) the ethnic concentration of power conducted by General Kolingba evolved into ethnic massacre of groups in opposition with the Yakoma. Ethnic hatred between Patassé's ethnic group Sara-Kaba and the Yakoma was practically initiated at this point. Pressured by the previous colonizers, Kolingba finally had to concede to and accept the holding of a political election. Supervised by France, the first politically democratic election in the CAR was held in 1993, resulting in the triumph by Ange-Félix Patassé. When Patassé gained presidency the divergence between the ethnic groups evolved into a division along not only ethnic lines but also by a wider north/south division as Patassé was the first President coming from the northern CAR. Hence, notwithstanding the righteous victory by Patassé, no political stability was to be expected. In the same way as his predecessor had inaugurated and concentrated the Yakoma within the FACA and the Presidential Guard, Patassé linked his ethnic family from the northern CAR to the military as soon as the opportunity availed.<sup>128</sup>

Described by Giroux et al: 'Patassé launched a broad effort to weaken the Yakoma-dominated military and stacked the French-backed Presidential Guard with members from the Kaba thus perpetuating the political exploitation of ethnicity'.<sup>129</sup> Having been replaced by the Sara-Kaba and demoted from the previously advantageous and preferential position in the Presidential Guard to lower positions in the FACA military; several members of the Yakoma developed feelings of disaffection against the new presidency. As a result, repeated mutinies by the FACA and uprisings against President Patassé followed, straining the already bad economy of the CAR and undermining any attempts to reach national stability and socio-economic development.

The last decade of the 20<sup>th</sup> century and the ruling under Patassé was consequently marked by political instability, sprawling inflation, increased guerilla warfare, humanitarian deterioration, economic decrease, mutinies and formation of new rebel groups. Receiving

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<sup>127</sup> ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] p. 8.

<sup>128</sup> CCPR/C/CAF/2004/2 [n 21] §§ 12 – 16; ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] pp. 4 – 9, 14; Berg [n 30] pp. 18 – 21.

<sup>129</sup> Giroux [n 25] p. 5.

scarce help from the international community<sup>130</sup>, Patassé increasingly appealed to and employed military forces from Libyan Colonel Quaddafi and Congolese rebels.<sup>131</sup>

Having first been involved in the Patassé-led coup against General Kolingba and subsequently engaged in a second coup in 2001 against the former allied Patassé; François Bozizé fled to the neighbouring state Chad twice; where he received military and financial support from the Chadian President Idriss Déby in order to organize military opposition. Intensely backed by Déby and Chadian soldiers, Bozizé took over power of Bangui on 15 March 2003. Thus, the military personnel overthrowing President Patassé under the leadership of Bozizé were not exclusively, but to a considerable extent supported by and originating from Chad.<sup>132</sup>

While acknowledging the financial and military support, HRW emphasizes that the Chadian involvement in the CAR at the time was not a new phenomenon: ‘The government of Chadian President Idriss Déby has played a role in CAR since the early 1990s. The Bozizé government was installed with Chadian support in 2003. The Déby government is believed to have been a sponsor and perpetrator of human rights abuses against civilians in CAR’s north’.<sup>133</sup> However, as will be shown, the Chadian involvement in the CAR is not, and has never been, confined to merely one part or the other.

This historic review of the Central African Republic, drawn with an extremely broad pencil, precedes the more recent history noted above in section 3.1.1. It shows that the post-colonial history has effectively underpinned a normalization of a violent societal climate.

### 3.4.2 Dynamic armed forces

Exemplifying the inevitable interrelation between dynamic armed groups, political association and the regionalized communality of the CCS-region; Bozizé’s use of Chadian soldiers will be addressed later on in this section.<sup>134</sup> Before that, general tendencies of the armed force will be pointed out. In analyzing the militias and rebel movements acting in the region one is faced with a highly diffuse and fragmented picture. Military groups and insurrectional movements consist of diverse regular and irregular combatants, previous and current soldiers of the official military, ethnically related or unrelated families and communities, stigmatized former soldiers as well as involuntary enlisted child soldiers or the economically manipulated equivalent. While there exist uniform armed groups and militias in Chad and Sudan characteristics of the rebel movements in the CAR are more widely disputed.<sup>135</sup> Some argue that there exist organized armed groups in the CAR as well<sup>136</sup> while others would go so far as

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<sup>130</sup> International operations having been employed in the CAR are for instance MISAB, MINURCA, BONUCA, FOMUC, MICOPAX and EUFOR. See section 1.2.

<sup>131</sup> ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] pp. 7 – 8, 14; Berg [n 30] pp. 19 – 21; Marielle Debos, ‘Fluid Loyalties in a Regional Crises: Chadian ‘ex-Liberators’ in the Central African Republic’ (2008) 107[427] African Affairs, p. 229.

<sup>132</sup> ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] pp. 8, 14 – 17; Berg [n 30] pp. 20 – 22; Debos [n 131] pp. 228 – 229; HRW, ‘*I can still smell the dead*’. *The Forgotten Human Rights Crises in the Central African Republic* [n 2] p. 32.

<sup>133</sup> HRW, ‘*I can still smell the dead*’. *The Forgotten Human Rights Crises in the Central African Republic* [n 2] p. 32.

<sup>134</sup> ICG, ‘Central African Republic: Anatomy of a Phantom State’ [n 30] pp. 16 – 17; Berg [n 30] pp. 21 – 22; Debos [n 131] pp. 228 – 229.

<sup>135</sup> Gérard Prunier, ‘Armed Movements in Sudan, Chad, CAR, Somalia, Eritrea and Ethiopia’ (2008) Centre for International Peace Operations, pp. 3 – 9.

<sup>136</sup> Steven Spittaels, Filip Hilgert, ‘Mapping Conflict Motives: Central African Republic’ (2009) International Peace Information Service, pp. 7 – 10, 13 – 14.

to consider that ‘there are no “proper” guerilla groups in the Central African Republic’<sup>137</sup>. Adapting an unbiased view to the ungraspable character of the armed forces in the region, Debos argues that: ‘Combatants’ loyalties are extremely fluid (...) The reconversion of armed combatants, who may easily shift allegiance, is a structural pattern of the current conflict, which has major implications at both the local and transnational levels’.<sup>138</sup> She describes and emphasizes a significant factor of the regionalized conflict in the CCS-region, the fluidity of combatants and their allegiance to shifting political and military leaders.<sup>139</sup>

Even though attributing the main focus to the practical involvement of Chadian soldiers in the Central African Republic, Debos also enlightens general tendencies in and perspectives of the militias active in the CCS-region: ‘Chadian combatants and civilians have always been numerous in Sudan. Since the 1970s, migrations and armed groups’ movements have contributed to the exacerbation and militarization of local tensions and conflicts (...) A significant number of Chadian Arabs were recruited into the Sudanese pro-government Janjawiid militias, Darfurian insurgent groups are supported by N’Djamena, and Chadian rebels are sponsored by Khartoum’.<sup>140</sup> The closely interlinked, parallel and simultaneous support to and from Chad’s and Sudan’s respective governments and rebel groups have also been examined by the CIPO<sup>141</sup>, according to which military and financial support has been intertwined to the extent that the conflicts in Sudan and Chad must be considered mixed. With regards to Sudan-based militias, the CIPO noted in 2008:

Darfur guerillas are either self-financed (in the case of JEM) or received moderate amounts from regional sponsors (Chad) (...) all of them have received money or equipment at one time or another and all of them have also quarrelled with their erstwhile sponsors (...) The ones most likely to prosper are those which can bid for Idriss Déby’s support and serve as counter-guerillas to attack the Khartoum-supported Chadian guerillas now trying to over-throw the regime in N’Djamena.<sup>142</sup>

The rebel group RFC exemplifies similar regional involvement in relation to Chadian-based militias:

The RFC enjoys a measure of support from Khartoum which is trying to (...) overthrow Déby who supports the anti-Khartoum Darfur guerillas (...) The two conflicts – Darfur and Chad – have now in fact merged (...) All the Chadian rebel groups are 100% financed by Khartoum.<sup>143</sup>

This is problematic in relation to international humanitarian law. When governmental and non-governmental groups are internationally merged and occasionally supported by neighbouring states, the characterization of the parties involved in hostilities is highly difficult. A characterization of the actors is not only of significance when academically approaching the conflict in order to subsuming it under the framework of either international or non-international conflicts. A characterization of the persons and groups involved in hostilities is inevitable for the attribution of accountability for potential misconduct and illegitimate violence. The problem will be addressed in section 3.6.

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<sup>137</sup> Prunier [n 135] p. 9.

<sup>138</sup> Debos [n 131] p. 226.

<sup>139</sup> Debos [n 131].

<sup>140</sup> Debos [n 131] pp. 226 – 227.

<sup>141</sup> Prunier [n 135].

<sup>142</sup> Prunier [n 135] pp. 6 – 7.

<sup>143</sup> Prunier [n 135] pp. 7 – 9.

Regarding the Chadian presence in the Central African Republic, several different versions of involvement can be found. A significant number of Chadians have been involved in road banditry, being part of the criminal network of ‘zaraguinas’ also referred to as ‘coupeur de routes’.<sup>144</sup> The present article does not explicitly deal with the zaraguinas as their actions should mainly be addressed within the field of criminal law. Nevertheless, their very existence has an inevitable impact on the situation in the CCS-region and in particular in the border region of northern CAR and southern Chad. The road-banditry conducted by the zaraguinas not only extends every-day violence for the civil population in the already insecure area, it also furthers increased flows of arms and weaponry into the territory.<sup>145</sup> Further, a number of zaraguinas have been recruited by the in CAR northern-based rebel group APRD.<sup>146</sup> Additionally, as a direct effect and response to the criminality sprawling in areas where the zaraguinas are active – mainly in the border region of Chad and the CAR – so called ‘self-defense groups’<sup>147</sup> have emerged with the aim of hindering the road-bandits. Davis describes the mentality underlying such group formations:

Citizens suffering from extreme levels of violence and insecurity find it difficult to know whether public police, private police, the military, local vigilante groups, community members, or even criminal mafias will be most likely to offer protection from harm. In the absence of any certainty about which armed actors or state/non-state institutions are most likely to guarantee security or inflict harm, and in the face of growing violence, a multiplicity of armed actors offer their own services.<sup>148</sup>

Providing for concrete alternatives to accepting the violent climate; taking up arms, gathering in groups and joining already existent armed forces may in many cases seem as attractive alternative for the civilians. Notwithstanding the limited resources and in the nearest inexistent organization of such self-defense groups, the groups have importance for the socio-political climate in the northern CAR. At times they join the notorious rebel group APRD, which is noteworthy since former zaraguinas – the road bandits whom the self-defense groups allegedly are fighting – also occasionally joins the APRD, as just noted. The various self-defense groups – as well as their alleged enemies – thus sometimes form part of one of the main non-governmental armed forces in the CAR and sometimes do not adhere to the same.<sup>149</sup> Such merged allegiances and on-and-off commitment is consequently just as typical for the self-defense groups as it is for the zaraguinas and the very subdivisions of the APRD itself, like any other rebel group. Varying and shifting adherence and commitment to certain leaders and authoritative personalities is a pervasive feature of the unregulated combatants of the CAR and the CCS-region.

Besides the evolving road-banditry; Chadian soldiers have taken part in international PKOs in the Central African Republic and unregulated combatants have to a varying degree been involved in or joined the UFDR, APRD and other non-governmental militias. Most recently it has been noted that: ‘The Seleka coalition (...) is strongly suspected to include Chadians who have aligned themselves with local rebels’.<sup>150</sup> Regular armed forces of the Chadian army have further conducted raids against Chadian militias as well as the

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<sup>144</sup> Spittaels [n 136] pp. 15 – 16.

<sup>145</sup> For more information on the zaraguinas see for instance Berg [n 30]; Debos [n 131]; Spittaels [n 136].

<sup>146</sup> Prunier [n 135] p. 10.

<sup>147</sup> Spittaels [n 136] pp. 16 – 17.

<sup>148</sup> Davis [n 18] p. 409.

<sup>149</sup> For more information on self-defense groups see for instance Spittaels [n 136] pp. 16 – 17.

<sup>150</sup> HRW, “*I can still smell the dead*”. *The Forgotten Human Rights Crises in the Central African Republic* [n 2] p. 33.

Central African equivalent from and within the CAR territory.<sup>151</sup> Notwithstanding these examples of the not-solely internally confined character of Chadian warriors and the obvious regional complexity of the militias in the border-region, the clearest example of the transnational character of the soldiers is Bozizé's use of Chadian soldiers in his insurgency against Patassé, under the approbation of Idriss Déby.

Described in section 3.4.1 François Bozizé took refuge in Chad twice after the unsuccessful coups against then-President Patassé and before that the former leader of the CAR; General Kolingba. Bozizé gained military and financial support from Déby in order to develop the insurrection: 'Bozizé recruited ex-combatants who had experience from previous Chadian wars as well as impoverished youth who had expectations of upward social mobility (...) high bonuses were promised to combatants who joined Bozizé's rebellion (...) as well as full integration into the regular forces after the victory'.<sup>152</sup>

When, after the overtaking of Bangui on 15 March 2003, financial reward did not occur and social progress stagnated, the Chadian soldiers became dissatisfied and turned against Bozizé to an increasingly concrete extent. While some of Bozizé's associated soldiers from the CAR received help for reintegration in the society after the coup against Patassé through DDR-programs, no such support where provided to the foreign recruited soldiers, who instead were left to foster for themselves. Joining other Chadian and Central African rebel groups and insurgents thus became an attractive alternative for many former soldiers. The combatants were and are still not unusually unemployed and inexperienced youth, stigmatized by their families and relatives because of their heinous crimes in the hostilities. Further, in the words of Debos:

Combatants who have had long careers as rebels and/or soldiers have the resources – combatants' knowledge and know-how – and social capital – kin-based and war-based social networks – to once again commence war-like activities (...) ex-combatants constitute a threat to stability not only in their region or their country of origin but also in the neighbouring countries.<sup>153</sup>

Combining the difficulties attached to reintegration into a society under the presupposition of social stigmatization, with the rebel groups' enticements of alleged military strength, social networks and potential employments; it is unsurprising that the former Bozizé-supporters soon turned into his enemies. Thus, subsumed into the ranks of UFDR, APRD and other insurgents or joining the looting zaraguinas in desperate needs for some kind of livelihood and socio-communal belonging, the previous soldiers became dangerous forces in the CCS-region in the beginning of the 21<sup>st</sup> century.<sup>154</sup>

But rather than pinpointing and accusing unemployed miss fortunate Chadian youths of having developed into 'regional warriors'<sup>155</sup>, even though acknowledging the underlying reasons of such a characterization, the appropriate view should be that the Chadian soldiers essentially exemplifies the character of the armed movements present in the CCS-region. Armed forces are to a great extent ungraspable, dynamic and constantly shifting. Having 'highly fluid loyalties'<sup>156</sup> these unregulated combatants are affected by short-sighted political persuasion, economic encouragement, social stigmatization, practical enticements, powerful and authoritative leaders, involuntarily disrupted relations with families and

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<sup>151</sup> FOMUC. Debos [n 131] p. 227. See section 1.2.

<sup>152</sup> Debos [n 131] pp. 228 – 229.

<sup>153</sup> Debos [n 131] p. 235.

<sup>154</sup> Debos [n 131] pp. 229 – 231, 235.

<sup>155</sup> Debos [n 131] p. 226.

<sup>156</sup> Debos [n 131] p. 230.



relatives, manipulative ideas of military glory and not least a context of societal normalization of violence.

Summarily, the present conflict involves diverse and unspecified rebel-groups having shifting character, changing authorities, combatants with fluid loyalties and allegiances and unclear organizational structures. The militias are occasionally financed by internal governmental elements as well as supported by neighbouring countries and are spread over indefinite and indeterminate, transnational areas.

Coming back to the idea of attempting to subsume the conflict under any in international humanitarian discourse recognized conflict-typology the potential internationalization of an otherwise internal conflict acknowledged in section 2.4 is here of relevance. Difficulties of generally characterizing the armed forces engaged in hostilities in the CAR and CCS-region in terms of IHL will be further elucidated in section 3.5.2. As it has already been pointed out that paramilitary forces in Chad and Sudan have been supported and underpinned by the opposing states' government to significant extents the following section will be confined to exemplifying Déby's involvement in Bozizé's rebellion.

The principle established in the Tadić-case on the necessity of the intervening state to have 'overall control'<sup>157</sup> becomes relevant in examining whether the support provided by Déby could have internationalized the situation in the CAR at the time – and thereby would have justified the employment of the great humanitarian framework attached to conflicts of an international character. It is acknowledged that support in the form of military personnel was provided, in addition to some financial support. As such, it appears as the support provided by Chad through President Déby to Bozizé and his rebellion was (occasionally intense) 'financial assistance or military equipment or training' but did not include 'organizing, coordinating or planning the military actions of the group'.<sup>158</sup> There is however extremely scarce information on the factual support provided by Déby to Bozizé, which in combination with the vagueness of the overall control criterion makes the assessment on whether support by Déby could have internationalized the situation very challenging. In any case, even if the support provided by Chad to the non-governmental armed force headed by Bozizé extended beyond mere financial and military support and thereby would have internationalized the conflict, the period during which the conflict could be regarded as internationalized was confined to the initial period of Bozizé's presidency. Even though foreign experts are in agreement that governmental parties and non-governmental militias are continuously intertwined and mixed to significant extents<sup>159</sup> no explicit information is found on any concrete organizational or coordinating support provided by neighbouring states to the different armed forces in contemporary CAR – which would have the same internationalizing effect in terms of humanitarian law.

Noteworthy; Chadian engagement in 2003 is not intended to be used as an all-embracing explanation of the extent of support needed to internationalize a conflict. Rather, the support provided by Déby to Bozizé is one example of the underlying, intertwined tendencies of the relations between different governmental and non-governmental parties in

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<sup>157</sup> *Prosecutor v Tadić*, Appeals Chamber [n 47] para. 137. See [n 81]. The 'overall control' criterion was explained by the ICTY: 'Control by a State over subordinate armed forces (...) must comprise more than the mere provision of financial assistance or military equipment or training. This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation. (...) It is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instruction concerning the conduct of military operations (...) A State has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group.'

<sup>158</sup> *Ibid.*

<sup>159</sup> ICG, 'Central African Republic: Anatomy of a Phantom State' [n 30] pp. 16 – 17; Berg [n 30] pp. 21 – 22; Prunier [n 135] pp. 3 – 9; Debos [n 131] pp. 226 – 229, 235.

the region. It is essentially supporting the argument that not only the territorial requirement for application of humanitarian norms, discussed in sections 2.4 and 3.3.2, but also the personal requirement of the existence of distinguishable parties to the conflict, is difficultly applied in relation to the CCS-region.

### 3.5 A presupposed Westphalian context

Described as ‘dividing it among themselves on the drawing-board at the Conference of Berlin’<sup>160</sup> European colonizers split the African continent into European-inspired entities in the end of the 19<sup>th</sup> century. As the theoretical demarcations of the national entities were profoundly different from the reality on the ground, the colonies became instable subjects with internal problems already during the colonial era, enlightened in section 3.2. Independence movements and struggles for self-determination during decolonization were followed by decades of attempts to organize nationally coherent entities, exemplified not least by the continuous political struggles in the CAR. Internal conflicts, border-clashes and spill-over confrontations occurring today are prolonged continuations of these unsolved difficulties emerging during and after decolonization. Now, having pinpointed these important features of the CCS-region, it is possible to assess the situation and conflict occurring there from the perspective of international humanitarian law.

As was pointed out already in section 2.1, ideas forming the basis for contemporary judicial regulations on international warfare emerged in a European/Western setting. General international law was initially a result of Western States’ understandings of how independent states and societies were supposed to act and interact on an international arena. In this, ideas underpinning international law – the concepts of nation-states, cartographical delineations and distinct populations etcetera – relied heavily on a Westphalian conceptualization of what statehood implied.<sup>161</sup> In the words of Hassan: ‘in the strict sense the modern International law and sovereign territorial States occurred at the same time. The history of modern International law begins with the emergence of independent nation-States (...) commonly dated from the peace of Westphalia (1648)’.<sup>162</sup> As a Westphalian understanding of nationality and statehood implying territorial boundaries, clearly distinguishable populations and centralized governance formed the natural starting point for any international arrangements – it formed the foundation from which also the laws of armed conflict evolved. As an inevitable consequence; *correct application of humanitarian norms requires certain presuppositions; territorially delimited states and distinguishable populations and armed forces*. When nowadays trying to solve the conflicts and numerous challenges of the CCS-region, the humanitarian norms available are still largely those adopted in the Westphalian spirit in the aftermath of the colonial era, in particular the Geneva Conventions. The particular context required for appropriate application of international humanitarian law is thus still the context and presuppositions attached to the Westphalian nation state. But both the territorial requirement and the requirement of distinct armed forces are unfulfilled in the CCS-region.

With regards to the territorial requirement: an effect of colonization was the, in theory, geographical delimitations of the countries, compatible with the territorial presupposition inherent in IHL. In practice however geographical delimitations are absent, making the application of IHL and therein underlying territorial presupposition difficult in

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<sup>160</sup> Berg [n 30] p. 18.

<sup>161</sup> Buckley [n 15] pp. 810 – 811.

<sup>162</sup> Hassan [n 17] p. 66.

relation to the region. Applying IHL requiring demarcated territories, to a region without clear demarcations is perhaps not meaningless, but clearly challenging. As both the ordinary dichotomy of internal and international armed conflicts, and the hybrid versions of internal conflicts stem from the same state-centric idea, the CCS-region is vaguely accessible from the perspective of European/Westphalian humanitarian law as it takes form today. Likewise is the personal requirement inherent in IHL in essence an effect of the Westphalian conceptualization of clearly distinguishable populations and armed forces belonging to clearly delimited territories. The CCS-region is most appropriately to be seen as a region in and of itself, with a distinguished population embracing people from all three countries – rather than three distinguished populations. The latter is however how the populations are generally conceived of as a consequence of the colonial separation of the regions' population. Such an understanding of the populations is compatible with the European/Westphalian idea of statehood and is thus also compatible with humanitarian norms attached thereto. On the contrary, humanitarian norms are not clearly compatible with a regionalized approach to the population residing in the CCS-region. Both the territorial and the personal requirement will be elucidated further in the following subsections.

The context in which the current conflict takes place is summarily only weakly compatible with the required Westphalian context. Just as the Euro-colonial version of statehood and territoriality fits badly to the current, regionalized context of Central Africa does the legal regulations of the prior fit badly for the latter. Contemporary situations to which the antiquated judicial framework is supposed to be applied are profoundly different from those situations to which they were applied more than half a century ago. Arguably, applying the straightforward and clear-cut Eurocentric/Westphalian version of international law to the dynamic setting prevalent in the CCS-region is like laying a pattern of squared lines over a picture of somewhat round circles with constantly changing lines. The difficulty of applying a solid, colonially squared geographical pattern to the socio-politically dynamic region – is the same problem as applying inelastic IHL-norms to the dynamic conflict. The framework of IHL in contemporary warfare to be seen as the squared pattern intended to be applied to non-squared dynamic hostilities. It does not fit.

Incompatibility with the notion of international armed conflict as the parties to the regionalized conflict in the CCS-region are not explicitly states, in combination with the difficulty of applying regulations on non-international armed conflicts due to the undeniable involvement of groups and entities of diverse nationalities; makes the characterization and application of humanitarian norms highly delicate in the present case. If one were to subsume the conflict under any of the typologies outlined in section 2.4, the categories of spill over conflicts or cross border conflicts undoubtedly presents the most appropriate alternatives. However, neither of the two, nor any of the other typologies correctly addresses the situation. Contemporary IHL, the therein inherent dichotomy discussed in chapter 2 and the hybrid versions of conflicts not of an explicitly national or international character all emerges from the same conceptual source and line of thoughts. The understanding of IHL requiring an underlying, presupposed context of state-centered communities in accordance with the spirit of the Treaty of Westphalia is ever-present in today's approaches to contemporary conflicts. This presupposed context poses not only practical problems in relation to present-day conflict-solving, but also furthers severe ethical dilemmas.

Rather than reconsidering the geo-political communality of the CCS-region, the distinct boundaries and forcibly comprised societies set by Westphalian-inspired colonizers have been continuously upheld throughout the violent post-colonial era – exemplified by the events having occurred in the CAR – until the present day, with deplorable human and societal consequences. How is the upholding of such regrettable, cartographically linear demarcation of communities any different from continuously trying to comprise the

multifaceted dimensions of the present conflict within the narrow frames of the rules of war, concluded under essentially the same premises? Isn't assessing the conflict with the glasses of a predated legal framework simply a continuum of an antiquated perception of societies descending from the colonial era?

### **3.5.1 Requirement of a defined territory**

Besides ethical questions, the practical problems of approaching the conflict with the available legal framework have been pointed out above and may be summarized as follows. The two elements of the basic IHL-dichotomy – international armed conflicts and conflicts not of an international character – both require distinct geographical spheres, which is in practice a consequence of the mentioned state-centric Westphalianism. It is clear that the conflict is not of an international character, as the parties to the conflict are not explicit states. However, the conflict under consideration is internationally merged and sprawls over widespread, dynamic and constantly changing areas – not confined within for IHL appropriate borders. It is therefore neither a non-international armed conflict. Elucidating the conflict sprawling in the Central African Republic without taking into account the situations in the neighbouring countries is ignorant. Geographical proximity, psycho-social communality and interrelated, simultaneous colonial heritage have formed a deeply intertwined region. Porous and dynamic territorial boundaries enable transnational flows of armed groups and weaponry. Ungoverned and in the nearest fictional national borders further provides significant possibilities of military and political refugee and opportunities to gather human and technical support for violent opposition. The essential problem is however not the transnational flows of militias and equipment as such. Rather, the problem is that IHL presupposes the existence of national borders possible to transgress.

The colonially marked contextualization of nationally separated territories – in line with the wishes of European imperialists – has created entities, coherent in theory but fragmented in practice. Violent opposition, cross-border flows of armed groups and military equipment and need for transnational refugee might not have been necessary if the national borders had taken different shapes. Naturally, it cannot be stated with certainty that no violence or conflict would have occurred if the territorial delineations had been drawn differently or if the CCS-region had formed an independent, sovereign entity of itself. Significant difficulties regarding livelihood and governance would most likely have existed in any case. But what is obvious is that the region as it takes form today challenges the colonially fixed territorial boundaries of the CAR, Chad and Sudan and the thereto closely connected regulatory framework. This is in itself a consequence of that the regionalized society has remained – despite the theoretical political and administrative separation of the territory into foreign colonizers perceptions of how the nations should be shaped.

Not only is the regionalized conflict hard to address from the traditional international/internal-dichotomy presupposing certain territorial facts. As noted, the hybrid versions of conflicts not of an international character all emerge from the same conceptual roots and state-centric idea. Notions of spill over wars and cross border clashes have limited substance in a territory without clear boundaries and with porous, in the nearest fictional borders. Arguably, characterizing the conflict under any of those headings merely maintains a state-centered conceptual polarization. Even if the intention with hybrid typologies is to widen the scope of application of the humanitarian framework by enlightening the need to recognize new forms of conflicts, the typologies upholds and crystallizes the idea of conflicts evolving from national disputes having occasional consequences on neighbouring states, while the more accurate description would focus on the regionalized dynamics having national effects.

Thus, the hybrid typologies are neither directly applicable to the context found in the CCS-region.

### 3.5.2 Requirement of distinguishable actors

The same problem goes for the human element of the normative framework. Noted throughout the examination, the non-governmental armed forces engaged in the conflict in the CCS-region are anything but structured or organized. Valuable information on the diverse armed forces in the CAR has been presented by Prunier, Spittaels and Hilgert, who even though pinpointing UFDR, APRD and FDPC as the main actors within the CAR emphasizes that the armed forces are multiple, diverse and employing various means and methods in the hostilities.<sup>163</sup> While extremely scarce information is available on the existence and whereabouts of the FDPC, some notes may be provided on the prior two.

Concerning APRD, created in 2005, the structure of the force and its actual impact is highly uncertain. While Spittaels and Hilgert argue that the group controls certain territory in the northern CAR, being the place of origin of Patassé but without specific connections to Patassé himself<sup>164</sup>, Prunier describes the group as unorganized, constituting ‘a bunch of former Patassé army officers’<sup>165</sup>. No specific political objectives have been presented, their military organization has been described as ‘improvised’ and the structure of command as ‘complex’, the number of combatants are unstated and availability of weaponry and military material is sporadic.<sup>166</sup> Noteworthy is that APRD significantly opposed the former Bozizé-presidency and has been sponsored by Sudan ‘for the simple reason that President Bozizé was put in power with Déby’s help’.<sup>167</sup>

The previous President and former leader of the Seleka coalition Mr. Djotodia was one of the head leaders of the UFDR when the force emerged in 2006 as a coalition of a number of smaller rebel groups. Based mainly in the Vakaga province in the north-eastern CAR the group has been said to struggle with internal disputes related to ethnicity and leadership. Nonetheless, the group has significance in the CAR; it has previously operated in coordination with the then-official military FACA and comprises previous combatants of the same as well as park rangers having been trained by the French military. Additionally, they have been occasionally supported and supplied by the government of the CAR, and fractions of the UFDR subsequently became part of the Seleka-fusion.<sup>168</sup>

For non-governmental parties to a conflict (not of an explicitly international character) such as the UFDR, the APRD, and the Seleka-militia to constitute such armed forces as are accessible by the regulations on non-international conflicts in IHL, certain requirements, stated in the Commentary to the Geneva Conventions, should in principle be fulfilled. Even though not obligatory, the premises exemplify conditions from which one may initiate an inquiry on the whereabouts of an armed force in the meaning of IHL.<sup>169</sup>

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<sup>163</sup> Prunier [n 135]; Spittaels [n 136].

<sup>164</sup> Spittaels [n 136] pp. 7 – 8.

<sup>165</sup> Prunier [n 135] pp. 9 – 10.

<sup>166</sup> Spittaels [n 136] pp. 7 – 8.

<sup>167</sup> Prunier [n 135] pp. 9 – 10.

<sup>168</sup> Spittaels [n 136] pp. 10 – 11; HRW, “*I can still smell the dead*”. *The Forgotten Human Rights Crises in the Central African Republic* [n 2] p. 29.

<sup>169</sup> ICRC, ‘Commentary on Geneva Conventions (I-IV)’ [n 35].

(1) That the Party in revolt against the de jure Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.

Firstly, insufficiently organized and structured<sup>170</sup> with dynamic formations and highly fluid loyalties depending of the for any particular moment most suitable group accession ('their decision to join a rebellion or not depends on political calculations based on their perception of the situation and on their own ambition to achieve a better position within the security forces'<sup>171</sup>) the non-governmental parties and individuals engaged in hostilities can hardly be considered to make up the uniform military formations to which IHL is intended to apply. The character of the unregulated combatants involved in hostilities has been exemplified by the Chadian soldiers of transnational origin described in section 3.2.4.

Secondly, even if it is not unimaginable that some rebel group may in fact be able to present an authority responsible for acts committed by the subordinates, the opposite with non-existence of responsible authority of command<sup>172</sup> presents a much higher percentage of likelihood. Command structures of both UFDR and APRD are highly uncertain and evidence of the lack of organization of the ex-Seleka continuously conducting raids in the CAR has been given by for instance ICG: 'Since the coalition was formed, it has always been an amorphous grouping of combatants from different movements, without a centralized chain of command or ideology'.<sup>173</sup>

Thirdly, that insurrectional armed forces engage in coups and actions over indeterminate and variegated territorial areas<sup>174</sup> have been enlightened by for instance Debos<sup>175</sup>, Spittaels and Hilgert<sup>176</sup>, and has been visualized by the IPIS<sup>177</sup>.

Fourthly, concluding whether or not the armed forces have the possibilities of ensuring respect for the humanitarian judicial framework<sup>178</sup> would require psychological, sociological and structural analyzes on each group individually, which the present article does not have the means for. Nonetheless, it does not appear very controversial to argue that the majority of the armed forces do not possess such a capacity, based on cumulative facts. Primary education is deplorable in the CAR and the CCS-region meaning that it is highly unlikely that individuals are generally taught the laws of armed conflict in the basic school system.<sup>179</sup> Armed rebel movements do not usually have as a common aim to conduct fair and righteous acts with legal means, but rather to achieve its goals by any means or methods – proved not least by the horrific acts and war crimes committed by the Seleka militia and the anti-Balaka group mentioned in sections 2.2 and 3.1. Additionally, even if the Geneva Conventions were somehow known by persons allegedly in responsible command of the

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(2) That the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory.

(3)(a) That the de jure Government has recognized the insurgents as belligerents; or (b) that it has claimed for itself the rights of a belligerent; or (c) that it has accorded the insurgents as belligerents for the purposes only of the present Convention; or (d) that the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

(4)(a) That the insurgents have an organization purporting to have the characteristics of a State. (b) That the insurgent civil authority exercises de facto authority over persons within a determinate territory. (c) That the armed forces act under the direction of the organized civil authority and are prepared to observe the ordinary laws of war. (d) That the insurgent civil authority agrees to be bound by the provisions of the Convention.

<sup>170</sup> ICRC, 'Commentary on Geneva Conventions (I-IV)' [n 35] § 1, 4(a)(c).

<sup>171</sup> Debos [n 131] p. 236.

<sup>172</sup> ICRC, 'Commentary on Geneva Conventions (I-IV)' [n 35] § 1, 4(c).

<sup>173</sup> ICG, 'Policy Briefing' [n 5] p. 3; AI, 'Central African Republic, Human Rights Crises Spiralling out of control' [n 50] pp. 13 – 14.

<sup>174</sup> ICRC, 'Commentary on Geneva Conventions (I-IV)' [n 35] § 1, 4(b).

<sup>175</sup> Debos [n 131].

<sup>176</sup> Spittaels [n 136].

<sup>177</sup> <[www.ipisresearch.be/mapping\\_car.php](http://www.ipisresearch.be/mapping_car.php)> Accessed 25 May 2014.

<sup>178</sup> ICRC, 'Commentary on Geneva Conventions (I-IV)' [n 35] § 1, 4(c)(d).

<sup>179</sup> CCPR/C/CAF/2004/2 [n 21] §§ 62 – 70.

guerillas, which in itself is unlikely, the chance of that knowledge consciously penetrating down the fragmented ranks of the militias to the combatants on the ground so that the latter achieves the means of respecting the Conventions is merely wishful thinking. Paulus and Vashakmadze notes: ‘it seems problematic to assess the ability of armed groups to implement international humanitarian law and whether this should be seen as a criterion for identifying these groups as parties to conflict at all’.<sup>180</sup>

Fifthly, an additional indication of the existence of rebel groups in the eyes of the Geneva Conventions mentioned by the commentary is that the Government of the State – for the example enlightened in the present article; the Government of the Central African Republic – is forced to use the strength of the official military in order to combat the rebels.<sup>181</sup> Previously constituting such an official military, the FACA appears however to continuously have been in the nearest as non-uniform and diverse as the rebel groups themselves. Noted in sections 3.4.1 and 3.4.2, the FACA as well as the Presidential Guard was repeatedly used for ethnic segregation and manipulation. Not only so, evidence has been given that the FACA’s means and methods of warfare through history have rarely been different from that used by the rebel groups. Until 2007 the FACA was ‘responsible for the vast majority of the most serious human rights abuses in the conflict’.<sup>182</sup> For instance, in a counteroffensive against northern-based rebellion in the CAR under the ruling of Bozizé in 2005 the FACA and the Presidential Guard carried out severe human rights abuses against the civilian population. Both groups: ‘showed little inclination to directly confront the rebels, opting instead for an extremely brutal campaign against the civilian population suspected of supporting them. A scorched-earth policy was carried out, with governmental troops destroying hundreds of villages in the space of a few months, slaying large numbers of innocent civilians and putting almost 300,000 to flight’.<sup>183</sup> Regarding the existence of any contemporary official military, the re-building and re-construction of such are said to be in an ‘embryonic stage’.<sup>184</sup> Lacking financial and political resources, the rebuilding of FACA has since the overtaking by Mr. Djotodia been consistently countered by the Seleka-militia.

The fragmented, two-edged and instable appearance of the FACA is only one example of the diffuse character of the regular armed forces in the CCS-region. In relation to the military and official regime of neighbouring Chad, Debos presents a similar exemplification:

The army, police, gendarmerie, customs, and other paramilitary groups primarily comprise ex-combatants (...) regular forces have thus become a good place to wait for the next war. Under such circumstances, the boundary between the status of military and combatant is blurred, reflecting simply different phases in the lives of men in arms (...) experience in soldiering is usefully recycled to work in the army, the rebellion or road banditry.<sup>185</sup>

Consequently, the armed forces engaged in the hostilities in the CAR and the wider CCS-region is somewhat ungraspable with the means of contemporary humanitarian norms. They do not fulfill the criteria set by the Geneva Conventions concerning organization or structure. They are dynamic and constantly varying. They involve governmental as well as non-governmental actors. They change format frequently. Their supporters may just as well be

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<sup>180</sup> Paulus [n 11] p. 102.

<sup>181</sup> ICRC, ‘Commentary on Geneva Conventions (I-IV)’ [n 35] § 2.

<sup>182</sup> Human Rights Watch, *Central African Republic: State of Anarchy, Rebellion and Abuses against Civilians*, New York, Human Rights Watch 2007, p. 6.

<sup>183</sup> Berg [n 30] p. 2.

<sup>184</sup> ICG, ‘Policy Briefing’ [n 5] p. 6.

<sup>185</sup> Debos [n 131] p. 236.

their enemies. As such, the personal requirement presupposed for correct application of Westphalian-inspired IHL is anything but fulfilled. The militias and rebel groups active in the region thus are difficultly accessed from the perspective of humanitarian law; despite their undeniable existence and despite the fact that they've been recognized to constitute 'a threat to international peace and security'.<sup>186</sup>

### 3.6 Summary and consequences

Ordinary conflict-assessments evolve from the idea that hostilities may be subsumed under either the umbrella of international armed conflicts or non-international armed conflicts. Depending on perceptible facts on the ground and based on objective criteria any belligerency will be addressed as one or the other and the associated humanitarian framework will be applied. If the adversaries in violent confrontation are international entities defined as states the conflict will be classified as an international armed conflict. Should the opposing parties not fulfill the criterion of being international entities defined as states will the conflict instead be characterized as non-international. Both characterizations require that that the clashes between the parties are violent enough as to constitute armed conflicts. If for some reason the elemental criteria for the two polarized categories are insufficiently fulfilled, the belligerency may unofficially be recognized to constitute a conflict in between, a hybrid version of armed conflict. Several hybrid versions of in particular non-international armed conflicts – which are the conflicts posing most challenges to the humanitarian framework today – have been presented in legal doctrine. Challenges addressed by these hybrid versions concerns hostilities when the parties involved are not inexplicitly governmental or non-governmental, or situations when conflicts which are essentially national are spread over into other states' territories or have international effects. This was outlined in chapter 2.

Determining the character of a particular conflict and categorizing it under the norms of IHL requires an analysis of the actors involved in the conflict and the geographical scope of the same. In the present chapter it has been concluded that the problem of such an analysis in relation to the present case is that the analysis presupposes a certain context. IHL and any analysis attached thereto presuppose a context according to which it is possible to distinguish distinct armed forces and confined territories. The dichotomy of IACs/NIACs clearly requires a sectioning of nations and a partition between governmental and non-governmental actors. Hybrid typologies likewise essentially presume that the actors involved in hostilities are distinguishable with identifiable characteristics and that nationally delimited territories are recognizable.

Ideas of recognizable armed forces and controlled national borders basically evolve from ideas of nationally coherent and demarcated entities in the form of states having been afforded territorial sovereignty and possessing distinguishable populations with righteous leaders. As such; the ideas are based on a conceptualization of societies drawn from the Treaty of Westphalia. Appropriate application of contemporary humanitarian norms therefore essentially requires a Westphalian setting; personally and geographically. In other words, IHL presupposes a certain context for its applicability: a Westphalian context implying centralized governance, demarcated territories and distinct populations. Existence of a presupposed Westphalian context for IHL's applicability is not in itself a problem. General international law and the majority of contemporary multinational treaties rely heavily on the same foundation. What is problematic is that the presuppositions required for correct application of humanitarian norms are absent in the CCS-region.

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<sup>186</sup> S/RES/2149(2014) [n 1] p. 5.



When attempting to apply humanitarian norms as they take form today to the conflict currently sprawling in the Central African Republic and its surroundings one is faced with an intricate, undeniable problem. Worth repeating; humanitarian norms presuppose and require a Westphalian context for its appropriate applicability and it should be acknowledged that territorial borders and national delimitations set in accordance with colonially, arbitrarily drawn demarcations are in fact compatible with such Westphalian requirements.

Theoretically can the conflict in the CAR be seen as an internal conflict while the conflicts in Sudan can simultaneously be conceptualized as nationally confined and the continuously ongoing hostilities taking place in eastern Chad be conceived of as purely intra-state rebellion. Following such theoretical characterization, humanitarian norms are easily applied. Presuming that the non-governmental militias in each country possess certain organization, that their actions reaches a certain level of intensity and that they are constrained to the respective countries' territory; the judicial framework attached to conflicts not of an international character is applicable. Further, if clashes between governmental and non-governmental forces have occasional effects on territories beyond the national borders, the conflict may unofficially be classified as a hybrid version of NIAC of some kind, to which the same judicial framework applies. Even the latter cases are compatible with the required presupposed Westphalian context, as also the hybrid typologies stem from the same conceptual source of clearly delimited states and coherent armed forces. Notions of spill-over conflicts and cross-border clashes are as mentioned merely concepts manifesting and crystallizing ideas of belligerency ordinarily confined within national borders – conducted by coherent armed forces – having occasional effects abroad.

In practice conversely the situation is much more complicated and not that easily described. Arguably, the area comprising north-eastern CAR, eastern Chad and western Sudan constitute a highly intertwined region presenting multifaceted dimensions of communality. The hinterlands of the north-eastern CAR, eastern Chad and western Sudan are closer related, geographically, ethnically and demographically, to each other than to their respective capitals in terms of climate, history, culture, language, religion and administration. Interrelations between families and communities as well as trade, herding and livelihood are trans-boundary and spread over territories embracing parts of each and all of the states. The importance of this not-nationally confined character of the communities and persons residing in the CCS-region cannot be overestimated. National borders are porous, ungoverned and transparent, almost fictional delimitations. As such, the possibilities for nomadic herding groups to move across states' borders in search for water and nutrition for their cattle have been maintained in practice, despite the theoretical effects of the states' common colonial legacy.

Notwithstanding the positive effects of such possibilities for the local population to continue their traditional way of living, the porous, dynamic and almost invisible borders of the CCS-region also enable extensive flows of armed forces, weaponry and military equipment. Placed in the hinterlands far from the military and administrative centers of the states; the porous and ungoverned national borders enable close cooperation between militias and rebel groups from all sides. Possibilities of seeking refugee and gathering military support from the neighbouring states are unlimited. Additionally, unfortunate socio-economic opportunities for impoverished stigmatized youths have furthered a significant number of unregulated combatants with highly fluid loyalties. Affected by military or political enticements and economic encouragements the combatants' accession to militias and armed forces tends to be constantly shifting and depending on the at each moment most suitable alternative. Giroux et al explains the situation:

Cross-border trade has been important in the region, which is logical given that eastern Chad, north-eastern CAR and Darfur have been oriented more towards each other than towards their respective capitals. Indeed, there has been little restriction of cross-border movement of goods, as governments in the region lack the capacity to control their borders. This has facilitated the regionalization of conflict insofar as it has allowed trade of military material across the border. It has fostered the proliferation of small arms and the emergence of a pool of fluid combatants and fluid loyalties.<sup>187</sup>

By acknowledging all these case-specific characteristics it is easily understood that the north-eastern CAR is to a great extent practically cut off from the administrative, economic centre of Bangui. Under such conditions, which have remained almost indifferent since the colonial era with its clear socio-economic centralization around Bangui, it is hardly surprising that the north-eastern Vakaga province has become increasingly distanced from the capital during past decades. Taking into account the similarities of the situations apparent in Chad and Sudan, as well as the dynamics of the border-regions enabling transnational flows of peoples, equipment, refugees and militias, it becomes clear that the CCS-region is distanced not only cartographically and financially from the commercial and administrative centers of the CAR, Chad and Sudan, but also mentally and psychologically. In fact, rather than being conceived of as three provinces in three different states that are separately, but simultaneously, distanced from the respective capitals, the north-eastern CAR, eastern Chad and western Sudan should be considered to constitute a financial, infrastructural, societal, commercial and organizational region of its own, not least due to their common colonial heritage.

A direct consequence of the colonial impingement in Central Africa in the early 20<sup>th</sup> century was the political and administrative separation of the residents in the CCS-region and the subordination of them under the authorities of three geographically-, demographically- and politically distant capitals. Combining the just noted geo-political and socio-economic regionalized communality with the legacy of having been involuntary subjugated to distant authorities and the continuously underdeveloped and neglected social services of the region; it is unsurprising that the residents in the CCS-region have repeatedly gathered and turned against their respective governments throughout history. But when assessing the characteristics of the opposition and the features of the non-governmental armed forces the aspects just noted and described in section 3.5.2 must be taken into account. The armed forces are dynamic and constantly shifting. Military personnel and support are gathered in neighbouring states. Unregulated combatants' loyalties are fluid, varying and their allegiances without national restrictions. Requirements of organized structures, responsible military commands and distinguishable combatants appear anything but fulfilled. Further, the non-governmental armed forces engage in combats and hostilities transgressing delimited territories, conducts raids in their neighbouring countries just as often as in their countries of origin and transfers military equipment and weaponry across borders without hindrance. Under these conditions; requirements on the parties involved in and the territorial scope of conflicts in line with the contemporary IHL, in particular the Geneva Conventions, are anything but fulfilled.

This is problematic not only when academically characterizing the conflict. It furthers significant practical dilemmas. Enlightened in sections 2.1 and 3.5 the international normative framework relies upon Westphalian territorial sovereignty. The territorial sovereignty sets the geographical and practical limits for the exertion of the states' exclusive rights of using violence against the state's population. Coercive exclusiveness and use of violence in order to maintain public security and national stability, usually conducted by a

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<sup>187</sup> Giroux [n 25] p. 12.

state's official military or police force, is thus closely tied to territorial sovereignty and national boundaries. There are two obvious issues of concern in relation to this when analyzing the belligerency occurring in the CCS-region. Firstly, in geographical terms; how far do one state's rights and duties reach in a region where the territorial boundaries are considered highly porous and dynamic, if even existent? *Where* do one state's exclusive sovereignty end and the neighbours' take on? At which point does the exclusive right to act and the responsibilities of one state's military turn into a duty to refrain from acting? Secondly and even more challenging; how to assert *who* is the righteous holder of the exclusive right to use force and violence in the hostilities, when the actors and parties involved in the conflict are intertwined to the extent outlined in the previous? When the governmental and non-governmental armed forces and militias are volatile, mixed, constantly varying and occasionally supporting each other beyond national limits, it appears almost impossible to distinguish who is the legitimate holder of the right to use violence. Consequently, it becomes extraordinarily difficult to assert accountability and criminal responsibility for misconducts, when even distinguishing who is a legitimate practitioner of violence and who is a perpetrator of illegitimate acts – is highly challenging. Some notes by Davis may function as final reflections in this regard:

The existence of a wide range of individuals and groups using coercive force either defensively or offensively helps undermine the state's longstanding monopoly over the means of coercion (...) The sub-national and transnational scope of these practices further challenges the legitimacy and sovereign authority of the nation-state (...) We are at risk of exiting a Westphalian world where most coercive force has been monopolized in the hands of nation-states, and entering a new epoch where local and transnational non-state actors take on those roles.<sup>188</sup>

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<sup>188</sup> Davis [n 18] pp. 409 – 411.

## 4 Conclusion

Post-colonial prolonged armed conflicts in the CCS-region are essentially effects of colonial delimitations drawn wantonly without consideration of original communities, dividing coherent societies and subsuming them under separate, distant authorities. The available humanitarian framework is compatible with those arbitrarily formed societies as the humanitarian framework and the therein inherently required context were concluded under the same presupposed Westphalian premises. The colonial pattern of squared territorial societies with straightly delimited populations – is compatible with a legal framework requiring exactly such squared territorial boundaries and clearly distinguishable actors. However, the legal framework requiring squared territorial boundaries and clearly distinguishable actors – is not as clearly compatible with the regionalized reality in the CCS-region, with closely intertwined communities, porous national boundaries and dynamic, constantly shifting armed forces. That the conflict is difficult to grasp in terms of international humanitarian law has deplorable consequences. The context in which it takes place makes it extraordinarily difficult to distinguish who are and who aren't the holders of the exclusive right to use violence and coercion within the states. It is extremely hard to hold persons and groups accountable for misconduct and war crimes both nationally and internationally, when simply characterizing the persons and groups is in the nearest impossible. Consequently, horrific crimes against the civilian population may not only go unpunished, but continue as it appears unclear who should – and has the exclusive right – to end to the violence. Because IHL – both regarding the common dichotomy of IAC/NIAC as well as hybrid typologies of NIACs – presupposes and requires a specific Westphalian context, it is highly challenging to apply the normative framework to the events taking place in the CCS-region. The prolonged hostilities and currently sprawling conflict occurring in the Central African Republic and its surroundings constitutes a from previously recognized armed conflicts distinguished type of conflict; a post-colonial regionalized conflict – difficultly accessible from the perspective of contemporary international humanitarian law and furthering undesirable consequences for the international society.

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