

Myanmar, Incidents at Chinese border

Case prepared by Alexandra Hansen, BLaw, student at the Universities of Basel and Geneva (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Myanmar Warplane Kills Four Farmers in China

[Source: New York Times, *'Myanmar Warplane Kills Four Farmers in China'*, 13 March 2015, available at: http://www.nytimes.com/2015/03/14/world/asia/myanmar-warplane-kills-four-farmers-in-china.html?_r=0]

[1] [...] Four farmers in southwest China were killed Friday when one or more bombs released from a warplane from Myanmar struck a sugar cane field, as fighting between Myanmar's government forces and an ethnic group pressed against the frontier with China.

[2] The deaths, reported by Chinese state-run television, appeared to be the worst instance so far of the recently renewed conflict between Myanmar's army and armed supporters of the Kokang people, an ethnic Chinese minority, rippling into neighboring Yunnan Province in China. Another nine people were wounded by the bombing, said Xinhua, the main Chinese state news agency.

[3] Late on Friday, a Chinese vice minister for foreign affairs, Liu Zhenmin, summoned Myanmar's ambassador in Beijing, U Thit Linn Ohn, to denounce the deaths and the intrusion into Chinese territory, Xinhua reported. The reports did not say whether the Chinese government thought the intrusion was deliberate or accidental.

[4] "We urge the Myanmar side to thoroughly investigate this incident and report the findings to the Chinese side, and to sternly punish the perpetrator," Mr. Liu told the ambassador, according to Xinhua.

[5] "Immediately take effective steps to prevent incidents like this from recurring, and thoroughly safeguard the security and stability of the China-Myanmar border region," Mr. Liu said.

[6] The Xinhua report in English indicated that Myanmar's plane dropped one bomb. But the Global Times, a popular Chinese newspaper that has often reported on the conflict, initially said the cane field was struck three times.

[7] The deaths threaten to complicate China's position in responding to fighting between Myanmar government forces and armed supporters of the Kokang, who call themselves the Myanmar National Democratic Alliance Army. The conflict flared in February, prompting tens of thousands of residents of the region, which is also known as Kokang, to flee into Yunnan. The last big eruption of fighting in the Kokang area was in 2009.

[8] The Kokang people have deep cultural, commercial and often personal ties with China, and are often barely distinguishable from inhabitants of Yunnan Province. In the eyes of Chinese sympathizers, they are a beleaguered minority deserving Beijing's support, and the hardships of Kokang refugees have been reported by the Chinese media, drawing an outpouring of supportive comments online.

[9] But Beijing has sought to shore up its increasingly brittle relations with the Myanmar government, and has insisted that it abides by a principle of not meddling in other countries' domestic problems. The government of Myanmar, also known as Burma, has accused rebels of staging attacks from Chinese territory, a claim denied by Beijing and Kokang leaders.

[10] At a news conference in Beijing on Sunday, the Chinese foreign minister, Wang Yi, said China was closely watching the fighting between Myanmar's forces and the Kokang fighters.

[11] "We are friendly neighbors, sharing not just mountains and rivers, but also weal and woe," Mr. Wang said, according to Xinhua. "When problems arise in our neighbor's house, we follow the situation very closely."

[12] The Chinese Air Force set up teams of fighter jets a number of times Friday to tail and warn Myanmar military planes and force them out of Chinese airspace, the state-run China News Service quoted an air force spokesman as saying Saturday. The air force will step up operations along the border with Myanmar, said the spokesman, Shen Jinke.

[13] The two countries share a 1,367 mile-long border, and other conflicts between the Myanmar government and armed ethnic groups on the fractious frontier have also spilled over. In 2013, reports said three people died in a Chinese border town from shelling when Myanmar's army was fighting the Kachin Independence Army.

[14] The Global Times said Myanmar Air Force planes had entered Chinese airspace at least four times in the current fighting. This week, the Chinese Foreign Ministry said that on Sunday a house on Chinese soil was flattened by a stray shell from the fighting.

[15] The bomb from Myanmar's warplane hit the sugar cane field in Gema County on Friday afternoon, China Central Television news said. The Global Times showed pictures on its website, which it said showed the aftermath: distraught villagers standing over covered bodies, and wooden burial coffins readied for the dead.

B. Despite China's Warnings, Cross-Border Strikes From Myanmar Continue

[Source: The Diplomat, '*Despite China's Warnings, Cross-Border Strikes From Myanmar Continue*', 23 March 2015, available at: <http://thediplomat.com/2015/03/despite-chinas-warnings-cross-border-strikes-from-myanmar-continue/>]

[...]

[1] As Myanmar's armed forces continue their assault on the ethnic Kokang Myanmar National Democratic Alliance Army (MNDAA), damage continues to spill across the border into southwestern Yunnan province in China. As *The Diplomat* recently noted, a bomb dropped by a Myanmar Air Force MiG-29 landed in a sugarcane field in Yunnan, killing five Chinese. The incident led to sharp criticism from senior Chinese officials, and Myanmar indicated that it would investigate the incident and prevent its recurrence. Still, despite these assurances, there are reports of continued forays across the border by Myanmar forces. China, for its part, has deployed People's Liberation Army Air Force (PLAAF) jets to monitor the air space and repel any incursions by Myanmar forces.

[2] Still, despite this incident and the ensuing rhetoric, the fighting continues to spill over the increasingly porous Myanmar-China border. *Radio Free Asia* reports that Yunnan authorities are investigating "a group of unexploded bombs that fell on the mountainous and rugged border with Myanmar." According to the report, which was based off eyewitness reports, the bombs dropped at "around 4.00 p.m. local time outside Mengdui township near Yunnan's Lincang city" on Saturday. The continued cross-border incursions will likely intensify the frustration of the Chinese government which has already issued several stern warnings to Myanmar.

[...]

[3] The diplomatic subtext is intensified by accusations from the Myanmar side that the Chinese government is covertly provided [sic] material and intelligence support to the Kokang rebels. Recently, as part of Xi Jinping's intensified anti-corruption campaign in the Chinese military, a PLA general was sacked amid accusations that he leaked state secrets to the rebels in Myanmar — his dismissal was a signal that while rogue elements may exist within the PLA and the Yunnan government that sympathize with the cause of the

ethnic Chinese Kokang rebels, the top leadership of the CCP will not sponsor cross-border interference.

[...]

Discussion

1. (*Document A, paras [7]-[9]*) How would you classify the situation in Myanmar based on the two newspaper articles? If you come to the conclusion that there is an armed conflict, who would be the parties to that conflict?
2. (*Document A, paras [2], [3], [7], [12], [13]-[15]; Document B, paras [1]-[3]*) In which circumstances would an international armed conflict exist between China and Myanmar? Is it sufficient for that purpose that Chinese territory has been attacked? That Chinese civilians were killed and their property was destroyed?
3. (*Document A, paras [3], [12]-[14]*) Would it make a difference for the classification of the conflict whether the intrusion by Myanmar into Chinese ground and airspace were deliberate or accidental?
4. (*Document A, paras [12], [14]; Document B, para. [1]*) Would the fact that the Chinese Air Force reportedly set up a team of fighter jets to tail and warn Myanmar military planes and repel them from Chinese airspace be relevant for IHL purposes?
5. Would you classify the situation differently if the non-state armed group (in this example the MNDAA) had been responsible for the destruction and damage in China's Yunnan province?
6. (*Document B, para. [3]*) Would Myanmar's alleged accusation "that the Chinese government is covertly provided [sic] material and intelligence support to the Kokang rebels" influence the classification of the conflict? What kind of support would China have to provide to the Kokang rebels to affect the character of the conflict from a legal perspective? If a non-international armed conflict spills over a State border into the territory of another State, does that alter its character? Does the territorial scope of a conflict influence its classification? What if there is only one incident in which the conflict spills over? What if there are numerous occasions in which the conflict spills over? In this case, the instances of spill-over effects are reportedly spread out over several months. Would this temporal element influence your answer to the above questions?
7. Traditionally, the threshold of violence for international armed conflict is very low, with some even arguing that the first shot fired triggers the application of IHL. How reasonable would it be to apply that logic to this case? What would be the advantages and disadvantages of doing so?
8. Is IHL applicable on the territory of China? If so, what is the legal status of the persons affected by the violence? If not, what law would be applicable to persons and property affected by the violence?