

Chad/France, Airstrikes against a Non-State Armed Group

INTRODUCTORY TEXT: This case is about French airstrikes conducted in support of Chadian forces against a non-state armed group, the Union of Forces of Resistance (UFR), in Chadian territory. The airstrikes have resulted in the deaths of UFR fighters, destruction of their trucks and capture of their members by Chadian forces. A French military statement noted that the airstrikes were carried out in response to a formal request for assistance by Chad and were conducted in accordance with international humanitarian law (IHL).

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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. Backing Chad's Deby, French Warplanes Stop Rebel Advance from Libya

[Source: "Backing Chad's Deby, French Warplanes Stop Rebel Advance from Libya", VOA News, 4 February 2019, available at: <https://www.voanews.com>]

[1] [...] French warplanes struck a rebel convoy in northern Chad on Sunday, helping local troops repel an incursion across the border from Libya, a sign France's support for President Idriss Deby goes beyond fighting Islamist militants.

[2] Mirage jets struck a column of 40 pickups carrying armed groups from Libya deep into Chadian territory, the French army said in a statement.

[3] “This intervention at the request of Chadian authorities helped hinder this hostile advance and disperse the column,” it said.

[4] The strikes were the first by French jets in support of Chadian troops since the rebel Military Command Council for the Salvation of the Republic (CCMSR) based in southern Libya increased its activities last year in a bid to overthrow him.

[5] The Union of Forces of Resistance (UFR), a rebel Chadian coalition created in 2009 after almost toppling Deby, said it was behind the offensive. CCMSR is a splinter group of the UFR.

[6] “The aim is to bring Deby down,” a UFR official said. “We thought France would not intervene in Chad’s internal affairs, but it appears that it is offering no solutions for the Chadian people beyond keeping Deby in power to do their dirty work in the region.”

[7] The official said two fighters had been killed and two trucks destroyed.

[...]

[8] France considers its former colony as vital in the fight against Islamist militants in West Africa and based its 4,500-strong counter-terrorism Operation Barkhane force in the capital N’jamena where the United States also has a base.

[...]

[9] “Deby remains the most viable and solid partner in the region. The Chadians are counting on France for the Libyan border,” a French military source said.

[10] Chad’s military command said the operation had neutralized the column of “mercenaries and terrorists” in Chadian territory after earlier operations by the Libyan National Army.

[11] The LNA, the military wing of one of Libya’s two rival governments that operates in the east of the country under General Khalifa Haftar, began operations against Chadian rebels at the start of the year.

[12] Haftar has close ties with France which has backed him against Islamist militants in Libya.

B. Statement: Joint French–Chadian operations against the incursion of an armed column

[Source: “Communiqué_Opérations conjointes franco-tchadiennes contre l’incursion d’une colonne armée”, statement by the Ministry of the Armed Forces, 6 February 2019, available at: <https://www.defense.gouv.fr/>]

Joint French–Chadian operations against the incursion of an armed column

[1] From 3 to 6 February 2019, Mirage 2000s from the French Armed Forces conducted operations in north-eastern Chad in coordination with the Chadian armed forces, in order to counter the incursion of an armed column into Chadian territory. These operations were conducted at the request of the Chadian authorities and in a proportionate, graduated and precise manner. Their aim was to signal to the column the determination of the Chadian and French authorities to halt their advance.

[2] The armed column, which had left Libya with some 50 pickups, failed to respond to the deterrent warnings and strikes from the Chadian air force on 1 and 2 February or from the French air force on 3 February. The Chadian and French authorities therefore decided to have Mirage 2000s from the N’Djamena base carry out additional airstrikes on 5 and 6 February.

[3] In all the Mirage 2000s, with support from a Reaper drone, put a couple dozen pickups out of commission.

[...]

C. French jets strike Chadian rebels to head off Deby destabilization

[Source: “French jets strike Chadian rebels to head off Deby destabilization”, Reuters, 6 February 2019, available at: <https://af.reuters.com/>]

[...]

[1] The strikes, which started on Sunday, come as Chadian rebels have increased their activities in southern Libya since vowing last year to overthrow President Idriss Deby. [...]

[2] The Union of Forces of Resistance (UFR), a rebel Chadian coalition created in 2009 after almost toppling Deby, has said it was behind this week’s incursion, which saw some 50 pick-up trucks drive 400 km (250 miles) into Chadian territory.

[...]

[3] France intervened in 2008 to stop the UFR toppling Deby, but President Emmanuel Macron has said he wants a new relationship with France’s former colonies and the era of propping up leaders is over.

[...]

D. Army Captures Hundreds of Rebels After French Airstrikes

[Source: “Chad: Army Captures Hundreds of Rebels After French Airstrikes”, *AFP, Reuters*, 9 February 2019, available at: <https://allafrica.com/>]

[1] The Chadian military on Saturday said it had captured more than 250 rebels, including some top leaders, after an operation against a convoy of militants trying to cross into the country from Libya in late January.

[2] The army said in a statement that it had captured the rebels from the Union of Forces of Resistance (UFR), a Libya-based rebel coalition that is trying to topple President Idriss Deby and destroyed more than 40 of their vehicles.

[...]

[3] The rebels had driven about 50 pickup trucks more than 600 kilometers (370 miles) into Chadian territory without any significant obstacles before facing several days of French and Chadian airstrikes.

[...]

[4] The UFR rebel group said it had suffered “damage” after the French strikes, according to one of its members Mahamat Doki Warou, while another source from the group told the AFP news agency that 10 fighters had been killed.

[...]

DISCUSSION

I. Classification of the situation and applicable law

(Document A, paras 1, 4, 5, 10–12; Document B, para. 1; Document C, para. 2)

1. According to the facts of the case, how would you classify the situation in Chad at the time of the incidents? Was it an armed conflict? Under Article 3 common to the Geneva Conventions? Under Additional Protocol II? (GC I–IV, Art. 3; AP II, Art. 1)

2. Was the intensity of violence during the French airstrikes sufficient to make IHL applicable? If not, could one add up the French airstrikes to the operations of the Chadian army?
3. Would your classification be different if the French forces had carried out the airstrikes without invitation from the Chadian authorities? What if the operation had been carried out against the CCMSR base in Libya? Would consent from Libyan authorities make a difference in the classification of the situation? If so, which of the two rival government's consent would make a difference?
4. If you classify the situation as an armed conflict, who are the parties to the conflict? Is France a party? Is the Libyan National Army party to the conflict in the current situation? Could the current situation be considered a spill-over for the LNA from its earlier operations against the CCMSR in Libya? How is spill-over conflict regulated by IHL?
5. What is the legal regime applicable to the situation? Could you determine the geographical scope for the application of the law?

II. Conduct of hostilities

6. (*Document B, para. 1*) "These operations were conducted [...] in a proportionate, graduated and precise manner". What is the relevance of this statement with regard to IHL of NIACs? What does the term "graduated" entail in your opinion? Must attacks against legitimate targets be graduated under IHL? What factors must be taken into account when evaluating the proportionality of an attack under IHL? In this case, what elements had to be balanced against the military advantage under IHL? (CIHL, Rule 14)
7. (*Document B, para. 2*) Is there a duty under IHL to give warnings to fighters before carrying out attacks? Under all circumstances? In the current situation? Would it have been a violation of IHL if, instead of the alleged "deterrent warnings and strikes", the airstrikes had directly targeted the rebels from the beginning? (CIHL, Rule 20)
8. Could the French base of the Operation Barkhane counter-terrorism force in the Chadian capital N'djamena have been a legitimate target for the fighters? What about the United States' base? Would your answer for the United States' base be different if it had been destroyed by operations that targeted the French base? (CIHL, Rules 1, 7, 12 and 14)
9. (*Document A, para. 10*) "Chad's military command said the operation had neutralized the column of 'mercenaries and terrorists'...". How does IHL regulate the issue of mercenaries in the context of hostilities? How about those labelled as "terrorists"?
10. (*Document C, para. 5*) The French military said "the strikes...were conducted according to IHL". Do you

agree? Why/Why not?

III. Detention

(Document D)

11. Do the captured rebels have a particular status under IHL? Do they qualify for POW status? Does Chad's labelling of them as "mercenaries and terrorists" affect your answer?

12. Is there a basis for the detention of the rebels under IHL? Can the Chadian government try them for mere participation in hostilities?

13. Does IHL regulate the detention conditions of the captured rebels? Is IHRL applicable in the particular situation? Do both apply concurrently? Which one is the *lex specialis* in this situation? (GC I-IV, Art. 3; AP II, Art. 5; CIHL, Rule 99)