

Article

# Françafrique and the Prohibition of the Use of Force

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## Abstract

TWAIL challenges the western origin of international law as well as its instrumentalisation by the global North. The prohibition of the use of force is a norm that, nevertheless, corresponds to the interests of the Third World, as it can help to ensure their territorial integrity. However, Art. 2(4) tends to be disrespected by western powers. An example thereof is the long tradition of French interventionism in Africa. After the end of colonialism, France continued its policy of interference, best described by the notion of *Françafrique*. The most recent examples are the military interventions in Côte d'Ivoire and Mali. This paper assesses how French interventionism has undermined the prohibition of the use of force. It will be shown that a gap between the official justification used by the French and their real intentions exists. The French tradition of intervention in its former colonies undermines the prohibition of the use of force and decreases the credibility of the UN Charter and the UN system. The TWAIL critique with regard to the law on the use of force is therefore justified.

## I. Introduction

International law and its making have a long, but mainly Eurocentric history. Since the beginning of European imperialism, Western nations have tried to export their understanding of the state, culture and law to the rest of the world, actively using the law as a tool for manifesting their hegemonic position. With the beginning of the anticolonial struggle in many countries in the global South, resistance also grew against international law and international institutions. The Third World Approaches to International Law (TWAIL) movement has its roots in this struggle and questions the legitimacy of international law.

TWAIL is a very diverse movement united by some common goals: it aims to understand and deconstruct international law as an instrument of subordination, it tries to propose alternatives to the existing model of global governance, and it wants to overcome the state of marginalization and under-development of the global South.<sup>2</sup> However, the understanding of 'Third World' is not uncontroversial. Some scholars define Third World in economic terms, referring to development factors. Yet, in the era of newly emerging super powers and growing economies in many so-called developing countries this

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<sup>2</sup> M Mutua, 'What is TWAIL?' (2000) 94 ASIL 31, 31.

classification does not seem to be very convincing. It makes more sense to refer to countries sharing a common experience of subordination by the colonizing powers – a state of subordination that still persists, through less obvious but nonetheless effective hegemonic structures.<sup>3</sup> The TWAIL critique addresses not only international law itself, but also the law-making international institutions and the application of international law.

The underlying power structures in international law and politics are not always evident but can still have a lot of influence on its creation and application. An example for such an unobvious power divide are the formal and informal networks between France and its former colonies, which are referred to as *Françafrique*. After the end of colonialism France maintained hegemonic ties with its *pré carré* in order to secure its political and economic influence. Neocolonial imbalances of power as those established through the *Françafrique* networks have also affected and continue to influence international law. In the case of the prohibition of the use of force, France has used its privileged position to promote an application of international law, which is favourable to its own interests.

As the UN Charter was elaborated before the independence of the colonial territories, the global South was excluded from the creation process of the UN Charter. Art. 2 (4), which is the linchpin of the *jus ad bellum*, prohibits the threat or use of force against the territorial integrity or political independence of another state. It can be argued that the ideas of sovereignty and non-intervention were shaped by the European understanding of statehood and that in the beginning the principle of sovereignty was only applied to the so-called 'civilized nations'. The Third World territories were not even considered to be subjects of international law and could therefore be suppressed and exploited.<sup>4</sup> However, as Art. 2 (4) is a norm that protects the right to self-determination of people and the sovereignty of states, it is at least in theory a norm which can be used for assuring the independence of the former colonies from interventions of more powerful nations. Consequently, the Third World has started to appropriate the claim for sovereignty and non-interference in their domestic affairs. An example of this tendency is reflected in the fact that when the Organization of African States was founded, its members refused to defer any power to a supranational level. Another example is the New International Economic Order, a draft elaborated by the Third World that was never implemented; it called for an extension of state sovereignty. The reason why self-determination and sovereignty were considered to be such important devices was, that the global South, due to its heavy military, administrative and economic dependency on the West, tried to maintain at least a certain level of independence from the global North.<sup>5</sup>

This essay starts from the assumption that Art. 2 (4) of the UN Charter, despite originating from a Western tradition of law and politics, is a norm which can be used for assuring the global South's territorial integrity. From this starting point, the question arises as to what influences France and its *Françafrique* networks have on the application of Art. 2 (4) and if the French exertion of influence actually justifies the TWAIL claim that international law is biased and used as an instrument of oppression by the global North.

This essay will first give a brief overview of the French interventionist tradition in its former colonies and what exactly *Françafrique* actually means.

From there on, the justifications France used for its interventions will be assessed. An important point of consideration is whether these interventions stayed within the limits of

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<sup>3</sup> BS Chimni, 'Third World Approaches to International Law – A Manifesto' (2006) 8 IntCommLRev 3, 4 ff.

<sup>4</sup> C Clapham, 'Sovereignty and the Third World State' (1999) 43 Political Studies 522, 522 ff.

<sup>5</sup> Ibid 523 ff.

international law or whether international law was distorted for giving legitimacy to wrongful uses of force against its former colonies. Here the focus will be on François Hollande's recent military interventions in Mali and the Central African Republic. Did the justifications used reflect the underlying French intentions or are they merely a means of achieving strategic, political or economic objectives?

Lastly, this essay will look at what impacts French interventionism has on the prohibition of the use of force. What impacts does the misinterpretation and abuse of norms of international law have on its claim of universality?

## II. French interventionism in the tradition of la Françafrique

France has a long history of military presence in Africa: after the independence of its colonies in the 50s and 60s France continued to exercise a considerable level of economic, political and military power in its *pré carré* (sphere of interest). *La Françafrique* describes the continuing French presence, including the official and unofficial networks, which help France to pursue its hegemonic interests and to establish and maintain a relationship of dependency with its former colonies. These networks include both an inter-state dimension, as well as a dense web of relations on the personal level.<sup>6</sup>

The continuity and stability of the French 'virtual empire' can especially be attributed to the strong presence of the French military in its former colonies. There are a high number of French troops stationed in Africa as France concluded defence agreements with many Francophone African states and there have been more than 30 unilateral French military interventions in Africa between 1969 and today.<sup>7</sup>

Charles de Gaulle considered this special relationship to be a condition for the *grandeur de la nation* and as a means to secure France's position as a one of the world powers.<sup>8</sup> Interestingly enough there was a general consensus between the different political groups not to challenge this interventionist, neocolonial policy for Africa in the past decades.<sup>9</sup> His socialist successor François Mitterand even deepened the hegemonic bonds between francophone African countries and France resulting in a number of major interventions, for example in Rwanda, Chad and Somalia.<sup>10</sup>

By the 1990s, many sensed the end of *La Françafrique*: one reason therefore was the end of the Cold War, which led to a growing competition between France and the US in Africa. Moreover it came to a step-by-step Europeanization of the defence policy and the French military had to reduce its military capacities due to the difficult economic situation. Moreover, the *Opération Turquoise* in Rwanda began to totter France's image as a the *gendarme* of Africa and the different *réseaux* (networks) started to compete with each other instead of pursuing a common vision of French *grandeur*.<sup>11</sup> When Jacques Chirac became President, France increasingly committed to the delegation of international and regional missions. Moreover, because of his cohabitation with the socialist Jospin the idea of France's Africa policy as *domaine réservé* of the president was challenged. However, since the 2002 elections the French involvement in African affairs

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<sup>6</sup> T Chafer, 'Chirac and "La Françafrique": No Longer a Family Affair' (2005) 13(1) *Modern & Contemporary France* 7, 11.

<sup>7</sup> S Gregory, 'The French Military Presence in Africa: Past and Present' (2000) 93 *AfrAff* 435-436.

<sup>8</sup> Agir Ici & Survie, *Dossiers Noirs de la Politique Africaine de la France N° 1 à 5* (L'Harmattan, 1996), 207 ff.

<sup>9</sup> Chafer (n. 6) 9.

<sup>10</sup> R Utley, 'The New French Interventionism' (1998) 1(2) *Civil Wars* 83, 83 ff.

<sup>11</sup> R Utley, 'Not to Do Less, But to Do Better...: French Military Policy in Africa' (2001) 78(1) *JIA* 129, 131 ff; Chafer (n. 3) 14.

has been on the rise.<sup>12</sup>

During his presidential campaign Nicolas Sarkozy announced to put an end to *Françafrique*. After being elected his policy was more of a continuation than a conclusion of *Françafrique* however.<sup>13</sup> François Hollande has so far initiated two military interventions in Africa, in Mali and the Central African Republic. In the following I will assess if there has actually been a change of doctrine or if Hollande continues to act in the tradition of France's Africa policy.

### III. Françafrique and the Use of Force

#### III.1 The Legal basis for French interventions

Don and Mingst claim that France's interventions are either based on strategic, political or economic grounds. However, in order not to feed the image of a former colonial power disrespecting the sovereignty of its former colonies, France had and has to give legal justifications for intervening.<sup>14</sup>

In some cases, France's interventions were authorized by the Security Council, and with the growing involvement of the EU in Africa, French troops were becoming part of assisting international missions. Examples for multilateral missions include the 1992 *Operation Oryx* in Sudan and the *Opération Turquoise* in Rwanda in 1994. But even these interventions were not necessarily free from the French hegemonic aspirations: firstly, France has a strong say in matters concerning Africa in the Security Council, and secondly, it often refused to put its troops under UN command. In some cases the French also challenged the scope of the UN authorization with regard to specific mission: for example in 2010 in Côte d'Ivoire they argued that their attack on the presidential compound was just an unintended side effect of their rescue mission for the Japanese ambassador. These attacks were criticised for exceeding the scope of authorization given by the Security Council.<sup>15</sup>

In many cases in the past decades France has intervened unilaterally. Treaties of defence or military cooperation were often used as a justification for these interventions. Examples for these privileged interventions include those in Burundi in 1972 and Rwanda in 1975. With regard to the strong economic and political dependence of many African leaders on French 'benevolence', it is questionable if these defence treaties in fact provide a serious justification.<sup>16</sup>

In other cases France justified its use of force with the need to rescue foreign nationals. This happened for example during the riots in Gabon in 1990 and in the Central African Republic in 1996.<sup>17</sup>

Many French interventions or attacks being part of an intervention were heavily criticised for mainly pursuing a hidden neocolonial agenda, at the expense of the people of its former colonies.

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<sup>12</sup> Chafer (n. 6) 18.

<sup>13</sup> R Moncrieff, 'French Relations with Sub-Saharan Africa under President Sarkozy' (*SAIIA* 2012) Working Paper 107 <<http://www.saiia.org.za/occasional-papers/french-relations-with-sub-saharan-africa-under-president-sarkozy>> accessed 19 December 2013, 21.

<sup>14</sup> D Bon/ K Mingst, 'French Interventions in Africa: Dependency or Decolonization' (1980) 27:2 *Africa Today* 5, 8 ff.

<sup>15</sup> Agir Ici and Survie (n.8) 221; Moncrieff (n.10) 23; A Tzanakopoulos 'The UN/French Use of Force in Abidjan: Uncertainties Regarding the Scope of UN Authorizations' (*EJIL: Talk!* 9 April 2011) <<http://www.ejiltalk.org/the-un-use-of-force-in-abidjan/>> accessed 19 December 2013.

<sup>16</sup> Glases A/ Smith S, *Comment la France A Perdu l'Afrique* (camlam-lévy, 2005) 81.

<sup>17</sup> Agir Ici and Survie (n.8) 220-21.

### *Intervention in Mali*

The conflict in Mali between separatist Tuareg groups and the Malian government began right after the country's independence. A second wave of violence occurred between 1990 and 1996 and ended with the signature of a peace agreement. The government made concessions with regard to the autonomy of the Tuareg territories in Northern Mali. In 2006 when the mediation process between President Amadou Touré and the rebel leader Iyad Ag Ghali, who was the former head of the main Tuareg rebel group Mouvement National de l'Azawad (MNLA), failed. In 2006 another peace agreement was concluded. The MNLA was not a homogenous movement - it consisted of non-violent actors, the Islamist sect Ansar Dine as well as Tuareg and Afoughas rebel groups. Moreover, Al Qaeda in the Islamic Maghreb played a certain role by providing logistical support to a part of the Tuareg movement.<sup>18</sup>

Until 2012, Mali was governed by the democratically elected President Amadou Touré, when a coup was carried out by the military and he was replaced by Major Amadou Sanogo. At the beginning of 2012 the Azawad region became the centre of fights between government troops and the MNLA. Due to the bad condition of the Malian army it was quickly defeated by the rebels and the MNLA controlled about 66% of the state's territory. The Ansar Dine Movement gained a lot of influence as it was supported by the population, neighbouring countries and Al Qaeda at the expense of the non-religious and more moderate MNLA sub-groups.<sup>19</sup> In April 2012 President Sanogo handed over power to a civilian government and appointed Dioncounda Traoré as new president. However, the new government was mainly perceived to be a marionette of the military. In November 2012 the Security Council adopted Res. 2071, in which it expressed its concern about the security and humanitarian situation in Mali. It acknowledged that the situation constitutes a threat to peace and security in the region under Chapter VII of the UN Charter and with regard to the demand made by the government declared its readiness to send an international force to regain the control over the Northern territories. It also asked the Secretary General to appoint security planners as support for the AU and ECOWAS and called upon the members as well as regional and international organizations to provide assistance and training to the government's military.<sup>20</sup>

In December 2012 President Traoré was overthrown by the military under Sanogo's control and the military appointed Diango Cissoko as the new president.<sup>21</sup> The Security Council condemned the coup d'état organized by the armed forces, authorized the deployment of an African-led International Support Mission to Mali (AFISMA), and demanded its members and regional and international organizations to provide coordinated support to AFISMA and to the Malian armed forces.<sup>22</sup> After the failure of negotiations in which Ansar Dine had demanded the government to grant full autonomy to the Tuareg territories and the application of the Shari'ah, the Islamist rebel groups conquered towns held by the MNLA and local militia. Consequently the French launched the *Operation Serval* which found the support of the MNLA. As a result of the French

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<sup>18</sup> EO Brahim, 'Conflict in Northern Mali: Internal Facts and Regional Impacts' (*Al Jazeera Centre for Studies* 19 February 2012)

<<http://studies.aljazeera.net/ResourceGallery/media/Documents/2012/2/19/2012219115035845734Conflict%20in%20Northern%20Mali.pdf>> accessed 21 December 2013, 2-3.

<sup>19</sup> FC Onuoha / A Thurston, 'Franco-African Military Intervention in the Mali Crisis and Evolving Security Concerns' (*Al Jazeera Centre for Studies* 19 February 2013)

<[http://studies.aljazeera.net/ResourceGallery/media/Documents/2013/2/19/201321984326956734FrancoAfrican\\_Intervention\\_Mali.pdf](http://studies.aljazeera.net/ResourceGallery/media/Documents/2013/2/19/201321984326956734FrancoAfrican_Intervention_Mali.pdf)> accessed 19 December 2013, 4.

<sup>20</sup> UNSC Res 2071 (12 October 2012) UN Doc S/Res/2071, 1,3,4.

<sup>21</sup> SA Salem, 'The Crisis of North Mali and Possible Outcomes' (*Al Jazeera Centre for Studies* 16 January 2013)

<<http://studies.aljazeera.net/ResourceGallery/media/Documents/2013/1/16/201311612403217734The%20crisis%20of%20north%20Mali%20and%20possible%20outcomes.pdf>> accessed 21 December 2013, 1.

<sup>22</sup> UNSC Res 2085 (20 December 2012) UN Doc S/Res/2085, 3 ff.

airstrikes, French and Malian troops managed to reconquer a number of important towns from the rebels.

The French Foreign Minister Fabius declared that the intervention was necessary for preventing the rebels from invading Bamako, protecting Mali's integrity and liberating a number of French hostages held by the rebels. Interestingly enough, on the legal level, he felt the need to give several justifications: he argued that the intervention was legitimate because of the government's invitation, the right to collective self-defence under Art. 51 UN Charter, and because of the Security Council's authorization, which had adopted Res. 2085, calling upon the member states to support the AFISMA forces. Moreover, he emphasized that the requests for assistance by ECOWAS and the AU give further legitimacy to the French decision to intervene.<sup>23</sup>

In most of the Western press the intervention was perceived rather positively. ECOWAS, the UN Secretary General and many states expressed their support and not a single country doubted the legality of the intervention. However, it is eye-catching that the French government felt the need to give three legal justifications instead of one: collective self-defence, the Security Council's authorization and the consent of the legitimate Malian government.<sup>24</sup>

First of all, the invocation of self-defence under Art. 51 UN Charter has its weaknesses: According to the wording of Art. 51 there needs to be an armed attack of a certain gravity by another state. In this concrete case the militant Islamist groups received logistical support from the neighbouring countries. In the *Nicaragua case* the ICJ ruled that the supply of arms, financial and logistic support does not constitute an armed attack. So even if rebel groups received support from abroad, there was no state directly involved in the attacks. It is quite questionable if the right to self-defence can be applied to non-state actors: in the aftermath of 9/11 some jurists argued that Art. 51 could be applied in case of a non-state terrorist organization capable of conducting attacks of certain gravity. The ICJ dismissed this interpretation in 2004 and 2005 on grounds of the assumption that this could be used to justify interventions against terrorists within the territory of "innocent states".<sup>25</sup> However, as no Security Council member objected to the application of Art. 51 this could be interpreted as a growing recognition of self-defence against non-state actors in the territory of a third state and a shift in state practice.

The second argument, namely that the intervention was justified by the legitimate government's invitation, is all but flawless. Such an intervention upon request would not constitute a breach of Art. 2(4), but it could be in conflict with the principles of non-intervention and non-interference in domestic affairs as well as the principle of self-determination of peoples. In this case only two out of the three Islamist groups which held a big part of the Malian territory were internationally recognized as terrorist organizations by the UN Security Council and several states. However, Ansar Dine was not officially being classified as terrorist, so it is questionable if the alliance of anti-governmental groups could be qualified as a terrorist group. Despite the argument's weakness, the same was not seriously challenged in the mainstream media or by governments.<sup>26</sup>

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<sup>23</sup> Onuoha/ Thurston (n. 19); T Christakis/ K Bannelier, 'French Military Intervention: It's Legal... But Why?' (*EJIL: Talk* 24 January 2013) <<http://www.ejiltalk.org/french-military-intervention-in-mali-its-legal-but-why-part-i/#more-7483>> accessed 22 December 2013.

<sup>24</sup> T Christakis/ K Bannelier (n 23)

<sup>25</sup> *Case Concerning the Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v USA)* (Merits) General List No. 70 (1986) 14, para 195.

<sup>26</sup> T Christakis/ K Bannelier, 'French Military Intervention in Mali: It's legal but ... Why? Part II: Consent and UNSC Authorization' (*EJIL: Talk* 2013) <<http://www.ejiltalk.org/french-military-intervention-in-mali-its-legal-but-why-part-2-consent-and-unsc-authorisation/>> accessed 24 December 2013.

Another problematic aspect is the legitimacy of the Malian government at the time - it was neither elected nor had it *de facto* or *de jure* control over the Malian territory, as about two thirds of the country were in the hands of rebel groups. As the government asking for foreign military assistance can hardly be identified as the legitimate government, the situation in Mali rather has to be classified as an internal armed conflict. Therefore, the French did not support the legitimate government, but took sides in an ongoing internal conflict and has infringed the principle of self-determination of peoples.<sup>27</sup>

The strongest legal argument for France was Res. 2085. Even though the wording of the resolution only provided for the deployment of the AFISMA troops and their support by international organizations and bilateral partners, the Security Council as well as other international organizations interpreted the resolution broadly. Originally, the AFISMA force was not intended to be deployed before Autumn 2013. Given its limited resources and logistic difficulties, it was also evident from the beginning that the African-led troops would probably face serious problems in their fight against the Islamist groups. In turn, the chairman of the African Union Boni Yayi asked the NATO to intervene in support of the AFISMA troops.<sup>28</sup> At the beginning of January 2013, when the security situation deteriorated even more the Security Council declared in a Press Statement that the situation constituted a threat to international peace and security. Hence, it called upon the member states to make a contribution to the settlement of the conflict and to support the Malian army.<sup>29</sup> The Press Statement allowed for a broader interpretation of Res. 2085, as it authorized the UN member states to directly support of the Malian forces in their fight against the terrorist groups. So the scope of the authorization was extended from the AFISMA force to willing member states in general. Under this interpretation the French intervention would comply with Res. 2085.

It is however very problematic to interpret a Security Council Resolution in such a broad way, as no exact definition of the scope, limits and goals of the foreign intervention is given. As a consequence the Security Council left a huge margin of interpretation to the French military. This could possibly be traced back to the strong French influence in the Security Council and highlights the dangers of the privileged position of the permanent members and the underrepresentation of the Global South in the Security Council.<sup>30</sup>

The French engagement also feeds suspicions that it could be motivated by the strong French economic interests in the region. For example the uranium mines in Niger of the state-owned energy company Areva play a crucial role in the French power supply and a spreading of the conflict could have had disastrous impacts.<sup>31</sup> Therefore, it can be summarized that there was probably a need to do something about the situation in Mali. The timing and the circumstances however, is very much reminiscent of the neocolonial, interventionist French tradition.

### *Intervention in the Central African Republic*

Since its independence, the former French colony the Central African Republic (CAR) faced political instability and France intervened numerous over the years. The situation

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<sup>27</sup> S Butler, 'Mali, Legitimacy and Self-Determination' (*Centre for Criminal Justice and Human Rights* 4 February 2013) <<http://blogs.ucc.ie/wordpress/ccjhr/2013/02/04/mali-legitimacy-and-self-determination-by-sean-butler/>> accessed 25 December 2013.

<sup>28</sup> BBC News Africa, 'NATO Forces Needed in Mali, Says AU's Thomas Boni Yayi' (9 January 2013) <<http://www.bbc.co.uk/news/world-africa-20957063>> accessed 25 December 2013.

<sup>29</sup> UNSC Press Statement on Mali (10 January 2013) SC/10878/ AFR/2502.

<sup>30</sup> Christakis/ Bannelier (n.26).

<sup>31</sup> R Baig, 'The Interests Behind France's Intervention in Mali' (*Deutsche Welle* 16 January 2013) <<http://www.dw.de/the-interests-behind-frances-intervention-in-mali/a-16523792>> accessed 2 January 2014.

today can be traced back to the country's colonial history, the traditionally weak statehood, the strife-ridden situation in its neighbouring countries, its richness in natural resources and the circulation of a high number of arms.<sup>32</sup>

In 2003 François Bozizé seized power in a *coup d'état* and won the seemingly free and fair 2005 elections. Bozizé continued his predecessors' policy aiming to secure his own power position by deliberately disadvantaging the regions of his political opponents. As a result two major strains of rebellion emerged, one in the northeast and the other in the northwest of CAR. In 2006 and 2007 French troops came to help the Bozizé government and bombed rebel groups in order to prevent them from occupying the strategically important town Birao.<sup>33</sup>

Several peace agreements were signed between the government and the rebel groups, but the successes were of very limited nature, because of the lack of political will to actually implement them. In March 2013 the situation escalated and a coalition of rebel groups, the so-called Séléka, ousted President Bozizé and installed Michel Djotidia as his successor. Séléka is however not a homogenous movement, but consists of a number of hardly controllable and uncoordinated smaller groups. Djotidia even admitted that he was no longer in control of the Séléka combatants and tried unsuccessfully to dissolve Séléka and integrate the fighters into the army.<sup>34</sup> The violence exercised by predominately Muslim Séléka fighters against the population have led to the creation of mainly Christian self-defence groups, the so called anti-balaka, who committed mass atrocities similar to those of their Muslim counterparts. The new transitional government under Djotidia tried to improve its image by highlighting the effort it made to end the conflict. These efforts however do not seem to be more than mere window dressing.<sup>35</sup>

In December 2013 the Security Council unanimously adopted Res. 2127 which authorized the deployment of the African-led MISCA mission for a period of 12 months. MISCA may use all necessary measures to protect the population, improve humanitarian situation and increase the stability of the country. Moreover, it authorized the French troops to take all necessary means for a limited period of time to support MISCA in the fulfillment of its mandate.<sup>36</sup>

From a legal point of view the French intervention based on Res. 2127 was less problematic than the intervention in Mali. The feedback in the press and from Western governments and regional organizations was also predominately positive. However, the background of the resolution is quite interesting and shows how the French pushed the adoption of Res. 2127. The Minister of Foreign Affairs Fabius declared in November 2013 that CAR was “on the verge of genocide”. François Hollande asked the so-called international community to react fast and to take extraordinary measures to stop the

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<sup>32</sup> S Herbert/ N Dukhan/ M Debos, 'State Fragility in the Central African Republic: What Prompted the 2013 Coup' (*GSDRC University of Birmingham* 2013) Rapid Literature Review <[http://www.gsdrc.org/docs/open/CAR\\_GSDRC2013.pdf](http://www.gsdrc.org/docs/open/CAR_GSDRC2013.pdf)> accessed 28 December 2013, 2, 3.

<sup>33</sup> JC Woodford/ J Carny , 'The Central African Republic: Worsening Crisis in a Troubles Nation' (*United States Institute of Peace* 2007) <<http://www.usip.org/publications/the-central-african-republic-worsening-crisis-in-troubled-region>> accessed 28 December 2013.

<sup>34</sup> R Downie, 'France to the Rescue (Again) in the Central African Republic' (*Center for Strategic & International Studies* 6 December 2013) <<https://csis.org/publication/france-rescue-again-central-african-republic>> accessed 29 December 2013.

<sup>35</sup> Herbert/ Dukhan/ Debos (n.32), 4, 14, 15; International Crisis Group, 'State Fragility in the Central African Republic: What Prompted the 2013 Coup?' (2 December 2013) Africa Briefing N°96 <<http://www.crisisgroup.org/~media/Files/africa/central-africa/B096-central-african-republic-better-late-than-never.pdf>> accessed 29 December 2013, 4.

<sup>36</sup> UNSC Res 2127 (5 December 2013) S/Res/2127, 7, 9.



criminal activities in CAR.<sup>37</sup> He also emphasized that contrary to earlier interventions this one served purely humanitarian purposes.<sup>38</sup>

It is however quite evident, that the constitutive elements of genocide are not fulfilled in this case; killings may have occurred on ethnic and religious grounds, but the requirement of intention is clearly not given as the rebels acted in an uncoordinated way without functioning command structures and atrocities occurred on both sides. It is therefore difficult to identify culprits for any kind of pre-genocide situation and it is not very likely that the situation would have developed in a way that one side would become in such a predominant position as to actually commit genocide.

It is quite dangerous, though, to misuse the term for purely political reasons. It strongly simplifies a complex conflict and creates a narrative of cruel, uncivilized, Muslim rebels and endangered, innocent Christian civilians in need of Western protection. Also the overuse of the term genocide leads to its marginalization. It becomes not more than an empty word and actions which are truly genocidal are diminished. There is a risk that the term loses its analytical and moral power.<sup>39</sup> The genocide terminology was eagerly copied by the press and pushed the Security Council to adopt Res. 2127.

Despite Hollande's insistence that French involvement was only due to humanitarian reasons there are indications that the Hollande administration continues to use its military and other influence in its former colonies in its own interest. Some refer to the new French humanitarian interventionism as the 'Hollande doctrine'. One characteristic of these interventions is that they are justified by humanitarian necessity. The French also seek to get away from their image as the *gendarme* of Africa. They do this by receiving UN and regional organizations' backing and by complying with international law. But the objectives pursued are still no less self-serving than those pursued by those who developed and shaped the idea of *Françafrique*. The new strategy is subtler and it helps them to decrease the risk of failures like Rwanda. By staying the most important military ally of its former colonies, it helps the French to assure their influence in Africa, especially with regard to increasing Chinese activity in the region.<sup>40</sup> Le Figaro even attested Hollande the same neoliberal agenda in foreign policy as his conservative predecessors.<sup>41</sup>

Despite the altruistic window dressing it can be summarized that both the interventions in Mali and Central African Republic were in the case of Mali motivated by economic interests, but especially political and strategic reasons played an important role.

### III.2 Impact on the prohibition of the use of force

Both examples assessed have shown that France had reasons to intervene and they used international law to justify the interventions. By using the law for their purposes they to some extent moved along the border to illegality and as international law is quite

<sup>37</sup> France 24, 'Laurent Fabius: La Centrafrique est "Au Bord du Génocide" (21 November 2013) <<http://www.france24.com/fr/20131121-laurent-fabius-centrafrique-genocide-seleka-bozize-onu/>> accessed 29 December 2013.

<sup>38</sup> Libération, 'L'Adhésion à l'Operation Sangaris est Soutenue par Moins d'un Français Sur Deux Selon un Sondage' (14 December 2013) <[http://www.liberation.fr/monde/2013/12/14/centrafrique-pour-hollande-c-est-l-honneur-de-la-france-d-etre-intervenu\\_966600](http://www.liberation.fr/monde/2013/12/14/centrafrique-pour-hollande-c-est-l-honneur-de-la-france-d-etre-intervenu_966600)> accessed 29 December 2013.

<sup>39</sup> A De Waal, 'Playing the Genocide Card' (*The New York Times: Opinion Pages* 18 December 2013) <[http://www.nytimes.com/2013/12/19/opinion/playing-the-genocide-card.html?hpw&rref=opinion&\\_r=1&](http://www.nytimes.com/2013/12/19/opinion/playing-the-genocide-card.html?hpw&rref=opinion&_r=1&)> accessed 29 December 2013.

<sup>40</sup> S Tisdall, 'France in the Central African Republic is the Latest Use of the "Hollande Doctrine"' (*The Guardian* 5 December 2013) <<http://www.theguardian.com/commentisfree/2013/dec/05/france-central-african-republic-hollande-doctrine>> accessed 31 December 2013.

<sup>41</sup> P Gélie, 'Des Raisons d'Agir' (*Le Figaro* 26 November 2013) <<http://www.lefigaro.fr/mon-figaro/2013/11/26/10001-20131126ARTFIG00590-des-raisons-d-agir.php>> accessed 31 December 2013.

ambiguous and bendable through state practise, it is possible that the justifications given actually influence the prohibition of the use of the use of force.

This is especially the case for the intervention in Mali: the justifications used by France as well the reactions of the international community challenged the interpretation of Art. 51 UN Charter as well as rules of state practise. First of all no state objected to the French invocation of collective self-defence. If one extends the right to self-defence to non-state groups, there is a heavy danger of abuse and instrumentalisation. Powerful nations could intervene and take sides in internal civil conflicts, at least in cases where the non-state actor does not operate in territory of a so-called innocent state.

With regard to the intervention upon request, the same risk exists that states invite their powerful allies to end civil unrest. Moreover, with regard to the acceptance of the use of force against recognized terrorist organizations, the question arises as to who sets the criteria for classifying terrorists and whose classification determines the status of such groups. In this case, only the viewpoints of the UN Al-Qaeda Sanctions Committee and powerful countries have been considered.

From a TWAIL perspective it is highly problematic that the Committee is composed of the 15 Security Council members.<sup>42</sup> As a result the permanent members, who tend to pursue their own neocolonial agenda have an important influence on which organization is being classified as terrorist. At the same time the traditionally underrepresented Global South has little say. Also when reference is made to classifications made by states, these states tend to be powerful and Western. So there is a serious risk that the position of the global South is not sufficiently taken into consideration.

Allowing interventions upon invitation against terrorist groups, based on these principles of classification, bears the risk to undermine fundamental rules of international law such as the principles of sovereignty or non-interference.

In the case of the CAR, the French intervention was authorized by the Security Council and was therefore clearly within the limits of international law. But it still had impacts on the law of the use of force.

France helped to further strengthen the doctrine of the responsibility to protect by assuring a high level of state and NGO consent to its intervention. The responsibility to protect doctrine had increasingly become subject to doubt and criticism because of the unsolved situation in Syria and the supporters of the doctrine welcomed the French and UN approach in the CAR.<sup>43</sup> From a TWAIL perspective the responsibility to protect doctrine is however a double-edged sword, as it enshrines to some extent the idea of the Western *mission civilatrice* and can be used to limit the principle of non-intervention. For the most part, in the case of unilateral, unauthorized interventions, there is a serious risk of abuse and reinforcement of existing global power structures to the detriment of the global South.

The CAR intervention is therefore a good example of how the West uses the terminology of international law and its influence on it solely for the protection of its own interests.

#### IV. Conclusion

In view of the above, it becomes quite evident that France still exercises a considerable amount of influence in its former colonies. This happens not only through economic and

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<sup>42</sup> Al-Qaida Sanctions Committee 'General Information on the Work of the Committee' <<http://www.un.org/sc/committees/1267/information.shtml>> accessed 24 December 2013.

<sup>43</sup> P Bolopion, 'The Central African Republic Facing its R2P Moment of Truth' (*La Nouvelle Centrafrique* 21 December 2013) <<http://www.lanouvellecentrafrique.org/the-central-african-republic-facing-its-r2p-moment-of-truth/>> accessed 31 December 2013.

political pressure, but also by posing subliminal military threat to its former colonies. The still strong military presence in Africa, the treaties of military cooperation and probably the warning examples of French interventions in the past are a tool for making the global South's countries serve French interests.

This relationship of dependency also has influence on the legal level. African countries are hesitant to protest against the French interventions and invitations give legitimacy to the interventions. The media also mainly captures state responses from the West, so the perception is created that what the West does actually constitutes state practise.

On top of that, the UN decision-making structure, in which the global South is clearly under-represented, helps the French and other Western powers to interpret and even create law according to their interests.

The application of Art. 2 (4) and the continuous extension of the exceptions shows that international law is still an instrument in the hands of the global North. Values like the principles of non-intervention and sovereignty are eroded if it serves economic, political or strategic interests of the world powers.

But even though the TWAIL critique is well-founded and justified it bears a certain risk in individual cases to provide a defence for unjust regimes and marginalizes severe human rights abuses. Both in Mali and Central African Republic large-scale human rights atrocities were being committed and most experts agree there was a need to react. It was more the way in which the French volunteered to play the saviour again that evoked negative images of the neocolonial *gendarme* of Africa.

In conclusion, there is an urgent need to reflect on and reform the contents and structures of international law in order to make it a tool of emancipation for the global South. Perhaps then one day African solutions for African problems will be possible.