

## Research Project C8

### Legitimacy and Law-Making in International Humanitarian Law

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#### **2 Overview**

Research Project C8 investigates the legitimacy of norms and law-making processes in international humanitarian law. Focusing on the conflicts in the African Great Lakes region, the project explores whether the norms of international humanitarian law are both sufficiently flexible and legitimate to govern the conduct of the relevant actors in the region, namely state and non-state actors as well as international forces. The project aims to combine the findings of the current research phase with the previous one on compliance, in order to propose new norms and enforcement mechanisms for international humanitarian law, which better respond to the context of areas of limited statehood.

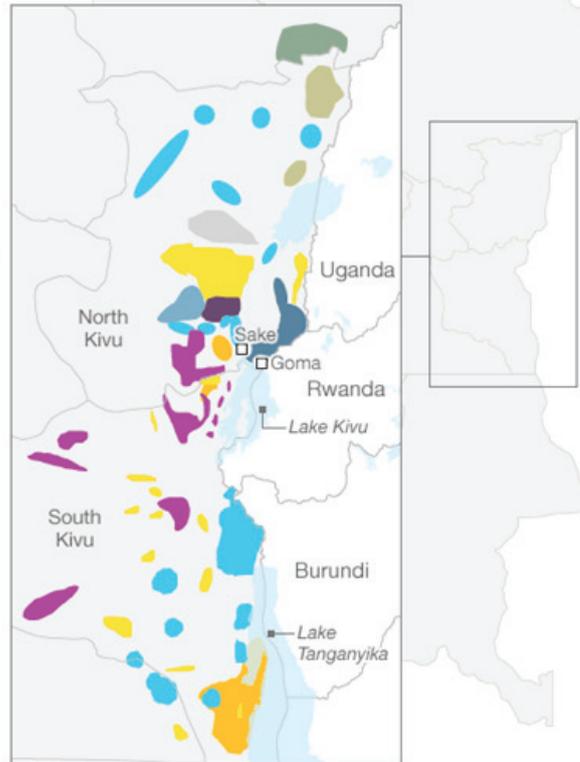
#### **3 Project Description**

In the last research phase, Research Project C8 investigated how international humanitarian law can be enforced in non-international armed conflicts between non-state armed groups and weakened state actors in areas of limited statehood, and which hierarchical and non-hierarchical forms of governance should be employed. The point of departure for the investigation was the observation that the enforcement of international humanitarian law faces particular challenges in violent areas of limited statehood. It could be seen that the international community responds to these challenges with a multi-level governance system. In the course of this, the hierarchical and non-hierarchical controlling tools are closely interlinked. Persuasion and inducement management function more effectively when they are utilized in the external “shadow of hierarchy” that comes from the UN Security Council and international criminal justice.

### Rebel groups in eastern DR Congo

UN forces and the Congolese army are present in large towns

- ADF-NALU**  
Ugandan-led Islamists
- APCLS**  
Mai Mai group
- FDLR**  
Mostly Hutu Rwandan rebels
- FRPI**  
Based in gold-rich Ituri region
- M23**  
Mostly Tutsi, said to be Rwandan-backed
- Rai Mutomboki**  
Anti-FDLR group
- Sheka**  
Mai Mai group
- UPCP**  
Loose coalition of smaller nationalist groups
- Mai Mai groups**  
Local forces claiming to act in self-defence
- Other armed groups**



Source: Oxfam

\*An estimate of where armed groups were in November 2012 based on the best available information. The conflict is changing daily.



Diese beiden Karten von der Demokratischen Republik Kongo zeigen die nahezu unüberschaubare Vielzahl von bewaffneten Akteuren vor Ort, ohne dass überhaupt die regulären staatlichen Streitkräfte der DR Kongo berücksichtigt wurden.

Building on these results, in this research period the C8 project turns the focus of the investigation away from the enforcement mechanisms and more specifically towards the norms themselves. The project wants to critically question the existing set of norms regulating non-international armed conflicts, i.e. Common Article 3 of the Geneva Conventions, their Second Additional Protocol as well as applicable customary international law. Since, in particular, the rules of the customary law of non-international armed conflict actually stem from interstate conflict, their appropriateness in the situation of conflicts in violent areas of limited statehood is, at the very least, doubtful. Furthermore, conflicts in areas of limited statehood often cannot be clearly classified as international or non-international armed conflicts. Such conflicts are accompanied by interventions of third states as well as law enforcement and stabilization operations of international organizations, as the example of the DRC shows. Moreover, in the last research phase concrete constellations were identified in which the standard of the norm itself was an obstacle for compliance by non-state actors. For the enforcement of international humanitarian law, the effective and legitimate shaping of the contents of the norm is central. Only a norm that is a) appropriately formulated in regard to the concrete situation, and that is b) perceived as legitimate by the norm addressee can fulfill its management function. At the same time the expected behavior must be clearly and specifically determined so that the addressee can apply the norm in a concrete situation. In order to establish its management effect, the norm should also take care not to expect the impossible from the norm addressee. It also appears to be problematic when norms in similar situations establish different standards for the various actors without adequate and substantial reasoning. Finally, the investigations of the last research phase showed that success depends not just on the norm, but demands as well that the process the norm resulted from is itself perceived as legitimate. It is also for this reason that serious doubts exist from the standpoint of non-state violent actors, given their lack of possibilities for participation. The following research questions arise as a result of these considerations:

1. Are the norms of international humanitarian law both sufficiently flexible and legitimate enough to govern the conduct of non-state armed actors, national armed forces and international armed forces during armed conflicts in areas of limited statehood?
2. Does the law-making process in international humanitarian law meet the requirements of empirical legitimacy applying to the provision of governance services, bearing in mind the limited opportunities of state and non-state actors in areas of limited statehood to influence such processes?
3. Does the law-making process in international humanitarian law meet the requirements of normative legitimacy applying to the provision of governance services?
4. Which modifications to the norms and which new mechanisms for enforcing international humanitarian law are necessary in light of the challenges faced during armed conflicts in areas of limited statehood?



Since standards of international humanitarian law should create universal norms, relevant practice must be comprehensively and consistently evaluated. Nevertheless, the C 8 project retains its particular focus on the African Great Lakes region during the current research phase. The reason for this is that the project specifically investigates the challenges that arise when universal norms designed for state actors are applied to particular conflict regions und non-state actors. The Great Lakes region is particularly illustrative for this purpose.