

# **Territorial control, recognition and external intervention in civil conflicts: is a new praxis emerging in International Law?**

*A critical review of the lecture “The Financing of Civil Wars in Syria, Libya and Yemen: An International Law Perspective” by Prof. Marco Pertile, NAMEPES SUMMER SCHOOL 2021, University of Trento.*

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During the past decade (2011-2021), civil wars in Libya, Syria and Yemen have been among the most significant internal armed conflicts across the world. Arguably, they represent interesting case studies from different aspects, presenting continuity as well as noteworthy innovations under an International Law perspective, compared to previous civil conflicts. In a lecture held on June 23<sup>rd</sup> at NAMEPES Summer School (North Africa – Middle East Politics and EU Security) of the University of Trento, Prof. Marco Pertile discussed this topic, focusing in particular on the financing of civil wars. As the lecture has shown, the economic sustainability of a conflict for the belligerent parties is related to different issues: territorial control, recognition and external intervention. In resuming the main insights offered by the lecture, the link between these three dimensions, with reference to the Libyan, Syrian and Yemeni conflicts, will be explored. This will contribute to assess whether a new praxis is emerging in International Law with regard to third-countries interferences in civil wars.

## **Economic warfare and foreign interference in a civil conflict: inputs from the case studies**

The first consideration to make in order to understand the relation between the financing of an internal conflict and the position of external actors towards the parties is that civil wars are expensive. A conflict can endure if the opponents have ways to sustain its costs, which are related to warfare (purchase of weapons and equipment, troops salaries) and to general needs of the population (internal trade, resource distribution, infrastructures). As a consequence, the ability to control a territory is pivotal to ensure the resilience of both the contested government and the insurgents. Territorial control can be decisive to determine the outcomes of the conflict, because it can ensure the parties sources of revenue, which can be control over natural resources, trade and smuggling, banks and financial assets.

Evidence from the Libyan, Syrian and Yemeni cases have shown that not only there was not a significant departure from pre-conflict management of the economy, which presents the same predatory and clientelist features, but patterns of economic governance do not differ much between State-controlled and insurgent-held areas (Heydemann 2018). Therefore, both governments and the armed opposition try to adapt existing economic structures and opportunities to the needs of war. Understanding how the war economy functions is important for third actors that want to indirectly favor a particular outcome of the war, such as de-escalation or defeat of a rebel group. The economic warfare has therefore significant implications in relation to interference from third countries.

The international community, or part of it, can target a specific source of revenues for the party which aims to harm. This can be achieved through military action, such as air strikes targeting infrastructures – as happened in Yemen with raids towards ports controlled by the Houthi rebels – or through sanctions. The international community has progressively accepted the idea that not only direct attacks, but also sanctions should avoid to target the civil population because they risk to cause excessive harm: this was particularly evident after the trade embargo against Iraq in the ‘90s brought the population on the verge of starvation (Wallenstein, Staibano and Eriksson 2005). Sanctions should therefore be directed to ban import of specific goods such as weapons, but also to cut the access to financial assets and to other sources of revenue which are used to finance conflicts. Usually, in civil wars these actions are directed towards insurgent groups; however, they have been directed

towards the governments as a consequence to the Libyan and Syrian revolutions and the repressive response of the regimes. Sanctions were part of unusual practices concerning international recognition in the two conflicts. As discussed in the lecture, this may have important implications in relation to the principle of non-intervention in International Law.

### **Formal recognition and material support: discontinuities from consolidated international practice**

The regimes of Ghaddafi and Assad were not internationally de-recognized as governments of their respective countries. Nonetheless, their assets abroad were frozen, while national oil companies were targeted, as they constituted an important source of revenue for the two governments (Dam-de Jong 2015: 12-14). At the same time, the recognition by a number of States, included three permanent members of UN Security Council (US, UK and France), of the National Transitional Council (NTC) in Libya and of the Syrian National Council (SNC) as “legitimate representatives of the people” is a significant element of rupture from the tradition. Even if this act does not amount to a recognition of such entities as governments, their labelling as representatives of the people, combined with sanctions towards the official governments, suggests the will of a large portion of the international community to favor regime change in the two countries. The traditional conservative attitude to sovereignty, which determines the principle of non-intervention and the subsequent prohibition of supporting the insurgents in civil wars (Werner 2001)<sup>1</sup>, has been thus disattended in these two cases.

This has had indeed consequences on the economy as well as on the principle of recognition. Although traditional international law does not recognize to the insurgents the right control and make revenue from natural resources located in the territory under their control, which is attributed to lawful governments that should act in the interest of the people (Dam-de Jong 2015: 18-19), the Syrian case has shown in this aspect another innovative aspect. The decision of the Council of the European Union to allow oil trade from SNC-held areas in April 2013 was officially taken to “support opposition and civilians”. This means that third countries can influence the balance of power in a civil war, even without direct military intervention, even favoring the consolidation of power of the insurgents in their portion of territory.

A form of international recognition can therefore be important to ensure the exploitation of natural resources as a source of revenue: the same mechanism can in fact be used by third countries to pursue a less favorable outcome for insurgents. This was the case, for example, of Libya during second civil war: while controlling a part of the national territory larger than the territory under the internationally recognized government, General Khalifa Haftar was not recognized as a legitimate interlocutor by the international community. Therefore, he did not have the possibility of exporting oil legally from his territories, contrary to the GNA.

Another interesting practice related to foreign intervention which emerged during the Syrian conflict was the stretching of the notion of humanitarian intervention to justify intervention derived from non-lethal assistance (i.e. vehicles, communication tools, vests, water filtering devices etc.) given by some countries to the rebel groups. For example, in 2013 the UK was among the countries that offered non-lethal assistance to opposition groups: it officially declared to do so in order to contribute to “end the prolonged humanitarian crisis” affecting the country. Non-lethal assistance is controversial in International Law, because it includes elements that could be used in the perpetration of war crimes or other violations of human rights: for this reason, countries which explicitly provide this type of aid try to present their behavior as legal, declaring that it is a mean to pursue humanitarian goals and to contribute to the end of a dictatorship that is responsible of gross violations of human rights (Ruys and Ferro, 2020). On the other hand, assistance to a government challenged by insurgents should not be considered always lawful under International Law: the government may use it to commit violations as well (Ruys, 2014).

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<sup>1</sup> The fight for self-determination, against occupation and apartheid regimes is not considered an insurgency, and is thus not subject to the same limitations of non-international armed conflicts.

## Conclusions: controversies on legitimate behavior from third countries

All these inputs emerging from the considered case studies were discussed during the lesson: their systematic evaluation may allow us to make some considerations. Indeed, the relationship between territorial control, recognition and foreign intervention is particularly complex and it has effects which are highly controversial in doctrinal interpretation of IL. On the one hand, large, prolonged effective territorial control from an insurgent party in an internal conflict does not lead to recognition as a legitimate interlocutor by third countries: for example, Haftar's army in Libya and the Houthis in Yemen were not given any recognition by the majority of the international community. At the same time, a praxis in recognizing non-state actors as legitimate international interlocutors, even when they do not have a consolidated territorial control, may be emerging in contexts where a significant part of the international community has an interest in favoring regime changing, as happened at the beginning of civil wars in Libya and Syria between 2011 and 2013. This attitude was linked to evidence that these regimes were committing violations of human rights against their population. Nevertheless, this cannot be considered as an international customary norm, as other regimes equally violating IHRL were not met with the same attitude.

Finally, a practical exercise that participants were asked to complete in groups was an occasion to reflect on the multiple interpretations of International Law that may emerge in expressing a particular position on controversial events. Each group had to elaborate a statement made by different actors – the Assad regime, the Syrian opposition, the UK and Russian governments – on the decision of the EU Council of lifting the sanctions against Syria involving a ban on oil import, only from opposition-held areas. This was useful to notice how issues such as recognition and external interference in an internal conflict are not regulated by agreed-upon norms that may constitute customary law. A part of the international community has been promoting an extensive interpretation of international norms and of IHL in particular, in order to justify the breach of the traditional principle of non-intervention in internal affairs – often invoking the doctrine of the responsibility to protect (R2P) – when it is functional to promote a particular outcome that they consider favorable. On the other hand, other States strongly reiterate the validity of this principle, even in front of gross violations of human rights, especially when it is functional to maintain a favorable *status quo*. They often cite the Libyan case, with the NATO intervention and the overthrowing of the regime, as a negative example of how international intervention has led to a worse outcome for human rights than the violations it wanted to stop (Naigen, 2016). As the main both doctrinal interpretations are represented by permanent member of the UN Security Council, this polarization easily produces the impossibility of promoting a coordinated, UN-led action in internal conflicts where the legitimacy of the parties is highly controversial and politicized among the international community.

## References

- Dam-de Jong, Daniella. «Armed Opposition Groups and the Right to Exercise Control over Public Natural Resources: A Legal Analysis of the Cases of Libya and Syria.» *Netherlands International Law Review*, 2015: 3-24.
- Heydemann, Steven. «Civil War, Economic Governance & State Reconstruction in the Arab Middle East.» *Dædalus, the Journal of the American Academy of Arts & Sciences* 147, n° 1 (2018): 48-63.
- Naigen, Zhang. «The Principle of Non-interference and its Application in Practices of Contemporary International Law.» *Fudan Journal of the Humanities and Social Sciences*, 2016: 449-464.
- Ruys, Tom. «Of Arms, Funding and “Nonlethal Assistance” - Issues Surrounding Third-State Interventions in the Syrian Civil War.» *Chinese Journal of International Law*, 2014: 13-53.
- Ruys, Tom, and Luca Ferro. «Non-lethal Assistance and the Syrian Conflict: Lessons from the Netherlands.» *Just Security*. July 20, 2020. <https://www.justsecurity.org/71286/non-lethal-assistance-and-the-syrian-conflict-lessons-from-the-netherlands/> (accessed July 9, 2021).

Wallesteen, Peter, Carina Staibano, et Mikael Eriksson. «UN Sanctions against Iraq: Lessons Learned.»  
Uppsala: Department of Peace and Conflict Research, Uppsala University, 2005.

Werner, Wouter G. «Self-Determination and Civil War.» *Journal of Conflict and Security Law*, 2001: 171-190.