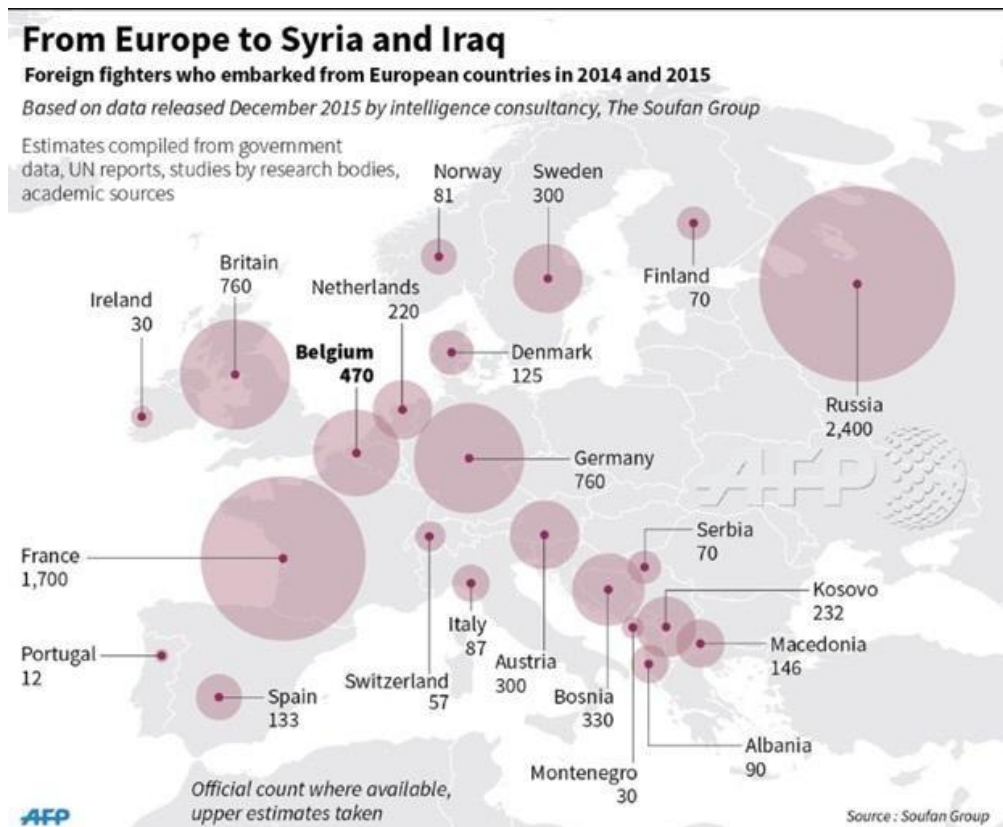


# International Law and the Territorial Gains and Losses of Non-State Actors in Africa and the Middle East

16 March 2017



Centre for International Land and Maritime Boundaries (CILMB)

## Background

International law is built on the preservation of international boundary regimes and the territorial integrity of States. The on-going civil strife in Africa and the Middle East, however, is characterised by State fragmentation through territorial gains and losses by non-state armed groups (NSAGs) with far-reaching, catastrophic international consequences. For example, with the intensification of the international coalition's offensive against "Daesh" (or "ISIS") in 2016, the organisation started losing territory in Syria and Iraq and consequently launched a campaign of terror attacks and suicide bombings in Bangladesh, Saudi Arabia, Turkey, France and Iraq, amongst other places. In addition, the International Organization for Migration (IOM) has reported that 2861 refugees fleeing civil war in Africa and the Middle East have lost their lives while attempting to cross the Mediterranean into Europe during the first half of 2016, marking a rise of 57 per cent compared to the first half of 2015.

In the context of this background, Centre for Land and Maritime Boundaries has carried out an initial assessment surveying the territorial gains and losses of NSAGs in the following parts of

Africa and the Middle East: Syria, Iraq, Afghanistan, Yemen, Libya, South Sudan, Somalia, Mali, Nigeria and Western Sahara. This survey has revealed that an estimated total of 1,752,309km<sup>2</sup> and 61,058,295 people are presently under the control of various NSAGs in those parts of Africa and the Middle East, which represents, by way of comparative example; approximately 720% of the total area of the United Kingdom and 95% of the UK's population, respectively.

In addition, according to our survey, 22,529,186 nationals of those countries were added to the United Nations High Commission for Refugees' (UNHCR) "people of concern" in 2015, which represents 35% of UNHCR's global total "people of concern" for the same year (63,912,738). This further represents 53% of UNHCR's 2015 global total of internally displaced persons (IDPs), 9% of its global total of refugees and surprisingly, pairing in mind the intensification of public debate in the metropolitan countries; only 2% of its global total of asylum seekers.

Meanwhile, under existing international legal frameworks, this situation has been addressed in a reactive, rather than a proactive manner. For instance, international humanitarian law (IHL) and international human rights law (IHRL) are at best limited in their scope to the classification of conflict as international or non-international, and the subsequent determination of the rights and obligations of belligerents in situations of armed conflict. In addition, while the law of occupation under IHL applies to instances of international, rather than non-international armed conflict, and if NSAGs presently "occupy" various proportions of territory within internationally recognized boundaries of States in Africa and the Middle East, international law is unclear on how those territories are to be governed or administered. Furthermore, humanitarian interventions in such conflict zones are often blamed for helping NSAGs maintain their control over the territories they "occupy," thereby prolonging conflict or engaging in "conflict management" as opposed to "conflict resolution."

At the same time, even though the international community in general, and the European Union in particular, have been pre-occupied with defining the right strategy to manage the spill-over effects of the territorial gains and losses of NSAGs in Africa and the Middle East, in what is inherently a reactive approach, many shortcomings remain in place. For instance, despite noticeable international progress in relation to the transfer of weapons to NSAGs, as underlined by the recent passage of The Arms Treaty, the continued participation of foreign fighters in non-international armed conflict remains to be properly addressed through proactive regional and international legal frameworks. According to the intelligence consultancy the 'Sofian Group,' by December 2015 the number of those who left Europe to participate in the on-going fighting in Syria and Iraq reached 6000 people, while 2,400 others have originated from Russia.

Furthermore, the on-going crises of refugees, asylum seekers and internally displaced persons (IDPs) have evidenced the need for an international commitment to extend the protections of international refugee law to persons fleeing civil war and territories claimed by NSAGs, while further highlighting that the best "containment" strategy is one that addresses the root causes of conflict.

## **Project Summary**

In light of the above, CILMB has committed to a public event & project launch to an evidence-based analysis with a view of informing the future codification processes of international legal norms, relevant to the general situation presented by the territorial gains and losses of NSAGs in the following parts of Africa and the Middle East: Syria, Iraq, Yemen, Afghanistan, Libya, South Sudan, Somalia, Mali, Nigeria and Western Sahara.

This project will entail:-

- (i) the organization of nine additional territory specific events,
- (ii) the publication of a volume of expert reflections on the subject matter,
- (iii) establishing local professional partnerships subject to appropriate due diligence and compliance with UK national and international norms, and
- (iv) deploying a team of analysts to each of those ten parts of Africa and the Middle East in line with CILMB's institutional risk assessment and management criteria

The objectives are to congregate what presently constitute the definitive and de-facto "code of governance" in territories seized by NSAGs, to highlight the legal basis of international responses to the situation and its spill-over effect, and to identify any shortcomings in presently available international legal remedies. Following the example of the International Law Commission (ILC) and the International Committee of the Red Cross (ICRC) that have contributed to the codification of different aspects of international law, it is anticipated that this project, subject to outcome, will culminate in recommendations which can contribute to a treaty-like legal framework that is intended to provide a proactive rather than a reactive remedy to the general situation presented by NSAGs' territorial gains and losses.

### **Timely Need for Action – Project Contributions**

- a) An-evidence based analysis with a legal outcome is instrumental for informing future governmental and non-governmental bodies' policy making processes in Africa and the Middle East
- b) By aggregating the various definitive and de-facto "code of governance" within territories under the control of NSAGs in Africa and the Middle East the international community will be better positioned to devise effective conflict containment and/or humanitarian intervention strategies
- c) Commonalities and distinctions between territories and the approaches to actual administration of territory in areas of NSAG control and aspiration can be identified as a contribution to the establishment of 'best practice' methodologies for intervention and engagement
- d) The incorporation of first-hand information through on-the-ground research is essential to remedying the sense of alienation that ethnic and religious minority groups are experiencing in Africa and the Middle East, and subsequently across Europe
- e) Establishing the direction of causality between the radicalisation campaigns of extremist groups around the world and on-going civil strife in Africa and the Middle East is essential to devising effective counter-radicalisation strategies
- f) Parallels drawn between pre-Westphalia Europe and contemporary Middle Eastern and African affairs could evidence a moment of State "creation" rather than "fragmentation" in Africa and the Middle East. Insights into any underlying processes which may be identified can inform contemporary and future strategic decision-making processes