

# Law, guns and money: regulating war economies in Syria and beyond

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## ■ Executive summary

A growing number of war zones are characterised by diversified types of violence and means to finance the ongoing armed conflict, often by preying on informal economic activity and access to global trade flows.

To date, international legal responses to such economies have focused on identifying undesirable groups or actors and targeting them with sanctions. These approaches have not enjoyed unquestionable success, and appear to be increasingly inappropriate for areas characterised by multiple factions, fragmented territorial control and vulnerable civilian livelihoods.

As an alternative, recent initiatives have sought to isolate those responsible for violations of human rights and humanitarian law from the global trade and human flows that are essential to sustaining their violent behaviour. These initiatives focus on places where abuses arise from organised violence that is a part of economic activity and where commerce is militarised. These measures will not stop wars, but may be a necessary part of efforts to do so. As such, they appear to offer a less politicised, more regulatory and possibly more effective means to control violent economies from afar.

## Introduction

In the spring of 2014 the Islamic State in Iraq and al-Sham (IS) leapt onto the global stage by capturing the Iraqi city of Mosul from government forces. As IS consolidated its hold on territory spanning north-eastern Syria and north-western Iraq and declared itself to have established a new Caliphate or Islamic State, news reports emerged of the looting of bank reserves in Mosul; protection rackets and kidnapping rings; fuel smuggling across the border into Turkey; slavery, trafficking and child soldier recruitment; and a steady stream of foreign fighters arriving to swell IS's ranks. Combined with donations from supporters in the region and globally, this activity very quickly earned IS a reputation in the media as possibly "the most cash-rich militant group in the world" (BBC, 2014; Lock, 2014; Malas & Abi-Habib, 2014).

Such claims regarding the financing of war are difficult to substantiate, both on the insurgent and the government side. Researchers combing Syrian government data, for instance, have found it hard to estimate exactly how much the regime is spending on its military efforts. One estimate

indicates that state revenues have been redirected to military expenditures in ever-increasing amounts, increasing by just under \$1 billion in 2011, by over \$2 billion in 2012 and by as much as \$3.6 billion in 2013 (SCPR, 2013b). But research also indicates large off-the-book expenditures that are not captured by these calculations, such as the "domestically financed military expenditure of armed groups" (SCPR, 2013a).

The phenomenon of both insurgents and governments financing their activities through a combination of formal and informal economic activity and external support is certainly not new. But as insurgency and counter-insurgency have come to dominate contemporary battlefields, the role of these economic activities has become more visible. The conflict zone is not only a site of various forms of armed violence, but is also a social and economic space. And the coincidence of informal economies and non-conventional armed violence – understood as violence operating outside the traditional bounds of conflict – generates "irregular war economies" (Taylor, 2013).

## Violence and the informal economy

To understand how these economies function, it is necessary to understand the characteristics of this coincidence of armed violence and informal economies in time and space. One obvious result of this combination of violence and informal markets is that the groups using force – whether state armed forces or non-state armed groups – gain unique access to economic opportunities. Armed groups, both rebel and state-affiliated, become central players in an economy dominated by the political economy of warlordism.

A second characteristic follows from the fact that the monopoly of the use of force is by definition contested: as a result, the limits of economic opportunity are likely to be defined in large measure by the relative strength of warring factions (Naylor, 2002). Options for outside sponsorship are always present, but the ability to extract rents from the social and economic space of the conflict zone depends on the ability to take and hold territory by force of arms. In short, coercion is a key factor in understanding the irregular war economy.

A third implication is that economic opportunities involve relationships between the armed group in question and the rest of society. Informal economies are not formed with the express purpose of financing the war, but in fact are primarily about sustaining workers, farmers, households and communities, including in conflict zones (Justino et al., 2013; Bøås, 2014). If they do not have territorial control, armed groups must resort to less reliable ways of generating revenues, including activities such as looting and kidnapping. Where partial territorial control is exerted, as in the case of IS, armed groups may attempt to control commodity flows and charge a premium for the risks involved in doing so (Hallaj, 2015). Attempts by armed groups to extract rents or control commercial opportunities will have a direct bearing on their relations with people and communities whose livelihoods may depend on these economies.

A fourth characteristic is that these economies are extremely hard to regulate. Not only are they designed to avoid oversight, but they operate in territories where the rule of law is weak and contested. Like organised crime, irregular war economies are both local and global, often thriving on the ability to move goods, people, and money between local and global flows. Indeed, organised criminal activities are part of today's irregular war economies (Cockayne, 2010), and at times the practical distinction between the criminal economy and the irregular war economy may seem arbitrary. The reality is that the market does not necessarily distinguish between the intent behind transactions, be they for the purposes of conflict, crime or

survival. This agnosticism significantly complicates matters for policymakers and raises the risk that attempts to criminalise such economies can have negative impacts on the livelihoods of people living in the conflict zone (Lunde & Taylor, 2005).

## Regulating war economies: guns, commodities, money, fighters and proxy war responsibility

To date, international responses to war economies have been either too weakly enforced or narrow in scope, allowing the integration of these economies into global commercial flows; or too blunt, failing to distinguish between legitimate and illegitimate economic activity associated with today's conflicts. As a result, the use of regulatory measures to grapple with irregular war economies has so far failed to find a sensible middle ground. The criminalisation of economic activity – on the grounds of its mere coincidence with war or association with parties to the conflict – undermines international efforts to manage the conflict and stigmatises economic actors simply for their presence in the conflict zone. Such an undifferentiated approach makes for poor policy and bad law.

Other publications in this series have described the social and economic realities of various war economies, including that of Syria (Hallaj, 2015). The present report builds on this analysis to examine the regulation of each of the principal international flows to and from the Syrian war economy, i.e. guns, commodities, money and fighters (people).<sup>1</sup> It also covers responsibility for economic activity undertaken in support of proxy wars. It assumes that these economies are primarily social and economic phenomena, and that their regulation must take this into account. The report's objective is to identify options for the law to influence or disrupt the economic flows that help to keep conflict alive.

The discussion is focused on legal options and not the merits or otherwise of military intervention. Military action is one way to conduct economic warfare: the U.S. and allied airstrikes in 2014 targeted Syrian oil production facilities in an attempt to undermine IS's acquisition of financing from the sale of crude oil. This no doubt had an impact on revenues, although it also contributed to IS decentralising oil processing, turning it into a kind of cottage industry, making it harder to target and creating additional hazards for those so employed. By focusing on legal options, the report hopes to identify ways in which the already existing integration of the Syrian war economy into the global economy can be influenced or constrained in a way that undermines the sustainability of the conflict and dampens the violence. The overall policy challenge is to move beyond

<sup>1</sup> The report is principally concerned with regulations imposed outside Syria, but which have effect on economic activity within Syria itself. This in no way implies that Syrian state regulation is irrelevant. On the contrary, an understanding of the particular dynamics of the Syrian war economy requires a detailed understanding of the state's regulatory practice. But the focus of this report is less on the dynamics of the Syrian war economy than on the options available for the international regulation of that economy and the responsibilities that arise from the latter.

narrow and blunt instruments to build a regulatory system to respond to the problem of irregular war economies. To this end, the report examines whether legal responsibilities, including criminal liabilities, can be established for those participating in the war economy in the Syrian conflict in a form that mitigates the violence.

## Guns

Traditional suppliers of weapons and defence systems to the Syrian government include Russia, long the largest single supplier of arms to Syria, as well as Ukraine, Iran, China and North Korea. Companies from European countries have also won defence contracts, such as the Italian company that upgraded Syrian T-72 tanks. While the U.S. had long-standing comprehensive sanctions on Syria, the European Union (EU) only imposed an arms embargo in 2011. Russia, Iran and Ukraine are known to have continued to supply weapons to the Syrian government after the 2011 uprising began (Wezeman, 2013: 269).

On the other side of the Syrian conflict, indirect transfers and recirculation appear to have been the main source of arms for rebels. States opposed to the Syrian regime, in particular in North America and Europe, were initially hesitant to supply weapons to rebel factions, in part over concerns these might end up in the hands of militant groups with a record of terrorist attacks against the weapons suppliers' own countries or interests. Initially, the supply of arms to the various rebel factions appears to have been mainly sourced from captured weapons and the black market in Iraq and Lebanon. As a UN investigative panel has pointed out,

The situation in the Syrian Arab Republic since 2011 and the internal conflict in Iraq since 2003 have generated a significant rise in the demand for arms. An extensive informal economy in the region had evolved to smuggle arms, and this criminal infrastructure exists today (UN Security Council, 2014).

Reports of interrupted shipments from Libya indicated that weapons from that conflict and elsewhere were being sold to rebels in Syria and shipped through Turkey. Analysts identified weapons being used by rebel factions that originated from European manufacturers, but which had been originally sold to countries such as Jordan, Saudi Arabia, the United Arab Emirates and Qatar. In 2013 it was widely reported that the U.S. had allowed – or been unable to prevent – the trans-shipment of man-portable air defence systems via Turkey and Qatar (UN Security Council, 2014: 271; see also Mazzetti et al., 2013).

In the case of Syria, the traditional international response to prevent arms from reaching a conflict zone – an arms embargo – faces two crucial challenges. The first is simply that it has proven politically impossible to impose one.

Despite repeated attempts at the UN Security Council, a general arms embargo against Syria has been blocked several times by Russia and China. However, comprehensive U.S. and EU sanctions have signalled to their own defence industries that arms deals with the Syrian regime will not be tolerated. Over time these sanctions have been eased to allow military support to flow to rebel factions. In 2011 the EU imposed a general arms embargo, including against supplying technologies that the regime might use to repress political opposition. In 2013, after pressure from France and Britain to allow military support for rebel factions, the general arms embargo was revised so that EU member states could decide on exceptions (EU Council, 2013).

Meanwhile, an arms embargo of sorts has been imposed against elements of the militant opposition to the Syrian government. To do this the UN Security Council has taken advantage of the pre-existing sanctions regime concerning “Al-Qaida and associated individuals and entities”,<sup>2</sup> which has been adapted to target IS and the al-Nusra Front (ANF), both in part off-shoots of al-Qa’ida in Iraq. These sanctions involved travel bans, asset freezes and prohibitions against commercial dealings with designated individuals, including against individuals providing logistical or other kinds of support to the targeted entities. This has not stopped arms from being supplied to other non-designated rebel factions, which have often “ended up in the hands of ISIL [i.e. IS] and ANF” (UN Security Council, 2014: para. 40).

However, there have been no prosecutions for violations of the U.S. or EU arms embargoes against Syria, nor have there been arms-related prosecutions for violations of the sanctions against IS and ANF. This is not unusual: UN sanctions can only be enforced at the national level, but prosecutions for violations of UN arms embargoes – indeed, for most kinds of UN sanctions – have been rare (Taylor & Davis, 2013). For example, in 2014 Canada obtained its first ever conviction against a company for violations of UN sanctions, in this case for selling dual-use components to Iran (Duhaime, 2014). In 2009 UN sanctions were enforced in British courts for the first time (Serious Fraud Office, 2009).

International investigations, like those into sanctions busting, pose their own practical challenges that make them difficult for prosecutors to take on (Taylor et al., 2010). Only in recent years have national law enforcement agencies started to become accustomed to investigating and prosecuting individuals and companies for crimes abroad. But most of these prosecutions have been in the area of corruption and few have dealt with sanctions violations or export control violations involving the trade in weapons. The lack of enforcement has contributed to the ease with which legal arms and ammunition production is used to meet the demand for illicit arms flows to conflicts such as that in Syria (Greene & Marsh, 2012.)

2 Pursuant to UN S/Res/1267 (1999) and UN S/Res/1989 (2011).

These enforcement challenges are part of the reason that campaigners have sought to regulate the arms trade through the global Arms Trade Treaty (ATT). The ATT harmonises the pre-existing approach to regulation based on national weapons export controls, and adds elements dealing with respect for human rights and international humanitarian law. But the ATT only came into force in December 2014, and while it calls on states to enforce its provisions through law, there is no express requirement that states use criminal law to do so. Furthermore, the ATT will have little or no impact on the supply of weapons to the Syrian regime: Syria voted against the treaty, China and Russia abstained, and none has signed it. The U.S. and others appear to have established vetting regimes to check on humanitarian law compliance by rebel groups receiving military support. But in the event that war crimes are committed with these weapons it remains unlikely that those managing the arms transfers would be at risk of liability as accomplices.

These conditions – a relatively weak law enforcement regime and relatively strong clandestine distribution networks – appear to have contributed to the tendency of U.S. authorities to resort to counter-terrorism statutes in pursuing international gun runners. The arms dealer Viktor Bout was the target of a U.S. law enforcement sting operation that resulted in his arrest for trying to sell weapons to U.S. agents posing as buyers for the Revolutionary Armed Forces of Colombia (FARC), a designated organisation under U.S. anti-terror laws. Bout's conviction under the counter-terrorism laws for conspiring with the FARC to kill U.S. citizens came after years in which his name had appeared regularly in UN investigations as a leading sanctions buster in Africa. The U.S. tactic appears to have been so successful that it was used again in 2014: a similar sting operation appears to have been run against Romanian and Italian arms dealers operating out of Montenegro (*Balkan Insight*, 2014).

## Commodities

Stolen goods are subject to a range of laws in most jurisdictions. Under the laws of war, theft or looting – known as pillage – is a war crime that has been prosecuted repeatedly since the Second World War (Stewart, 2013; 2014). In Syria, reports of looting have been widespread, including the theft of public and private property, natural resources, and antiquities. The international regime governing the theft of and trafficking in antiquities, including in times of war, is well developed, but has not often been used in prosecutions, in part due to a lack of resources dedicated to enforcement (Posner, 2006).

In an effort to isolate these economies from global trade the international community uses trade embargoes, which impose export controls on designated goods. Embargoes can take the form of sanctions on industrial equipment for

the nuclear, oil and gas sectors, as well as raw materials such as crude oil, timber or diamonds. Typical in this regard were the December 2014 changes to the EU sanctions on Syria that targeted jet fuel (O'Kane, 2014).

Trade sanctions can be a powerful tool in that they can undermine specific forms of economic activity, although alone they are not effective in changing the behaviour of targeted states (Naylor, 2001). Based on its experience of investigating natural resource trade that has helped to sustain conflicts, Global Witness (2010: 9) argues that commodity sanctions can effectively undermine the resources available to continue the fighting, but they can be blunt instruments, often hurting the communities who rely on the illicit trade in natural resources for survival. It recommends focusing on targeted sanctions against individuals and resorting to commodity sanctions only where certain criteria are met.<sup>3</sup>

The logic of trade sanctions – to prevent the target of sanctions from acquiring resources available through trade – is complemented by recent developments in the regulation of conflict minerals, in particular attempts to promote responsible sourcing of minerals by industry. In May 2011 the Council of Ministers of the Organisation for Economic Cooperation and Development (OECD) approved the “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High Risk Areas” (OECD Guidance). The OECD Guidance was a detailed description of responsible sourcing of the kinds of minerals that have helped sustain the conflict in the Democratic Republic of the Congo (DRC), but its approach is potentially applicable to supply chains extending to any conflict situation.

The OECD Guidance represents a paradigm shift from previous attempts to regulate such trade, such as the Kimberley Process for conflict diamonds or UN sanctions. As in both of these regimes, the OECD Guidance seeks to exclude certain commodities from global trade flows. But there the similarity ends. Instead of obligating states, the OECD Guidance places the responsibility on business to manage its supply chains. Instead of relying on a state-based certification regime, as in the case of the Kimberley Process, the OECD Guidance deploys the concept of business due diligence, i.e. the practice of self-investigation and risk management by a business. And instead of targeting a commodity based on its association with rebel groups – a definition that has plagued the Kimberley Process, preventing it from taking action where abuses are committed by state armed forces, as in the case of Zimbabwe – the OECD Guidance defines the grounds for a company to exclude mineral suppliers from its supply chain rather differently: the presence of minerals in the supply chains that have been extracted or shipped by those associated with conflict-financing activities (for which the

3 “Do the targets have alternative sources of revenue? Is the commodity production and trade largely dominated by abusive state or non-state armed groups? What would be the unintended impacts on those not involved in the illicit trade? Are there reasonable expectations of enforcement; for example are neighbouring countries willing and able to control border crossings?” (Global Witness, 2010: 9).

OECD Guidance provides a definition) or human rights abuse (including violations of international humanitarian law), regardless of whether the perpetrator is a state or non-state armed group.

In effect, the OECD Guidance places the onus on businesses to show through their own due diligence that they are not financing conflict or contributing to human rights abuse. It is in principle a non-binding instrument. However, nothing in the OECD Guidance prevents states from regulating this responsibility to conduct due diligence. This is precisely what the U.S. and African countries did in 2011 and 2012, supported by the UN Security Council. The OECD Guidance became the basis for U.S. Securities and Exchange Commission (SEC) rules governing mandatory reporting on conflict minerals and will likely become so for EU rules.

These rules do not give rise to criminal liability for using conflict minerals (although failing to report properly to the SEC may give rise to liabilities for U.S.-registered companies). However, one recent test case indicates that smuggling natural resource commodities may be a predicate offence that can trigger criminal liabilities under money-laundering law. Swiss prosecutors opened an investigation into a company that had allegedly refined gold purchased through a chain of transactions that had originated in the DRC. The charge was aggravated money laundering based on the predicate crime of pillage, or theft in armed conflict; as noted above, this is a war crime (Stewart, 2014).

This innovative combination of money laundering and international criminal law has yet to be tested in a court of law. But it is indicative of the ways in which various criminal law norms relevant for armed conflict are being integrated into regulatory mechanisms directed at business. Similarly, the OECD Guidance on conflict minerals defines respect for international humanitarian law – of which the crime of pillage is a violation – as one of the standards companies should apply. This creates no liabilities under international humanitarian law, but does help to create normative coherence between criminal law and regulatory standards with respect to company behaviour in situations of armed conflict. In addition, the fact that anti-money-laundering rules require companies to conduct customer due diligence, not dissimilar to the conflict minerals due diligence described under the OECD Guidance, also suggests a convergence in regulatory design.

By focusing on conflict financing and human rights as the principal problems linked to conflict minerals, the emerging standards are designed to enable the continuation of economic activity that sustains the most vulnerable, while at the same time excluding from global trade flows those commodities produced through violations of universally accepted standards of behaviour, such as human rights and humanitarian law. The combination of an obligation on business to conduct due diligence and a duty of states to regulate this practice may be a more effective approach

than asking states to certify or police a trade into which they have little insight. It also permits export control regimes – where they exist – to allow trade to continue, but to draw a line at connections to those responsible for abusive behaviour.

## Money

Compared with the international legal architecture governing trade in arms or commodities, the transnational criminal law infrastructure governing financial services is far more developed. The laws on money laundering and anti-corruption have long relied on the notion of the responsibility of a business to exclude certain prohibited activities from its value chain, as well as the duty of states to regulate to this end. That said, these regimes do not target conflict financing or human rights violations directly.

Anti-money-laundering (AML) statutes are the principal way to counter transboundary financial crime. AML laws are criminal laws that target ill-gotten gains. In theory, this means that a charge of money laundering involves transactions in property that have been carried out illegally. Predicate offences in standard AML statutes often include financial crimes (e.g. fraud, tax evasion), corruption and bribery, human trafficking and sexual slavery, the smuggling of commodities (e.g. illegal logging), and drug trafficking. In certain countries, such as the U.S., Britain and Canada, predicate offences may also include sanctions violations.

Central to the international AML infrastructure are the financial intelligence units (FIUs) attached to regulatory or law enforcement agencies in most jurisdictions. These collect and analyse financial-transaction-reporting data that banks and financial service providers are required by law to make available. On the basis of FIU intelligence, law enforcement is able to target suspicious transactions for a closer look (Broomhall, 2010). As a result of this institutional innovation, banks and individuals are regularly prosecuted for money laundering. The resulting case law indicates that the nexus between sanctions violations and AML statutes has become quite close, at least in the U.S. Since 2012 the U.S. AML and sanctions enforcement authorities have pursued cases against such banks as BNP, HSBC, Commerzbank and Standard Chartered Bank for a range of violations of AML and sanctions laws. The resulting deferred prosecution agreements have led to fines ranging from \$600 million to well over \$1 billion. Some of these cases concerned sanctions against Iran, while others involved the laundering of Mexican drug cartel revenues during the years that Mexico was experiencing extraordinarily high levels of criminal violence.

These prosecutions have sent a clear signal to the financial services industry that U.S. sanctions will be enforced. As a result, many banks have implemented customer-due-diligence measures in connection with Syrian citizens, making life difficult for anyone doing business in or with Syria.<sup>4</sup> Similarly, in the EU, financial sanctions are being

taken seriously. The EU sanctions regime for Syria has been a focus of activity in the EU courts, as designated Syrian nationals challenge the evidentiary bases upon which the EU has targeted them with sanctions. The EU Council has also been active in adjusting the sanctions, both to respond to these challenges and to target new aspects of economic exchange with Syria.<sup>5</sup> However, as with arms embargos, UN financial sanctions are rarely enforced with such vigour. One of the first ever prosecutions in Britain resulting from UN financial sanctions occurred as late as 2012, in connection with transactions that took place a decade earlier between a British company and the Iraqi government.

Other liability risks arise from payments made to designated organisations. As with the prosecutions of arms dealers mentioned above, counter-terrorism laws in the U.S. have been used to prosecute individuals and companies who have helped to finance designated groups. In 2007 the Chiquita corporation was fined \$25 million for payments it made between 1989 and 2007 to the United Defence Forces of Colombia – a right-wing paramilitary group that was on the U.S. lists of terrorist organisations. Court documents alleged that Chiquita had also paid the left-wing rebels of the FARC and the National Liberation Army. The company had voluntarily disclosed the payments and accepted a fine, saying at the time that they were necessary to protect employees and that it had ended the practice.

Financing a criminal organisation was also the basis for prosecutions of German industrialists at the Nuremberg trials after the Second World War. Several members of a group of businessmen known as the “Friends of Himmler” were convicted of payments to the Nazi party. Those convictions were dependent on the characterisation of the Nazi party as a criminal organisation by the post-war International Military Tribunal at Nuremberg. Today, international criminal tribunals, such as the International Criminal Court in The Hague, would be unlikely to criminalise an entire organisation. However, as explained below, where individuals knowingly provide financial support to the perpetrators of international crimes they could be liable as accomplices to these crimes.

## Fighters

There is an old tradition of states attempting to criminalise the participation of their nationals in foreign wars. Britain’s Foreign Enlistment Act of 1870 was reactivated to threaten members of the International Brigades who volunteered to fight in Spain on behalf of the elected government in the 1936-39 Spanish Civil War. Nationals of the U.S., Canada, Ireland and the Netherlands who fought in Spain were all

similarly threatened with sanctions of various kinds, although few prosecutions actually occurred, in part due to unworkable laws and in part due to popular domestic support for the returning Brigadistas.

Today, there is accelerated activity in this regard, with states resorting to radical measures to disrupt the flows of fighters from their jurisdictions to war zones and back again, in particular with respect to Syria and Iraq. Since September 2014 domestic measures have been given new impetus by UN Security Council Resolution 2178 on combating violent extremism. Under this resolution (which was passed under Chapter VII of the UN Charter, making it binding on member states), governments must ensure that it is a crime for their nationals to travel or attempt to travel abroad for the purpose of planning or perpetrating terrorist acts. The resolution also calls for the criminalisation of the provision or receipt of terrorist training, the provision or collection of funds to finance the travel of individuals to participate in these acts, and the wilful organisation or facilitation (including acts of recruitment) of the travel of individuals to participate in terrorism.<sup>6</sup> In short, the resolution attempts to harmonise the criminalisation of fighting abroad where that fighting is on behalf of a designated terrorist organisation.

The Security Council has in effect given fresh legitimacy to state actions of dubious legitimacy. Australia introduced legislation in 2014 that would make it an offence for its citizens to enter areas abroad designated by the Australian government as no-go zones. The Australian law proposes making exceptions, e.g. for those with family in designated areas, journalists and humanitarian workers. But creating no-go zones is notoriously hard to regulate from afar and these exceptions create loopholes that would be hard to close without infringing on basic rights. Similarly, Canada has passed legislation permitting the government to revoke citizenship from dual citizens for acts of terrorism (a measure not dissimilar in principle to those taken against International Brigade members by the Dutch government after the Spanish Civil War). By contrast, in Denmark, the government has taken a public health approach, combining close surveillance of returning fighters with offers of special services to help them reintegrate into life in Denmark (Oppenheimer, 2014).

On the front lines of conflict, policing the flows of fighters is much more difficult. In Jordan, which has received hundreds of thousands of Syrian refugees since 2011, criminal law makes it illegal to recruit fighters to listed terrorist organisations. The law includes a clause that criminalises the act of joining (or attempting to join) extremist Islamist groups fighting outside Jordan. Yet

<sup>4</sup> At a meeting in 2014 of Syrian business and civil society attended by the author the common complaint was that financial sanctions were affecting small businesses and households rather than members of elite networks supporting the regime.

<sup>5</sup> For an updated overview of EU sanctions against Syria, see Lester and O’Kane (2015).

<sup>6</sup> Security Council Resolution 2178: “6. Recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense.”

enforcement has been plagued by challenges (Sommerfelt & Taylor, 2015). For example, the Jordanian counter-terror law does not cover child soldier recruitment by the armed factions that are not listed as terrorist organisations, such as the Free Syrian Army. In times of war the conscription of civilians to forced labour or of children to fighting groups is a war crime, but this is not enforced either. In addition, policing cross-border movements is proving difficult. Border enforcement appears to be constrained by humanitarian imperatives: in attempts to stop extremist groups from passing into Jordan, the government at irregular intervals ensures that illegal border crossing points to and from Syria are closed, but for humanitarian reasons, unofficial refugee transit routes are allowed to function.

Ironically, as states increase criminal law restrictions on ideologically motivated foreign fighters, those motivated by economic incentives, such as private security companies, remain largely the subject of self-regulation. Mercenaries are technically prohibited by international law, but the legal framework is generally perceived to be unable to respond adequately to the phenomenon of private security companies. As a result, employees of such companies have operated in a legal grey zone for some years (Chesterman & Lehnardt, 2009). In 2008 the Montreux Document made clear the requirement that private security companies should respect international humanitarian law in situations of armed conflict. The process to establish an International Code of Conduct for private security providers was completed in 2013 and includes provisions for private security companies to conduct due diligence, including to take steps to prevent and mitigate human rights violations. In 2014 the U.S. prosecuted employees of the Blackwater security firm for murder in connection with the massacre of Iraqi civilians in Nasour Square, Baghdad, in 2007. At the time over 150,000 contractors were operating in Iraq. That number has dropped dramatically since 2009, although an estimated 40,000 contractors are still operating in Afghanistan (Strobel & Stewart, 2014).

### Proxy war responsibility

A final source of potential legal liability arises from economic activity that contributes to war crimes. Individuals who knowingly provide financial or other material support to the perpetrators of international crimes could be liable as accomplices to these crimes. This is legally distinct from the financial or logistical support to terrorists described above, where financial support is criminalised because it is provided to an organisation or individual designated as a criminal entity. Instead, accomplice liability involves a substantial contribution by an accomplice to the commission of a crime by another.

The 2012 conviction of former Liberian president Charles Taylor by the Special Court for Sierra Leone provided a hint of what this form of liability might look like. Taylor was convicted for aiding and abetting the crimes of rebels fighting in the civil war in neighbouring Sierra Leone. Part of his conviction was based on the financial and logistical

support he provided to the rebels. The court was explicit in rejecting the prosecution argument that Taylor was somehow the mastermind behind the insurgency, but found clear evidence that he aided and abetted the crimes committed by the insurgents.

A conviction of a political-military leader using theories of responsibility like aiding and abetting sets an important marker for the potential liability of high-level figures in armed conflicts, especially in so-called proxy wars. In addition to the mental element of the crime (i.e. knowledge of one's acts), aiding and abetting requires that there be practical assistance and that this has a substantial effect on the crime. Much of the evidence against Taylor was made up of the extensive support he provided to the Revolutionary United Front (RUF), involving everything from arms, to tactical and strategic advice (such as which towns to take first or which diamond fields to control), to transport, communications, food, clothing, financial assistance and the facilitation of diamond deals.

The *Taylor* decision also offers a lesson in how to locate natural resources in the criminology of the war economy. The court was careful to locate the diamond trade in the context of the political and other forms of economic support that the RUF received from various sources, including that which Taylor provided both as part of – but also separately from – the illicit diamond trade. The court's depiction of the conflict was more balanced than many depictions of the Sierra Leone diamond wars, where the diamonds are portrayed as the principal cause of the fighting.

The similarities between the pattern of crimes involved in the *Taylor* case and the patterns identified in Syria's war economy are striking: porous borders and the movement of people and goods into and out of the war zone; a natural resource trade dimension; international and regional arms deals; and logistical, financial and political support provided to the rebels by neighbouring states. In Syria, as in *Taylor*, the role of external state-sponsored support to factions in the conflict is substantial and, as in *Taylor*, war crimes are being committed.

In establishing liability, the *Taylor* court did not establish direct links between specific deliveries of support and specific crimes. Rather, it established that the level and scope of the support over time and the nature of the relationship between sponsor and recipient created a level of material and moral patronage, combined with knowledge that crimes were being committed, sufficient to constitute culpability. In effect, the court's use of aiding and abetting as a mode of liability points to what might be called proxy war responsibility. This concept expresses the simple notion that those who support the wars of others may be found culpable of the crimes committed by those they support.

Proxy war responsibility might also apply to businesses that provide financial and logistical support to war criminals. Accomplice liability is not something restricted to international criminal courts, which do not have jurisdiction over legal persons. The adoption of the Rome Statute of the International Criminal Court and the subsequent incorporation of international criminal law into the criminal laws of many countries have created a “web of liability for business entities” (Thompson et al., 2009), at least in theory. The UN has examined the role of home states in relation to businesses in conflict zones and pointed at prosecution as an option (UN, 2011). Some legal scholars believe a transnational approach may be the basis for a “turn” from civil law suits to corporate criminal liability for those who contribute to international crimes (Stewart, 2014). Although still rare, criminal complaints against corporations are currently being investigated in several countries, e.g. in connection to surveillance technology sold by two companies, one to the regime in Syria and the other to the Qaddafi regime in Libya.<sup>7</sup> Several individual business people have been prosecuted for war crimes or related offences in various jurisdictions, both in the U.S. and Europe.

Proxy war responsibility also has implications for transitional justice. The *Taylor* decision dealt with – and distinguished – the ways in which Taylor was engaged in the peace process in Sierra Leone, implying that political and diplomatic engagement with potential war criminals is permissible as long as one is not arming or financing them on the side. This runs in direct contradiction to the received wisdom of the counter-terrorism regime described above, through which authorities have criminalised and black-listed non-state armed groups and terrorist organisations to such an extent that they have discouraged and even prevented constructive contacts aimed at peacemaking, or at least reducing the violence.

## Conclusion

The survey of relevant legal regimes provided above suggests that there are two basic approaches to the international regulation of the economies of war and violence: one – the dominant approach – that targets organisations or individuals with various sanctions based on political affiliation; and another – an emerging approach – that seeks to target actors based on their behaviour in relation to international human rights and humanitarian law standards.

In principle, these are very different regulatory strategies. One criminalises people and organisations based on their political position – defined, for example, as a threat to international peace and security. The other approach excludes from global flows and targets for prosecution people and organisations who commit certain crimes or abuses, regardless of their political affiliation.

There are several advantages to this latter approach. By focusing on human rights or humanitarian law violations resulting from organised violence as the trigger for exclusion, this approach takes a preventive posture, encouraging groups that seek integration to the global political economy to behave in ways that reduce violence against non-combatants. By focusing on human rights and humanitarian law violations as the trigger for investigations and sanctions, this approach makes it possible to include both state and non-state actors. An approach that targets violence and uses due diligence to regulate economic activity to exclude such violence could contribute to undermining the economic power of violent armed groups and militias. It could be a disincentive to violence while simultaneously having limited effects on humanitarian efforts. At the same time, it could reinforce peacemaking or ceasefire efforts.

This approach also mitigates against the transformation of conflict zones into no-go zones for economic actors: it becomes possible to conceive of conducting economic activity in the conflict zone, using due diligence as the basis for ensuring that such activity is not being conducted at the cost of civilian lives and livelihoods. This creates a self-reinforcing dynamic of legal and market incentives for compliance with a minimum standard of human rights and humanitarian law for all actors involved in the war economy.

All of this is easier said than done, however. War zones are by definition hellish, fragmented and difficult to comprehend, and their economic dimensions can be just as problematic. Governments have a tendency to criminalise relationships with organisations that are in violent rebellion against their rule. That is not about to change and, as in the case of Syria, will continue to divide those in the international system supporting one side or the other, including over how to deal with the economies that help to sustain the conflict. These challenges should not be underestimated.

But existing attempts to regulate war economies have not fared well. The standard international response to the economic dimensions of such conflicts – the imposition of sanctions, and the designation of terrorists and their financiers – is already plagued with implementation problems and unintended consequences. Sanctions can be effective in isolating targeted actors from the global economy and can undermine state military capacity, but they can do little to tackle the illicit activities that take place at the intersection of the non-conventional armed violence and informal economies of today’s conflict zones.

Perhaps it is time to consider a more coherent, less politicised approach – one that excludes economic activity from global flows based on international human rights and humanitarian law standards, backed by prosecutions. The obvious place to start would be to refocus existing

<sup>7</sup> See IFHR (2013) and the case of Frans van Anraat (Trial, n.d.).



sanctions measures on designations based on international crimes. Where there is a reasonable likelihood that armed groups or state forces are involved in forced labour, pillage, or trafficking, the perpetrators should be excluded from business dealings and investigations should be launched. This would require a focus on value chains where organised violence is a part of the economic activity and where commerce is in some sense militarised. It would require that business actors defend their continued commercial activities in relation to risky environments against a standard based on human rights due diligence, enabling them to do business with those who respect human rights and to exclude those who do not from their business universe.

It would also require states to be far more active in pursuing investigations, prosecutions, and sanctions of international humanitarian and criminal law violations, not least those involving economic dimensions. States have in recent years elaborated new international norms with the aim of regulating various flows to and from areas of conflict and non-conventional violence, including rules governing conflict minerals, the arms trade, the private security sector, proxy war responsibility and businesses involved in conflict zones. It is questionable whether this diverse range of legal bits and pieces adds up to a regulatory whole: for the moment, these new approaches coexist uneasily with the standard politicised approaches of sanctions regimes. Neither approach will stop a war anytime soon, but a less political and more regulatory approach might offer a more progressive – and effective – international engagement in attempting to control war economies from afar.

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