

The importance of Non State Actors nowadays.

Nowadays, in the overview of International law¹ it is quite interesting to talk about Non State Actors. Actually, the aim of this work it is to bring the reader deep inside the reasons why non state actors have achieved the attention of a relevant part of the academic world, and a spot in the international policy.

For this reason, our attention will focus on the definition of Non-State actors.

First of all, non-states are subjects of International Humanitarian Law. IHL is the “branch of the law” which regulates and governs the armed conflicts between States and Non-state actors. Classify and recognize these two subjects of international law, in order to regulate them, is the task being performed directly and indirectly by states, through regulations, international treaties and agreements, in order to define this type of relationship. The recognition of a state actor is not a business as complicated as the non-state actor’s one. *In primis*, because a pacific definition of State exists, (the State is a political entity that rules and exercises the power of the sovereign on a given territory and the subjects belonging to it), and secondly for States there is a specific recognition in standard international law.

The same speech is not possible for non-state actors, for which a real definition does not exist.

However, among the authors who tried to give a definition of non-state actors we see the authoritative opinion of Andrew Clapham². Clapham describes not state actors like those rebel groups, insurgent groups and belligerents who are sometimes regarded by international lawyers according to a graduated scale of importance and power, proportionated on their capacity to organize and control the territory, taking into account the ability of territorial control that would ensure their recognition proportionally. The greater will be the territory "controlled" by these groups, the greater recognition by the states they will gain. On the other hand as well as August³ Reinisch says, this mind set of lawyers nationalist or internationalist, is deeply rooted in the concept of human right. According to A. Reincisch, "International as well as national lawyers have traditionally been trained to conceive of human right as fundamental **guarantees** and standards of legal protection for individual against the power, and particularly, against the abuse of power of state".

Also Antonio Cassese⁴ recognizes non state actors as subjects of international humanitarian law according to the level of organization and intensity of the conflict. Actually A. Clapham stressed that

1 International Law, also called the "law of nations" *ius gentium*, is the branch of law that regulates the life of the international community. The international law is responsible for the greater of the relationships, constraints, obligations, duties and rights of States.

2 Andrew Clapham - Human rights obligations of non-state actors in conflict situations Human rights obligations of non-state actors in conflict situations - Volume 88 Number 863 – 30 September 2006.

3 The Changing International Legal Framework for Dealing with Non- state actors, August Reinisch edited by Philip Alston, 07 July 2005.

4 Antonio Cassese, International Law, 2nd edn., Oxford University Press, Oxford, 2005, at p. 125.

in recent years, there has been a tendency to submit these actors no longer under traditional international law, but rather simply calling them belligerent, with all the rights and obligations that will follow, they are governed by international law of armed conflict.

Besides, the same is not relevant for the international law; in fact, just when the two requirements are met, (Intensity of Conflict and Level of Organization), that group of belligerents can be named Non-State Actor.

Summarizing, a general accepted definition of Non State Actor exists; according to the International Committee of Red Cross, non-state actors can be accommodated under international humanitarian law, if they meet certain requirements:

1. Organization of the armed group, namely:
 - a) Existence of a command structure;
 - b) Presence of internal rules;
 - c) Skill to recruit new fighters;
 - d) Ability to train new forces;
2. Intensity of a conflict, that is, the collective nature of the same, and the use of armed force by states, most detailed:
 - a) Duration Conflict;
 - b) Still weapons;
 - c) Frequency Attacks;
 - d) Number Of victims;

Apart from this definition, there are some different. For example, Heather Wilson⁵ has a distinct point of view. Heather Wilson says that since the First World War, the old rules of international law are more theoretical than practical. In her opinion, it makes more sense to think no longer the rebels or insurgent groups, dividing the first from the seconds, but rather speak of "rebels" directly subordinated to the rules of international humanitarian law. However, this concept is expressly contained in Article 3⁶ common to the four Geneva Conventions of 1949, and the Second Additional

⁵ Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements*, Oxford University Press, Oxford, 1988, p. 24.

⁶ ARTICLE 3 In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

Protocol of 1977, or in art. 19⁷ of the Hague Convention on Cultural Property of 1954. Here it deduces as main principle the protection of civilians rather than the classification of all the kind of armed groups. The safeguard of civilians becomes the first star in the treaty, and the contracting parties are brought at the background.

Ruth Wedgwood⁸ has the same mind set; actually he explains how the notion of state, international or actor, is now a matter that affects a lot more lawyers, experts jurists or sociologists of law; moreover, the new rules of the Non-Governmental Organizations (NGOs) and non-state political entities within the international systems must scrutinize critically. In particular it must be assessed whether giving voice to these non-state actors (such as enabling them to control a territory officially), help, or *vice versa*, will hinder the task of the United Nations in solving internal and international conflicts, in order to strengthen the human rights.

Then, why is it so important and so felt the necessity to define who not state actors are?

First, the requirement is dictated by the fact that during these armed conflicts, the number of victims is quite large, and very often gets confused between who are the fighters, rebels or groups of insurgents, and ordinary civilians. At the risk of falling into banality, it must be remarked that the main purpose of international organizations, including the United Nations, it is the protection of human rights, including clearly the *leitmotif* of the reduction in the number of victims, and even more of victims who are not directly involved in conflicts of this type.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

7 ARTICLE 19 – CONFLICTS NOT OF AN INTERNATIONAL CHARACTER

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention that relate to respect for cultural property.
2. The parties to the conflict shall endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.
4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

⁸ Professor of Law, Yale University, and Senior Fellow at the Council of Foreign Relations; Non-state actors as new subjects of international law: international law - from the traditional order were towards the law of the global community: proceedings of an international symposium of the Kiel-Walther Schücking-Institute of International Law, March 25 to 28, 1998 - Edited by Rainer Hofman.

In addition as we can see, this is the main reason why the international and European⁹ policies are really in this topic. The interest on this field is directly proportionated to the number of victims. In fact, all the institutions of European Union, as well as the international organizations are in trouble about to recognize the right of self-determination of non-states, and at the same time to protect civilians from the indiscriminate attacks of non-states. It is easy to see the huge task the international organization are dealing with; actually on the basis of their statutes, they have to guarantee the respect of human rights as well as the respect of the population. This does mean that, on one hand they need to control non-states actors in their dangerous activities, (otherwise the civil population becomes an indirect target of their actions), and on the other hand to guarantee the respect of the right of self-determination of non-states, that is one of the reason of armed conflicts.

Also, the "prisoners" are often victims of conflicts, which even affect them personally. It is also interesting to note that on one hand, there is a part of the doctrine that supports the necessary recognition and definition of non-state actors, (see Heather Wilson), and instead states does not seem to have an interest in recognizing non-state actors. The reasoning followed by the governments is quite simple, if not obvious to anyone involved in international politics.

In fact, if states recognized non-state actors as entities of international law, they would declare implicitly that they exist, which therefore have a power and a say in the matter. As writes Clapham¹⁰ in an eloquent metaphor, "This seems as likely as turkeys voting for Christmas." Recognizing a non-state actor implies somehow admitting that the same cannot be simply objects, but rather subject in conflicts. Still, what scares most states is that this kind of recognition, to be understood as subjection to international standards, creates the risk that they declare themselves independent, and then over time can be recognized as such in the international community. States in essence seeking primarily to protect their sovereignty that far from the intentions of any head of state and prime minister losing the power to govern, is one of the "must" of the life of the state.

As written in the introduction of this work, we aim to point out also why non states caught the attention of the academic world. According on what it has been explained above, the reason is understandable. First, there is not a specific definition of non-states in the academy, but just a pacific and accepted one. Secondly, there is not a precisely regulation. Last, but not least, it is a very new theme of international law. On this basis, there have been in the last decades several studies on this subject, perseverating on the target to guarantee the protection of human rights.

The last reason why non-state actors are so discussed nowadays, reason that was not considered in the introduction of this work, it is about the influence of non-state actors in the law making process. In fact, non-state actors exert an increasingly important influence on formal international law-making process; they play a relevant role in the game of the implementation and enforcement of international instruments. In addition, the investigation of the role of non-state actors is therefore crucial to

9 For example, Annual Action Programme 2012 for 'Non state actors and local authorities' programme - https://ec.europa.eu/europeaid/thematic-programme-non-state-actors-and-local-authorities-development-decision_en

10 The Oxford Handbook of International Law in Armed Conflict - 13 March 2014, Adrew Clapham.

understand how the international legal system works in practice. These matters have become the object of much scholarly attention.

Ending, it can be said that even though there are several distinctions between states and non-states actors, the prospect for the future is to overcome the distinction among the different kind of conflicts and to line up the protection of victims in all the armed conflicts. Through the collaboration of international humanitarian organizations, we need to achieve the respect of human rights, not keeping into the place and the time of the human rights violations have been done. To do so, it will be important to monitor the sentences of international tribunal and the praxis of the application of international humanitarian law by states and non-states.