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The dark side of resource wealth: the protection of natural resources during armed conflict

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The dark side of resource wealth: the protection of natural resources during armed conflict

- What is understood in this context by the ‘resource curse’?
- How does international law protect natural resources during armed conflict?
- Which opportunities exist for enforcement?



Resource Conflicts

- Increased competition over access to major sources of oil and gas;
- Growing friction over the allocation of shared water supplies;
- Internal warfare over valuable export commodities.



The 'Resource curse'

- Introduced in 1993 by the economist Richard Auty
- Resource wealth leads to economic stagnation and political instability
- A wealth of valuable natural resources in a country either triggers or fuels internal armed conflict

Conflict situations

- Internal armed conflicts
- Often internationalized through regional spill-over
- Examples: Democratic Republic of Congo, Sierra Leone



Three branches of the legal regime

- International human rights law
- International humanitarian law
- International environmental law



International human rights law



The peoples' right to freely dispose of their natural wealth and resources

Article 1(2) of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights:

“All peoples may, for their own ends, freely dispose of their natural wealth and resources [...] In no case may a people be deprived of its own means of subsistence”



The principle of permanent sovereignty over natural resources

Paragraph 1 of the Declaration on Permanent sovereignty over natural resources (*UNGA Res. 1803 (XVII)*):

“The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned”



Applicability of PSNR to armed conflict

- UN General Assembly has affirmed the applicability of the principle to the situation of occupation
- UN Security Council has affirmed the sovereignty of the DR Congo over its natural resources
- The ICJ has denied the applicability of PSNR to the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State

International Humanitarian Law



International Humanitarian Law Conventions

- 1907 Hague Regulations
- 1949 Geneva Convention IV
- 1977 Protocols Additional to the Geneva Conventions



Relevant IHL provisions

- Provisions relating to the protection of property
- Provisions relating to the prohibition of pillage
- Provisions relating to the protection of particular civilian objects



Protection of Property

- Articles 23 (g) and 55 of the 1907 Hague Regulations
- Article 53 of Geneva Convention IV

Article 23 (g) of the 1907 Hague Regulations

“In addition to the prohibitions provided by special Conventions, it is especially forbidden
(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war”

Article 53 of Geneva Convention IV

- “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”.



Article 55 of the 1907 Hague Regulations

“The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct”.



Prohibition of Pillage

- Article 28 Hague Regulations;
- Article 47 Hague Regulations;
- Article 33 (2) of Geneva Convention IV;
- Article 4 (2) (g) of Additional Protocol II.



International armed conflicts

- Article 28 of the Hague Regulations:
“The pillage of a town or place, even when taken by assault, is prohibited”
- Article 33 (2) of Geneva Convention IV:
“Pillage is prohibited”.
- Article 47 of the Hague Regulations:
“Pillage is formally forbidden”

Internal armed conflicts

Article 4 (2) (g) of Additional Protocol II:

“Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(g) pillage”.



ICJ Congo-Uganda

“Whenever members of the UPDF were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the jus in bello [...] The Court notes in this regard that both Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 prohibit pillage”

Protection of Civilian Objects

- Article 54 of Additional Protocol I
- Article 14 of Additional Protocol II



Article 54 of Additional Protocol I

“2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”.



Article 14 of Additional Protocol II

“Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.



International environmental law



Examples of relevant international environmental conventions

- CITES
- 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage
- 1992 Convention on Biological Diversity



Relevance of international environmental law for the situation of armed conflict

- Does international environmental law remain applicable during armed conflict?
- Circumstances precluding its application
- Does international environmental law impose obligations upon non-state armed groups?

In Conclusion



Possibilities for Enforcement under the ICC Statute

- Art. 8 (2) (a) (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
- Art. 8 (2) (b) (xiii) and (e) (xii) Destroying or seizing the enemy's / adversaries' property unless such destruction or seizure be imperatively demanded by the necessities of war / the conflict
- Art. 8 (2) (b) (xvi) and (e) (v) Pillaging a town or place, even when taken by assault

Measures to break the ‘resource curse’

- Develop further mechanisms to prevent the trade in conflict goods
- Integrate as far as possible international human rights law, international humanitarian law and international environmental law

