

Taking stock of International Law Responses to Resource Wars

Lys Kulamadayil, PhD Candidate in International Law, The Graduate Institute, Geneva, Switzerland

In the last 20 years, a significant body of literature has evolved around the phenomenon of resource wars. The term “resource war” is used to describe different linkages between natural resources and conflict. It refers to: (1) conflicts that are fought over access and control of scarce, or valuable resources; (2) conflicts sustained through the trade with resources; (3) conflicts that involve the looting of the natural resources by an occupying power, and finally; (4) conflicts where the destruction of the environment or of industrial facilities serving resource exploitation is used as a strategy of warfare. Resource wars certainly have diverse legal implications, yet international law norms have primarily developed in response to the following sets of issues.

International law responses

1. To what extent is the environment protected under the laws of war? In addition to the minimum protection offered under *ius cogens* (i.e. law that cannot be derogated from), international law has developed a humanitarian layer to the traditional property-based approach, namely one that protects environmental resources as a matter of safeguarding the human environment¹. This evolution was prompted by the deployment of environmental warfare by the U.S. army during the Vietnam War². The First Gulf War was the first time that these norms were consequential as the United Nations Security Council found that the attacks of the Iraqi army against oil production sites which resulted in an environmental disaster, to be in violation of these norms. In response the Security Council authorized for the first time the use of military action against Iraq³.

2. How can the problem of illicit resource extraction be addressed? Legal responses to the frequent occurrence of illicit resource extraction in times of conflict depend on the types of resources involved, the logistics of their extraction and diffusion, and their customer base. Take for instance oil



and gems. The exploitation of oil is cost-intensive and its logistics are relatively rigid, with the predominant actors involved still being agencies of the state. For these reasons, the Security Council has in the past opted several times to intervene in wars fueled by oil revenues by restricting its trade through economic sanctions⁴. In contrast, gems are identifiable high value end-consumer products. Accordingly, trading and certification schemes such as the Kimberley Process can make use of market forces to disincentive illicit trade flows. [8] These instruments have in common that they seek to disrupt trade and fiscal flows, either through consumer-driven pressures, or by legal coercion.

3. How can those responsible for resource wars be brought to justice? International law conventionally distinguishes between two forms of responsibility, namely state-responsibility and individual responsibility. State responsibility, which arises when a state is found to have violated international law obligations, has only been found in two recent cases of resource wars. Firstly, in the earlier mentioned case of the First Gulf War, where Iraq was found to be responsible for violations of humanitarian law that resulted from its deployment of environmental warfare. Secondly, in the case of the war in Eastern Congo where Uganda was held responsible for acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in ter-

1. “Additional Protocol I of the Geneva Conventions Relating to the Victims of International Armed Conflict,” (8 June 1977), Art. 55.

2. “For an overview, see: Adam Roberts, “The Law of War and Environmental Damage,” in *The Environmental Consequences of War: Legal, Economic, and Scientific Perspectives*, ed. Jay E. Austin and Carl E. Bruch (Cambridge University Press, 2000).

3. UN-SC, “S/Res/661 (1990) - Iraq-Kuwait,” (1990).

4. “S/Res/864 (1993) - Angola,” (1993), paras. 9, 11; “S/Res/2146 (2014) - Libya,” (2014), para. 5; “S/Res/2182 (2014) - Somalia,” (2014), para. 15; “S/Res/917 (1994) - Haiti,” (1994).

ritories under Ugandan occupation⁵. In addition to these two cases relating directly to resource wars, the case law of the International Court of Justice suggests that wrongfully inflicted environmental damages in times of conflict and occupation can be subject to reparation payments⁶.

A recent surge in the literature advocates that in addition to states, individuals should be held accountable for such acts of looting and resources plunder under international law as well⁷. This has led to a lot of attention to the war crime of pillage, which is prohibited under all international criminal law conventions. And indeed, famously, in the course of their trials at the Special Court for Sierra Leone, the charge of looting Sierra Leone's diamonds had been brought against Charles Taylor and against leaders of the Revolutionary United Front. Unfortunately however, none of the persons charged was convicted by the Court on this count. Either, because the Court found that it lacked jurisdiction, or because it was not satisfied that the evidence that was brought before it did not sufficiently establish the responsibility of the individuals in question⁸.

Is it time for a new research agenda?

For the most part, legal research on these developments has zoomed-in on the potential of each legal instrument based on how it is situated in the normative spectrum. This is not to say that the common thread of the literature has been to favor hard law over soft law, but rather that the effectiveness of a particular instrument was often considered to be in spite of, or because of questions of its legal character, implementation mechanisms and jurisdictional issues.

These studies offer insights on how the law applicable to resource wars has developed over time and how traditional international law approaches relate to multi-stake holder initiatives, or consumer-based mechanisms. What is so far mostly absent from the literature however is a review of the effectiveness of different instruments based on the type of intervention they seek to make and the type of resource war that they are applied to. For instance, trade and transparency measures, as well as economic sanctions and military action are applied when a resource war is ongoing. Yet based on how the economy of the conflict is structured and what role natural resources play the effectiveness of a legal instrument may vary greatly and independently of its normative character. Similarly, what type of accountability mechanism to make use of after the end of a conflict is not a purely legal one, informed by matters of jurisdiction and prospect for success, but should be evaluated based on the objective that this legal action pursues. It is motivated by a quest for justice and deterrence, or by more practical issues i.e. reparation payments, or the settling territorial disputes?

And, the type of resource war determines the effect and effectiveness of a measure. On the most basic legal, distinguishing between conflicts fought with natural resources and those that are fought over natural resources is useful. Of course, this does not prejudice discussions on the applicability of certain norms to international vs. non-international armed conflicts, but it does open up a research agenda for less obvious legal solutions beyond the scope of conventional approaches.

5. Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo V. Uganda), Judgment, I.C.J. Reports 2005, p.168, paras. 237-50 (2005); The International Court of Justice based its reports on: "The Hague Convention Respecting the Laws and Customs of War on Lands," (1907), Art. 43.
6. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136, para. 153 (2004); Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica V. Nicaragua), Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica, paras. 47-86 (2 February 2018).
7. James G Stewart, "Corporate War Crimes: Prosecuting Pillage of Natural Resources," (Open Society Justice Initiative, 2010); Olivia Radics and Carl Bruch, "The Law of Pillage, Conflict Resources, and Jus Post Bellum," in Environmental Protection and Transitions from Conflict to Peace, ed. Jennifer S. Easterday, Jens Iverson, and Carsten Stahn (Oxford University Press, 2017).
8. Prosecutor Vs. Charles Ghankay Taylor, SCSL-03-01-T-1283, para. 2385 (18 May 2012); Prosecutor Vs. Issa Hassan Sesay, Morris Kollo and Augustine Gbao, Case No. SCSL-04-15-T, para. 1027 (2009).

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CENTRE FOR INTERNATIONAL ENVIRONMENTAL STUDIES

GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES
Case postale 136, 1211 Genève 18
T +41 22 908 44 61
cies@graduateinstitute.ch
www.graduateinstitute.ch/cies