International law and governance of natural resources in conflict and post-conflict situations

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Concluding remarks to Part I

This part examined the legal framework for the governance of natural resources within sovereign States. Chapter 2 examined the principle of permanent sovereignty over natural resources, which is the organizing principle for the governance of natural resources within States. This principle formulates a right for States and peoples to freely dispose of their natural resources. Normally this right is exercised by the government of a State on behalf of the State and its people. This only changes when a government is not or is no longer recognised by the international community.

The principle of permanent sovereignty over natural resources can first of all be upheld vis-à-vis other States. In this sense, the principle of permanent sovereignty over natural resources formulates a right for both States and peoples that have not yet organized themselves within sovereign States to exercise control over their natural resources, without interference from other States. This is the horizontal, or external, dimension of the principle of permanent sovereignty over natural resources.

A vertical – or internal – dimension can be added to this horizontal dimension. The 1962 Declaration on the Principle of Permanent Sovereignty over Natural Resources assigns permanent sovereignty not only to States but also to peoples. In addition, the 1962 Declaration formulates an important condition for the exercise of permanent sovereignty by States, viz. that natural resources must be exploited for national development and the well-being of the people of the State. This condition was repeated in several subsequent resolutions and treaties, including those relating to armed conflicts involving natural resources. On the basis of the 1962 Declaration and subsequent instruments, peoples can therefore be identified as subjects and beneficiaries of the principle of permanent sovereignty.

Chapter 3 examined the implications of peoples as subjects and beneficiaries of the principle of permanent sovereignty for the governance of natural resources within sovereign States. It did so from the perspective of human rights law, as this field of international law formulates rights for 'peoples', to be exercised in their relations with States. The chapter concluded that the notion of 'peoples' is a dynamic concept that can designate different groups depending on the precise right that is invoked. With regard to the right to external self-determination, the term 'peoples' is reserved for colonial peoples and peoples under foreign subjugation. As soon as these peoples have attained an international status, the right to self-determination becomes: 1) a right of

the State and its peoples to be free of foreign interference; and 2) a right for the peoples living within the State to freely determine their political system, also referred to as internal self-determination.

Chapter 3 argued that the right to internal self-determination accrues in particular to four groups. These are first, the whole population of a State, both as the sum of the peoples living in that State and as succeeding the people who attained the right to external self-determination. Furthermore, the right to internal self-determination accrues to specific communities within a State – including in particular, peoples, minorities and indigenous peoples.

Furthermore, the right to self-determination as enshrined in the identical Articles 1 of the ICESCR and the ICCPR entails a right for peoples "to freely pursue their economic, social and cultural development". It was argued that within an independent State, this right must be interpreted as a right to be involved in decision-making processes pertaining to development, including decision-making processes regarding the use of the State's natural resources as the capital for development.

The special position of peoples as subjects and beneficiaries of the principle of permanent sovereignty over natural resources therefore has two important implications for the governance of natural resources. First, it entails an obligation for the government to put in place procedures that allow for public participation in decision-making regarding the exploitation of natural resources. Public participation can be defined broadly so as to include access to information and to justice. These participatory rights must be regarded as a logical consequence of the right to self-determination of peoples. In addition, the right to freely pursue economic, social and cultural development, as embodied in the right to self-determination and the emerging right to development, entails an additional obligation for governments not only to involve peoples and individuals in the process of development, but also to ensure that the population as a whole, as well as specific groups within society, benefit from the resulting development. The first obligation is firmly established in international law, *inter alia*, in Security Council resolutions relating to particular conflicts, while the second obligation finds some resonance in relevant Security Council resolutions.

In addition to human rights law, international environmental law has developed principles that have an impact on the governance of natural resources within States. These principles were examined in Chapter 4 of this book. This chapter demonstrated that international environmental law formulates duties of care for the environment which States must respect when they exploit their natural resources. Chapter 4 discussed the following principles: the principle of sustainable use, the principle of inter-generational equity, the principle of prevention and the precautionary principle.

The principle of sustainable use and the principle of inter-generational equity qualify the right of States to exploit their natural resources in order to safeguard a State's natural resource capital for future development. In

addition, the principle of prevention formulates an obligation for States to take measures to prevent damage to the environment of other States. Furthermore, States must act with caution to prevent damage to the environment. Although the precautionary principle is not generally accepted, it entails an obligation to conduct an Environmental Impact Assessment for resource projects that are likely to cause significant damage to the environment. Today this obligation represents customary international law. All these principles qualify the right of States to exploit their natural resources.

In addition, Chapter 4 examined the concept of common regimes which have been set up to protect a specific interest of a broader community of States. Relevant common regimes include those for the protection of natural resources that have been designated "world heritage" or "wetlands of special importance", as well as those for the protection of endangered species. These common regimes share similar characteristics: 1) they were set up to protect natural resources that represent a special interest to the international community as a whole; 2) they are situated within the territory of a State. Common regimes that were set up to address a "common concern" of the international community share these characteristics. Finally, common regimes that were set up to protect natural resources shared by two or more States primarily serve to preserve the interests of those States that have a share in the natural resources. However, in all cases these regimes protect natural resources because they are important to a broader community of States. It is for this reason that these regimes can be seen as qualifying the right of States to freely dispose of these natural resources.

In conclusion, it can be argued that the legal regime for the governance of natural resources within States is based on the right for States and peoples to freely dispose of their natural resources. This right is normally exercised by the government on behalf of the State and its people. However, the right of a government to dispose of the State's natural resources is qualified by several obligations arising from international human rights and environmental law. These obligations are aimed at ensuring that the government effectively exercises the right of the State to freely dispose of its natural resources for the purpose of promoting sustainable development, in the sense of long-term and inclusive development. It is argued that respect for this framework is paramount, both for the prevention of armed conflicts and for post-conflict reconstruction. Part II of this book examines the applicability of this legal framework in situations of armed conflict.