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

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Part II

The governance of natural wealth and resources in situations of armed conflict

INTRODUCTORY REMARKS TO PART II

The current part of this book discusses the legal framework for the governance of natural resources in situations of armed conflict, which pose major challenges to the governance of natural resources within States. In many of the conflicts referred to in this book, parts of State territory were brought under the control of armed groups or foreign troops, making it impossible for the government to exercise control over the natural resources situated within these territories. The occupation of Eastern Congo by Uganda and Rwanda is one example of this. The situation in Côte d'Ivoire between 2002 and 2007, where the northern part of Côte d'Ivoire was under the control of the rebel forces that made up the *Forces Nouvelles* is another example.

The extent to which contemporary international law is able to address these challenges is examined in this part of the book. To what extent does international law formulate obligations for non-state armed groups and foreign States regarding the use of their adversary's natural resources? In addition, to what extent does international law formulate obligations for States in relation to the exploitation of their own natural resources in situations of armed conflict?

The previous part of this book argued that it is the government of a State that should exploit the State's natural resources on behalf of the State and its people. However, it also demonstrated that the government cannot in all situations be considered to constitute the legitimate representative of the people of the State. Specific problems may arise in internal armed conflicts, where the government is a party to the armed conflict as well. As a party to an armed conflict, a government can have interests that do not coincide with the interests of the people living in the State.

All these situations – occupation by foreign States, territories under the control of armed groups and the exercise of permanent sovereignty over natural resources by governments that are parties to an armed conflict – pose challenges for the premises on which the legal framework for the governance of natural resources are based, in particular the basic premise that natural resources must be exploited for national development and the well-being of the people.

The current legal framework governing the exploitation of natural resources in situations of armed conflict is made up of rules from various fields of

international law. Chapter 5 discusses the effects of armed conflict on the general legal framework for the governance of natural resources as discussed in Part I of this book. The legal framework as set out in Part I of this book defines the rights and obligations of governments with regard to the management of the State's natural resources, as well as the effects of particular exploitation activities on the environment of other States. For the purposes of this book, it is especially relevant to examine to what extent this legal framework continues to apply in situations of armed conflict for: 1) the actions of governments involved in internal armed conflicts and; 2) the actions of States intervening in an armed conflict on the territory of another State.

Chapter 6 discusses the rules of the law of armed conflict, or international humanitarian law. This field of international law sets out the rights and obligations of parties to an armed conflict. Although its principal focus is on regulating military operations and their effects on vulnerable groups, international humanitarian law does contain some rules that are relevant for the exploitation of natural resources by parties to an armed conflict. In the first place, it contains a well-developed body of rules to regulate the powers of occupants in occupied territory. Moreover, international humanitarian law is the only body of international law that applies directly to non-state armed groups.