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

Dam-De Jong, D.A.

9 Regulating the governance of natural resources for the purposes of conflict prevention, containment and resolution

9.1 INTRODUCTORY REMARKS

This book has demonstrated that resource-related armed conflicts pose considerable challenges to the premises on which the international legal framework for the governance of natural resources is based. It was argued that the general legal framework for the governance of natural resources relies on a stable government that is in full control of the State's natural resources and exploits these for the benefit of all. However, resource-related armed conflicts often show a different reality in which governments are unable to exercise sovereignty over portions of the State territory, foreign States and armed groups plunder the State's natural wealth, and/or governments use the proceeds from natural resource exploitation to fund destructive military campaigns.

The objective of this book was to analyse the role of international law in addressing these challenges. More specifically, it attempted to identify and assess the role of international law in ensuring that natural resources are used to promote development and achieve sustainable peace in countries that have experienced armed conflicts that are either caused, financed or fuelled by natural resources. For this purpose, this book first analysed the general legal framework for the governance of natural resources within States (Chapters 2-4), as well as the effects of armed conflict on this legal regime (Chapter 5). It then examined the additional protection provided to natural resources and the environment under the law of armed conflict (Chapter 6). Finally, it analysed the legal and extra-legal approaches to severing the link between natural resources and armed conflict. More in particular, this book examined the approach of the UN Security Council with regard to resource-related armed conflicts (Chapter 7) and the role of voluntary initiatives that have been developed alongside Security Council action (Chapter 8).

This chapter aims to bring to the fore the most important conclusions that can be drawn from this book. Furthermore, it endeavours to assess the role of international law in the prevention, containment and resolution of resource-related armed conflicts. Sections 2, 3 and 4 briefly discuss the most important conclusions of this book with reference to the three principal research questions formulated in the introduction. These are:

1. *Does current international law provide rules to ensure that natural resources are exploited for the purpose of achieving sustainable development?*

2. *Do these rules continue to apply in situations of armed conflict and does international humanitarian law provide relevant rules?*
3. *Do norms and standards developed by* ad hoc *mechanisms contribute to improving governance over natural resources in States that are recovering from armed conflict?*

Subsequently, section 5 places these questions in a broader context by looking at the role of international law in the prevention, containment and resolution of resource-related armed conflicts.

9.2 THE GENERAL LEGAL FRAMEWORK FOR THE GOVERNANCE OF NATURAL RESOURCES WITHIN STATES

The governance of natural resources within States is based primarily on the principle of permanent sovereignty over natural resources. As discussed in Chapter 2, this principle is rooted both in the principle of State sovereignty and in the right of peoples to self-determination. Originally asserted as a right for former colonial countries to freely dispose of their natural resources as a means to advance their development, permanent sovereignty has evolved into the organizing principle of international law regulating the governance of natural resources, both between and within States. As such, it has come to entail both obligations and rights for States.[1] The obligation for a State to exercise permanent sovereignty for the purposes of national development and the well-being of the people on the one hand, and the obligation to devote due care to the environment on the other are the most relevant obligations for the purposes of this book. They are based on international human rights and environmental law.

Chapter 3 discussed the legal position of peoples in relation to the principle of permanent sovereignty over natural resources. The right of peoples to freely dispose of their natural resources is part of their right to self-determination, as enshrined in the identical Articles 1(2) of the ICESCR and the ICCPR. Peoples are the subjects of the principle of permanent sovereignty over natural resources. However, as argued in Chapter 2, permanent sovereignty is an attribute of State sovereignty as well. In this sense, peoples are also beneficiaries of the principle of permanent sovereignty over natural resources. The 1962 Declaration on Permanent Sovereignty over Natural Resources had already recognised that natural resources must be exploited for the well-being of the people. This condition has been revived in modern legal and political instruments dealing with resource-related armed conflicts.

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1 See in particular, N.J. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge: Cambridge University Press (1997).

Chapter 3 also analysed the legal implications of peoples' ownership of natural resources for the governance of natural resources within States. In the context of a sovereign State, it argued that there are two categories of peoples that are eligible to exercise peoples' rights. First, there is the whole population of a State as the successor of the people who have exercised a right to external self-determination. Furthermore, particular groups within a State have been granted a limited right to exercise peoples' rights. These include minorities and indigenous peoples.

The principal argument advanced in this chapter was that for the realisation of the right to internal self-determination and the – emerging – right to development it is essential for governments to put in place procedures that allow for public participation in decision-making with respect to the use of the State's natural resources. Public participation in this sense can be defined broadly to include a right of access to information and justice with regard to all projects that involve the exploitation of the State's natural resources, as well as a right to be consulted with regard to projects that could affect the living environment of local communities.

Although the right for peoples living in an independent State to participate in decision making is not expressly enshrined in current international law, it is implied in the practice of human rights bodies and in resolutions of the UN Security Council. Human rights bodies require States to establish general procedures that allow for the realisation of the right to self-determination in practice. Furthermore, specific case law relating to the right of indigenous peoples to enjoy their culture points to an obligation for governments to consult indigenous peoples when conducting exploitation projects on their lands. Similarly, resolutions of the UN Security Council in general call for effective, transparent and accountable management of natural resources, implying that the government of a State must hold up the management of the State's natural resources against public scrutiny. Therefore international practice shows the emergence of an obligation for States to manage their natural resources in a transparent and accountable way. This entails an obligation for States to involve citizens in decision making with respect to projects relating to the exploitation of the State's natural resources.

Chapter 4 also discussed the environmental obligations of States. International environmental law formulates several standards for States which they must take into account when exploiting their natural resources. These include an obligation to conserve and sustainably use natural wealth and resources, to safeguard natural resources for future generations, to prevent damage to the environment of other States, and to adopt a precautionary approach to the protection of the environment and natural resources. Elements of the environmental principles examined in this chapter can also be found in international humanitarian law. The precautionary principle, for example, recognises that States should take into account the risks to the environment, even when these risks cannot be precisely defined. In this sense, the precautionary prin-

ciple can play a role in battlefield practice, where military commanders must assess the potential damage of their actions on the environment. In addition, the related obligation to conduct an environmental impact assessment for activities that pose a risk to the environment is relevant for States contemplating exploitation projects, whether in situations of peace or in situations of armed conflict.

Chapter 4 also analysed several 'common regimes' aimed at protecting the interests of a larger community of States with regard to a State's natural resources. Relevant common regimes include those aimed at protecting natural resources situated within a State's territory but which represent a special interest to the international community, including "world heritage", "wetlands of special importance" and certain endangered species of flora and fauna, those that are aimed at addressing a common concern of the international community, such as the loss of biological diversity, and those that are aimed at protecting the interests of States that share a natural resource. Common regimes are therefore based on an obligation to individually and collectively protect the natural resources in the interests of all the States concerned. The common interest that these regimes are aimed at protecting entails a presumption that they cannot be unilaterally suspended in situations of armed conflict.

Chapter 4 demonstrated the existence of a general obligation for States to exploit their natural resources in a sustainable way, while preventing damage to the environment of other States. These obligations apply to States both as a matter of treaty law and as customary international law. Furthermore, it is relevant to note that some of the most important treaties that embody these principles are widely accepted. This applies particularly with regard to treaties that establish common regimes. The Convention on Biological Diversity, for example, enjoys universal acceptance with 193 States parties. This Convention is of the utmost importance, because biological resources are estimated to support nearly 40 per cent of the world economy.[2]

Similarly, the World Heritage Convention, with 190 States parties, enjoys near universal acceptance. This Convention is especially important because it protects a number of nature reserves that are particularly rich in biological diversity, including nature reserves in conflict areas. Examples include the Virunga National Park located in the East of the DR Congo and the Comoé National Park located in the Northeast of Côte d'Ivoire.[3]

The last convention of particular relevance to the current book is CITES. With 178 States parties, the convention has been widely ratified. As a combined environmental and trade convention, CITES could play an important role in curbing the trade in particular conflict resources, such as timber and ivory. The significance of CITES in this respect was explicitly recognised by the Panel

2 See http://www.cbd.int/sustainable/ (last consulted on 21 January 2013).
3 See http://whc.unesco.org/en/list/ for the full list of World Heritage sites. (last consulted on 21 January 2013).

of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo. The potential of CITES should therefore be explored to the full.

In conclusion it can be argued that Part I of this book showed that the general legal framework for the governance of natural resources within States contains a number of principles that directly or indirectly aim to ensure that governments exploit natural resources for the purpose of promoting sustainable development. These include in particular the principles of public participation, sustainable use and precaution. Together these principles constitute the basic foundations for a legal framework for the governance of natural resources within States that have experienced armed conflicts.

9.3 THE GOVERNANCE OF NATURAL RESOURCES IN SITUATIONS OF ARMED CONFLICT

The exploitation of natural resources is principally a commercial activity, even if the proceeds of the natural resources are used to sustain an armed conflict. This is one of the primary reasons which explains the fragmentation of the international legal framework for the governance of natural resources in situations of armed conflict. International humanitarian law is normally considered to be the *lex specialis* in situations of armed conflict, but this field of international law is primarily concerned with acts of warfare and their implications for the population of a State. Therefore other fields of international law are equally important for the regulation of natural resources exploitation in situations of armed conflict, at least for States. These are, in particular, international economic, environmental and human rights law.

The international legal framework for the governance of natural resources in situations of armed conflict is therefore composed of rules from different fields of international law. Relevant factors that determine which rules apply in a specific situation are notably the nature of the armed conflict (international or internal) and the actors involved in the exploitation of the natural resources (domestic governments, foreign States or armed groups). Nevertheless, some rules apply to all parties to an armed conflict, irrespective of the nature of the armed conflict or the actors involved.

First, all parties to an armed conflict are bound by the international humanitarian law prohibition of pillage. This prohibition, which applies to cases of the appropriation of natural resources for personal gain, can be construed broadly to cover all instances of natural resources appropriation by parties to an armed conflict that do not serve a military purpose. This means, for example, that an occupant is prohibited from exploiting the natural resources in occupied territory for the benefit of its own economy. It also implies that public officials of the domestic State who misappropriate the proceeds from natural resources exploitation for their personal enrichment violate the prohi-

bition of pillage. Furthermore, the prohibition of pillage is an important tool for addressing instances where armed groups or members of armed forces loot natural resources for their personal gain. However, it does not cover instances of natural resources appropriation for military purposes. These are covered by more specific provisions which do not equally apply to all parties to an armed conflict.

Another obligation that applies to all parties to an armed conflict is the prohibition against removing or destroying objects indispensable to the civilian population, which is linked to the prohibition against starving the civilian population as a method of warfare. It is relevant to note that the drafters of the 1977 Additional Protocols I and II, which include this prohibition, envisaged a large measure of flexibility in the interpretation of the prohibition. The determination of the types of objects that were to be considered indispensable to the civilian population was considered to depend on local circumstances. In many of the countries examined in this book, local communities are highly dependent on natural resources to earn a basic living for themselves and their families. From this perspective, it is therefore logical that the prohibition covers such natural resources as well. This means that the prohibition covers instances where parties to an armed conflict deliberately deprive the local population of the opportunity to earn their living by denying them access to mining sites.

In addition to these general obligations, Chapters 5 and 6 examined specific obligations which apply only to some of the parties to an armed conflict. As regards the rights and obligations of domestic governments in armed conflicts, the applicable legal framework is principally derived from international economic, environmental and human rights law. As the outbreak of an armed conflict does not automatically suspend the existing obligations of States under international law, governments must continue to respect their obligations under international human rights and environmental law.

It should be noted that situations of armed conflict can obviously alter the extent to which States have to fulfil their obligations under relevant treaties. The treaties themselves allow for this. The International Covenant on Civil and Political Rights, for example, contains an express provision on derogation. This provision allows States to derogate from their obligations under the Convention in situations of public emergency, though only to the extent that is necessary in view of the situation. In any case, States can never derogate from the prohibition embodied in Article 1(2) of the Covenant against depriving a people of its means of subsistence. This implies that, as a minimum, States cannot deny the local population access to exploitation sites if these are necessary for their subsistence. This obligation for States under international human rights law therefore complements and strengthens the protection granted to the civilian population under international humanitarian law, notably by the prohibition against removing or destroying objects indispensable to the civilian population.

Furthermore, some international environmental law treaties provide States with a degree of leniency regarding the implementation of specific obligations. The degree to which relevant obligations must be implemented depends on the circumstances. However, even if States are given a measure of flexibility with regard to the implementation of specific obligations, they must continue to respect their core obligations under these treaties. The flexibility provided to States does not annul these obligations, but rather provides States with the possibility of implementing them according to the circumstances. Therefore States must continue to respect their core obligations under relevant international environmental treaties, especially if these treaties protect natural resources that are of importance to the broader international community.

While the rights and obligations of domestic governments with regard to the exploitation of the State's natural resources in situations of armed conflict are primarily regulated by the general legal framework that applies to the exploitation of natural resources, the rights and obligations of other States with regard to these natural resources are primarily determined by international humanitarian law. A distinction should also be made between States that militarily intervene in other States without occupying part of that State's territory, and States that do occupy portions of the State's territory. In some cases, States can assume both roles in the same armed conflict. An example of this can be found in the *Case Concerning Armed Activities on the Territory of the DR Congo*, where the International Court of Justice determined that Uganda was an occupying State in some parts of the DR Congo while it was not in others.

Different rules apply to each of these situations. International humanitarian law contains an almost absolute prohibition with respect to the exploitation of natural resources for foreign States militarily intervening in another State without taking effective control over that State's territory. These States are not allowed to appropriate the natural resources of their adversary, except in cases of imperative military necessity. Chapter 6 argued that this exception must be interpreted restrictively. The appropriation of natural resources is permitted only when the following requirements are fulfilled: 1) the appropriation must secure a military advantage; and 2) the situation must be urgent, in the sense that there is no moment for deliberation and there is no alternative solution available. Instances of systematic resource exploitation by foreign States are therefore not covered by the exception of imperative military necessity.

While foreign States are therefore generally not allowed to exploit natural resources in territory where they are militarily present, the legal framework changes when these States gain effective control over territory. The rights and obligations of occupants with respect to the exploitation of natural resources are primarily regulated on the basis of the concept of *usufruct*. According to the right of *usufruct*, an occupant is allowed to exploit the natural resources in occupied territory for the purpose of administering the territory. Further-

more, the administration of the territory must be for the benefit of the population of the occupied territory. Finally, according to Article 55 of the 1907 Hague Regulations, the exercise of the right of *usufruct* is subject to the condition that occupants safeguard the capital of the properties they administer. A modern interpretation of this requirement points to an obligation for occupants to exploit the natural resources in a sustainable way.

Furthermore, the exploitation activities of armed groups are primarily regulated by international humanitarian law, though the set of rules that applies to these groups depends on their legal status. Generally, the legal position of armed groups is regulated by the legal rules that apply to internal armed conflicts, which determine that armed groups cannot appropriate the State's natural resources, except in cases of imperative military necessity. However, armed groups that act on behalf of a foreign State, or which have been recognised by the international community as belligerents, fall under the rules applicable to international armed conflict. In these circumstances, armed groups that are in control of a portion of the State's territory fall under the rules relating to occupation, which means that the concept of *usufruct* applies to them as well.

Despite the numerous different obligations that apply to different actors in different situations, an important conclusion that can be drawn from this book is that the international legal framework regulating the exploitation of natural resources in situations of armed conflict is difficult to oversee, but not necessarily incomplete. Even where one can observe an asymmetry in international humanitarian law with regard to obligations that apply to armed groups on the one hand, and to the domestic government on the other, it is important to realise that international humanitarian law is only one of several fields of international law that apply to the exploitation of natural resources in conflict situations.

At the same time, it cannot really be argued that the system as it exists today is perfect. The existing legal framework would benefit immensely from clarification, as well as a reinterpretation of existing obligations. There are two issues that deserve particular attention in this respect. These are the protection of the environment on the one hand, and the legal position of armed groups on the other. In relation to the legal position of armed groups, this book strongly advocates applying the concept of *usufruct* from international occupation law to all situations in which armed groups exercise effective control over portions of a State's territory. According a right of usufruct to armed groups that are in control of portions of a State's territory would provide these armed groups with an incentive to respect international humanitarian law. The qualified nature of the concept of *usufruct* strikes a careful balance between the realities of armed conflict and the provisional character of the situation. Moreover, the concept can be interpreted in the light of relevant human rights and environmental norms. This balancing of rights and obligations is the best way to protect the environment and the civilian population in territories that

are controlled by armed groups. Finally, according a right to armed groups that are in effective control over portions of a State's territory provides these armed groups with the opportunity to show that they are willing to assume governmental responsibilities, while it leaves open the possibility of enforcement action in individual cases.

9.4 THE GOVERNANCE OF NATURAL RESOURCES AS PART OF CONFLICT RESOLUTION AND POST-CONFLICT PEACEBUILDING EFFORTS

Several *ad hoc* mechanisms have been developed over the past years to address the challenges resulting from resource-related armed conflicts. Most importantly, the UN Security Council has addressed several of these armed conflicts using its powers under Chapters VI and VII of the UN Charter. Chapter 7 of this book examined the role of sanctions regimes adopted by the Security Council in addressing these conflicts. It demonstrated that the Security Council has used a variety of measures to address resource-related armed conflicts, including selective commodity sanctions, as well as asset freezes and travel bans targeting individuals and organizations involved in the illicit exploitation of natural resources.

The Security Council has also set substantive standards for the governance of natural resources as part of its sanctions regimes. In relation to the diamond sanctions, it demanded a certificate-of-origin regime that was effective, transparent, accountable and internationally verifiable. In relation to timber, it called upon States, international organizations and other bodies to assist the Liberian government, under the presidency of Johnson-Sirleaf, to promote responsible and environmentally sustainable business practices in the timber industry. In addition, in several of its resolutions, it emphasised in a general sense that natural resources must be exploited in order to promote development. In the case of Liberia, it went a step further, and in Resolution 1408 (2002), it called upon the Taylor regime to take urgent steps to ensure that revenue from the timber industry was used for legitimate social, humanitarian and development purposes.

Chapter 7 also demonstrated that the Security Council has continuously tried to improve its methods in order to address specific threats to the peace more effectively. It embraced innovations such as a certificate-of-origin regime to distinguish between diamonds traded by armed groups and by governments, support for specific programs in Liberia to stimulate the necessary post-conflict reforms, and due diligence requirements for companies sourcing from the DR Congo.

However, the readiness of the UN Security Council to adopt measures is often linked to a particular type of threat to peace and security. Most of the sanctions regimes examined in this book were aimed at assisting the government of a State to restore governance over natural resources that had fallen

into the hands of subversive entities. Only in a few cases has the Security Council directly targeted the government of a State, but most of these sanctions regimes did not, strictly speaking, address resource-related armed conflicts. These were the sanctions regimes imposed against Iraq, Southern Rhodesia and Libya. It was only in the case of Liberia under the presidency of Charles Taylor that the Council targeted the government of a State in relation to a resource-related armed conflict. However, even in this case, the purpose of the sanctions regime was to cut off the rebel financing. It can therefore be concluded that the UN Security Council is committed to upholding the principle of permanent sovereignty over natural resources in most circumstances, even when it is clear that a government is violating its commitments under peace agreements.

A recent Open Debate held in the Security Council on 'Natural Resources and Conflict Prevention' showed the diverging opinions within the Council with respect to its role in preventing natural resources from fuelling armed conflict. This debate revealed the divisions between those countries advocating an increased role for the Security Council in preventing conflicts involving natural resources, which would include approaches directly related to improving a State's governance of natural resources, and those countries that insisted on the right of States to exercise permanent sovereignty over their natural resources. This divergence of opinions was an obstacle to adopting a Presidential Statement on the issue of natural resources and conflict prevention.[4]

Voluntary initiatives have been developed by partnerships of States, civil society and companies, parallel to the efforts of the Security Council to address threats to the peace related to the trade in natural resources. Chapter 8 discussed three of these voluntary initiatives that were endorsed by the UN Security Council as a means of addressing problems associated with resource-related armed conflicts. These are the Kimberley Process for the Certification of Rough Diamonds as an example of a certification mechanism that aims to combat the trafficking and trade of natural resources by armed groups, the Extractive Industries Transparency Initiative as an example of a mechanism that aims to improve transparent and accountable governance over natural resources as a tool for conflict resolution and prevention, and the OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas as an example of a mechanism that is aimed at improving corporate responsibility with respect to mineral sourcing in conflict-affected States.

The most important contribution of the initiatives to addressing problems associated with resource-related armed conflicts is related to their function of setting standards. All three initiatives set standards aimed at increasing transparency in the management of natural resources. Furthermore, EITI sets

4 United Nations Security Council, Open debate on conflict prevention and natural resources, 19 June 2013, *UN Doc. S/PV.6982*

standards related to accountability in the management of natural resources, while the OECD Guidance sets standards for companies in relation to human rights and public procurement policies. For the purposes of conflict resolution and prevention, environmental protection is equally important, though it is not addressed in any of these initiatives. The initiatives discussed in this book focus exclusively on standards related to restoring or improving the political governance of natural resources. However, in order to ensure that natural resources are used to achieve sustainable development, environmental protection must constitute an integral component of conflict resolution and prevention strategies.

Furthermore, the question arises why the initiatives discussed in Chapter 8 formulate voluntary commitments rather than legally binding obligations. The reason for choosing voluntary rather than legally binding mechanisms cannot be automatically attributed to the participation of entities without treaty-making powers in the initiatives. Although all three initiatives were developed on the basis of multi-stakeholder processes, this multi-stakeholder structure is only marginally reflected in their means of operation. Both the Kimberley Process and EITI formulate requirements only for States, while the role of companies is addressed indirectly. The OECD Guidance does formulate requirements for companies, but its whole institutional focus is on States. The reason for the voluntary nature of the commitments should therefore primarily be sought in other characteristics of the initiatives, notably in their flexibility, which makes it easier to adopt the instruments and to adjust them to achieve better results.

Despite their voluntary nature, the initiatives have yielded some tangible results. The Kimberley Process has significantly reduced the smuggling of diamonds from conflict regions. In addition, a considerable number of States recovering from resource-related armed conflicts have started to implement EITI. Finally, the OECD pilot project in the Great Lakes Region demonstrates a gradual change in attitude in companies with respect to the exercise of due diligence. However, these results cannot be completely attributed to the initiatives themselves. Experience has shown that the effectiveness of voluntary mechanisms depends in particular on five factors: 1) a dedication by those concerned to implement the commitments; 2) an inclusive system, in which all relevant actors participate; 3) an effective monitoring system to ensure compliance; 4) effective national legislation to implement the commitments and 5) external recognition of the initiatives. These factors are considered essential for ensuring the success of voluntary mechanisms.

In conclusion, the UN Security sanctions regimes, as well as the voluntary mechanisms discussed in this book make a significant contribution to addressing the most acute problems related to the role of natural resources in armed conflicts. Nevertheless, it is also necessary to develop more structural solutions to prevent natural resources from financing or fuelling future armed conflicts. Promoting effectiveness, transparency and accountability in the governance

of natural resources are important elements of conflict resolution strategies, though in themselves they are not sufficient to promote responsible governance over natural resources for the purpose of conflict prevention. For this purpose, it is necessary to develop general standards for the management of natural resources in countries recovering from armed conflict. These standards should integrate requirements relating to sustainability and public participation in addition to transparency and accountability in order to increase the opportunities for countries recovering from resource-related armed conflicts to achieve enduring peace.

9.5 The contribution of international law to the prevention, containment and resolution of resource-related armed conflicts

This book has examined the role of international law in addressing the two main challenges associated with resource-related armed conflicts. The first is to stop natural resources from financing or fuelling armed conflicts. This book has shown that the international law that applies to situations of armed conflict prohibits most forms of resource exploitation by parties to an armed conflict. The problems associated with resource-related armed conflict therefore do not stem from an absence of rules. However, there are several factors that prevent international law from effectively regulating the exploitation of natural resources in situations of armed conflict.

The first concerns the lack of clarity that results from the numerous different obligations that exist. There is a clear need to formulate general guidelines that stipulate the rights and obligations of parties to an armed conflict and the most appropriate body to develop these guidelines is the International Law Commission, because of its broad expertise and its mandate to codify and progressively develop international law. As specified in the concluding remarks to Part II of this book, one of the aspects that an ILC study should also address concerns the effects on the environment of the exploitation of natural resources by parties to an armed conflict. As resource exploitation is primarily a commercial activity, the rules of international humanitarian law do not provide adequate protection. Moreover, the existing rules of international environmental law do not address armed groups.

However, a more fundamental question that should also be considered is whether the rules which apply to armed groups are adequate. The equality of parties to an armed conflict is a fundamental principle of the law of armed conflict. This book does not argue in favour of giving armed groups the same rights and obligations with regard to the exploitation of natural resources as governments, nor does it propose assigning all armed groups the right to exploit natural resources. However, it does propose granting those armed groups that are in control of a portion of the State territory a qualified right to exploit natural resources, based on the right of *usufruct* that is central to

international occupation law. The principal reason for granting armed groups that control portions of a State territory this right is it protects the civilian population and the environment more adequately than the current rules do. In the first place, granting armed groups a right of *usufruct* gives them an incentive to respect the rules of international humanitarian law. Secondly, the concept of *usufruct* does not entail a right to use the proceeds from the exploitation of natural resources to buy weapons. It merely grants armed groups a right to set up and maintain a civilian administration for the benefit of the population. Furthermore, granting armed groups such a right does not exclude the possibility for the Security Council to impose sanctions when it considers that a specific situation poses a threat to peace and security.

The second challenge associated with resource-related armed conflicts is to improve the governance over natural resources within States, both in order to resolve existing armed conflicts and to prevent a relapse into armed conflict. The governance of natural resources within States is based on the principle of permanent sovereignty over natural resources. This principle is rooted in the right to self-determination of peoples. Although the principle of permanent sovereignty is considered to be attached to the sovereignty of the State, its roots in the right to self-determination are not without significance. This demonstrates that the State's natural resources should be exploited for the benefit of the people of the State. This is further emphasised by the condition imposed on the principle of permanent sovereignty stipulating that States must be able to exercise the right to freely dispose of their natural resources for national development and the well-being of the people.

This condition is reflected in the modern practice as regards resource-related armed conflicts, in particular in resolutions of the UN Security Council and in regional treaties. Moreover, the governance of natural resources in States suffering from armed conflict is increasingly qualified by requirements linked to the concept of good governance. UN Security Council resolutions require effective, transparent and accountable management of natural resources by States. These elements are also reflected in the political initiatives discussed in Chapter 8. However, current practice does not fully address good governance. In this respect it should be recalled that the present book defined good governance as:

> "the sustainable, transparent and accountable management of natural resources for the purposes of equitable and sustainable development. It entails clear and participatory decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of natural resources and their revenues as well as capacity building for elaborating and implementing measures aimed in particular at preventing and combating corruption in the public administration of revenues from natural resources".

The elements of good governance that are mainly neglected in the current initiatives include aspects of public participation and sustainability, factors that are essential for the prevention and resolution of armed conflicts.

In conclusion, it can be argued that international law addresses the challenges associated with resource-related armed conflict fairly well. Although the existing legal framework for the governance of natural resources in situations of armed conflict is fragmented and in some ways inconsistent, there are rules to address instances of the illicit exploitation of natural resources in situations of armed conflict. Furthermore, the current approaches to address the problems associated with resource-related armed conflicts are mostly *ad hoc* and sometimes informal. However, international law does provide some tools to address these problems and the role of the UN Security Council has proved invaluable in this respect. Its sanctions regimes have helped to push for the necessary reforms to assist countries emerging from armed conflict to regain control over their natural resources. The creation of the Kimberley Process, as well as the formulation of due diligence guidelines for companies in the extractive sector, can be directly related to Security Council sanctions regimes. While Security Council measures have so far largely focused on helping governments restore their governance over natural resources that have fallen into the hands of subversive entities, the Security Council should increase its role in the resolution of armed conflicts involving natural resources by focusing more on some of the root causes of armed conflict. In particular, the Security Council should use its powers under the UN Charter more actively than it has done so far, to achieve reforms in the public administration of natural resources in countries recovering from armed conflict.

Finally, it should be emphasised that it is of the utmost importance that natural resource wealth is once again associated with development rather than armed conflict. In order to achieve this, it is essential to assist States that are recovering from armed conflict to (re)build the institutions that are necessary for the proper management of their natural resources. It is only in this way that natural resources can be transformed from engines for conflict into engines for sustainable development.