CONTENTS

page xiii

xiv xviii

1

Acknowledgements

Table of treaties

Table of cases

Introduction

1

2

1.1 Relationships between natural resource wealth and armed conflict 4				
1.2 The actors involved in resource-related armed conflicts 7				
1.2.1 Domestic governments 8				
1.2.2 Foreign States 10				
1.2.3 Armed groups 12				
1.2.4 Companies 18				
1.3 Implications for strategies to address resource-related armed conflicts 21				
1.4 Definition of terms used in this book 24				
1.5 Aim of the book 27				
1.6 Structure of the book 28				
PART I The legal framework for the governance of				
natural resources in States				
Introductory remarks to Part I 33				
Defining the right of peoples and States to freely exploit their natural resources: permanent sovereignty over natural				
resources 34				
2.1 Introductory remarks 34				
2.2 Evolution of the principle of permanent sovereignty over natural resources 35				

self-determination

2.2.1 Early recognition: permanent sovereignty and the right to

viii CONTENTS

3

2.2.2 The 1962 Declaration and the following years: regulating foreign investment 36
2.2.3 From resource rights to duties: permanent sovereignty and sustainable development 40
2.2.4 Other duties: towards a people-oriented concept of permanent sovereignty 43
2.3 The nature and legal status of the principle of permanent sovereignty over natural resources 46
2.4 Legal subjects of the principle of permanent sovereignty over natural resources 49
2.5 The position of governments under international law 50
2.6 Concluding remarks 57
A closer look at peoples as subjects and beneficiaries of
the principle of permanent sovereignty over
natural resources 58
3.1 Introductory remarks 58
3.2 A more detailed definition of 'peoples' 59
3.2.1 A definition of 'peoples' 59
3.2.2 'Peoples' in the sense of indigenous peoples 63
3.2.3 Concluding remarks on the definition of 'peoples' 66
3.3 The right to self-determination 66
3.3.1 Evolution of the right to self-determination 67
3.3.2 The nature and legal status of the right to self-determination 80
3.3.3 Implementation of the right to economic self-determination in the sovereign State 84
3.4 The right to development 90
3.4.1 Evolution of the right to development 91
3.4.2 The nature and legal status of the right to development 98
3.4.3 The implementation of the right to development within the sovereign State 101
3.5 Appraisal 102
Environmental law obligations relevant to the governance of
natural resources 105
4.1 Introductory remarks 105
4.2 Origins and structure of international environmental law 106
4.2.1 Origins of international environmental law 106
4.2.2 Structure of international environmental law 109
4.3 Principles resulting from international environmental law 112

CONTENTS ix

4.3.1 The obligation to conserve and sustainably use natural wealth

		and resources 112
	4.3.2	The obligation to safeguard natural resources for future
		generations 118
	4.3.3	The obligation to prevent damage to the environment of other States 122
	4.3.4	The obligation to adopt a precautionary approach to protect the environment and natural resources 129
4.4	Comi	mon regimes 138
		Natural resources situated within State territory with special importance for the international community 139
		Common concern 142
		Shared natural resources 143
4.5	Conc	lusions 147
	Conc	luding remarks to Part I 149
PA	RT II	The governance of natural wealth and resources in
		ns of armed conflict
		ductory remarks to Part II 155
pp:1		·
		of international human rights and environmental
		tuations of armed conflict 157
		ductory remarks 157
5.2	suspe	outbreak of armed conflict as grounds for the termination or
	E 0 1	nsion of treaties 161
	5.2.1	nsion of treaties 161 General principles concerning the effects of armed conflict on treaties 161
		General principles concerning the effects of armed conflict on
	5.2.2	General principles concerning the effects of armed conflict on treaties 161
	5.2.2 5.2.3	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for
5.3	5.2.2 5.2.3 5.2.4	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for
5.3	5.2.2 5.2.3 5.2.4 Term	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177
5.3	5.2.2 5.2.3 5.2.4 Term Conv	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna
5.3	5.2.2 5.2.3 5.2.4 Term: Conv 5.3.1	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna ention on the Law of Treaties 179
5.3	5.2.2 5.2.3 5.2.4 Term. Conv 5.3.1 5.3.2	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna ention on the Law of Treaties 179 Material breach 179 Supervening impossibility of performance 182
5.3	5.2.2 5.2.3 5.2.4 Term: Conv 5.3.1 5.3.2 5.3.3	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna ention on the Law of Treaties 179 Material breach 179 Supervening impossibility of performance 182 Fundamental change of circumstances 184 Conclusions on the relevance of other grounds for the termination or suspension of treaties in situations of armed
	5.2.2 5.2.3 5.2.4 Term: Conv 5.3.1 5.3.2 5.3.3 5.3.4	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna ention on the Law of Treaties 179 Material breach 179 Supervening impossibility of performance 182 Fundamental change of circumstances 184 Conclusions on the relevance of other grounds for the termination or suspension of treaties in situations of armed conflict 186
	5.2.2 5.2.3 5.2.4 Term: Conv 5.3.1 5.3.2 5.3.3 5.3.4	General principles concerning the effects of armed conflict on treaties 161 Human rights instruments 164 International environmental treaties 172 Conclusions on the outbreak of armed conflict as a ground for the termination or suspension of treaties 177 ination or suspension of treaties under the 1969 Vienna ention on the Law of Treaties 179 Material breach 179 Supervening impossibility of performance 182 Fundamental change of circumstances 184 Conclusions on the relevance of other grounds for the termination or suspension of treaties in situations of armed

X CONTENTS

6

5.4.2 Necessity 189
5.5 Customary international law 191
5.5.1 The principle of permanent sovereignty over natural resources 192
5.5.2 The environmental principles of sustainable use and prevention of environmental damage 194
5.6 Concluding remarks on the role of international human rights and environmental law in situations of armed conflict 196
Protection of natural resources and the environment under
international humanitarian law 200
6.1 Introductory remarks 200
6.2 Qualification of the legal situation 202
6.2.1 Internal armed conflict 203
6.2.2 International armed conflict 208
6.2.3 The relevance of the distinction between international and internal armed conflict 213
6.3 International humanitarian law protection of natural resources and the environment 215
6.3.1 The protection of property 217
6.3.2 The protection of civilian objects 233
6.4 The Martens Clause 245
6.5 Preliminary conclusions 250
Concluding remarks to Part II 255
PART III The governance of natural resources as part of
conflict resolution and post-conflict peacebuilding efforts
Introductory remarks to Part III 263
The UN Security Council and resource-related armed
conflicts 267
7.1 Introductory remarks 267
7.2 General remarks concerning sanctions 269
7.3 Early examples of resource-related sanctions regimes 273
7.3.1 The 232 Southern Rhodesia Sanctions Regime 274
7.3.2 The 661 Iraq Sanctions Regime 277
7.3.3 Comparing the sanctions regimes 281
7.4 Selective commodity sanctions 282
7.4.1 The 792 Cambodia Sanctions Regime 282
7.4.2 The 864 UNITA Sanctions Regime 289
7.4.3 The 1132 Sierra Leone Sanctions Regime 293

CONTENTS xi

	7.4.4 The 1343 Liberia Sanctions Regime 297
	7.4.5 The 1521 Liberia Sanctions Regime 302
	7.4.6 The 1572 Côte d'Ivoire Sanctions Regime 307
	7.4.7 Comparing the sanctions regimes 313
7.5	From commodity sanctions to targeted sanctions 315
	7.5.1 The 1493 DR Congo Sanctions Regime 315
	7.5.2 The 1970 Libya Sanctions Regime 322
	7.5.3 Comparing the sanctions regimes 328
7.6	Peacekeeping operations and sanctions implementation 329
	7.6.1 General remarks concerning peacekeeping operations 329
	7.6.2 Peacekeeping operations and natural resources 331
	7.6.3 Appraisal 342
7.7	From conflict resolution to peacebuilding: the role of the UN Peacebuilding Commission 343
	7.7.1 Country-specific configurations 345
	7.7.2 Working Group on Lessons Learned 350
	7.7.3 Appraisal 351
7.8	Appraisal of the Security Council's approach to addressing the links
	between natural resources and armed conflict 354
	7.8.1 Legal basis 355
	7.8.2 Objectives 355
	7.8.3 Evolution in the approach of the Security Council 359
	7.8.4 Sustainability: a missed opportunity 361
	7.8.5 The role of the Security Council 363
Ad	dressing resource-related armed conflicts with informal
	rmative processes 366
8.1	Introductory remarks 366
8.2	The Kimberley Process for the Certification of Rough
	Diamonds 369
	8.2.1 Context 369
	8.2.2 Scope and objectives of the scheme 371
	8.2.3 Participants and institutional structure 374
	8.2.4 Operation of the scheme 375
	8.2.5 International recognition of the Kimberley Process 379
	8.2.6 Appraisal of the initiative 380
8.3	Extractive Industries Transparency Initiative 383
	8.3.1 Context 383
	8.3.2 Scope and objectives of the initiative 384
	8.3.3 Participants and institutional structure 386

xii contents

		8.3.4 Operation 387
		8.3.5 International recognition of the initiative 389
		8.3.6 Appraisal of the initiative 393
	8.4	OECD Due Diligence Guidance for Responsible Supply Chains of
		Minerals from Conflict-Affected and High-Risk Areas 395
		8.4.1 Context 395
		8.4.2 Scope and objectives of the initiative 397
		8.4.3 Participants and institutional structure 400
		8.4.4 Operation 403
		8.4.5 International recognition of the initiative 405
		8.4.6 Appraisal of the initiative 408
	8.5	Substantive contribution of the initiatives to improving
		resource governance 410
		Effectiveness of the initiatives 412
	8.7	Concluding remarks 414
		Concluding remarks to Part III 417
9	Th	e contribution of international law to addressing
		challenges ensuing from resource-related
		ned conflicts 419
		Introductory remarks 419
		Stopping natural resources from financing and fuelling
		armed conflict 421
	9.3	Improving the governance of natural resources within States 426
	9.4	Proposals for strengthening the international legal framework 429
	Bił	oliography 432
	Un	ited Nations documents 455
		Survey of UN Security Council practice in relation to
		natural resources 455
		Resolutions 455
		Principal Reports by Panels of Experts 460
		Presidential Statements 462
		General Assembly Resolutions 462
		Other UN documents and reports 464
	Inc	lex 468