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## Introduction

An abundance of natural resources in a country is conducive to its development. It is precisely this assumption that constitutes the basis for traditional development thinking.<sup>1</sup> The basic premise of this study is that natural resources undoubtedly can and do play an important role in kick-starting the economy of a country. Nevertheless, the last few decades have shown a harsher reality, where natural resources have triggered, financed or fuelled a number of internal armed conflicts. Examples include armed conflicts in Cambodia, Angola, Sierra Leone, Liberia, Côte d'Ivoire and the Democratic Republic of the Congo (DR Congo), which have been financed by the exploitation of a variety of valuable natural resources, including diamonds, gold, timber, oil and cocoa.<sup>2</sup>

Some of these internal armed conflicts were internationalised with the involvement of foreign States looking for a share in the natural resource wealth of the countries where the conflict was taking place. For example, access to the natural resources of the DR Congo proved to be an important motivation for Uganda and Rwanda to continue their military presence in the DR Congo.<sup>3</sup> Similarly, the involvement of the Liberian president Charles Taylor in the internal armed conflict in neighbouring Sierra Leone

<sup>1</sup> See, e.g., the UNCTAD Integrated Programme for Commodities, *UNCTAD Resolution 93(IV)* (1976), as well as documents that are related to the NIEO, in particular the Declaration on the Establishment of a New International Economic Order, *UNGA Resolution 3201 (S-VI)* of 1 May 1974.

<sup>2</sup> Another example is Colombia, where coca and opium play a major role in sustaining the armed conflict between the government and the FARC. However, the current study deals only with those natural resources that can be traded on legitimate markets, because of their significance for promoting sustainable development.

<sup>3</sup> See the reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, in particular the Final Report of 16 October 2002, *UN Doc. S/2002/1146*, which describes in great detail the involvement of Uganda, Burundi and Rwanda in the illegal exploitation of Congolese natural resources.

was in part motivated by his desire to gain access to high-quality diamonds from that country.<sup>4</sup>

These resource-related armed conflicts have had devastating effects on the civilian populations of the afflicted countries. Serious human rights violations have been committed in resource-related armed conflicts, many of which have been extensively documented in reports from UN Panels of Experts and from nongovernmental organisations (NGOs).<sup>5</sup> Some of these are directly related to the exploitation of natural resources, while other violations have taken place as part of general conflict situations. Examples include the burning and plundering of villages, the use of forced labour by armed groups for the extraction of natural resources, sexual violence, and the maiming of civilians as part of campaigns of terror. All these violations are in some way linked to natural resources, either because they are committed to gain access to or to retain control over the natural resources or because the natural resources serve as the means of financing the armed conflicts in which the atrocities are committed.<sup>6</sup>

In addition, unsustainable patterns of resource exploitation by belligerents have had a severe impact on the natural environment in most of these armed conflicts. In many cases natural resources have been extracted by

<sup>4</sup> See Special Court for Sierra Leone, Trial Chamber, Judgment of 18 May 2012 in the Case against Charles Taylor, *Case No. SCSL-03-01-T*, in particular paras. 5843–6149 on diamonds.

<sup>5</sup> On Angola, see, e.g., Global Witness, *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict* (1998). On Sierra Leone, see, e.g., Human Rights Watch, *Sierra Leone: Sowing Terror: Atrocities against Civilians in Sierra Leone* (1998). On the DR Congo, see, e.g., the Final Report of the Group of Experts on the Democratic Republic of the Congo, Prepared in Accordance with Paragraph 8 of Security Council Resolution 1857 (2008), *UN Doc. S/2009/603*; and the Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo Between March 1993 and June 2003 (hereafter Mapping Report), Office of the High Commissioner for Human Rights (2010).

<sup>6</sup> In this respect, see the Mapping Report, p. 350. This report, which was drawn up by a team of human rights officers documenting human rights abuses during the conflict in the DR Congo, identifies three different types of links between natural resources exploitation and human rights abuses. These relate to (1) violations of human rights and IHL committed within the context of the struggle by parties to an armed conflict to gain access to and control over the areas of the country rich in natural resources; (2) human rights abuses committed by parties to an armed conflict as part of a regime of terror and coercion established in resource-rich areas under their control; and (3) the role of natural resources in funding armed conflicts, which are themselves a source and cause of violations of human rights and IHL. Although the findings of the mapping team are based on the situation in the DR Congo alone, the links identified in the report exist for other resource-related conflicts as well.

armed groups with little regard for the protection of the environment. For example, extensive logging by all parties to the armed conflict in Cambodia significantly diminished the country's forest cover.<sup>7</sup> Similarly, highly organised and systematic exploitation activities within and around UNESCO World Heritage sites in the DR Congo, including ivory poaching, logging and mining, have posed a significant threat to the integrity of these biodiversity reserves.<sup>8</sup> Another example is the land degradation that occurred in Sierra Leone as a result of substantial diamond mining during the conflict. Exhausted mining sites were not restored, resulting in severe environmental degradation.<sup>9</sup> The environmental damage caused by the unsustainable extraction of resources during armed conflict seriously hinders the prospects for the economic reconstruction of conflict-afflicted States.

Some of the conflicts dealt with in this book have come to an end. The Cambodian Khmer Rouge movement was put to a halt in the late 1990s. The armed conflict in Sierra Leone ended in 2002 and members of the Revolutionary United Front (RUF), as well as the former Liberian president Charles Taylor, recently went on trial before the Special Court for Sierra Leone for crimes committed during this civil war. Furthermore, Liberia has implemented significant institutional reforms under the leadership of President Ellen Johnson-Sirleaf.

However, peace is fragile. The leading economist Paul Collier showed that even a decade after an armed conflict has ended, there is an almost 15 per cent chance that a country will relapse.<sup>10</sup> Armed conflicts that involve natural resources are actually twice as likely to reignite as those that do not involve natural resources.<sup>11</sup>

Some of the armed conflicts discussed in this book have not yet been resolved. The armed conflict in the DR Congo is a salient example. The growing demand for raw materials on the world market, in particular for rare metals and oil, underscores the need to find lasting solutions to the problems associated with resource-related armed conflict. Disregarding

<sup>7</sup> For more details on the links between logging and the armed conflict in Cambodia, see Le Billon and Springer, 'Between War and Peace', pp. 17–36.

<sup>8</sup> Interim Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, *UN Doc. S/2002/565*, paras. 50 and 52.

<sup>9</sup> See UNEP, *Sierra Leone: Environment, Conflict and Peacebuilding Assessment*, February 2010, p. 45.

<sup>10</sup> Collier, Hoeffler and Rohner, 'Beyond Greed and Grievance', p. 16.

<sup>11</sup> Beevers, 'Forest Resources and Peacebuilding', p. 368.

the role played by natural resources in these conflicts will only prolong them and increase the risk of relapse after the conflict has ended. Conversely, integrating the adequate management of natural resources and the environment into strategies for conflict resolution and post-conflict peacebuilding is imperative for creating the conditions for a sustainable peace.<sup>12</sup>

### 1.1 Relationships between natural resource wealth and armed conflict

In order to devise strategies for the prevention and resolution of resource-related armed conflicts, it is first of all necessary to have a proper understanding of the relationships between natural resource wealth and armed conflict. There is a large body of academic literature, in particular in the economic and political sciences, that has studied the so-called 'political economy of armed conflict' or the economic dimensions of civil war.<sup>13</sup> The sudden increase in 'self-financing'<sup>14</sup> internal armed conflicts during the 1990s highlighted the relationships between natural resource wealth and armed conflict.

Early academic research into the self-financing nature of armed conflicts drew attention to the role of natural resources in providing the *means* to finance an armed conflict as an alternative to other sources of funding. The armed conflicts in Cambodia and Angola, for example, were originally funded with external sponsorship. When this funding dried up as a result of the end of the Cold War, the parties to the conflict turned to

<sup>12</sup> Ibid., p. 368; UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (2009), p. 19. This was also recognised in a Presidential Statement of the UN Security Council, which stressed that 'in countries emerging from conflict lawful, transparent and sustainable management . . . and exploitation of natural resources is a critical factor in maintaining stability and in preventing a relapse into armed conflict'. See the Statement by the President of the Security Council made in connection with the Council's consideration of the item entitled Maintenance of International Peace and Security, *UN Doc. S/PRST/2007/22*, 25 June 2007.

<sup>13</sup> See, e.g., Ballentine and Nitzschke (eds.), *Profiting from Peace*; Ballentine and Sherman (eds.), *The Political Economy of Armed Conflict*; Bannon and Collier (eds.), *Natural Resources and Violent Conflict*; Collier, *The Bottom Billion*; Collier and Hoeffler, 'Resource Rents, Governance, and Conflict', pp. 625–33; Collier and Hoeffler, 'Greed and Grievance in Civil War', pp. 563–95; Collier and Hoeffler, 'On Economic Causes of Civil War', pp. 563–73; Collier, Hoeffler and Rohner, 'Beyond Greed and Grievance'; Le Billon, *Wars of Plunder*; Le Billon, *Fuelling War*; Renner, *The Anatomy of Resource Wars*; and Ross, 'What Do We Know about Natural Resources and Civil War?' pp. 337–56.

<sup>14</sup> Ballentine and Sherman (eds.), *The Political Economy of Armed Conflict*, pp. 1–3.

natural resources to fund their armed struggle. In Cambodia, the Khmer Rouge movement exploited timber and gemstones to finance its rebellion. In Angola, the rebel movement UNITA turned to diamonds, while the government used oil revenues to suppress the rebellion.

In addition, belligerents' access to natural resource wealth also proved to be an important factor in *prolonging* internal armed conflicts. Natural resources give parties to an armed conflict access to weapons and to political support. In addition, the profits obtained from resource exploitation can prove to be a disincentive for armed groups to sit down at the negotiating table.<sup>15</sup> Exact data are not available, but it is estimated that the RUF made at least 25 million dollars a year from the trade in diamonds. This is relatively little compared to the revenue generated by the Khmer Rouge from logging, estimated at 120 million dollars a year at least.<sup>16</sup>

Furthermore, more fundamental relationships between natural resource wealth and armed conflict can also be identified. In particular, natural resources have been linked to the *outbreak* of armed conflict.<sup>17</sup> These theories focus on the institutional effects of resource wealth, on the role of natural resources as the motivation for the outbreak of armed conflict and on the role of natural resources in providing opportunities to start an armed conflict.

According to the 'resource curse thesis' described by the economist Richard Auty, resource wealth can lead to economic stagnation and underperformance. Large rents for resources may make governments less accountable, because these rents replace tax revenues for which governments must account to the population. This in turn may lead to the weakening of governmental institutions, making a country vulnerable to the outbreak of an armed conflict.<sup>18</sup>

<sup>15</sup> See, e.g., Bannon and Collier (eds.), *Natural Resources and Violent Conflict*, pp. 217–18. A 2013 Report of the Secretary General in relation to the DR Congo indicates that, for armed groups operating in the Eastern part of the DR Congo, 'the benefits derived from the illegal exploitation of [natural] resources not only finance their acquisition of illicit weapons, but have also become an end in themselves'. See UN Secretary General, Special Report on the Democratic Republic of the Congo and the Great Lakes Region, *UN Doc. S/2013/119 (2013)*, para. 48.

<sup>16</sup> For these and other estimates, see Renner, *The Anatomy of Resource Wars*, p. 7.

<sup>17</sup> On this subject, see Le Billon, *Wars of Plunder*, p. 17.

<sup>18</sup> See Auty, *Sustaining Development in Mineral Economies*. In this sense, the concept is related to notions such as the 'Paradox of Plenty' and the 'Dutch disease'. Since then, several studies, both in economics and in political science, have confirmed the hypothesis of the resource curse. See, e.g., Ross, 'The Political Economy of the Resource Curse', pp. 297–322; and Sachs and Warner, 'The Curse of Natural Resources', pp. 827–38.

Grievances and greed theories focus on the role of natural resources in provoking the outbreak of armed conflicts. According to the grievances theory, perceived injustices relating to the use of natural resources may be a cause for the outbreak of armed conflict. These perceived injustices may relate to the effects of the exploitation of natural resources on the living environments of particular ethnic or social groups, or they may relate to the (unequal) distribution of the benefits obtained from the exploitation of natural resources.<sup>19</sup> According to the greed theory, the likelihood of armed conflict breaking out is increased if rebel groups try to obtain rent from natural resources. The prospect of gaining access to large deposits of natural resources which these groups can exploit for their personal gain may be an incentive for them to start an armed conflict.<sup>20</sup>

Unlike grievances and greed theories, which focus on the role of natural resources in provoking armed conflict, the feasibility thesis focuses on the opportunities for starting an armed conflict created by natural resource wealth. This theory assumes that a rebellion will occur if it is militarily and financially feasible. According to this theory, an armed conflict is therefore more likely to occur in a country where large quantities of easily accessible natural resources are available to rebels.<sup>21</sup>

A fourth theory about the relationship between natural resource wealth and armed conflict focuses on the opportunities created by the outbreak of an armed conflict for third parties to engage in the looting of natural resources. Recent incidents of elephant poaching in the Central African Republic where conflict broke out after a coup d'état on 24 March 2013 are an example of this. Poachers were reported to have killed a large number of elephants in the Dzanga-Ndoki national park, a UNESCO World Heritage Site.<sup>22</sup> Part of the poaching in the Central African region is directly linked to the financing of armed groups,<sup>23</sup> prompting the Security Council in 2014 to impose targeted sanctions on individuals and entities supporting armed groups and criminal networks involved in the illegal trade in wildlife in the Central African Republic.<sup>24</sup> However, the poaching in itself

<sup>19</sup> See, e.g., Klare, *Resource Wars*, p. 208; and Ross, 'How Do Natural Resources Influence Civil War?' p. 41.

<sup>20</sup> Collier and Hoeffler, 'Greed and Grievance in Civil War', pp. 563–95.

<sup>21</sup> Ross, 'What Do We Know about Natural Resources and Civil War?' pp. 337–56.

<sup>22</sup> See 'Elephant Poaching on Rise in Chaos-Hit Central African Republic', 26 April 2013, [www.reuters.com](http://www.reuters.com).

<sup>23</sup> See the Statement by the President of the Security Council on the Central African Region, *UN Doc. S/PRST/2013/6*, 29 May 2013, para. 10.

<sup>24</sup> UNSC Resolution 2134 (2014), para. 37(d).

constitutes a broader problem related to weaknesses in law enforcement.<sup>25</sup> The outbreak of an armed conflict is merely a factor that exacerbates these types of situations, in the sense that the chaos and instability created by the outbreak of an armed conflict increases the opportunities for individuals or groups to engage in the looting of natural resources. As the relationship between natural resources and armed conflict is less direct in these situations, it is not of immediate interest to the current study.

In conclusion, natural resources can provide the *means* to finance an armed conflict; they can *prolong* existing armed conflicts; and they can play a role in the *outbreak* of an armed conflict. In addition, the outbreak of an armed conflict may create opportunities for third parties to loot natural resources for their personal gain. Of course, natural resources can also play many different roles in armed conflicts. In Sierra Leone, for example, the Truth and Reconciliation Commission established after the armed conflict concluded that diamonds had provided the RUF with the means to finance – and maybe even prolong – their rebellion.<sup>26</sup> At the same time, the Commission considered that the economic mismanagement of the natural resource wealth in that country – which involved not only diamonds, but also bauxite, coffee and cocoa – and the resulting failure of successive governments to use the proceeds from these exports to enhance the standard of living of the population, were important factors in the outbreak of the armed conflict in 1991.<sup>27</sup>

## 1.2 The actors involved in resource-related armed conflicts

Strategies for the prevention and resolution of resource-related armed conflicts require a proper understanding of the roles and the legal positions of the different actors involved in the exploitation of natural resources in situations of armed conflict. Resource-related armed conflicts involve a range of different actors. Most of the armed conflicts discussed in this book are internal armed conflicts involving a State and/or one or more armed groups engaged in the exploitation of the State's natural

<sup>25</sup> See Report of the Secretary-General on the Activities of the United Nations Regional Office for Central Africa and on the Lord's Resistance Army-Affected Areas, *UN Doc. S/2013/297*, 20 May 2013, paras. 7–9.

<sup>26</sup> See 'Witness to Truth', *the Final Report of the Sierra Leonean Truth and Reconciliation Commission*, Vol. Three B, Chap. One.

<sup>27</sup> *Ibid.*, Vol. Three A, Chap. Two.

resources.<sup>28</sup> These armed groups either exploit the natural resources themselves or levy taxes from companies by granting them concessions.

However, in some of the armed conflicts discussed in this book, foreign States are also involved in the exploitation of a State's natural resources. In some cases, it is carried out directly by these States, either by their national armies or by companies that are offered access to exploitation sites in territory under the control of these States. In other cases, the involvement of foreign States is limited to assisting the armed groups engaged in the exploitation. For example, this assistance can consist of offering smuggling routes to these armed groups or of trading natural resources with them.

From a legal perspective, the range of actors involved in resource-related armed conflicts entails many challenges, not least with regard to determining the applicable rules. There are relevant rules in several fields of international law, in particular in international economic, environmental, human rights and humanitarian law.<sup>29</sup> However, as discussed in more detail in Part II of this book, the applicable legal framework varies depending on the actors involved and, in addition, depends on the typology of the armed conflict.

The following subsections briefly touch upon some of the issues that are of particular relevance for understanding the legal positions of the different actors involved, as well as their roles in resource-related armed conflicts. To illustrate these issues, reference is made as much as possible to existing conflict situations.

### 1.2.1 *Domestic governments*

International law accords a right to States and peoples to exercise sovereignty over their natural resources. This right, including the right to exploit the State's natural resources, is exercised by the government, subject to a number of conditions derived principally from international human rights and environmental law. The role of the government is therefore crucial to the proper functioning of the legal framework. Moreover, several of the armed conflicts that are at the heart of this book show that a strong political will to address the links between natural resources and armed conflict at the national level is essential for achieving a sustainable

<sup>28</sup> On the typology of armed conflicts, see Chapter 6 of this study.

<sup>29</sup> Chapter 5 discusses the general presumption that the outbreak of hostilities does not *ipso facto* affect the operation of treaties.



peace. However, at the same time, it is possible to identify several challenges relating to the role of the government.

The first challenge that is relevant to the current study concerns the legitimacy of the government. International law accords the right to exploit domestic resources to the State and its people; it does not accord this right to the government. The latter can exercise this right only on behalf of the State and its people. The question therefore arises whether a government that does not or can no longer be considered to represent the State and its people is entitled to exercise sovereignty over the State's natural resources. For example, in the armed conflict that raged in Angola for decades between 1975 and 2002, both the ruling MPLA and the opposing UNITA claimed to be the legitimate government of Angola. Another example concerns the civil conflict in Libya in 2011, when the Gaddafi government lost its legitimacy during the course of the armed conflict. This issue is discussed in more detail in Part I of this book.

Furthermore, the way in which governments exercise authority over the State's natural resources can also present a challenge. The failure of governments to exercise authority over the State's natural resources in the proper manner underlies many of the armed conflicts examined in this book. The armed conflict in Sierra Leone referred to above is a relevant example. Economic mismanagement and the resulting failure of successive governments to use the proceeds from the exports of the country's natural resources to raise the standard of living of the population have been identified as root causes for the outbreak of armed conflict in 1991.<sup>30</sup>

Similar patterns can be recognised in the DR Congo, where political elites have used the natural resource wealth of the country for their personal enrichment, leaving the population with very little to survive on. The DRC Mapping Report, drafted by independent experts under the auspices of the Office of the High Commissioner for Human Rights, concluded, for example, that

During Mobutu's rule, natural resource exploitation in Zaire was characterised by widespread corruption, fraud, pillaging, bad management and a lack of accountability. The regime's political/military elites put systems in place that enabled them to control and exploit the country's mineral resources, thereby amassing great personal wealth but contributing nothing to the country's sustainable development . . . The two Congolese wars of 1996 and 1998 represented a further major setback to development,

<sup>30</sup> See *Witness to Truth*, Vol. Three A, Chap. Two.

causing the destruction of a great deal of infrastructure and propagating the practice of resource pillaging inherited from Mobutu's kleptocratic regime, under the pretext of funding the war effort.<sup>31</sup>

In addition, economic mismanagement can be a factor in sustaining armed conflicts. Opaque systems of public administration have allowed the governments of Liberia and Côte d'Ivoire, for example, to procure weapons in contravention of UN Security Council sanctions. In Liberia, the Taylor government largely excluded revenues from the timber and rubber sectors from the public administration. The evidence suggests that these revenues were used both for President Taylor's personal expenditure and for the procurement of weapons in contravention of UN Security Council sanctions.<sup>32</sup> In Côte d'Ivoire, the procurement of weapons was financed with the proceeds from the cocoa and oil industries.<sup>33</sup> In both countries, the natural resources industries were to a large extent controlled by the government.

These examples clearly show the significance of properly functioning institutions for the prevention and resolution of armed conflicts. This issue is examined in more detail in Section 1.3 of this introductory chapter.

### 1.2.2 *Foreign States*

Foreign States have played a role in several of the armed conflicts examined in this book. In the DR Congo, for example, Uganda and Rwanda have been both directly and indirectly involved in the ongoing armed conflict. Between 1998 and 2003 both countries engaged in the exploitation of the DR Congo's natural resources, while controlling parts of the territory of the DR Congo.<sup>34</sup> The Panel of Experts, set up by the UN Security Council to investigate the illegal exploitation of natural resources and other forms of wealth of the DR Congo, concluded that the exploitation of natural

<sup>31</sup> Office of the High Commissioner for Human Rights, Mapping Report (2010), p. 351.

<sup>32</sup> Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia, *UN Doc. S/2001/1015*, paras. 309–50.

<sup>33</sup> See, e.g., Midterm Report of the Group of Experts on Côte d'Ivoire Submitted in Accordance with Paragraph 11 of Security Council Resolution 1842 (2008), *UN Doc. S/2009/188*, paras. 59–72; Final Report of the Group of Experts on Côte d'Ivoire, Prepared in Accordance with Paragraph 14 of Security Council Resolution 1980 (2011), *UN Doc. S/2012/196*, para. 113.

<sup>34</sup> See the Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, *UN Doc. S/2002/1146*, paras. 65–131.

resources constituted one of the principal reasons for the continued presence of these countries in the DR Congo.<sup>35</sup>

In 2002, the DR Congo initiated proceedings against both countries before the International Court of Justice, but the Court could only exercise jurisdiction in relation to the DR Congo's case against Uganda.<sup>36</sup> With respect to Uganda, the Court found evidence of the involvement of senior officers of the Ugandan army, as well as of individual soldiers, in the exploitation of the DR Congo's natural resources.<sup>37</sup> It also found that high-ranking officers of the Ugandan army facilitated the illegal trafficking of natural resources by commercial entities from territories occupied by the Ugandan army. The Court attributed responsibility for the conduct of members of the Ugandan army to the Ugandan State and found that the failure of the Ugandan authorities to take adequate measures to prevent such acts from being committed constituted a breach of Uganda's international obligations.<sup>38</sup>

Although both Uganda and Rwanda have officially left the territory of the DR Congo, there is evidence to suggest that they still play a major role behind the scenes. The 2012 final report of the Group of Experts on the DR Congo, which replaced the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, points to the role of Uganda and Rwanda in providing direct military support to the rebel movement M23. There are even strong indications to suggest that these countries sent in troops in July 2012 to help M23 gain control over Congolese territory.<sup>39</sup>

Another example of a State providing support to armed groups in a foreign country was the support provided by Liberia under President Charles Taylor to rebel groups operating in Sierra Leone, in particular to the RUF, between 1997 and 2002. A report of the Panel of Experts on Sierra Leone, published in 2000, already pointed to the active involvement of President Taylor in fuelling the armed conflict in Sierra Leone. The

<sup>35</sup> Ibid.

<sup>36</sup> See International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, *I.C.J. Reports 2005*. For the judgment of the Court with respect to the determination of jurisdiction in relation to Rwanda, see International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment of 3 February 2006, *I.C.J. Reports 2006*, p. 6.

<sup>37</sup> Ibid., para. 242. <sup>38</sup> Ibid., para. 243.

<sup>39</sup> See the Final Report of the Group of Experts on the DR Congo, Prepared in Pursuance of Paragraph 4 of Security Council Resolution 2021 (2011), *UN Doc. S/2012/843*, 15 November 2012.

report indicated that Taylor and his inner circle were ‘in control of a covert sanctions-busting apparatus that include[d] international criminal activity and the arming of the RUF in Sierra Leone.’<sup>40</sup> The report also noted that this sanctions-busting was ‘fed by the smuggling of diamonds and the extraction of natural resources in both Liberia and areas under rebel control in Sierra Leone.’<sup>41</sup> A subsequent report published by the Panel of Experts on Liberia confirmed these conclusions.<sup>42</sup> The issue of Taylor’s involvement in the exploitation of diamonds by the RUF in Sierra Leone was also examined in the trial against Charles Taylor before the Special Court for Sierra Leone. The Court held, *inter alia*, that it had been proved beyond reasonable doubt that diamonds were delivered to Taylor in exchange for weapons and ammunition.<sup>43</sup>

These examples show that the involvement of foreign States in the exploitation of natural resources in situations of armed conflict can take many forms. A State can be involved because it is trading with armed groups (Taylor-RUF), but it can also be directly involved in the exploitation of the natural resources (Uganda in the DR Congo). From a legal perspective, a further distinction must be made between a State that exploits natural resources in another State without exercising control over part of that State’s territory and a State that exploits natural resources in territory where it is exercising *de facto* authority as an occupying power. Different rules apply to these two different situations. Therefore, it is very important to determine the precise role played by a State in an armed conflict. This issue is discussed in more detail in Part II of this book.

### 1.2.3 *Armed groups*

Armed groups have been involved in most of the armed conflicts examined in this book. Examples include the Khmer Rouge in Cambodia; the National Union for the Total Independence of Angola (UNITA); the RUF and the Armed Forces Revolutionary Council (AFRC) in Sierra Leone;

<sup>40</sup> Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone, *UN Doc. S/2000/1195*, December 2000, para. 212.

<sup>41</sup> *Ibid.*

<sup>42</sup> Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia, *UN Doc. S/2001/1015*, 26 October 2001, paras. 112–124.

<sup>43</sup> Special Court for Sierra Leone, *Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-01-T*, Trial Chamber II, Judgment of 18 May 2012, paras. 5948 and 6057.

the Forces Nouvelles in Côte d'Ivoire; and the Patriotic Forces for the Liberation of Congo (FPLC) and the Mai Mai groups in the DR Congo. These armed groups have all financed their armed struggles by means of the trade in natural resources.

As regards the legal rules that apply to these armed groups, a distinction must first of all be made between armed groups, such as UNITA and the Forces Nouvelles, that were able to control large areas of State territory over a long period of time and other groups, such as the Mai Mai, that are loosely organised militia groups with no control over territory. While the activities of all armed groups are subject to the basic obligations formulated in Article 3 of the 1949 Geneva Conventions, the activities of highly organised armed groups such as UNITA and the Forces Nouvelles that exercise control over a part of State territory may fall under the scope of Additional Protocol II to the 1949 Geneva Conventions. However, two additional criteria must be met before Additional Protocol II actually applies to an internal armed conflict. The first relates to its material scope of application. Additional Protocol II applies only to armed conflicts to which the government is a party. The second relates to the Protocol's formal applicability. While the 1949 Geneva Conventions have been ratified by all States, the Additional Protocol II enjoys wide yet not universal ratification. Angola, for example, is not a party to Additional Protocol II, while the DR Congo only ratified the protocol in 2002.<sup>44</sup>

The issue of ratification of Additional Protocol II by the State draws attention to another issue that has raised quite a lot of debate in the academic literature, i.e., the legal basis for imposing direct obligations on armed groups without allowing these groups to formally accede to the relevant treaties.<sup>45</sup> The Geneva Conventions are concluded between the 'plenipotentiaries of the Governments represented at the Diplomatic Conference', also referred to as the 'High Contracting Parties', while Additional Protocol II is only open for signature by the Parties to the Geneva Conventions.<sup>46</sup> At the same time, common Article 3 of the Geneva Conventions and the provisions of Additional Protocol II address armed groups directly. Common Article 3 determines that 'each Party to the conflict shall be bound to apply' certain minimum humanitarian standards, while Article 1(1) of Additional Protocol II states that it 'develops and supplements Article 3 common to the Geneva Conventions'.

<sup>44</sup> See [www.icrc.org](http://www.icrc.org) for information regarding ratification of the protocol.

<sup>45</sup> See Zegveld, *Accountability of Armed Opposition Groups in International Law*, p. 14.

<sup>46</sup> *Ibid.*

It is not sufficient to assume that, by ratifying a legal instrument, a government binds not only itself, but also the population it represents, including armed groups.<sup>47</sup> As Liesbeth Zegveld argues, this sort of 'hierarchical' view of the relationship between the government and non-State armed groups is undermined by the mere fact that non-State armed groups often 'seek to exercise public authority, and in doing so they question the authority of the established government, including the government's laws'.<sup>48</sup> Therefore, if the obligations of armed groups cannot be based on the consent of the State to be bound by relevant instruments, what would then constitute the legal basis for imposing obligations upon these groups? As Lindsay Moir argues, an alternative, more plausible argument would be to consider the obligations of non-State armed groups to be based directly on international rather than domestic law. In his view, non-State armed groups are bound by international humanitarian law (IHL) not as members of the population of a State but as 'individuals under international law', upon whom international law directly confers rights and obligations.<sup>49</sup>

In international practice the inability of armed groups to participate in the process of international law-making is not considered to constitute an impediment to imposing direct obligations upon these groups. In several of its cases, the International Court of Justice has confirmed that armed groups are bound by IHL. In its judgment of 27 June 1986 in the *Case Concerning Military and Paramilitary Activities in and against*

<sup>47</sup> See the following note, prepared by Claude Pilloud, staff lawyer of the ICRC, for the 1947 preparatory meeting for the 1949 Diplomatic Conference, reported in Kalshoven, 'The Undertaking to Respect and to Ensure Respect in All Circumstances', p. 12, note 28: 'La formule adoptée par les experts au sujet de la guerre civile ne semble pas donner satisfaction, car elle implique le principe de réciprocité que la Division juridique voudrait, dans toute la mesure du possible, éliminer. C'est pourquoi la Division juridique désirerait mettre sur pied une disposition qui prévoit que les Gouvernements, en signant la Convention, s'engagent non seulement en tant que Gouvernements, mais engagent aussi l'ensemble de la population dont ils sont les représentants. On pourrait alors en déduire que toutes les parties de la population d'un Etat qui entreprend une action en guerre civile est liée ipso facto par la Convention.' Also see Momtaz, 'Le droit international humanitaire applicable aux conflits armés non internationaux', *Recueil des cours*, p. 72. Also see the Report of the Secretary-General on Respect for Human Rights in Armed Conflicts, *UN Doc. A/7720* of 20 November 1969, para. 171.

<sup>48</sup> Zegveld, *Accountability of Armed Opposition Groups in International Law*, p. 16. Unfortunately, Zegveld does not provide an alternative theory. Rather, she emphasises that there is actually a problem and examines how this problem is dealt with in practice by international bodies.

<sup>49</sup> Moir, *The Law of Internal Armed Conflict*, p. 56.

Nicaragua, the International Court of Justice expressly noted that the acts of the *contras* towards the Nicaraguan Government were governed by the law applicable to noninternational armed conflicts.<sup>50</sup> Furthermore, in its judgment of 19 December 2005 in the *Case Concerning Armed Activities on the Territory of the Congo*, the Court noted that Uganda should have prevented ‘violations of . . . international humanitarian law by other actors present in the occupied territory, including rebel groups *acting on their own account*’.<sup>51</sup> Despite the fact that the particular circumstances of the case induced the Court to attribute responsibility for the acts of the armed groups to Uganda, the case suggests that armed groups ‘acting on their own account’ can commit violations under IHL.

Where there are sufficient indications for the direct applicability of IHL to armed groups, another question that arises is whether armed groups are bound by other fields of international law as well, in particular by international human rights and environmental law. Unlike IHL, which directly confers obligations on non-State armed groups, international human rights and environmental law almost exclusively formulate obligations for States. Only a few international human rights and environmental conventions directly confer obligations on private parties. For non-State armed groups, reference can be made to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. This Protocol prohibits armed groups to ‘recruit or use in hostilities persons under the age of 18 years’.<sup>52</sup> International environmental law, on the other hand, does not formulate any direct obligations for armed groups.

As both international human rights and environmental law primarily formulate obligations for States, most of the obligations for armed groups contained in these fields of international law must be implemented by

<sup>50</sup> International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986, *I.C.J. Reports 1986*, para. 219; Zegveld, *Accountability of Armed Opposition Groups in International Law*, p. 10.

<sup>51</sup> International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, *I.C.J. Reports 2005*, para. 179. Author’s emphasis added.

<sup>52</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Adopted on 25 May 2000, *U.N. Doc. A/54/49 (2000)*, Article 4. It should be noted that the Convention formulates a soft obligation: armed groups ‘*should* not, under any circumstances, recruit or use in hostilities persons under the age of 18 years’. Author’s emphasis added. In addition, see Ryngaert, ‘Human Rights Obligations of Armed Groups’, p. 364.

means of domestic law. Both fields of international law formulate ‘due diligence’ obligations for States, which means that the State must ensure that private actors respect the relevant obligations. Problems arise in situations where States cannot exercise control over the activities of private actors, in particular the activities of armed groups. It can be difficult or even impossible for States to ensure compliance with international human rights and environmental standards in territories that are under the control of armed groups.

The question is therefore whether armed groups that are in control of parts of the State territory can be considered to be directly bound by international human rights and environmental law, especially when they exercise functions of governmental authority.<sup>53</sup> This is an extremely difficult question to answer *in abstracto*. There are relatively few examples of armed groups that behave like *de facto* authorities, even though they may be highly organised. Mention can be made, for example, of the Forces Nouvelles in Côte d’Ivoire. Although this opposition force was in full control of the north of Côte d’Ivoire and established a well-organised administration there,<sup>54</sup> it did not truly function as a local authority. The Group of Experts established by the UN Security Council to investigate violations of the arms and diamond embargoes concluded in its 2009 final report that, notwithstanding the formal reintroduction of local government in the north of Côte d’Ivoire, ‘[t]he political situation in northern Côte d’Ivoire currently bears more resemblance to a warlord economy than to a functioning government administration.’<sup>55</sup>

A closer look at international practice does not provide direct support for the thesis that armed groups are bound by international human rights or environmental law. However, it does provide some support for the thesis that there is, in the words of Cédric Ryngaert, a ‘legitimate expectation of the international community’ that armed groups will comply with international human rights law, not as a legal but as a moral

<sup>53</sup> With respect to human rights, see, e.g., Clapham, ‘Human Rights Obligations of Non-State Actors in Conflict Situations’, pp. 491–523; and Ryngaert, ‘Human Rights Obligations of Armed Groups’, pp. 355–81.

<sup>54</sup> See, e.g., the Report of the Group of Experts Submitted in Accordance with Paragraph 7(e) of Security Council Resolution 1727 (2006) of 14 June 2007, *UN Doc. S/2007/349*, para. 89, on the organisation of the economic and financial management in the rebel-controlled part of the country.

<sup>55</sup> Final Report of the Group of Experts Submitted in Accordance with Paragraph 11 of Security Council Resolution 1842 (2008) of 9 October 2009, *UN Doc. S/2009/521*, para. 36.



obligation.<sup>56</sup> In several of its resolutions, the UN Security Council has called upon parties to an internal armed conflict to respect international human rights law. Examples include Resolution 1231 of 11 March 1999 on the situation in Sierra Leone, in which the Council ‘calls upon all parties to the conflict in Sierra Leone fully to respect human rights and international humanitarian law’; and Resolution 1291 of 24 February 2000 on the situation in the DR Congo, in which the Security Council calls on all parties to the conflict in the DR Congo ‘to protect human rights and respect international humanitarian law and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948’.<sup>57</sup>

All in all, current practice does not indicate that the proposition that armed groups are bound by human rights law is accepted, and there is no evidence at all for the proposition that armed groups are bound by international environmental law. Of course, armed groups can always choose to assent to human rights or environmental obligations, either through agreements with the government or through unilateral declarations. In fact, there are several examples of peace agreements between governments and armed groups, where armed groups agree to respect human rights as well as other international legal obligations.<sup>58</sup>

A final issue that deserves consideration is the question whether non-State armed groups are bound by customary international law. In this respect, Yoram Dinstein argues that ‘[t]he inability of individuals, either singly or as insurgent groups, to participate in custom-formation does not affect the fundamental principle that – once formed . . . – customary international law is binding on all human beings without exception’.<sup>59</sup> This is a rather bold statement which needs to be put into perspective.

The better view would be that non-State actors can be directly bound by customary international law in the same way that they are directly bound by treaties. In other words, non-State armed groups can be directly bound

<sup>56</sup> For the notion of ‘legitimate expectations’ of the international community as a more realistic alternative to legally binding obligations, see Ryngaert, ‘Human Rights Obligations of Armed Groups’, pp. 355–81.

<sup>57</sup> See UNSC Resolution 1231 (1999), para. 4; and S/RES/1291 (2000), para. 15.

<sup>58</sup> See, e.g., Article 3(3) of the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo concluded between the Congolese government and five armed opposition groups, in which the parties ‘reaffirm their support for the Universal Declaration of Human Rights, the International Pact on Civil and Political Rights of 1966, the International Pact on Economic and Socio-Cultural Rights of 1966, the African Charter on Human Rights and the Rights of Peoples of 1981, and duly ratified international conventions’.

<sup>59</sup> Dinstein, ‘The Interaction between Customary International Law and Treaties’, p. 2344.

by customary norms that address these groups, either directly or as parties to an armed conflict. By way of example, reference can be made to the rules embodied in common Article 3 of the 1949 Geneva Conventions, which are considered to apply to all internal armed conflicts, both as a matter of treaty law and as customary international law. According to the International Court of Justice in the *Nicaragua case*, common Article 3 reflects 'elementary considerations of humanity'.<sup>60</sup> Other customary international norms that apply to internal armed conflicts, and which therefore can be assumed to bind armed groups directly, include the core principles of IHL, in particular the principles of humanity, distinction, necessity and proportionality.

In contrast, armed groups cannot be directly bound by customary norms that are exclusively addressed to States. This means, for example, that armed groups are not directly bound by the international environmental principles of sustainable use and prevention. As explained in Chapter 4 of this book, these principles are addressed to States and must be made effective for other actors through implementation in national law.

As a general rule, it can thus be argued that armed groups can only be directly bound by rules of customary international law that address these groups, while they are not directly bound by rules that exclusively address States. There appears to be one exception to this general rule. Reference can be made to the Martens clause, as inserted, *inter alia*, in the preamble to Additional Protocol II applicable to internal armed conflicts. This clause, which is discussed in more detail in Chapter 6 of this book, aims to ensure that human beings remain protected in situations of armed conflict, even in the absence of specific treaty rules. It is argued that this clause enables the application to armed groups of some customary international law rules that normally address States only, in particular customary international law rules relating to the protection of human rights. However, it is relevant to note that these customary norms do not then apply to armed groups as a matter of customary international law but rather as a matter of treaty law, namely, through the Martens clause.

#### 1.2.4 Companies

Because of their involvement at every stage of the production and distribution process related to natural resources, companies play a key role

<sup>60</sup> International Court of Justice, Case Concerning Military and Paramilitary Activities in and against Nicaragua, Judgment of 27 June 1986, *I.C.J. Reports 1986*, p. 14, para. 218.

in resource-related armed conflicts. They are able to make an important contribution to solving these armed conflicts, but they can also exacerbate the situation with their practices. To illustrate the negative impact of companies on resource-related armed conflicts, reference can be made to the reports of various panels of experts established by the UN Security Council in relation to the conflicts in Angola, Sierra Leone, Liberia and the DR Congo. These reports show the involvement of companies in such diverse practices as the extraction of natural resources controlled by rebel groups, the smuggling of natural resources, and breaking weapons embargoes introduced by the UN Security Council.<sup>61</sup>

The Dutchman Guus Kouwenhoven is a well-known example of a businessman who was directly involved in illegal practices related to an armed conflict. He was the director of the Oriental Timber Company, the largest timber company operating in Liberia during the presidency of Charles Taylor. Kouwenhoven is suspected of being involved in the delivery of arms to Taylor in Liberia and the RUF in Sierra Leone, in contravention of the embargo imposed by the UN Security Council,<sup>62</sup> a crime for which he is currently standing trial before the Dutch Appeals Court.<sup>63</sup> In addition, the Panel of Experts on Liberia found evidence to suggest that Kouwenhoven's Oriental Timber Company, as well as other timber companies, helped Taylor to divert revenues from the timber industry for extra-budgetary activities.<sup>64</sup>

Furthermore, several panels of experts have reported on companies that had direct business dealings with armed groups. The report of the Panel of Experts on Angola, also known as the Fowler Commission after its chairman, indicated that before the imposition of the diamond sanctions

<sup>61</sup> See, e.g., the Final Report of the Monitoring Group on Angola, *UN Doc. S/2000/1225*, in particular paras. 154–61, and the Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone, *UN Doc. S/2000/1195*, December 2000.

<sup>62</sup> See the Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone, *UN Doc. S/2000/1195*, December 2000, para. 215.

<sup>63</sup> The trial has been on the roll for several years now. In 2006, Guus Kouwenhoven was convicted by the Dutch district court for the delivery of weapons to Taylor. In appeal, Kouwenhoven was acquitted. The Dutch Supreme Court has finally referred the case back to the Court of Appeal, which is bound to make a decision very soon. For a discussion of this case and the difficulties of exercising extra-territorial jurisdiction, see Herik, 'The Difficulties of Exercising Extraterritorial Criminal Jurisdiction', pp. 211–26.

<sup>64</sup> Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia, *UN Doc. S/2001/1015*, 26 October 2001, paras. 321–50.

on Angola, UNITA had auctioned off mining permits to foreign companies for the exploitation of mines within UNITA-controlled territory. In addition, the Panel found that UNITA had granted various diamond buyers a licence to operate within the areas under its control in exchange for a commission.<sup>65</sup>

In addition to these examples of direct company involvement in resource-related armed conflicts, there are also many examples of companies that are or have been indirectly involved in resource-related armed conflicts. This is partly due to the character of these conflicts. Natural resources that are used to finance armed conflict clearly have an economic value, which makes them valuable to companies further up the supply chain as well. Companies that produce consumer goods such as jewellery and electronic devices buy their raw materials – such as diamonds, gold and coltan – from other companies. Because of these purchases, these companies can also be indirectly involved in the financing of armed conflicts. Several reports of panels of experts have demonstrated the relative ease with which diamonds from countries like Angola, Sierra Leone, Liberia and Côte d’Ivoire were able to enter the legitimate diamond market. The Fowler report specifically pointed to the diamond market’s lax controls and regulations to explain the relative ease with which illegal diamonds could find their way onto the market.<sup>66</sup>

While these examples show the negative impact that companies can have on resource-related armed conflicts, they also show the possibilities that exist for companies to make a positive contribution to ending them. In fact, several initiatives have been launched in recent years to end corporate complicity in the trade in resources from countries engaged in conflicts. Important initiatives include the Kimberley Process for the Certification of Rough Diamonds (KPCS) and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. In addition, initiatives have been launched to address the role of companies in fostering corruption, in particular the Extractive Industries Transparency Initiative (EITI). These initiatives are discussed in more detail in Part III of this book.

It is also important to note that all of these initiatives have a voluntary character. Their effectiveness depends on the willingness of companies to

<sup>65</sup> See the Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, *UN Doc. S/2000/203*, 10 March 2000, paras. 78 and 79.

<sup>66</sup> Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA, 10 March 2000, *UN Doc. S/2000/203*, paras. 87–93.

implement these instruments. In addition, as discussed in more detail in Part III of this book, these instruments all respond to the particular needs of the State where the natural resources are located. The question therefore arises of whether international law could also impose binding obligations on companies. In this respect, reference can be made to the 1969 International Convention on Civil Liability for Oil Pollution Damage, which directly confers responsibility for damage caused by oil pollution on private shipowners.<sup>67</sup> Furthermore, the 1982 UN Convention on the Law of the Sea (UNCLOS) prohibits natural or legal persons from appropriating parts of the deep seabed and its resources.<sup>68</sup> However, these are among the few examples of international legal instruments that directly impose binding obligations on companies. For the most part, the legal position of companies is regulated by national law, both of the home and of the host State. Companies must respect these national laws in their business practices.

### 1.3 Implications for strategies to address resource-related armed conflicts

The preceding sections showed that there are several links between natural resources and armed conflict. Natural resources can provide the means to finance an armed conflict, they can be associated with the outbreak of an armed conflict and they can prolong armed conflicts. Moreover, a wide range of actors are involved in these armed conflicts, whose activities are subject to different legal regimes. These factors require a multifaceted and comprehensive approach to the prevention, containment and resolution of resource-related armed conflicts.

Two main challenges can be identified in this respect. The first concerns stopping natural resources from financing or fuelling armed conflicts. This implies, first of all, the adoption of strategies that address the trade in natural resources as well as other forms of financing related to natural resources, such as the issuing of mining and timber concessions by armed groups and foreign States, as well as illegal taxes on natural resources. It also implies adopting strategies aimed at returning the control over the State's natural resources to the government.

<sup>67</sup> International Convention on Civil Liability for Oil Pollution Damage, adopted on 29 November 1969, 973 *UNTS* 3.

<sup>68</sup> United Nations Convention on the Law of the Sea, adopted on 10 December 1982, 1833 *UNTS* 3, Article 137.

The second challenge is to improve governance over natural resources within States in order to resolve existing armed conflicts and to prevent a relapse into armed conflict. Strategies focusing on the financial aspects of natural resources exploitation address only some of the problems associated with resource-related armed conflicts. They do not provide solutions for grievances related to environmental degradation or the misuse or improper distribution of profits obtained from natural resources. Nor do they provide solutions for institutional failures related to the resource curse. These problems require a more structural approach aimed at resolving resource-related armed conflicts and preventing the outbreak of new conflicts.

A key aspect of this sort of structural approach is to address failures in the governance of States with regard to natural resources. For the purposes of the present book, the term 'governance' seeks to denote the broader framework for the exercise of political authority with respect to the management of natural resources within States.<sup>69</sup> Although it is the government of a State that is entrusted with the task of managing the State's natural resources, it does so within a broader social and political framework. First of all, the government exercises authority over the State's natural resources on behalf of the State and its people. Therefore it has to take into account the interests of groups and individuals within society. In addition, international actors can also be involved in the governance of natural resources. For example, the Security Council can use its powers under Chapter VII of the UN Charter to assist a government to implement reforms in its natural resources policies. Therefore the term 'governance' should primarily be understood to refer to this broader participatory framework, or in other words, to the process of governing.

Furthermore, the term 'governance' is often associated with the quality of governance, and reference is made to 'good governance'. Although there is no common definition of the concept of good governance, it is possible to identify certain common elements. These include abiding by the rule of law, public participation, transparency, accountability, control of corruption and government effectiveness.<sup>70</sup> All these elements can be found in the definition of good governance as incorporated into Article

<sup>69</sup> On the concept of governance and related concepts, see Weiss, 'Governance, Good Governance and Global Governance', pp. 795–814; Knight, 'Democracy and Good Governance', pp. 620–33; Brown-Weiss and Sornarajah, 'Good Governance', pp. 516–28; and Ladeur, 'Governance, Theory of', pp. 541–53.

<sup>70</sup> See Brown-Weiss and Sornarajah, 'Good Governance', pp. 516–28.

9(3) of the 2000 Cotonou Convention concluded between the European Union and its member States on the one hand, and the members of the African, Caribbean and Pacific Group of States on the other. The Cotonou Convention defines good governance as

the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aimed in particular at preventing and combating corruption.<sup>71</sup>

As a comprehensive definition, the Cotonou definition can serve as a benchmark for understanding the concept of good governance and its implications. Furthermore, it provides a very useful point of reference for the present study, which focuses on good governance in relation to natural resources management. For the purposes of the present study, good governance refers to

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 and 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.

Taking the Cotonou definition as a point of reference, this definition focuses on some of the particular challenges associated with the governance of natural resources, while adding the elements of participation and sustainability to the definition. This book argues that for the management of natural resources good governance requires the active involvement of citizens in decision-making processes as well as due regard for environmental protection, which is reflected in the concept of sustainability. Furthermore, good governance is considered an essential prerequisite for achieving sustainable development. This was recently confirmed in the

<sup>71</sup> Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part, 23 June 2000 (last revised: 2010).

Rio+20 Declaration, ‘The Future We Want.’<sup>72</sup> Arguably, good governance constitutes the basis of natural resource governance to prevent and resolve armed conflicts. One of the objectives of this book is to assess whether and to what extent these requirements for good governance are reflected in international law, as well as in current approaches to addressing the links between natural resources and armed conflict.

#### 1.4 Definition of terms used in this book

Some terms are used throughout this book without further clarification. One of these is ‘natural resources’. Natural resources can be defined as ‘those materials or substances of a place which can be used to sustain life or for economic exploitation’<sup>73</sup> or as ‘any material from nature having potential economic value or providing for the sustenance of life’.<sup>74</sup> These definitions first of all emphasise the economic function of natural resources. In this sense, natural resources constitute primary commodities, i.e., ‘raw or unprocessed material[s] that [are] extracted or harvested and also require very little processing before consumption’.<sup>75</sup> Indeed, for the purposes of this book, their economic value as raw materials is a defining characteristic of natural resources. It is for this reason that natural resources constitute an important source of funding for armed conflicts. Natural resources can often be relatively easily obtained by parties to an armed conflict and can be sold without further processing. The primary focus of this book is therefore on those natural resources that are relatively easy to obtain but are highly profitable, such as timber, minerals and rare metals.

<sup>72</sup> The relevant section of the Rio+20 Outcome Document reads, ‘We acknowledge that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger. We reaffirm that to achieve our sustainable development goals we need institutions at all levels that are effective, transparent, accountable and democratic.’ See UNGA Resolution 66/288 of 11 September 2012, para. 13.

<sup>73</sup> Oxford English Dictionary Online, Oxford: Oxford University Press (2007).

<sup>74</sup> *Black’s Law Dictionary*, 8th edn. (2004), p. 1056.

<sup>75</sup> *Ibid.* UNCTAD distinguishes the following groups of primary commodities: foods and tropical beverages (includes basic foods, coffee, cocoa and tea); vegetable oilseeds and oil; agricultural raw materials (includes timber and rubber); and minerals, ores and metals (includes copper, tin, tungsten, gold and crude petroleum). See UNCTAD, *Handbook of Statistics* (2012).



Nevertheless, natural resources are not only economic goods. They also form an integral part of the environment, and may perform an important ecological function as well. For example, trees not only provide timber, but also help to reduce climate change. In addition, forests are the habitat for numerous different species. This is also expressed in the definitions given above. As elements of the environment, natural resources can be necessary to 'sustain life'. In this respect, reference can be made to Principle 2 of the 1972 Stockholm Declaration, which refers to 'the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems'.<sup>76</sup>

The environment, which is another term used throughout this book, can then be defined in relation to natural resources. The environment comprises the air, water, land, flora and fauna, which interact as part of different ecosystems. It can be argued that the environment needs protection for two distinct but interrelated reasons. First, the environment needs protection for the inherent values it represents. Furthermore, human beings are dependent upon the environment. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice stated, 'the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn'.<sup>77</sup>

In relation to natural resources, reference is often made to the term 'exploitation'. The Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo opted for a very broad definition of this term, to include the extraction, production, commercialisation and export of natural resources, and other services such as transport and financial transactions.<sup>78</sup> The present book largely follows this definition, although 'other services' are not covered by the term 'exploitation'. Where this book refers to the exploitation of natural resources, it generally refers to extraction, production and trade in natural resources, unless a further distinction is required.

In some cases this book refers to the 'illicit' or 'illegal' exploitation of natural resources to designate exploitation activities that are conducted

<sup>76</sup> Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, 11 *I.L.M.* 1416 (1972).

<sup>77</sup> International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, *I.C.J. Reports* 1996, p. 226.

<sup>78</sup> Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, *UN Doc. S/2001/357*, para. 16.

in violation of rules of international law. It is important to note that the term ‘illegal’, as used in legal documents, often fails to distinguish between resource exploitation that is contrary to international law and resource exploitation that is contrary to national law. Mining without an official permit under domestic law constitutes ‘illegal exploitation’ from the domestic perspective, even if it does not necessarily violate any rule of international law. This is reflected in the definition of the Protocol against the Illegal Exploitation of Natural Resources, adopted by the International Conference on the Great Lakes Region, which defines illegal exploitation as ‘any exploration, development, acquisition, and disposition of natural resources that is contrary to law, custom, practice, or principle of permanent sovereignty over natural resources, as well as the provisions of this Protocol.’<sup>79</sup> References to ‘illegal exploitation’ in this book, however, primarily designate activities that are contrary to international law.

Another term that is sometimes used in this book is ‘conflict resources’. There is as yet no legal definition of the term. The only official document that uses a related term is the KPCS, a voluntary agreement between State, civil society and the diamond sector to combat the trade in ‘conflict diamonds’. The definition of ‘conflict diamonds’ adopted in the Scheme focuses exclusively on the role of rebel movements. According to the Scheme, conflict diamonds are ‘rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments’.<sup>80</sup>

The NGO Global Witness proposed adopting the following alternative definition of conflict resources: ‘conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law’.<sup>81</sup> The advantage of this definition is that it does not distinguish between natural resources exploited by rebel groups and those exploited by the government, which makes it more neutral. However, in another sense the definition is too narrow. In order to designate natural resources as conflict resources under this definition, it is necessary to establish that the natural resources have

<sup>79</sup> Protocol against the Illegal Exploitation of Natural Resources, adopted by the International Conference on the Great Lakes Region on 30 November 2006, Article 1.

<sup>80</sup> Kimberley Process Certification Scheme, Section I.

<sup>81</sup> Global Witness, *The Sinews of War: Eliminating the Trade in Conflict Resources*, p. 10.

contributed to violations of international law. This is problematic in the sense that not all natural resources that contribute to armed conflicts necessarily contribute to, benefit from, or result in violations of international law. This book therefore prefers to define conflict resources as natural resources whose systematic exploitation and trade finance or fuel armed conflicts.

### 1.5 Aim of the book

This book addresses the problem of resource-related armed conflicts from an international law perspective. More specifically, it aims to identify and assess the role of international law in ensuring that natural resources are used to promote development as well as sustainable peace in countries that are experiencing or that have experienced armed conflicts which are either caused, financed or fuelled by natural resources. Since the issue of resource-related armed conflicts is relatively new, it has not yet been addressed in a systematic way in formal law-making processes. To determine the applicable rules, it is therefore first of all necessary to rely on the existing rules of international law that pertain to the governance of natural resources within States in general, as well as on the rights and obligations of parties to an armed conflict. Furthermore, relevant standards can be derived from ad hoc processes, in particular from Security Council resolutions and from political agreements and codes of conduct adopted to address the issue of resource-related armed conflicts.

For this purpose, this book assesses first of all the general legal framework for the governance of natural resources within States. The principal question to be answered here is to what extent current international law provides rules to ensure that natural resources are exploited for the purpose of achieving sustainable development. In this respect, the first role of international law is that it establishes legal rights and obligations with regard to the exploitation of natural resources in States, including legal entitlements to the benefits derived from their exploitation. This book aims to identify these legal rights and obligations deriving from international economic, environmental and human rights law, as the legal framework relevant to the exploitation of natural resources in situations of armed conflict, as well as to the governance of natural resources as part of a strategy for conflict resolution and post-conflict peacebuilding.

Furthermore, this book aims to establish whether and to what extent the general legal framework for the governance of natural resources continues to apply in times of armed conflict. In addition, it aims to assess the

extent to which rules from the law of armed conflict address the illicit exploitation, looting and plundering of natural resources by parties to an armed conflict, including the resulting environmental damage. Does international law provide adequate rules to prohibit these practices and to address the related environmental damage?

Finally, the book aims to identify standards for the governance of natural resources in States recovering from armed conflict. Most of these standards have been developed by ad hoc approaches, in particular UN Security Council resolutions and informal multi-stakeholder processes. This book assesses the contribution of both types of mechanisms to the legal framework for the governance of natural resources. The principal question addressed in this part is whether and to what extent norms and standards developed with ad hoc mechanisms contribute to improving governance over natural resources in States that are recovering from armed conflict.

## 1.6 Structure of the book

This book consists of three parts. Part I deals with the international legal framework for the governance of natural resources within States. The underlying hypothesis is that the rights and obligations identified in this part not only are relevant to the governance of natural resources by governments in situations of peace, but also are relevant in situations of armed conflict. It comprises three chapters. Chapter 2 discusses the principle of permanent sovereignty over natural resources as the basis for the governance of natural resources within States. The principle of permanent sovereignty formulates a right for States and peoples to freely exploit their natural resources for the purposes of development. The main conclusion of this chapter is that the principle of permanent sovereignty over natural resources entails a right for governments to exploit the State's natural resources on behalf of the State and its people on condition that it does so for national development and the well-being of the people of the State. Chapter 3 discusses these conditions in greater detail through the lens of collective or 'peoples' rights. It identifies groups that are eligible to exercise peoples' rights and examines the implications of peoples' rights for the governance of natural resources within States. Finally, Chapter 4 discusses the protection of natural resources under international environmental law. It assesses the obligations imposed by international environmental law on States with regard to the protection of the environment, as well as the implications of these obligations for the governance of natural resources within States.

Part II of this book discusses the international legal framework regulating the protection and management of natural resources during armed conflict. Chapter 5 examines the question of whether and to what extent norms of international human rights and environmental law continue to apply in situations of armed conflict. For this purpose, the chapter looks at how armed conflict affects treaties, a topic which has been the object of a recent study by the International Law Commission (ILC), resulting in the adoption of a set of articles. The chapter discusses the work of the ILC in this respect. It also looks at the broader issue of how treaties operate during armed conflict. In addition to treaty law, this chapter also analyses the role of customary international law in situations of armed conflict. Even if a particular treaty is considered not to apply in times of armed conflict, specific obligations contained in its provisions may continue to be valid because of their customary international law status. Chapter 6 assesses the protection afforded to natural resources and the environment by IHL. This field of law is of particular relevance, as it is the only field of international law that contains obligations directly binding non-State armed groups. In addition, it is the principal source of rights and obligations for States with a military presence on the territory of a foreign State. This chapter argues that IHL contains only a few rules that were specifically developed to regulate the use of natural resources by parties to an armed conflict. Therefore, for the most part, recourse must be made to more general rules of this body of law relating to the protection of property and civilian objects. In order to address the specific challenges posed by resource-related armed conflicts, these more general rules of IHL are interpreted in light of the more specific rules of international environmental and human rights law relating to natural resources.

Part III of this book discusses the international legal and political framework regulating the governance of natural resources as part of conflict resolution and post-conflict peacebuilding strategies. Chapter 7 discusses the approach of the Security Council to the role of natural resources in financing armed conflict. In many cases the UN Security Council has resorted to imposing sanctions to address the links between natural resources and armed conflict. The objective of Chapter 7 is to assess whether and to what extent the Security Council resolutions have, in addition, developed standards for the governance of natural resources. For this purpose, Chapter 7 discusses a range of sanction regimes imposed by the Security Council in order to address resource-related armed conflicts. In addition, it assesses the extent to which peacekeeping operations, as well as the Peacebuilding Commission, implement and consolidate the measures imposed by the Council. Furthermore, Chapter 8 discusses informal political instruments

that have been developed in response to resource-related armed conflicts. In addition to States, the business community and civil society have been involved in the design of these instruments and have been given a stake in their implementation. These instruments are part of a growing trend in international politics towards drafting 'guidelines', 'codes of conduct' or other nonbinding instruments rather than negotiating formal treaties. Nevertheless, these informal instruments do formulate standards for the management of natural resources in States emerging from armed conflict. This chapter examines these standards in more detail and assesses the extent to which informal instruments can be regarded to provide credible alternatives to formal treaties.

The concluding Chapter 9 summarises the general conclusions of this book. It assesses the adequacy of the overall international legal framework for the governance of natural resources within States and contains recommendations for how international law can be better equipped to prevent, contain and resolve resource-related armed conflicts.