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Profiting from Peace: Managing the Resource Dimensions of Civil War

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Introduction

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Since the mid-1990s, the increased commercialization of civil wars has gained unprecedented academic and policy attention. A large number of scholarly and policy studies have been produced that allow for a better understanding of the political economy of many contemporary conflicts, particularly those characterized by the predatory exploitation of lucrative natural resources and the pervasive criminalization of economic life.¹ What many of today's armed conflicts have in common, these studies show, is their increasing "self-financing nature."² As superpower patronage declined with the end of the Cold War, both rebel groups and governments in numerous conflict theaters have sought out alternative sources of revenue to sustain their military campaigns.³

Facilitated by economic globalization and financial market liberalization, many of the resulting war economies are centered on the exploitation of and trade in natural resources, such as oil, timber, precious minerals and gemstones, and narcotic crops.⁴ The revenues generated through such "conflict trade" help to procure readily available weapons and military materiel, to hire mercenaries, to line the pockets of corrupt warlords and government officials, and to buy support of neighboring regimes. Numerous examples abound. During Cambodia's civil war, both the government and the Khmer Rouge sold gemstones and timber on Asian and European markets⁵; in Colombia, the guerrillas and paramilitaries have increasingly engaged in the production and trafficking of narcotics and in laundering their ill-gotten proceeds through elaborate quasi-criminal networks⁶; and Liberia's warlord-turned-president Charles Taylor controlled a large part of that country's trade in timber and smuggled diamonds to finance his violent rebellion and subsequent sponsorship of the Revolutionary United Front (RUF)

rebels in neighboring Sierra Leone.⁷ Perhaps nowhere was the humanitarian price of conflict trade more evident than in Angola and the Democratic Republic of Congo (DRC), where the exploitation of diamonds, gold, and coltan enriched rival elites while exposing the civilian population to devastating poverty and enormous loss of life.⁸

This complicated reality of contemporary intrastate wars presents policymakers with a twofold challenge: to accurately assess the impact of resource predation and related financial flows on the dynamics of armed conflict and to develop and implement effective policy responses for conflict prevention, conflict resolution, and peacebuilding. Attention to the issue has led to numerous policy initiatives, which are the subject of this volume and are discussed in more detail in the ensuing chapters.

Among others, the governments of Canada, Norway, and the United Kingdom have championed policy development on relevant issues such as UN sanctions, corporate responsibility, and financial transparency in the extractive industries. The World Bank and its private sector arm, the International Financial Corporation (IFC), have stepped up their support of anticorruption efforts and of promoting transparent and accountable institutions for resource management, an example of which is the much-debated Chad-Cameroon oil pipeline project.⁹ The UN Security Council has addressed the role of diamonds in fueling conflicts in West Africa through the imposition of diamond embargoes on warring factions in Sierra Leone, Angola, and Liberia. The Security Council has discussed the role of business entities in conflict prevention, peacekeeping, and peacebuilding, an issue that the UN Global Compact has also focused on in its multistakeholder dialogues.¹⁰ Last but not least, advocacy organizations such as Global Witness and Partnership Africa Canada have brought the issue of war economies to the international agenda through, *inter alia*, their campaigns against “blood diamonds.”¹¹ These nongovernmental organizations (NGOs) were also instrumental in the imposition of diamond sanctions against UNITA and the establishment of the so-called Kimberley Process for the certification of rough diamonds, a government, industry, and NGO initiative endorsed by the UN.¹²

Why Consider the Resource Dimensions of Civil Wars?

Throughout history, violent contests over natural resources have played a central role in warfare. Until recently, however, academic and policy attention to the economic dimensions of conflict was confined largely to interstate wars. With the ascendance of intrastate wars as the main type of armed conflict in the post-Cold War era, the focus has shifted. Sustained research on conflicts such as those in Sudan, Angola, Sierra Leone, and Cambodia has demonstrated that violence and armed intrastate conflicts often serve a

range of political and economic functions for combatants, civilians, and external actors participating in the conflict and the war economy that sustains it.¹³ This research has also gone far to identify the key linkages by which economic factors can promote or exacerbate violent conflict.

First, an abundance of lucrative natural resources can have detrimental effects on the socioeconomic and political stability of a country, creating permissive causes of violence and armed conflict. In fact, numerous qualitative and quantitative studies show that in resource-dependent countries, resource wealth is often associated with macroeconomic instability, rampant corruption, oppression of minorities or other groups at the hand of the ruling elite, and crippling poverty.¹⁴ Among political scientists and economists, this phenomenon is known as the “paradox of plenty” or the “resource curse.” While natural resources provide the bedrock for economic development and relative prosperity in countries such as Norway, Chile, and Botswana, in large parts of the world resource wealth does not benefit the majority of the population. To them, natural resources are a curse rather than a blessing.¹⁵ This demonstrates the urgent need to foster the positive, productive role of natural resource exploitation for more equitable socioeconomic development and political stability through adequate policy responses aimed at export diversification and good governance, supported by complementary changes to the institutional frameworks of international aid, trade, and finance.¹⁶

Second, revenues generated from natural resource exploitation can significantly influence the character and the duration of conflicts.¹⁷ Conflicts that have started as political rebellions, such as those in Colombia and Angola, can mutate over time as pecuniary considerations become as important to some combatants as political aspirations—or even more important. The types of natural resources a country is endowed with, their modes of exploitation, and the way related benefits accrue to conflict stakeholders can also influence the type of armed conflict it experiences. There are strong indications, for instance, that “unlootable resources” (oil, gas, and deep-shaft gems and minerals) tend to be associated with separatist conflicts such as those in Bougainville (Papua New Guinea), Aceh (Indonesia), and Sudan; by contrast, “lootable resources” (alluvial diamonds, narcotic crops, and timber) feature strongly in nonseparatist insurgencies, such as in Afghanistan, Angola, Colombia, Liberia, and Sierra Leone.¹⁸ Furthermore, the ready availability of spoils of war in the form of lucrative and easily tradable natural resources in particular tends to complicate conflict termination and may pose important challenges for postconflict peacebuilding by creating “spoilers” with an interest in continuation of violence and instability.¹⁹ Natural resource predation and criminal economic activities can also have strong regional linkages with cross-border trading networks, regional kin and ethnic groups, and supportive neighboring regimes, particularly where conflicts are embedded in regional conflict formations.²⁰ Properly

understanding and addressing these complex economic dimensions of conflict may thus hold great promise for improving the international community's ability to prevent and resolve armed conflict and build lasting peace.

Third, there are nonnegligible moral, political, and even legal obligations for governments and companies in the developed world that arise from their commercial linkages with local war economies. While rarely acknowledged in official policy discourse, most of the natural resources fueling conflicts are destined for consumer markets (both licit and illicit) in the developed world. The majority of the oil and natural gas produced in the developing world fuels the economies of the developed world; the mineral coltan, which fueled much of the DRC war, is used in high-end electronics; the majority of the drugs produced in Colombia and Afghanistan are consumed in New York, Paris, London, and Moscow; and diamonds would be worthless were it not for their well-guarded status as a luxury item. Similarly, bank secrecy in the developed world continues to permit safe havens for stolen funds of unaccountable elites in the developing world and to facilitate money laundering by criminal networks. Policymakers, activists, and private-sector actors in the developed world thus have (or should have) a stake in positively influencing conflict dynamics through the numerous regulatory, legal, and market-based mechanisms at their disposal.

Taken together, these factors underline both the timeliness and the importance of current policy attention to the role of natural resources as a source of combatant self-financing. Indeed, the term *resource wars* has gained currency in scholarly work and policy discourse as a depiction of what to some observers represents a new type of insurgency.²¹ Here, however, a word of caution is in order. Clearly, not all countries that suffer from armed conflict are rich in lucrative natural resources, nor are all resource-dependent economies prone to conflict. In conflicts in Sri Lanka, the Balkans, and Afghanistan, war economies have thrived instead on diaspora remittances, aid diversion, or contraband trade.²² Furthermore, studies suggest that even where natural resource predation features strongly in conflict dynamics, it is seldom the sole or even main cause of conflicts.²³ Thus, while a political economy approach is a useful methodological framework for conflict analysis and policy development, it should not lead to "natural resource reductionism" that neglects other, still crucial political, security and social dimensions of armed intrastate conflict.²⁴

Objectives and Design of the Book

Given the relative newness of economic factors in peace and security analysis, few systematic studies exist on the actual amenability of conflicts to economic regulation. Consequently, policy responses remain largely

exploratory and ad hoc. Through its commissioned research and policy dialogues, the Economic Agendas in Civil Wars Program at the International Peace Academy has sought to fill this lacuna.²⁵

The main objective of this volume is to assess and promote practical policy tools and strategies by which policymakers in governments, inter-governmental organizations, the private sector, and civil society, in both the developed and developing worlds, may more effectively address the economic dimensions of contemporary armed conflict. To that end, the volume first provides an overview of the complex linkages between natural resource wealth and armed intrastate conflicts and, based on these linkages, provides an overview of adequate policies and tools. The chapters in the second section analyze a range of policy responses to curtail and control the flow of resources and related finances to conflicts, as important mechanisms for conflict prevention and resolution. In the third section, the contributions detail different mechanisms to promote more responsible and transparent management of natural resources, both by companies engaged in resource extraction and by host governments in conflict-prone states. The fourth section comprises chapters that analyze the regulatory and legal frameworks that may be brought to bear upon the range of licit and illicit actors engaged in war economies as a means to establish accountability for human rights violations and to end impunity for those who profit from war. A concluding analysis with issues for further research and policy action is offered in the final section.

Natural Resources and Conflict: Issues and Policy Options

There are numerous ways in which the exploitation of and trade in lucrative natural resources and related financial interactions can have impacts on armed conflict. Early scholarly discourse on the economic causes of conflict centered on the *greed versus grievance* dichotomy in explaining the onset of armed rebellion.²⁶ According to the highly influential yet controversial “greed thesis,” economic motivations and opportunities (“loot seeking”) are more highly correlated with the onset of conflict than are ethnic, socioeconomic, or political grievances (“justice seeking”). By now, numerous academic and policy studies exist that allow for a more differentiated understanding of the complex political economy of armed conflict.²⁷ Based on a review of these studies, Macartan Humphreys in his overview (Chapter 2) discerns five modalities through which natural resources are linked with conflict:

- *rent seeking*, the political impact of the availability of large natural resource rents to ruling elites, often referred to as “the resource curse”

- *grievances*, primarily associated with the (mal)distribution of natural resource wealth and socioeconomic impacts of extractive operations
- *economic instability*, accruing from the distortions associated with a country's high dependence on natural resources
- *conflict financing*, the channels through which access to natural resource wealth affects the means for belligerents to continue fighting
- *peace spoiling*, by which natural resource wealth alters the incentives for peace

As Humphreys highlights, each of these modalities involves different sets of actors and incentives. Equally diverse is the range of possible policy responses he introduces, many of which are taken up in greater detail in the ensuing chapters.

Curtailing Conflict Trade and Finance

Much of the policy debate and action dealing with war economies thus far has focused on developing “control regimes” aimed at curtailing conflict trade and financial flows as sources of combatant self-financing.²⁸ The rationale for such global or regional control regimes is fairly straightforward: if conflicts thrive on licit or illicit trade in natural resources, then curtailing conflict trade may contribute to conflict resolution by weakening warring parties and shifting combatants' incentives from war to peace. The same logic holds for efforts aimed at attacking the financial lifelines of combatants, often by targeting white-collar and organized criminal activities through which this financing is channeled.

A range of initiatives, policy mechanisms, and regulatory instruments can directly or indirectly address the natural resource dimension of war economies.²⁹ Some were developed or adapted in direct response to armed conflict, such as UN targeted sanctions imposed through the 1990s and the Kimberley certification scheme for the trade in rough diamonds. Others, such as interdiction regimes against organized crime, money laundering, drug trafficking, and terrorist financing, are mainly reactions to threats posed by instability and conflict abroad to developed countries, yet they have indirect bearing on curtailing economic flows that sustain armed conflicts.

Perhaps the most robust policy instruments deployed to curtail resource flows to combatants are the targeted commodity and financial sanctions imposed by the UN Security Council on government elites and rebel groups in several conflicts. The jury is still out on the effectiveness of targeted sanctions as a tool for conflict resolution. Yet the creation of ad

hoc, independent panels of experts to support the monitoring of the various sanctions regimes and to investigate illegal resource exploitation by the numerous parties to the DRC conflict was a particularly useful policy innovation.³⁰ The expert panel reports submitted to the Security Council have helped to improve understanding of the complex dynamics of “sanctions busting” and war economies more generally. Expert panels and their practice of “naming and shaming” sanctions busters have been an effective—if controversial—mechanism of “noncoercive diplomacy” in the arsenal of the Security Council. Whether this innovative policy mechanism will receive much-needed administrative strengthening and political support or fall victim to Security Council diplomacy and political trade-offs remains to be seen.

The work of the Angola and Sierra Leone expert panels was also instrumental in establishing the Kimberley Process Certification Scheme (KPCS) for rough diamonds, the first policy mechanism that deals in a detailed and comprehensive manner with a commodity that has been directly and heavily involved in fueling several African conflicts. The Kimberley Process, which came into effect in January 2003, grew out of commercial, political, and humanitarian concern over the destabilizing role of “conflict diamonds”—defined by the UN and the Kimberley Process as “rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.”³¹ In Chapter 3, Ian Smillie describes the emergence of this joint government, industry, and NGO initiative and discerns to what extent the KPCS may hold lessons for the regulation of other conflict commodities. Despite its shortcomings regarding, *inter alia*, independent monitoring and compliance monitoring, the Kimberley regime is a promising initiative. According to Smillie, it may help reduce the vast trade in “illegal diamonds” that has contributed to violent state collapse in numerous African countries. When supported by adequate capacity building in member states, the KPCS may thus become a key mechanism for conflict prevention in diamond-rich countries with weak governance structures.

Tracking the financial transactions involved in and proceeds from conflict trade offers another promising means of curtailing combatant self-financing. This regulatory dimension is the subject of Chapter 4 by Jonathan Winer, who offers practical suggestions to unify existing money-laundering regimes with efforts aimed at controlling the trade in conflict goods. Thus far, policy initiatives to establish financial transparency, such as the anti-money-laundering and anticorruption efforts of the Financial Action Task Force against Money Laundering (FATF), have not specifically included a conflict dimension. Conversely, enhanced initiatives to improve security in the cross-border transit of goods, such as that by the World Customs Organization (WCO), have no provisions regarding trade in con-

flict commodities. As Winer details, positive synergy effects may be achieved through the establishment of documentation regimes applying both to financial institutions and to importers, exporters, transport companies, and customs authorities. These documentation regimes could be readily adapted and expanded to include a conflict dimension and could be integrated into a unified documentation system for both conflict goods and their financial traces.

The terrorist attacks of September 11, 2001, have provided an important impetus for increased financial market transparency as a means of curtailing terrorist finance. In addition, “failed states” have regained currency in policy circles and national security strategies as breeding grounds for terrorist groups.³² Reports that Al-Qaida laundered money by buying diamonds in West Africa have demonstrated the possible links between terrorism, conflict trade, and violent state collapse.³³ Based on an analysis of the work and mandate of the UN Counter-Terrorism Committee (CTC), Sue Eckert in Chapter 5 identifies two ways in which the UN’s counterterrorism efforts may be applicable to the trade in conflict commodities. Where direct linkages exist between terrorism and conflict trade, the international legal framework against terrorist finance may in theory be broadened to include an investigation of the nonmonetary bases of terrorist funding. While this is technically feasible, Eckert cautions that politically such a step may be overly ambitious at present. More promising, according to Eckert, are the lessons that can be learned from the CTC’s innovative monitoring and reporting requirements and capacity-building provisions for strengthening UN sanctions regimes and other regulatory efforts such as the Kimberley certification regime.

The often symbiotic relationship between organized crime networks and combatant elites in today’s conflicts presents policymakers with a serious dilemma. For some observers, contemporary rebel groups such as those in Colombia and Sierra Leone are comparable to criminal organizations.³⁴ Yet Phil Williams and John Picarelli argue in Chapter 6 that, as much as insurgency and criminality may overlap, they are not the same. A conceptual distinction can be made between organized crime as an *entity* and as an *activity*. Whereas criminal organizations employ violence in the sole pursuit of profit, both government elites and rebel groups may engage in “do it yourself” criminal activities at least in part to pursue political and military goals. This understanding must inform policy action to tackle the crime-conflict nexus throughout the conflict cycle. Here, the authors suggest that a new policy framework is required that blends traditional law enforcement approaches and diplomatic expertise to develop innovative and flexible policy responses for conflict prevention, conflict resolution, and peacebuilding.

While resource control and interdiction regimes are both timely and

warranted policy responses to the commercialization and criminalization of conflict, as Williams and Picarelli explain, they share the same inherent limitations as other policies that rely exclusively on “supply-side” controls. In Chapter 7, Stephen Jackson highlights another crucial shortcoming of supply-side controls: their unintended but often consequential negative impact on civilians. Drawing on empirical studies from the DRC, he demonstrates that violent economies based on resource predation not only generate substantive economic benefits for rebel groups, corrupt government elites, and shadowy business interests but often also provide critical sources of survival for the civilian population. Devising appropriate regulatory policies that tackle those engaged in armed conflict for profit and power but protect those forced to participate in violent economies to sustain their livelihood is a daunting task. Jackson employs livelihood analysis to develop a taxonomy of assets and actors in violent economies. As a methodological tool, he argues, livelihood analysis can help the international community to avoid the unintended negative humanitarian impacts of targeted commodity sanctions and interdiction efforts, as well as improve demobilization, disarmament, and reintegration (DDR) efforts as crucial preconditions for building lasting peace.

Improving Corporate Responsibility and Resource Revenue Management

Few governments in conflict-prone or war-torn states have the technical know-how, financial capital, or market access required to extract and process their natural resource endowments. Rather, they rely on multinational energy and mining companies that, often as joint-venture partners with host-state state-owned companies, are the main agents in the exploitation, trade, and transport of lucrative resources. Where these multinational companies operate in unstable or conflict-prone regions, they may knowingly or unknowingly contribute to or exacerbate armed conflict.³⁵

The most commonly cited linkage between extractive industries and conflict involves the negative impacts that company operations can have on local communities in unstable countries. These may include environmental pollution and social impacts, such as the physical and labor displacement of local populations, as well as human rights abuses committed by security firms hired by companies or provided by repressive host governments to protect their plant and personnel.³⁶ A second linkage between companies and conflict is found in the financial deals concluded between extractive industry companies and repressive and unaccountable host governments. While some of these financial transactions involve the payment of bribes—illegal in most national jurisdictions—the majority, in the form of royalty payments, taxes, and signature bonuses, are legal, albeit morally question-

able, payments that have only an indirect relationship with actual conflict dynamics.³⁷ However, the immense revenues generated from resource exploitation have at times been used by governments for self-enrichment or off-the-books military expenditures that finance counterinsurgency forces and oppression of opposition or minority groups.³⁸

Paying attention to the problematic role of companies in conflict settings should not in any way excuse host governments from their responsibility to ensure the transparent, efficient, and equitable management of their country's natural resources and the adequate provision of public goods and services to their populations. Policy responses aiming to ensure that resources are a blessing rather than a curse to developing countries thus need to target the problematic behavior of both extractive industry companies and host governments, thereby addressing also the "demand side" of the equation. As the next chapters highlight, a range of policy responses from NGOs, governments, the financial markets, and aid agencies are exploring ways to adopt existing market and regulatory mechanisms to enhance the incentives for responsible resource management.

Extractive industry companies by definition are bound to operate in regions where oil, gas, and lucrative minerals are found. Often these are regions of the developing world that experience political instability or even active combat. Based on field research in numerous such settings, Luc Zandvliet in Chapter 8 argues that companies can have a positive or a negative impact on local conflict dynamics, but they are never neutral. Routine operations and even well-intentioned community development and social investment programs may inadvertently exacerbate existing tensions between the company and local communities and within communities, as well as between communities and the central government. Issues of contention include siting decisions, hiring and remuneration practices, and compensation payments that neglect the needs and traditional mores of local communities. In such contexts, the company can become the proxy target of local dissatisfaction and resentment, particularly when the affected population is already economically marginalized and politically disenfranchised. According to Zandvliet, a careful stakeholder analysis and adequate understanding of the various conflictual relationships is the prerequisite for devising appropriate company strategies that could improve interaction with local stakeholders and thereby earn companies a "social license to operate" that protects their host communities as well as their own bottom line.

To date, the role of financial actors and institutions in promoting and rewarding conflict-sensitive business practices has remained relatively undeveloped. However, there are a number of public and private financial actors and agencies whose financial leverage could be better applied to creating incentives for extractive industry companies to ensure that their oper-

ations do not contribute to armed conflict. As Mark Mansley explains in Chapter 9, for both commercial and ethical reasons a growing number of institutional investors (such as pension and mutual funds) and private commercial banks require extractive industry companies they do business with to operate in adherence to established environmental, labor, and human rights standards. The mechanisms that the private financial market employs to that end include avoidance of certain companies and industries; socially responsible investment (SRI); shareholder activism; corporate governance; reporting and disclosure requirements; and mandatory social and environmental impact assessments. Given the increasing financial, reputational, and legal liability risks for companies operating in conflict zones, the private financial market has started to realize the relevance of conflict-sensitive business practices, as reflected in their support of anticorruption initiatives, the Equator Principles for environmental and social impact assessments, resource revenue transparency, and conflict prevention more generally. If such measures are adequately encouraged by governments and nongovernmental organizations, argues Mansley, the heretofore limited influence that private financial actors have had in this area can become more decisive.

In addition to private financial markets, important leverage over extractive industry companies can be exerted by public export credit agencies (ECAs). These agencies provide companies with government-backed export credits, investment guarantees, and project financing—support that is often indispensable for foreign investments and operations in the extractive industries. As Nicholas Hildyard notes in Chapter 10, ECAs provide companies operating abroad with a financial safeguard against political risks, including those arising from armed conflict. Yet despite the disastrous socioeconomic and political impacts of many ECA-backed extractive industry projects in unstable countries, ECAs have been highly resistant to change. Indeed, both individually and within the OECD Export Credit Group, ECAs have been reluctant to incorporate environmental standards and performance obligations—to say nothing of human rights codes or conflict-impact assessments—into their lending and financing decisions. As Hildyard argues, because ECAs continue to see their mandate as promoting the international commercial competitiveness of domestic companies and not socioeconomic development or conflict prevention in the host country, if they are to begin to play a positive role in encouraging conflict-sensitive business practices among their clients, deep-rooted reform is essential.

The need for financial transparency in extractive industries as a precondition for conflict prevention has been championed by the Publish What You Pay (PWYP) campaign. Launched in 2002 by an international coalition of nongovernmental organizations, now numbering over 200, the campaign urges governments to make it mandatory for companies in the extrac-

tive industries to disclose the payments they make to host governments in the developing world. As Gavin Hayman and Corene Crossin argue in Chapter 11, reliable information about natural resource revenues would provide inroads for civil society and donor agencies to hold governments accountable for their use of these revenues. In advocating mandatory disclosure requirements, the PWYP campaign differs fundamentally from the open-ended, consensus-based approach chosen by the UK government-sponsored Extractive Industry Transparency Initiative (EITI), a diplomatic initiative that relies on voluntary company and government participation. Whatever approach ultimately takes root, it is clear that revenue transparency has to be part of a wider strategy of reform in the extractive industry sector. Here, Hayman and Crossin call for further policy action by key actors such as export credit agencies, regional organizations, and donor organizations such as the World Bank and the International Monetary Fund (IMF) to strengthen the promotion and implementation of revenue transparency.

The role of foreign development aid, and more specifically aid conditionality, in conflict prevention, resolution, and peacebuilding is the subject of Chapter 12 by James K. Boyce. Based on an examination of the cases of Angola, Cambodia, and Afghanistan, he demonstrates how “peace conditionality” by bilateral and multilateral donors may put pressure on combatants that benefit from war economies. Conditionality can be applied to create incentives for the transparent and equitable distribution of resource wealth, which in turn can help to ease social tensions and prevent violent conflict. Where neighboring regimes are involved in conflict trade, aid conditionality may be applied to them as a means of ending their complicit activities and depriving combatants of crucial finances. In postconflict settings, conditionality may support the crucial task of rebuilding transparent and effective state institutions (including those for resource management), help induce potential spoilers to cooperate with peace processes, and support alternative livelihood provisions for civilians and former combatants. As Boyce acknowledges, peace conditionality provides no panacea. In fact, the availability of large revenues in natural resource-rich countries can severely undermine donor leverage over governments. Where applied in a concerted manner and in coordination with other mechanisms described in this volume, however, conditionality attached to foreign aid is an important policy mechanism for managing the resource dimensions of armed conflict.

Establishing Accountability, Ending Impunity

Scholarly and policy attention to the political economy of armed conflict has led to a growing convergence among corporate social responsibility, human rights, and conflict-management agendas. Important policy develop-

ments in the field of corporate social responsibility (CSR) seek to incorporate conflict-sensitive business strategies into siting and investment decisionmaking, deter corporate complicity in human rights abuses, and foster a positive role for business actors in conflict prevention.³⁹ Similarly, academics and practitioners in the peace and security community have shown increasing concern over the role of companies in fueling violent conflict, based on NGO investigations that highlight intricate linkages between extractive companies and businessmen and the brutal civil wars in Angola, Sierra Leone, and the DRC.⁴⁰ The role of business activities in zones of conflict has raised a number of complex and still unanswered questions of whether, how, and by whom these activities should be regulated.

Those seeking to establish effective regulation where commerce and conflict intersect are faced with a diverse range of actors engaged in conflict zones, ranging from large multinational companies that—at least in theory—prefer stable business environments to less scrupulous “rogue companies” and middlemen (such as arms traders, diamond smugglers, and private security firms) that deliberately seek to profit by conducting the often illicit and always predatory business of war. Furthermore, there is disagreement among policymakers, legal experts, and activists as to what activities are in fact legal or illegal. While some activities are legal, others clearly violate national or international law. Many, however, remain in a regulatory gray zone. The lack of normative consensus on these issues continues to impede the development of coherent and effective policy and regulatory responses.

A growing number of company, industry, and public policy initiatives are seeking, however, to address the resource dimensions of conflict and the regulation of business actors in particular. The emerging policy discourse on regulatory options typically centers on the voluntary-versus-mandatory dichotomy, with companies, industry organizations, and home governments stressing the importance of voluntary self-regulation while NGOs, activists, and legal experts argue for mandatory rules and hard laws. Pointing to the limits of such a dichotomy, Leiv Lunde and Mark Taylor in Chapter 13 analyze what they conceive as a continuum of regulatory efforts, including company and industry voluntary self-regulation, voluntary multistakeholder initiatives, public-private partnerships, policy implementation obligations, conditionality, and national and international law. Lunde and Taylor note that policymakers seeking to develop regulation in this complex issue area are confronted with what they call a “malign problem structure.” This is a policy problem characterized by a heterogeneous set of actors with strong—albeit varying—incentives to evade regulation, competing and ill-defined regulatory jurisdictions and normative frameworks, and an asymmetrical distribution of the costs and benefits of regulation. To overcome these regulatory and policy dilemmas, a concerted effort

is required that utilizes the complementary strengths of the entire range of regulatory mechanisms currently on offer.

One such regulatory mechanism, the OECD *Guidelines for Multinational Enterprises*, attracted public scrutiny in October 2002, when the DRC expert panel's widely publicized final report to the Security Council listed eighty-five companies with operations in the DRC as having violated this little-known set of recommendations for responsible business conduct. As the ensuing controversy made clear, there was no consensus among the OECD governments and listed companies as to the specific nature of the alleged violations, nor even whether the OECD guidelines were applicable to conflict contexts. In Chapter 14, Patricia Feeney and Thomas Kenny provide a detailed assessment of the actual and potential applicability of the *Guidelines* to the specific case of company activities in conflict zones. While the *Guidelines* make no explicit mention of conflict situations, several existing provisions that address bribery, human rights, and environmental protection may warrant the *Guidelines'* applicability to conflict settings. Most important, the *Guidelines* include a complaint mechanism that requires member governments to investigate and seek to resolve specific instances of problematic business activity that are brought to their attention by NGOs, labor organizations, and others. Based on an assessment of two cases of company conduct in Burma/Myanmar and the DRC, Feeney and Kenny offer recommendations for strengthening the *Guidelines* so that they can serve as a more effective tool for ensuring responsible business conduct in conflict zones.

As important as industry self-regulation and voluntary codes of responsible business conduct have been in altering the corporate culture and operational practices of companies doing business in conflict zones, they have yet to make a decisive impact on the ground. In his 2002 report on the protection of civilians in armed conflict, Secretary-General Kofi Annan deplored the continuing state of affairs in which "individuals and companies take advantage of, maintain, and even initiate armed conflicts in order to plunder destabilized countries to enrich themselves, with devastating consequences for civilian populations."⁴¹ Given the current inadequacy of policy and diplomatic means to effectively deter conflict-promoting economic activities, or reduce the prevailing impunity that surrounds them, efforts to wrestle with these challenges have thus increasingly looked to international norms of humanitarian and human rights law and domestic legal mechanisms as possible remedies.⁴²

As numerous reports by UN expert panels and NGOs describe in detail, a large number of criminal networks, rogue companies, state-owned and state-protected enterprises, and shadowy brokers and middlemen routinely collaborate with rebel groups and government elites in many conflict theaters in the illicit exploitation of natural resources, often in violation of

UN sanctions regimes. And they do so with impunity. Against this background, Pierre Kopp in Chapter 15 analyzes whether and how UN sanctions regimes could be strengthened by focusing on the political economy of law and interdiction. Thus far, the implementation of sanctions regimes suffers from the unclear legal scope of the obligations that UN sanctions impose on member states. The criminalization of sanctions busting under national law would be an important step toward strengthening sanctions regimes. Doing so, however, would require a degree of political will and commitment among governments that has thus far been lacking. As Kopp also observes, efforts to curtail sanctions busting have been compounded by a certain reluctance of relevant governments, both in the North and the South, to enforce sanctions and to systematically follow up on the UN expert panels' recommendations. The difficulty of establishing an evidentiary trail for legal prosecution of even well-known sanctions busters is a continuing challenge, which allows shadowy businessmen such as Victor Bout and Leonid Minin, the notorious "merchants of death" named and shamed in several UN expert panel reports, to continue their nefarious dealings in a range of conflict theaters. In addition to domestic legislation, then, more robust sanctions enforcement will require greater cooperation between national law-enforcement and intelligence agencies.

In the absence of effective international regulation, one emerging avenue for holding business actors accountable for their conduct abroad is the use of domestic courts.⁴³ Indeed, an increasing number of civil and criminal lawsuits are being brought against companies, particularly large multinational extractive corporations, for alleged violations of human rights and the laws of war or for their complicity in such acts committed by host-country joint-venture partners or hired security firms.⁴⁴ As Paul Hoffman recounts in Chapter 16, the U.S. Alien Tort Claims Act (ATCA) of 1789 has become the unlikely, if controversial, remedy of choice for those seeking to hold companies accountable for their activities overseas. In several pending cases, courts have ruled in favor of alien plaintiffs' rights, under ATCA, to bring suit against companies in U.S. courts for alleged violations of "the laws of nations." While several jurisdictional hurdles remain, and while no company has yet been convicted under ATCA, the mere prospect of civil liability has put companies, private financial institutions, and host-state governments on alert. At the same time, ATCA's popularity among human rights lawyers and advocates may yet be its own undoing, as the U.S. administration and industry organizations may seek to reform or repeal ATCA for commercial and geopolitical reasons. Whether ATCA will survive this onslaught remains to be seen.

Clearly, as a U.S. civil law statute, ATCA is only one part of a larger body of international human rights and humanitarian law that may be used to promote accountability of commercial actors engaged in war economies. The

potential of developing international mechanisms for this purpose was underscored in 2003, when the chief prosecutor of the International Criminal Court announced his intention to conduct investigations into financial activities as part of his larger investigation of war crimes and crimes against humanity committed during the conflict in eastern DRC.⁴⁵ According to William Schabas in Chapter 17, efforts to hold war entrepreneurs accountable under international humanitarian law are hampered by the inadequacies of current legal norms and mechanisms to address private-sector actors and crimes of an inherently economic nature. Some case law exists on corporate complicity in war crimes and crimes against humanity,⁴⁶ and indictments of the ad hoc tribunals for the former Yugoslavia and Sierra Leone incorporate the notion of “joint criminal enterprise”; both of these may establish important precedents for further legal action. Given the shortcomings of existing international criminal law, Schabas argues, a legal regime focused on corporate accountability and responsibility with civil or administrative consequences may be a more viable option at this point. As fact-finding bodies that can identify misdeeds and attribute responsibility, truth and reconciliation commissions may also be useful forums to address the role of companies in specific conflicts, even if no punishment or sanctions are attached. By contrast, the adoption of a new international instrument would first require broad intergovernmental agreement on the general principles applicable to commercial activity during armed conflict, a precondition that is unlikely to be satisfied in today’s international political climate.

Toward Peace, Development, and Justice

The self-financing nature of many contemporary civil wars has drawn attention to the connections among trade in natural resources, global financial flows, and armed conflict. The contributions to this volume identify both the opportunities and the challenges that lie ahead for those seeking to devise adequate policy responses. From a political economy perspective, the key objective is to make peace more profitable than war. Several implications emerge for policy and practice, which our concluding chapter examines in more detail.

First, all chapters underscore the intricate linkages between local war economies and global markets for commodities, arms, and finance. The creation of robust international regulatory frameworks aimed at curtailing resource flows to combatants or ending impunity for entrepreneurs of violence is thus a necessary and significant means to contribute to conflict mitigation. Numerous relevant policy, regulatory, market-based, and legal frameworks exist that can and should be strengthened and adapted to contribute to improved conflict prevention, conflict resolution, and peacebuilding. Yet the authors in this volume caution that such global or regional reg-

ulatory mechanisms will be insufficient on their own. Even the most robust policies to curtail resources and finances to combatant parties and their criminal allies may produce diminishing returns as new illicit activities and networks and means to evade regulation develop. As long as the structural factors of underdevelopment, state weakness, and horizontal inequalities remain, international control and interdiction regimes will continue to treat the symptoms rather than the causes of conflict and the war economies fueling them.

These shortcomings point to a second finding discussed in several chapters. Few policy issues highlight more clearly the intersect between security and development than contemporary war economies based on resource predation, shadow trade, and economic criminality.⁴⁷ There is a need for development and trade agencies to address the structural causes of conflict and the determinants of war economies, including endemic corruption, socioeconomic inequality, and international trade and lending policies that, wittingly or not, may reinforce them.⁴⁸ Particular attention needs to be paid to creating more effective, transparent, and equitable resource management as an integral part of good governance programs for conflict prevention and postconflict peacebuilding. Aid programs may also better support alternative livelihood provision to conflict dependents and former combatants as part of DDR programs as well as efforts for drug eradication. Last, technical assistance and capacity-building efforts are also crucial for improved implementation of the various control regimes described above, including the administrative and regulatory provisions of the Kimberley Process, improved border control, and financial oversight in the banking sector, as well as law enforcement. In sum, then, just as efforts to prevent and resolve conflict need to be made more “development sensitive,” so too does development policy need to be consciously “conflict sensitive.” The synergy effects among aid, trade, and security policy in the context of war economies in particular need to be more systematically analyzed and addressed.

Third, the chapters in this volume demonstrate the potential of the growing, diverse set of regulatory mechanisms aimed at improving business behavior in zones of conflict and establishing accountability for their operations and financial transactions. For mutual efforts to achieve coherent and effective policy outcomes, however, there is a need for more careful consideration of the different, often unexamined priorities and objectives reflected in the parallel agendas of corporate social responsibility, human rights, and conflict management.⁴⁹ Not only are there differences between traditional CSR agendas and the agendas of conflict prevention and human rights, but there are also less apparent differences between the promotion of human rights and the promotion of peace. Simply put, the former seeks to end human rights abuses (which admittedly often go hand in

hand with conflict), while the latter seeks to end conflict. Understanding these differences is essential to developing meaningful policy responses to business activities that affect conflict dynamics. Given the highly divergent set of business actors engaged in war economies and their differing amenability to regulation, policy efforts will need to make use of the full spectrum of regulation, from voluntary initiatives to international law.

Finally, one cannot overemphasize the centrality of the UN system, both as an actor and as a norm-setting forum, for a more concerted policy approach to address the economic dimensions of conflict. Through its renewed efforts to improve sanctions regimes and to sponsor open debates on the role of business in conflict prevention, the Security Council has set the stage for further policy development. Through its case-by-case decisions on sanctions and conflict diamonds, the Security Council has helped to promote new global norms and expectations for economic actors. As of yet, however, this firm recognition of the relevance of this issue to the maintenance of international peace and security has not coalesced into a comprehensive, UN-wide strategy for addressing the economic dimensions of armed conflict. Efforts by the Global Compact to promote conflict-sensitive business practices directly in the private sector need to be complemented by the work of other UN agencies. Most urgently, there is a need for UN peace and development missions to give priority to combating war economies and their legacies, including the continued availability of lucrative resources, economic criminality, and smuggling activities that strengthen peace spoilers while impeding civilian well-being.⁵⁰ The need for support to weak states in the management of their natural resources was recognized also by the UN High-level Panel on Threats, Challenges, and Change, which recommended that “the United Nations should work with national authorities, international financial institutions, civil society organizations and the private sector to develop norms governing the management of natural resources for countries emerging from or at risk of conflict.”⁵¹ Aware of these challenges and responsibilities, UN Secretary-General Kofi Annan in 2003 established an interagency working group on the political economy of armed conflict, charged with developing and mainstreaming such an analysis in the organization’s mandate and operations. As the Secretary-General rightly stated, “The time has come to translate ad hoc efforts into a more systematic approach.”⁵² We hope that this volume will make a contribution to that end.

Notes

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