

Controlling Illicit Resource Flows to Civil Wars:
An Overview of
Current Policies, Legal Instruments & Challenges of Implementation

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This paper provides a general overview of the nature of several key resource flows sustaining, if not fueling, civil wars. It then briefly analyzes extant and emerging national and multilateral policies, practices and legal instruments available to combat and reduce the global flow of these resources. In particular, it examines the trade-offs involved in different approaches to controlling resource flows (*inter alia*, national versus regional or international; legally binding measures versus voluntary compliance; targeting the supply-side versus demand side of these flows.)

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Resource Flows in Civil Wars: A General Overview

Wars need resources.² The ability of combatants, both state actors and armed groups, to prosecute armed conflict is predicated on their ability to secure access to resources needed to procure weapons and materiel, and to pay soldiers. Since the end of the Cold War and the related reduction of foreign state sponsorship, many combatants and would-be rebels have sought alternative sources of revenue. The nature of the resulting “war economies” varies according to locally available lootable resources, geographical circumstance, patterns of regional or foreign trade, aid and finance, and the behavior, capacity and organization of combatants themselves.

The economic transactions engaged in by combatants include, but are not limited to: brokering and trafficking illicit arms; engaging in organized criminal activities; financial crimes, including corruption, money-laundering and the misuse of public and private international financial flows, including official development assistance, foreign investment, and diaspora and migrant labor remittances; kidnapping and extortion; diversion of humanitarian aid; production and trafficking of narcotics; trafficking in people and endangered species; illicit exploitation of natural resources; smuggling of other, licit commodities; and the activities of the private sector in areas of conflict.

These economic activities are not mutually exclusive: most armed groups rely on a combination of commercial partnership, covert foreign assistance, predation upon civilian populations, and diversion of relief supplies. These flows are also multidirectional – arms, commodities and financial assets are both imported into and exported out of war zones. Many of these transactions rely on the same, or overlapping, illicit brokering and transport networks to access international financial and commercial markets. Some resource flows are highly localized, such as the support by villagers for a self-defense unit. Others, such as drug trafficking, are global in reach and organized through extended networks reaching well beyond war zones to the world’s capitals and major financial centers. Pre-existing infrastructural networks facilitate these war economies, for example, international flights

² Unless other wise stated, “resources” is used in the general sense to refer to finances or material goods which may used to pay for supplies and services.

which provide for diamonds trading channels, both open and clandestine, between producer and transit countries in Africa to international market places in Antwerp, Bangkok, Bombay, Tel Aviv, or New York.

These economic transactions not only affect the character and duration of conflict by providing the means to fight, but, as recent scholarship on civil wars has emphasized, access and control of resources flows may also directly contribute to conflict, whether aimed at redressing legitimate grievances, or waged purely for profit. In limited cases, the control of economic activities may be the principal motivation for the initiation or perpetuation of conflict. But this is not to say that wars are solely about “greed.” Far more often there are underlying grievances, whether politically, economically or socially motivated, in the period prior to the outbreak of violence.³ Indeed, malfeasance on the part of corrupt and unaccountable government has been identified as a root cause of violence conflict. States affected by contemporary armed conflicts are frequently characterized by the use of public resources for private gain of elites at the expense of the rest of society. Beyond fueling a war effort and creating personal wealth for elites, such resources are also sometimes used to fund political patronage, thereby building a political base for the profiteer and at least the appearance of political legitimacy. Civil wars create new economic and political opportunities for combatants, war profiteers and other entrepreneurs – or, what David Keen has referred to as an “alternative system of profit and power” favoring certain groups at the expense of others.⁴ As varying actors, either official or private, become complicit in and derived economic and political benefits from these flows, these activities and their legacies may adversely influence the balance of incentives in favor of peace, posing challenges for those seeking to promote peace through the regulation of economic behavior. Moreover, the criminalization of economic relations in war-time frequently leaves lasting developmental distortions which, if left unattended, can fatally undermine subsequent efforts at sustainable post-conflict reconstruction.

³ Sierra Leone and Liberia – among the cases of civil war most widely referred to in emerging literature on economic motivations of conflict – both had periods of widespread government corruption and economic collapse (triggered by declining prices for primary commodities on world markets) leading up to the outbreak of armed conflict. See for example, Adekeye Adebajo, “Building in Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau” International Peace Academy Occasional Paper Series, (Boulder, CO: Lynne Rienner Publishers, 2002).

⁴ Keen, D., “Organised Chaos: Not the New World We Ordered”, *The World Today*, Jan,1996.

Some of resource flows in conflict zones are licit, others are clearly criminal, some are vital to civilian livelihoods, while others are manifestly predatory – and some exhibit multiple of these characteristics. A number of these activities directly feed armed hostilities, but most economic behavior contributes to conflict in more indirect ways, with some also playing a vital role in the livelihoods of civilian populations. The complicated reality presents policy-makers with the two-fold challenge of accurately assessing the impact of discrete economic behaviors on conflict dynamics and of designing effective policy responses.

Policies, Practices, & Institutional Responses to Resource Flows

The curtailment of resource flows to belligerents may hold some promise as a means of altering economic incentive structures and thus promoting conflict resolution. Many of the resources sustaining wars depend upon access to the global economy, including international markets and foreign supporters. Implied in this relationship is the critical, yet unacknowledged, complicity of the global North in conflicts predominantly affecting the South – from its demand for commodities ranging from oil to narcotics, to its supply of arms, aid and investment, and remittances. Importantly, while globalization has presented combatants and their support networks with new economic opportunities, it also renders them more vulnerable to international pressure, if such can be mobilized. From this perspective, the objective of the ‘international community’ should be to suppress profit-seeking actions committed under cover of civil wars.

There already exists a range of legal and policy instruments available at the national, regional and international levels which may be used to better regulate the resources which sustain and fuel civil wars. While economic sanctions and arms embargoes – increasingly in their “smart” or targeted version -- remain the most widely used regulatory instrument wielded in conflict zones, they are but one mechanism in a growing framework of possible responses. This framework has evolved rapidly over the last five years, though not necessarily in response to civil wars. Recent legal and regulatory initiatives – many in response to advocacy campaigns by international NGOs – focus on money laundering, corruption, trafficking in small arms and light weapons, smuggling in diamonds, narcotics and other natural resources, and on minimizing the negative impact of private sector activities which

may exacerbate conflict. Much of this progress has been in response to the threat posed by transnational organized crime and international terrorism.

Broadly speaking, the main policy approaches available to national and international actors attempting to influence resource flows in civil wars fall within the categories listed below. Within each, there are considerable variations as to the policy authority and the jurisdiction concerned, the actors and activities being targeted, and whether the respective policy initiatives were designed to combat the economic enablers of armed violence or for the general purposes of global and domestic governance. These major categories of regulatory instruments assessed in this review include:

- **Multilateral instruments.** The transnational nature – whether regional or global -- of resource flows and the multiplicity of actors involved necessitate international cooperation and assistance. Multilateral instruments may be legally binding or voluntary and may take the form of positive inducements, or punitive measures. One government, a group of governments, or a multilateral organization such as the United Nations may sponsor these. In the post-Cold War context, extraterritorial regulations are, for the most part, designed multilaterally in the interest of peace, or the interests of major powers. Increasingly, multilateral instruments are designed and applied at a regional level rather than on a country-by-country basis. This category includes conditions on multilateral aid, United Nations instruments, including Security Council Resolutions on arms embargoes and financial sanctions, Expert Panels, UN Conventions against Transnational Organized Crime and international terrorism, and the UN Global Compact's efforts to engage the Private Sector actors in issues of peace and security. The threat of prosecution by the International Criminal Court, currently awaiting ratification by the requisite number of states, may hold promise as a deterrent against violent predation and an incentive for warlords and other actors to uphold peace accords. Key initiatives and practices have also been developed by other multilateral organizations, most notably the OECD, European Union, OAS and African regional and sub-regional organizations.

- **National instruments.** These are sponsored and enacted by one government. Such state-based initiatives range from domestic legislation on customs, import/export regimes, criminal law enforcement, tax and securities regulations, to the extraterritorial application of tort law (the US Alien Tort Claims Act) and the imposition of unilateral sanctions.
- **Import/Export Regimes, Customs and Transport.** Much of the resources flows take place across international borders and in some cases reach remote areas without land transport infrastructure. Customs and the regulation of air transport and shipping thus play a key role in a regulatory framework. However, state customs agencies and air transport systems are often under budgetary constraints or are vulnerable to corrupt practices. Many states affected by conflict are ill-suited to regulate resources flows and international assistance, both in terms of ‘assisting’ the development of a sound regulatory environment (such as pre-shipment customs controls in the most reliable countries) and direct assistance (such as air traffic monitoring capacities in poor countries).
- **Voluntary Codes of Conduct.** Voluntary approaches, like the UN Global Compact, the US-UK principles for extractive industries on the use of security, company- and sector-wide codes of conduct, and a proliferation of NGO-sponsored initiatives, are advantageous in that they address problems of asymmetrical information and are highly adaptive to specific firms. Yet, voluntary approaches have several drawbacks: they are self-selecting (firms need to recognize the value of implementation and compliance) and they lack monitoring and enforcement in the event of non-compliance. Apart from their desire to be good corporate citizens, it must be in their *economic* interest for private sectors to adopt socially responsible behavior. They are unlikely to modify their business practices if it will place them at a disadvantage vis-à-vis their competitors, particularly those firms motivated solely by profits rather than broad social benefits.
- **Contractual or Market-based Initiatives.** Many argue that the limits of corporate self-regulation on issues related to conflict requires external means for encouraging corporate compliance. These might include either explicit, statutory regulation, or implicit, market-driven or contractual measures, such as indices which track and report on the ethical

performance of companies, the incorporation of political risk assessment in valuations of companies, and share-holder activism, all of which may influence a corporation's behavior by affecting the value of its shares. In other cases, such as securities and exchange requirements or contractual obligations regarding financing and insurance, which carry legal obligations, firms may face punitive measures for non-compliance. In effect, subject firms submit themselves to regulation as a *sine qua non* of meeting business strategies.

- **Normative pressure and advocacy.** Advocacy campaigns, which often arise as *ad hoc* responses to specific situations, seek to raise public awareness. They may have carry a strong moral persuasiveness, and thereby increase consumers' pressure on corporate behavior. Campaigns are generally led by NGOs, but increasingly involve inter-governmental agencies, which previously shunned such 'politicized' activities. Examples include recent campaigns on 'blood diamonds' and oil exported from conflict zones. Continued pressure by international and local NGOs on will certainly move the debate further as it is doing for the diamonds and petroleum industries at the moment.

Challenges for Policy Design and Implementation

Existing international and regional conventions, national legislation and bilateral agreements, codes of conduct and market pressures already provide the basis for developing a legal and policy framework for addressing many of the resource flows that sustain armed conflict – including suppression of money laundering, regulating the export of weapons, and targeting international organized crime. Generally, these initiatives are well developed and have the compliance of states and non-state actors. Yet, many countries, particularly those in the global South lack adequate financial means or enforcement capacity necessary for effective implementation. Moreover, the existing regulatory framework is neither uniform in its application nor comprehensive in its reach, facilitating the ability of criminals to stay ahead of the law and confusing the efforts of legitimate actors to comply with it.

The legal and regulatory tools examined generally here, and in greater detail in the background paper, are by no means comprehensive, nor do the brief overviews of the

resource flows identified capture the full range and depth of the economic behavior which accompanies, shapes, sustains, and often outlasts conflict. Nonetheless, from these examples, several valuable conclusions can be drawn concerning the challenges to existing and emerging legal and policy responses to control resource flows to and from armed conflict. These conclusions fall into two categories: those highlighting characteristics of war economies which pose challenges to control efforts, and aspects of control regimes which themselves complicate effective enforcement.

- Efforts to curtail the profitability of illicit economic transactions in which combatants and their support networks engage (and thus shift the incentive structure from the pursuit of conflict to that of peace) are unlikely to fully halt resource flows. Moreover, even if they can substantially reduce these flows, they are unlikely by themselves to assure peace. Although they can increase the transaction costs to belligerents, even the most effective policy responses are ultimately likely to have diminishing returns, as existing activities are driven underground, new illicit activities and networks fill the void, and new means develop to evade detection.
- The lack of a clear distinction between “illicit” and “licit” activities or resources complicates control efforts. Certain activities are clearly illegal under national or international law, but other transactions are more ambiguous, particularly at the margin between legitimate financial or commercial enterprises and black market smuggling or brokerage networks. While many of these transactions occur through informal channels, they are not expressly “illicit” until defined as such. Natural resources gain access to the international market through multinational corporations, who, while perhaps engaging in questionable transactions, are legally doing nothing wrong. Certification regimes, like the Kimberley process on rough diamonds, offer one means of stemming illicit economic transactions while preserving legitimate economic activity by states and private sector actors, and more narrowly defining the difference. Likewise, the current state-centric international system has defined *a priori* trade with rebel groups as illicit – whatever the legitimacy of these groups themselves – trade with a national government engaged in a civil war is legitimate (provided it is not subject to international sanctions). Therefore, corrupt governments that buy

arms with concessions, royalties and other rents paid by multinational corporations is a matter of national sovereignty and self-defense. To date, there has been no consensus on which types of economic transactions actors should be held accountable for – though such normative expectations are clearly emerging.

- Initiatives which target the “supply-side” of resource flows, as through prohibition, may *increase* rather than decrease the incentive – and profitability – of engaging in illicit activity, negatively affecting not only the prospects for peace, but also humanitarian conditions.⁵ As available lootable resources grow scarce, combatants may likewise engage in more violent forms of predations against civilian populations. In some cases, this problem may be through legalization of certain activities, albeit with some measure of regulation. Both existing and emerging efforts to curtail resource flows to conflict zones therefore require a more careful analysis of their efficacy in shifting the economic incentives of combatants from war to peace relative to their potential consequences.
- National strategies continue to provide the most robust means of combating illicit activities related to armed conflict. This strength is primarily due to the jurisdiction of states – they not only remain the key actors in international relations, but also have the authority to create, modify and implement legislation and policy, to allocate (where available) necessary fiscal resources, and to mobilize administrative, policing and judicial capacities – within their national territory.
- But national strategies alone are inherently inadequate for responding to illicit economic activities that cross international borders and involve multiple jurisdictions. Increasingly porous international borders mean that illicit transactions are difficult to identify, let alone prevent, amidst the total volume of global trade and financial transactions. Moreover, globalization has enabled the diversification of illicit economic (as well as political and military) activities and, perversely, the proliferation of means by which to evade enforcement efforts. Regardless of the

⁵ In Afghanistan, for example, attempts to eradicate opium are driving up the price, thereby increasing incentives for expanded cultivation, while simultaneously strengthening the hand of regional warlord factions who control trafficking routes and undermining the central government and

type of resource flow concerned, the most effective policy responses are those which have cooperation both horizontally (i.e., bilateral, intra- or inter-regional) and vertically (i.e., between global, (sub)regional and/or national levels).⁶

- Efforts to combat the illicit transactions and actors most directly implicated in the perpetuation of armed conflict will require reform of local economic and political governance. But developing these capacities must also be accompanied by more long-term and far reaching structural reform of the international aid, trade and financial systems which facilitate such behavior. This will require complementary efforts by member states, international financial institutions, regional organizations as well as private sector actors. It will also require the formation of an integrated strategy which combines both economic development and international peace and security.
- Paradoxically, multilateral initiatives that are sufficiently specific in their definitions of illicit behavior are typically voluntary in nature, whereas those that are legally binding tend to be ambiguous, to lack adequate transparency of process, monitoring and mutual evaluation, or fall short on effective compliance and enforcement. International treaties in particular suffer from a lack of national enforcement. This suggests that while stricter, unambiguous, and common standards of what constitutes illicit or criminal activity need to be developed, ensuring compliance with legal regimes codifying such standards is likely to become more difficult. (However, as the FATF demonstrates, when backed by mutual enforcement and credible threat, multilateral initiatives may be able to pressure member and non-member states to comply with specific principles if the incentive structure is right).
- In comparison with global approaches, regional efforts, particularly by regional or sub-regional organizations, have the potential to better influence the political economy of armed conflicts. Regional actors are more likely to be aware of the

international efforts at peace-building.

⁶ This is particularly true when these institutions are specifically mandated to share information and provide technical assistance among members (e.g., regional police associations, financial intelligence units, mutually monitored arms export regimes) or when such arrangements facilitate exchange between supplier countries, countries of transit and markets. The effectiveness of these efforts remains subject to the capacity not

economic, as well as political, dynamics of neighboring conflicts; states bordering armed conflict are directly affected by refugee flows, by armed groups establishing rear bases across national borders, by the loss of legitimate regional and international trade and investment, and the corresponding growth of illicit trade, as well as the unintended consequences of international intervention. The likelihood that regional interventions will have the ownership of those states most directly affected by conflict should improve both their design and likelihood enforcement by member states, while at the same time being mindful of impact of such efforts on their own security. Nonetheless, regional efforts may be complicated by local interests, either public or private, which may be complicit in and profiting from illicit activity, rendering control efforts ineffective.

- Implementation and enforcement of international and regional initiatives depends upon the ability and will of member states to tackle issues of supply, transit and demand within their national borders, or by their nationals operating extraterritorially. The lack of capacity (whether institutional, financial or technical) of many states to police their borders, maintain effective export/import regimes, monitor their financial systems, combat corruption, effectively design, enact and enforce legislation, let alone to coordinate these myriad activities, are challenges most clearly for developing countries, but for developed countries as well. Yet, for conflict-ridden and post-conflict states, they are virtually impossible.⁷ Indeed, the institutional limitations facing these states may be so overwhelming that their individual actions are inconsequential, making multilateral and bilateral agreements a necessity. The lack of adequate resources at the level of the state, and sometimes the region, can become a problem of international dimensions, as these areas risk attracting or becoming havens for illicit activity. Countries and multilateral organizations with the financial and technical resources to do so need to assist developing countries in improving their legal infrastructure and law enforcement capabilities, including their coordination across national jurisdictions, through information sharing, training of customs officers, law enforcement agencies, judiciary

only of the institution, but its constituent members.

⁷ Due to weakened administrative, judicial and policing capabilities, criminalization of the economy, the complicity and self-interest of

and financial regulators, and the provision of mutual legal assistance. Perhaps more importantly though, developed countries need to examine their own practices with regard to aid, trade and finance which perpetuate the crisis of the developing state. This should include shifting in part the burden of transparency and good behavior from capacity-weak states to developed countries and their corporations.

- Many policy responses to resources flows in conflict zones are still nascent – those targeting sanctions-busting, illicit exploitation of natural resources in conflict zones and arms brokering, for example. Others build upon already well-developed policy arenas. Yet, even where highly developed and effective, they remain limited; they are not equally robust across all states or regions, leaving open many havens for illicit activity. Additionally, where existing regulatory efforts have proven successful in particular sectors (e.g., laundering of narcotics profits), this success has often not been translated into strategies for combating related activities (tracing proceeds from ill-gotten gains from kleptocratic regimes). At the national level, this is due in part due to the separate jurisdictions of government agencies responsible for implementing national laws, and, by extension, multilateral treaties (inter alia immigration, customs, financial supervision, judiciary and police).⁸ Problems of coordination are equally present for multilateral enforcement agencies and technical assistance providers (coordination between the UN, Interpol, the World Customs Organization, and the International Civil Aviation Organization on preventing sanctions-busting has only recently begun). In general, more emphasis needs to be dedicated to make the various overlapping control systems, both within states and through multi-lateral agreements and conventions, mutually reinforcing.
- To date, international intervention through existing regulatory instruments has often been too late, when the impact of war has become internationally visible (massive population displacement, hunger, atrocities), when all political avenues have proven inconclusive, when negotiated settlements of the conflict have repeatedly failed (e.g.

authorities, the development of alternative survival strategies, etc.

⁸ Often, the prioritization of limited resources – including political capital – means national governments will avoid “non-essential” issues. For example, governments may freeze assets or block financial transactions of terrorist or rebel groups jeopardizing their own national interests, but tolerate those which do not, including by turning a blind eye money-laundering by corrupt but ‘friendly’ governments.

sanctions against UNITA and RUF diamonds). This delay means that regulations are facing well-organized and/or highly criminalized resource networks – some of which are politically protected by local or national authorities. Some networks also have close connections with intelligence agencies (for which they may render services) while others involve major domestic or international business interests, which are then protected by home authorities. So far, the accountability record of regulatory instruments is extremely poor, even for widely reported arms traffickers and sanctions busters such as Victor Bout (whose international judicial prosecution only came recently for ‘money-laundering’ charges in Belgium).

- Alongside the growing importance of non-state actors in armed conflict, a new generation of policy responses has arisen, marked by contractual instruments and partnerships among donors, private companies, enforcement agencies, NGOs, governments and regional and international multilateral organizations. They compliment not only the vast array of legal and regulatory measures, but also voluntary initiatives, particularly where private sector actors are concerned. Purely voluntary measures, whether aimed at states or non-state actors, if operating without the threat of legal or other enforcement have generally proven ineffective. In between voluntary and legally binding initiatives exist a range of public and private sector measures which are neither wholly voluntary nor explicitly regulatory. These include so-called “market approaches”, including inter alia, statutory and contractual requirements, e.g. by public and private financial and insurance industries, securities and exchange requirements, the development of “white lists” to induce corporate compliance with agreed upon standards of behavior, and rewarding “whistleblowers”. By reshaping incentive structures to reward compliance, rather than merely penalizing criminal or illicit behavior, these initiatives may effectively address some of the respective shortfalls of both legal and voluntary approaches.
- Finally, some have argued that an explicit international legal framework on illicit economic behavior in civil wars is required. While an enforceable regime may be a long way off, this does not preclude the development and promotion of international norms on resource flows in armed conflict. Already, international and regional

conventions on terrorism, organized crime, and narcotics provide the basis for proscribing certain economic activities, and for the better regulation of such activities in situations of armed conflict. Likewise, the significant progress of regional and sectoral initiatives covering various illicit resource flows represent building blocks towards a broader, more comprehensive international approach. The achievements of the FATF in combating financial crime and of SADC, working in cooperation with the EU, on small arms demonstrate the merit of approaches which can more directly develop consensus at the national and regional levels, but which may be globally relevant. Even voluntary measures may carry a strong normative weight, as demonstrated by the US-UK voluntary principles on security and human rights, which are being implemented by a growing number of companies with the support of their home governments. The UN can and should play a leadership role, above all through its convening power, in building upon sub-regional and regional efforts to forge broader international normative consensus on what constitutes illicit economic activity in conflict zones. In this way, it can foster gradual emergence of an international framework which will reinforce and legitimate existing efforts, can provide the basis for actions in regions lacking effective regional organizations, and can fill the gaps where there is a lack of adequate control.

Cutting off resource flows may hold particular promise for altering the incentives of combatants and those who profit from conflict, but these initiatives cannot substitute for more concerted efforts by the international community and other actors to address the grievances or motivations underlying conflict, through concerted action to reduce poverty, to support more accountable and transparent governance, including equitable distribution of resources in unstable countries, and to promote universal human rights.