

Introduction

Når krigen er usynlig, er krigen fri (when war is invisible, war is free).
Hans Hussum, *Skjult*

The connection between economic activity and war is ever-present in international affairs. It is most visible in the war economies that supply weapons and fighters to conflict. As recently as 2020, the war economy of the Yemen conflict included Chinese, Russian, US, and European arms sales to those doing the fighting. At the same time, in Sudan, the war economy included US and Chinese oil and arms companies in networks supporting militias involved in mass violence. In the Libyan war economy, militias took EU aid to guard – and exploit – migrants, Turkey flew fighters from Syria in support the United Nations-backed government in Tripoli, while antigovernment rebels received the support of Russian mercenaries, as well as United Arab Emirates and Saudi money and weapons. War economies in Syria kept the many autonomous insurgent groups going, and made sure the US, Syrian, Russian, and Iranian proxies fighting in Syria were well supplied with wages, weapons, and ammunition. Meanwhile, war economies ensured that minerals stolen from Western Sahara, central Africa, or Myanmar found their way into global commodity chains. War economies even appear in the form of online tourism platforms that make properties available in occupied areas of Ukraine and Palestine

While these examples are current, economic activity in or connected to war is not new. The connection between economic activity and war is one of the oldest stories in human history. For millennia, conquering sovereigns appropriated property, enslaved people, and taxed key sources of wealth. Explorers, colonial armies, companies, and settlers plundered the lands and people they conquered or profited from the access to resources and markets won through war. For much of human history, warfare itself has been significantly

economic in nature: mercenaries have fought for pay, military commissions were sold to nobles or capitalists, navies and privateers took prizes at sea, and great powers launched blockades and targeted each other's ships.

It is tempting to dismiss the contemporary pathologies of war economies as just newer variations on the premodern themes of plunder-based systems of warfare. How better to explain the fact that artisanal miners in the Democratic Republic of Congo are forced to work at extracting minerals at the point of a gun; or that foreign and local fighters in conflicts all over the world compete for control over flows of gold, diamonds, timber, antiquities, or people; or that oil prices rise and fall with tensions in the Middle East? It is hard to escape the sense that 'war is a racket'.¹ No wonder, then, that explanations for wars suggest they are 'all about the oil', or the interests of the military-industrial complex, or a particular manifestation of neoliberal capitalism.²

The suspicion that war is driven by economic interests is not inaccurate. But it is a distortion that fails to capture complex reality of contemporary warfare. In fact, economic activity is present not just in the motives for war, but also in its means and methods. A war may not be 'about' economic interests, but it may indeed be influenced by them. There is a complex set of social, economic, and political dynamics that operate at the nexus of economic activity and war. These influence the violence, shape the damage that war does and constrain the possibilities for making peace. While economic interests may be strategic, they are also tactical. The suggestion that war is a profit-making exercise is simultaneously ancient, intuitive, and short sighted. The question we should be asking is not so much whether economic activity plays a role in war, but *how* it does so.

As I will show in what follows, one of the keys to answering this question lies in understanding how law – in particular international law – shapes the nexus of political violence and economic activity. The history of international law has many examples of attempts to both enable and constrain the economic dimensions of armed conflict. In the past, edicts were issued by sovereigns, contracts were made between nobles and knights over a division of spoils, and treaties formalized reparations and territorial acquisitions. Beyond armed conflict between states, premodern laws also regulated permissible predatory activities of both public and private actors, such as the taking or trading of slaves, piracy and privateering, or the taking of ships as prizes at sea.

¹ To quote an old favorite of the genre; see Smedley D. Butler, *War Is A Racket*, original edition (Dauphin Publications, 2018).

² See, for example, Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Henry Holt & Company, 2007).

Today, the main components of premodern, plunder-based systems of war have been outlawed by modern international law. International law separates war and commerce in most things: it distinguishes between civilian economic activity and economic activity meant for war, and protects the former from predatory attacks, appropriations, and exploitation. The Paris Declaration of 1856 prohibited privateering and protected neutral shipping. The Nuremberg trials prosecuted pillage and slavery in Nazi-occupied Europe. These principles would become customary law and would be codified in treaties governing the law of sea and international crimes.

This normative separation between war and commerce has tended to obscure the fact that, in recent years, international law has been slowly and contentiously drawn into attempts to regulate the connections between economic activity and political violence. Since the turn of the twenty-first century, humanitarian law, criminal law, human rights law, and the laws governing international peace and security have all been sites of attempts to regulate the war–economy nexus. Some new rules have their origins in attempts to respond to particular crises and conflicts. Others arose because governments and social movements found common cause in seeking to regulate the global value chains connected to today’s war zones. Still others have arisen from the caldron of economic warfare that has been created in recent decades, both within and without UN Security Council authorizations. In each case, international law has been a source of norms for regulating the nexus of war and economic activity, as well as a site of contention over the application of those norms.

This study is an attempt to provide some clarity about the underlying norms in international law applicable to the economic dimensions of violent conflict. Along the way, some those dimensions are necessarily made more visible. Clarifying what consists in the war–economy nexus, and what rules apply to that nexus, is useful for understanding how the law might regulate particular conflict situations. It also provides some perspective on the tensions within international law itself in relation to the political economies of war. Both – an understanding of war economies as social practice, and the legal regulation of that practice – are vitally important for understanding the role of law in a time of rising great power competition and neo-mercantilist foreign policies.

This book asks some basic questions: What international legal norms govern the nexus of war and economic activity? Where do these norms come from? How do they shape our options for regulating the economic dimensions of war? By way of introduction, the present chapter considers what we know about the nexus of violent conflict and economic activity and how it is regulated, before setting out the structure of the argument contained in subsequent chapters.

THE WAR—ECONOMY NEXUS

War is a form of violent conflict that involves armed fighting between two or more groups of people. Making war requires sustained access to labor and property.³ Most societies have developed systems for ensuring fighting organizations have access to a supplies of people to do the soldiering, weapons for them to use, and the money necessary to ensure that replacements of both are available over time.⁴ The systems involved in obtaining the labour and property (including money) necessary for war-fighting are usually referred to as a ‘war economy’.⁵ The structures and transactions of war economies are part of larger political economies that form – and are formed by – national and international institutions, both social and legal-political.

War economies include activities such as financing, mobilization, weapons purchases, logistics, and the other activities that are commonly involved in sustaining a fighting organization, whatever its size or legal character. The war economies of military organizations involve the activities to recruit and mobilize people to do the fighting, industrial production to make the weapons to arm them, and budget allocations to pay for it all, not to mention procurement and logistics systems to manage the flow of people and weapons to battlefield. No two war economies are exactly the same. They arise out of particular geographies and societies, with their own histories and political economies. The particularity of social structures of race, class, and gender shape, for example, the politics of mobilization for war and the dynamics of exploitation in war. This imposes certain responsibilities on the analyst and constrains what can be said about war economies in general.

³ ‘Exercising coercion requires two basic resources: labor and property. Labor includes mental labor, such as leadership and technical skills, as well as the physical labor of the soldier. Property includes the armaments and money required to sustain a coercive project. Ownership of and decision-making authority over these resources may reside with the state or nonstate actors.’ Janice E. Thompson, *Mercenaries, Pirates and Sovereigns* (Princeton University Press, 1994), p. 9.

⁴ It is arguable that, at the time of writing, we are on the cusp of a fundamental change in the relationship of labor and property for warfare. The development of autonomous weapons systems is today transforming the relationships of labour and property to warfare, just as technology and warfare have repeatedly transformed each other throughout history. For an early exploration of the issues see Manuel De Landa, *War in the Age of Intelligent Machines* (Zone Books, 1991). The impact of autonomous weapon systems, while a current topic of international legal debate, is not so advanced at present that it has transformed the economic dimensions of armed conflict in practice.

⁵ Le Billon has defined a war economy as economic activity connected to preparing for and sustaining armed conflict. See Philippe Le Billon, *Wars of Plunder, Conflicts, Profits and the Politics of Resources* (Columbia University Press, 2012), p. 288.

Yet, it is possible to generalize to some extent about war economies: war economies arise where the forces of coercion and capital meet with the immediate purpose of obtaining the ability to fight a war.⁶ War economies are political, in the sense that they are sources of power and also sites of contention. As such, they play an important part in the politics of violent conflicts, shape how those conflicts are fought, and help to reproduce the structures that cause and sustain conflicts.

In contemporary industrial societies, the heart of a war economy is usually the defence budget of a state, the organizations of national defence and security, and the industries – both public and private – that service those organizations. The acquisition of labour for fighting organizations, or mobilization, involves various activities and goes by various names, such as ‘recruitment’, ‘conscription’, and ‘national service’. These are often public functions, involving significant fiscal outlays, but in recent decades many countries have experienced a rapid expansion in the private military and security service sector as well.

In addition to mobilization, formal war economies involve defence acquisition, or the acquisition of weapons, including via its international dimensions in the arms trade. Historically, sovereigns have financed their demands for war production through a variety of means, the most obvious being tax revenues. These are significant economic activities: globally, military expenditures in 2018 were an estimated US\$1.8 trillion, amounting to 2.1 percent of global gross domestic product (GDP). In the industrial age, war economies of the major powers relied upon advances in technology, but also the natural resources obtained in colonies, in addition to a state’s fiscal foundation. These economies served as the basis for building what one US president called the ‘arsenal of democracy’. A few years later, the growth in the defence

⁶ Charles Tilly famously summarized the interaction of role of capital and coercion with the statement that ‘States make wars and wars make states.’ ‘Where capital defines a realm of exploitation, coercion defines a realm of domination. The means of coercion centre on armed force, but extend to the facility for incarceration, expropriation, humiliation, and publication of threats. Europe created two major overlapping groups of specialists in coercion: soldiers and great landlords; where they merged and received ratification from states in the form of titles and privileges they crystallised into nobilities, who in turn supplied the principal European rulers for many centuries. Coercive means, like capital, can both accumulate and concentrate: some groups (such as monastic orders) have few coercive means, but those few are concentrated in a small number of hands; others (such as armed frontiersmen) have many coercive means that were widely dispersed. Coercive means and capital merge where the same objects (e.g. workhouses) serve exploitation and domination. For the most part, however, they remain sufficiently distinct to allow us to analyse them separately.’ Charles Tilly, *Coercion and Capital: States in Early Modern Europe* (Cambridge University Press, 1990), p. 19.

industry would prompt another US president to warn of a ‘military–industrial complex’.⁷ It is not surprising that these expressions have come to us from US presidents, give the singular dominance of US defence industries in the twentieth century. Today, this dominance remains, although it is facing competition.⁸ Two major economies – the United States and China, both permanent members of the United Nations Security Council – account for half of global military spending. In addition, six of the ten countries with the highest military spending as a proportion of GDP were from the Middle East.⁹

Not every country is a producer of defence materiel, but every country has its own particular political economy of national security, including the particularities of the preparation of national defence. The economic aspects of organized violence are necessary foundations of coercive power. War economies are important parts of the macroeconomic and political structures in many countries, in an age in which a defining characteristic of our principal form of political organisation – the state – is its monopoly on the use of force. It is not surprising, then, that most governments consider the main elements of their war economies as essential to national security. This, in turn, has shaped the way states treat war economies in their international relations, including how international law has evolved to regulate them.

Insurgents operate war economies with much the same ends. However, mobilizing resources requires that they utilize more informal means, such as the mobilization of irregulars, covert arms transfers, extortion or informal taxation in the war zone, and smuggling and trafficking. These are systems that serve the same function as the more formal or state-based war economies: to obtain weapons, mobilize fighters, and generate the money to sustain both of these over time.

The war economies of insurgent organisations are an important concern of the law discussed in this book. This is because today, wars tend to be civil wars, insurgencies, rebellions, and so-called ‘small wars’ of various sorts involving

⁷ In 1940, President Franklin Roosevelt referred to the US economy as the ‘arsenal of democracy’, that is, the economic basis for the provision of arms and supplies for the Allied war effort in Europe. In 1961, President Dwight D. Eisenhower referred to the growing ‘military–industrial complex’ as a potential threat to US democracy.

⁸ ‘In 2017, of the 20 largest companies in the SIPRI Top 100, 11 were based in the USA, 6 in Western Europe and 3 in Russia. If the four Chinese arms companies investigated in the study were included in the Top 100, they would all rank among the top 20, with combined estimated arms sales totalling \$54.1 billion. Three of the companies would be ranked in the top 10.’ ‘New SIPRI Data Reveals Scale of Chinese Arms Industry | SIPRI’, www.sipri.org/media/press-release/2020/new-sipri-data-reveals-scale-chinese-arms-industry

⁹ ‘World Military Expenditure Grows to \$1.8 Trillion in 2018 | SIPRI’, www.sipri.org/media/press-release/2019/world-military-expenditure-grows-18-trillion-2018

non-state actors as well as state militaries.¹⁰ The predominant form of warfighting in today's armed conflicts is irregular warfare, defined simply as armed conflict involving what historically have been called 'irregulars', such as insurgents, terrorists, mercenaries or other non-state actors. When state military forces are involved in internal armed conflict, those forces are more likely than not engaged in some form of irregular warfare, often through the use of special forces and in alliance with irregular groups.¹¹ The state and non-state armed actors that operate in this space are diverse in form, from military units to insurgents to peacekeeping forces to private security forces and mercenaries.¹² In practice, irregular warfare encompasses a broad repertoire of organized violence, from sporadic attacks typical of bandits or terrorists, sustained violence common to insurgents or in some cases organized criminal gangs or drug wars, to combat that at times can resemble inter-state warfare.¹³ In theory, there is a repertoire of violence that consists of different tactics available to all actors involved in violent conflict.¹⁴ In practice, access to resources and capacities shapes or constrains what kinds of violence different actors opt to use. Our moral, legal, and political norms help us organize these different forms of violence into categories with labels, such as 'crime' or 'war' or 'rebellion' or 'terrorism'.¹⁵

¹⁰ Internal armed conflicts far outnumbered inter-state conflicts and a significant proportion were hybrid conflicts involving international state and non-state actors. 'All conflicts active in 2013 were fought within states, but nine of them – or 27% – were internationalized in the sense that one or more states contributed troops to one or both sides.' Lotta Themnér and Peter Wallensteen, 'Armed Conflicts, 1946–2013', *Journal of Peace Research* 51, no. 4 (2014): 551–4.

¹¹ *Ibid.*; Themnér and Wallensteen describe a predominance of conflict 'dyads' involving conflicts between state forces and one or more rebel groups.

¹² Non-state armed groups have been a constant feature of armed conflict throughout the history of modern warfare and insurgencies and counterinsurgencies have been a central part of the armed conflicts of the past century. See, for example, John Keegan, *A History of Warfare* (New York: Vintage Books, 1993); Ian F. W. Beckett and John Pimlott, *Counter-Insurgency, Lessons from History* (Pen & Sword, 2011); Martin Van Creveld, *The Changing Face of War: Combat from the Marne to Iraq* (Random House, 2008); Eric J. Hobsbawm, *Primitive Rebels, Studies in Archaic Forms of Social Movements in the 19th and 20th Centuries* (The Norton Library, 1959).

¹³ As Cockayne states in his history of organized crime, 'The startling conclusion that emerges from the evidence in this book is that not only states, but also some organised criminal groups, make war.' James Cockayne, *Hidden Power: The Strategic Logic of Organized Crime* (Hurst and Company, 2016), p. 206.

¹⁴ On repertoires of violence see Charles Tilly, *The Politics of Collective Violence* (Cambridge University Press, 2003).

¹⁵ Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge Studies in Comparative Politics, 2006); Charles Tilly, *The Politics of Collective Violence* (Cambridge University Press, 2003). This repertoire of violence is the basis for a 'crime-war spectrum' in law. Christine Jojarth, *Crimes, War and Global Trafficking: Designing International Cooperation* (Cambridge University Press, 2009).

In irregular wars, many of the activities involved in obtaining the labour and property necessary for conducting irregular warfare occur in the conflict zone. Often, the demands of fighting organizations must be met, at least in part, within the economic space of the armed conflict itself, or close to the war zone. As a result, an important part of the activities involved in mobilizing, arming, and paying for war often coexist with the irregular warfighting. Examples of insurgents or incumbent elites exploiting economic activity in time of war can be found in every conflict in recent decades, from the Democratic Republic of the Congo to Libya and Syria and and Yemen, from the Horn of Africa to Afghanistan, and from Colombia to Myanmar. In most cases, the economic foundations of a fighting organization are constituted by combinations of financial or logistical support by third-party states as well as a range of informal sources, both local and transnational. In each case, the mix is different and subject to both geo-political considerations and factors on the ground, such as territorial control or the relations between fighting organizations and society.¹⁶

These contemporary war economies are heirs to similar practices throughout history in which control over access to rents has been decisive for strategic advantage.¹⁷ The reason for this is straightforward: in order to fight, parties to conflicts need guns, the people to use them, and the money to buy both. Often, the limits of a group's ability to obtain these factor inputs to the means of coercion are defined by its ability to control territory, or the nature of competition and the relative strength of a warring faction. The strength of a group both influences and is determined by its ability to control territory and command the collaboration of people in that territory, and as such its relative strength is key, not least with respect to the strength of the state.¹⁸

This is why insurgents and incumbents will target each other's economic infrastructure with the objective of denying revenues and increase costs; disrupting economic activity; and forcing capital to flee, investment to shrink, production to fall, and unemployment and inflation to rise. Both sides will also promulgate laws and edicts within their areas of control criminalizing the other's economic activities. For incumbents, the objective is to undermine insurgent capacity, as part of an overall counterinsurgency strategy. For insurgents, the objective is to erode the formal economy, either by direct action or

¹⁶ Kalyvas, *The Logic of Violence in Civil War*; R. T. Naylor, *Wages of Crime, Black Markets, Illegal Finance and the Underworld Economy* (Cornell University Press, 2002).

¹⁷ David Keen, 'The Economic Functions of Violence in Civil Wars', Adelphi Paper (International Institute for Strategic Studies, 1998). Karen Ballentine and Jake Sherman, eds., *The Political Economy of Armed Conflict* (Lynne Rienner, 2003).

¹⁸ Kalyvas, pp. 91–105; Naylor, chapter 2, 'The Insurgent Economy: Black Market Operations of Guerrilla Groups'.

by provoking a government response; and in so doing increasing the dependence of the population on the informal economy through the creation of a parallel economy and alternative forms of governance, for example, by abolishing or restructuring certain markets, or reforming land tenure, or establishing alternative norms to govern economic activity. In addition, this has the knock-on effect of shrinking the state's fiscal resources, expanding the relative size of the black market from which the movement draws its material support, delegitimizing the government in the eyes of people, and creating the conditions for changes in popular allegiance.¹⁹

These forms of economic warfare are the domestic versions of age-old practices of strategic competition between states.²⁰ As with its domestic forms, economic warfare at the international level is usually implemented through a combination of legal and military measures. Laws impose trade and financial embargoes on particular targets while military actions – such as bombing and blockades – target economic capacity. As we shall see in the text that follows, the contemporary versions of economic warfare may occur in a targeted manner and with legal authorization at the UN Security Council,²¹ or it may be done unilaterally and comprehensively, often with devastating effects for the population. Economic warfare in its contemporary manifestations includes attempts to quarantine or disrupt the war economies of insurgents or terrorists, as well as isolate or weaken strategic opponents. It can involve temporary measures, or last for decades.²² In practice, there is a continuum of tactics and strategies that follow the basic logic of siege warfare – the denial of resources to weaken military capacity, undermine political support or the will to resist, or both. The fact that economic warfare is an increasingly important part of today's strategic arsenal is testament to the importance of war economies for those involved.

¹⁹ But insurgents must be wary: as the military demands rise because of attacks on them by incumbent forces, so too will the social welfare demands rise 'because a true insurgent movement, as distinct from one engaged purely in adventurism, must displace at least partially the social services provided by the government' (Naylor, p. 47).

²⁰ As described by R. T. Naylor, 'since the Napoleonic era most economic wars have been fought on three main fronts . . .': attempting to stop the target country's exports; denying the target strategic imports, particularly of arms, fuel, and technology; financial measures to isolate the target from international financial flows, such as loans, investments, and assets held abroad. R. T. Naylor, *Patriots and Profiteers: On Economic Warfare, Embargo Busting and State Sponsored Crime* (Toronto: McLelland and Stewart, 1999). See in particular the first chapter. For a summary see pp. 375–7.

²¹ See Chapter 3, 'Money: Regulating Conflict Finance'.

²² Examples include US sanctions regimes imposed repeatedly against countries such as Iran and Iraq, or the closure regimes imposed by Israel on occupied Palestine with varying intensity since 1989.

TWO KINDS OF WAR ECONOMIES

The description of the war–economy nexus sketched so far builds on a critical tradition in the social science study of war. A critical approach starts from an agnostic position with respect to violence in war. This involves seeking to understand violence and its related phenomena as a social practice.²³ A similar approach has been incorporated into the study of economic activity in war.²⁴ The descriptions of the war–economy nexus made available in the social science literature is deployed here as the basis for an identification of social practices subject to legal regulation.

The description summarized in the preceding text suggests there are at least two broad categories of economic activity connected to war. One category involves the acquisition of the labour and property necessary for war. This is the war economy of a military organization and includes both incumbent state military as well as insurgent or non-state armed groups. The second category of economic activity connected to war is the economic activity within the war zone. This is the economic activity that households need to survive, or that local businesses transact in the market. It may or may not be connected to the war economy of fighting organizations.

These two kinds of war economies are reflected in how we speak about them. For example, it is possible to refer to ‘the war economy of Syria’ and mean the totality of economic activity in Syria while at war and in the Syrian war zones, or the fiscal and other efforts of the government or rebels to pay for and mobilize their war-fighting capacity. It can mean both. In other words, in

²³ This is common to criminology, as well as the sociology and anthropology of violence. A similar approach is found in political science and history. See, for example, Zachariah Cherian Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life During War* (Cornell University Press, 2011); Morten Bøås and Kevin Dunn, eds., *African Guerrillas: Raging Against the Machine* (Lynne Rienner, 2007); Kalyvas, *The Logic of Violence in Civil War*; Elisabeth Jean Wood, *Insurgent Collective Action and Civil War in El Salvador* (Cambridge University Press, 2003); Charles Tilly, *The Politics of Collective Violence*; Thompson, *Mercenaries, Pirates and Sovereigns*; Hobsbawm, *Primitive Rebels, Studies in Archaic Forms of Social Movements in the 19th and 20th Centuries*.

²⁴ Naylor, *Wages of Crime, Black Markets, Illegal Finance and the Underworld Economy*. See also Patricia Justino, Tilman Brück, and Philip Verwimp, ‘Micro-Level Dynamics of Conflict, Violence and Development: A New Analytical Framework’, Working Paper, HiCN, January 2013, www.hicn.org/wordpress/wp-content/uploads/2012/06/HiCN-WP-138.pdf; Patricia Justino, Tilman Brück, and Philip Verwimp, eds., *A Micro-Level Perspective on the Dynamics of Conflict, Violence and Development* (Oxford University Press, 2013); Morten Bøås, *The Politics of Conflict Economies: Miners, Merchants and Warriors in the African Borderland* (Routledge, 2014); Le Billon, *Wars of Plunder, Conflicts, Profits and the Politics of Resources*; Ballentine and Sherman, *The Political Economy of Armed Conflict*.