

WAR ECONOMIES AND INTERNATIONAL LAW

What rules apply when US troops occupy Syrian oil fields? Who is responsible when multinational companies use minerals extracted by child labourers in war zones? This book examines how international law regulates the war economies that are at the heart of strategic competition between great powers and help sustain the irregular warfare in today's war zones. Drawing on advances in our understanding of the social and economic dynamics in war zones, this book identifies predation, a combination of violence and economic opportunity, as the core pathology of war economies. The author presents a framework for understanding the regulation of war economies based on the history of international law and existing norms of international humanitarian law, international criminal law, international human rights law, and the law of international peace and security. *War Economies and International Law* concludes that the pathologies of predation in war demand answers based on an international regulatory strategy.

Mark B. Taylor is a senior researcher at the Fafo Institute for Labour and Social Research in Oslo. His research focuses on law and capitalism with a focus on legal frameworks for responsible business, sustainability, and the economic dimensions of violent conflict.

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REGULATING THE ECONOMIC ACTIVITIES OF
VIOLENT CONFLICT

MARK B. TAYLOR

Fafo Institute for Labour and Social Research, Oslo



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Preface

This book is concerned with an aspect of war that is hidden in plain sight. The economic aspects of war are blindingly obvious: they are there in the salaries and upkeep of the fighters deployed, in the weapons used, and in the survival strategies of people caught in the war zone. Yet, the economic dimensions of conflict have been largely neglected by the jurists, diplomats, and others who are usually concerned about how war is regulated.

This book is an attempt to correct this neglect. Drawing on the social science investigating violence in conflict, and on the history of various regimes of public international law, the book makes a simple claim (or two): the economic dimensions of armed conflict should be brought out of obscurity and they should be regulated. To this end, the chapters that follow make visible the ways in which public international law regulates war economies, what norms are deployed, what obligations the law creates, and to what purposes.

The book is an attempt at scholarship, and it is by no means intended as the last word on the topic. By mapping the core elements of the public international laws and institutions that govern contemporary war economies my objective is to highlight an aspect of contemporary conflicts that needs further study and debate. In doing so I hope that the masters of different disciplines touched on here will take issue with my argument and my evidence or how I present it and will critique and correct me.

Beyond my scholarly purpose, this book is also an attempt to encourage policymakers, legal practitioners, and activists to think strategically about the dilemmas posed by economic activity in conflict. Whether you live in a war zone or not, the moral and political challenges posed by war economies are present wherever the value chains that transect the global economy touch down. Political violence and war cannot be understood in isolation from their

economic dimensions, and their economic dimensions cannot be understood in isolation from the law.

Acknowledging these facts is not the same as asserting that economic activity causes wars, or the reverse – that economics alone can secure the peace. Rather, it is simply to acknowledge that power matters to conflict, that economic activity is a key source of power, and that law regulates best when we have a clear idea of where the power lies. If we hope to have a progressive impact on how we might respond to the challenges posed by war economies, I assume it would help to have some idea about the legal norms that govern them. That assumption has guided me in this journey to better understand the relevant law.

The journey started with two meetings. The first, in the spring of 2001, was a surprise invitation to lunch with an ambassador of Norway. I was a researcher at the Fafo Institute for Labour and Social Research in Oslo. Norway had just been elected to the Security Council and over lunch it quickly became apparent that the ambassador was at that moment preoccupied with the attempts by the Council to wrestle with sanctions busters and the amazing ability of certain civil wars to finance themselves. *‘That is something you should look into!’* said the ambassador, in the way that ambassadors do.

In a previous life as a UN analyst in the Middle East, I had encountered the black markets that circulated commodities of all kinds, transcending some of the most difficult borders and cease-fire lines known to modern conflict. War, it seemed, had certain demands and enabled certain supplies. That, it seemed, was the inevitable way of the world. Was this about to change?

A year later, I would find myself at a seminar in a village outside Geneva with a small group of activists. Each was working on changing aspects of global governance in relation to conflict or had been involved in his or her own way in getting governments to agree on collective efforts to improve human security. On that day, there were people in the room who had contributed to realizing the Rome Statute of the International Criminal Court, the International Convention to Ban Landmines, the Programme of Action on small arms transfers, the Kimberly Process on conflict diamonds, and efforts to get the then UN Human Rights Commission to take up the issue of corporate impacts on human rights. They had been brought together by a Canadian diplomat, Don Hubert, who wanted to take stock of where these waves of humanitarian diplomacy were leading. At one point, Charmian Gooch, a cofounder of the international investigatory nongovernmental organization Global Witness, was explaining how their investigations had turned up evidence of collusion between murderous warlords and their corporate allies, not least from Europe and North America. In mid-sentence she interrupted

herself and let a fist fall firmly to the table, ‘There must be a way to put these people behind bars!’

Yes, I thought to myself, there must be.

The journey launched by those conversations has, in practice, been made up of a series of projects focused on discrete aspects of the larger problem I came to identify as ‘war economies’. Those projects included research into the UN’s responses to economies of conflict; surveying the domestic law incorporation of the Rome Statute in sixteen different countries and the implications of this state practice for liabilities for business linked to armed conflict; learning from investigators and prosecutors working on economic crimes, international crimes, and sanctions busting; facilitating a dialogue among member states on the topic of state responses to business in conflict zones; conducting comparative law research into the regulation of business due diligence; developing guidance for supply chain due diligence by businesses sourcing from conflict-affected regions; and the investigation and prosecution of corporate crimes related to human rights abuse. I am grateful for support and collaboration on specific projects over the years from the governments and officials from Canada, Norway, Switzerland; the Ford Foundation; and Noref (the Norwegian Peacebuilding Resource Centre). I owe special thanks to the excellent lawyers and investigators at Global Witness, Amnesty International, and the Clooney Foundation for Justice, as well as Professor John Ruggie and his team at the office of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises. Although none of the foregoing supported this monograph, nor were always concerned with war economies as such, the research and discussions conducted through my association with these projects made a significant contribution to what follows.

Throughout, I am privileged to have been able to collaborate with an ever widening cast of colleagues, both scholars and practitioners. Certain people have been long-time co-conspirators; others have made brief but vital contributions at important moments. You are all deserving of my deepest thanks for the insights you have given me over the years. You are, in no particular order: Maja van der Velden, Christian Ruge, Anita Ramasastry, Seema Joshi, Don Hubert, Mora Johnson, Gerald Pachoud, Robert Thompson, Salil Tripathi, Rachel Davis, Simon Taylor, Charmian Gooch, Patrick Alley, William Bourdon, Charles Arthur, Richard Meeran, Egbert Wesselink, Marya Farah, Sandra Cossart, Claire O’Brien, Beate Sjøfjell, Paloma Muñoz Quick, Erik Hagen, Willy Egset, Arvind Ganesan, John Karlsrud, Amol Mehra, Filip Gregor, Marie-Laure Guislain, Miriam Saage-Maasz, Ian Smiley, Dom Renfrey, Mariano Aguirre, Malcolm Langford, James G. Stewart, Gunhild

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Special thanks Mari Ruge for allowing me a room of one's own – and for peace movement inspiration – at a vital stage in the writing.

I am particularly grateful for the support received in the final phases of this project from my employers, the Fafo Institute for Labour and Social Research in Oslo and our Director, Tone Fl otten. Although the bulk of this book was developed and written on the margins of my day job at Fafo, this support enabled me to complete key sections and pull the final version together into a monograph.

I am indebted to Professor Beate Sj afjell for her support and excellent collaborations before, during, and after my postdoctoral fellowship at the University of Oslo.

Many colleagues at Fafo, both past and present, have contributed to my thinking and research practice over the years, through debates, discussion, and project work. It is impossible to thank you all individually. I can only thank you collectively for all you have given me. Thanks for making Fafo a great place to 'grow up'. I hope I have been able to return the respect and support you that have shown me over the years.

The analysis presented in this study would not have been possible but for the collaboration, critical input, and intellectual companionship from everyone named here (and no doubt a few I have probably missed. Apologies.). Beyond offering my endless gratitude, the least I can do is absolve you all of responsibility for any errors of fact or analysis in what follows. That is my responsibility.

At home, Maja, Robin, and Max kept me sane, inspired, and always challenged with new ideas. The love, patience, and understanding you showed me seemed endless (I'm sure this project seemed endless to you!). This one is for you.

Abbreviations

AFRC	Armed Forces Revolutionary Council (Sierra Leone)
ALC	Armée de libération du Congo
AML	Anti-Money Laundering
ATS	Alien Tort Statute
ATT	Arms Trade Treaty
AU	African Union
AUC	United Self-Defense Forces of Colombia
CAR	Central African Republic
CoCom	Coordinating Committee of Multilateral Export Controls
CTC	Counter Terrorism Committee
CTED	Counter Terrorism Executive Directorate
CTITF	Counter-Terrorism Implementation Task Force
DDR	Disarmament, Demobilization, and Reintegration
DRC	Democratic Republic of Congo
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
FARC	Revolutionary Armed Forces of Colombia
FATF	Financial Action Task Force
FDLR	Democratic Forces for the Liberation of Rwanda
GATT	General Agreement on Tariffs and Trade
HRC	Human Rights Council
ICC	International Criminal Court
ICGRL	International Conference on the Great Lakes Region
ICJ	International Court of Justice
ICL	International Criminal Law

ICoC	International Code of Conduct
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organization
IMT	International Military Tribunal
IS	Islamic State
JCE	Joint Criminal Enterprise
JNA	Yugoslav National Army
KPCS	Kimberly Process Certification Scheme
KYC	Know-Your-Customer
MEJA	Military Extraterritorial Jurisdiction Act
MLC	Mouvement de libération du Congo
MONUC	United Nations Mission in the DRC
NATO	North Atlantic Treaty Organisation
OECD	Organisation for Economic Co-operation and Development
OAS	Organization of American States
OHCHR	Office of the Higher Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PLO	Palestine Liberation Organization
PoA	Programme of Action
RUF	Revolutionary United Front (Sierra Leone)
SADC	South African Development Community
SALW	Small Arms and Light Weapons
SCSL	Special Court for Sierra Leone
SRSG	Special Representative of the Secretary-General
UNCLOS	United Nations Convention on the Law of the Sea
UNCTOC	UN Convention against Transnational Organized Crime
UNEF	United Nations Expeditionary Force
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNITA	National Union for the Total Independence of Angola
UNMIL	United Nations Mission in Liberia
UNROCA	United Nations Register of Conventional Arms
VRS	Army of Republika Srpska
VPs	Voluntary Principles on Security and Human Rights
WTO	World Trade Organization