CHAPTER 19

Breaking the ‘Resource Curse’: Prosecuting Pillage of Natural Resources

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1 Introduction

The environmental, human, and economic impacts of natural resource plunder during a war are catastrophic and well described in the books of international criminal law. Trade in diamonds, timber, oil, coltan, cassiterite and other 'conflict resources' have helped both state and non-state actors to fuel and financially sustain armed conflicts. Pillage as a war crime under arts. 8(2) (b) (xvi) and 8(2) (e) (v) of the Rome Statue1 is the criminal charge used most frequently to prosecute the perpetrators of natural resource exploitation. Various theories of prosecution of the crime of pillage have emerged.2 Prosecutors have largely applied pillage on a situational or small-scale incident level, which has proven to be inadequate, as it fails to secure the objectives of the Rome Statute to create stability and reduces crime at a massive, systematic level to the level of a particular act. Some theorists have added another leg to this episodic theory by propagating the corporate theory of pillage prosecution, which argues that the corporations, businesses, and industries that extract, export, and sell the pillaged resources should be held criminally liable along with the direct perpetrators.

The Democratic Republic of the Congo (DRC) provides a classic example of how the greed for natural resources can lead to the bloodiest and the deadliest

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of conflicts. Foreign armies, rebel forces, and the DRC government have all plundered the DRC’s natural resources to further their control over the country’s wealth and people. The DRC situation represents the phenomenon known as a ‘resource curse,’ meaning that a country is unable to use its rich natural resource wealth to boost its economy and ultimately has lower economic growth than countries without an abundance of natural resources.

Resource curse may be both a cause and effect of pillage. The paper postulates that the incident based theory and the corporate theory of pillage prosecution may help prosecute some perpetrators for pillage, but ultimately fail to cure a system of its resource curse. In light of this, the paper suggests that a systematic theory of pillage prosecution would offer not only a solution to hold direct perpetrators responsible, but would also have a disruptive effect on others involved in the mineral wars. Thus, an attempt is made to deal with the problem of resource curse in its relationship with the war crime of pillage, with the aim of culling out a theory that is best suited to curing the curse. While acknowledging that the International Criminal Court (ICC) should pursue resource pillaging as a war crime, this paper argues that the systematic theory offered by Keenan should be applied to effectively combat the paradox of plenty.

The paper proceeds in five parts. After a brief introduction, the second part deals with a general overview of the problem of resource curse and its relationship with natural resources and armed conflict. The third part critically assesses the practice of international courts in relation to pillage charges and explores their role in prosecuting the same. The fourth part will elaborate the various theories of pillage prosecution, and, finally, the paper concludes with a possible solution to the problem of pillage and resource curse, highlighting the systematic approach in particular as the most plausible.

2 Links between Resource Curse, Resource Wars, and Pillage

With the expansion of the global economy, the extraction and depletion of finite natural resources has led to conflicts on both the global and the local

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4 L. Watt, “Mining For Minerals Fuels Congo Conflict,” USA Today (1 November 2008).
6 Ibid., 530.