Chapter Three: Natural Resources

Introduction

Access to natural resources and the allocation of revenue generated by resource exploitation is at the core of many conflicts and plays an important role in many others. Since 1990, there have been nearly 20 conflicts related to the exploitation of natural resources, and in the last 60 years, over 40 percent of intra-state conflicts have related the exploitation of natural resources.[1]

As a result, between 1989 and 2004, nearly half of all peace agreements included detailed provisions addressing natural resources.[2] From 2005 to 2014, all major peace agreements included provisions relating to the ownership or management of natural resources and/or the allocation of revenue derived from those resources.[3] This was likely the case given that in many fragile states the exploitation of oil, gas, minerals, and timber provide a fairly significant percentage of national revenue.[4]

Notably, conflicts related to natural resources are twice as likely to revert to conflict in the first five years after the signing of a peace agreement.[5] When a fragile state possesses an abundance of natural resources (oil and gas particularly), there is a substantially increased likelihood of intra-state armed conflict, and an increased likelihood that the sub-state entity involved in the conflict will seek external self-determination as a means to resolve the conflict.[6] Political elites frequently capture resources, which leads to unaccountable governance structures, which then in turn act as a conflict driver.[7] Moreover, when a state depends on natural resources for a significant share of its GDP, this will frequently "increase the likelihood of underdevelopment, fragility and conflict."[8]

There are three main types of natural resource-based conflicts: those that relate to extractive resources such as oil, gas, minerals, diamonds and timber; those that relate to land; and those that relate to water.[9]

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[1] 'From Conflict to Peacebuilding: The Role of Natural Resources and the Environment' (United Nations Environment Programme, 2009) i

[2] 'Natural Resources and Conflict: A Guide for Mediation Practitioners' (United Nations Department of Political Affairs and United Nations Environment Program, 2015) 46

[3] *Id.*

[4] Phillipe Le Billon, 'Resources for Peace? Managing Revenues from Extractive Industries in Post-Conflict Environments' (Political Economy Research Institute Working Paper Series Number 167, Apr. 2008) i

[5] UNEP, *supra* note 1

[6] Michael L. Ross, 'How do natural resources influence civil war? Evidence from thirteen cases' (2004) 58(1) International Organization 35; *see also* Michael L. Ross, 'What do we know about natural resources and civil war?' (2004) 41(3) Journal of Peace Research 337, as cited in Simon J. A. Mason, Damiano A. Sguaitamatti, and María del Pilar Ramirez Gröbli, 'Stepping Stones to Peace? Natural Resource Provisions in Peace Agreements' (2016) 71, 75 in Carl Bruch, Carrol Muffett, and Sandra S. Nicholas (eds), *Governance, Natural Resources, and Post-Conflict Peace Building* (Routledge, 2016)

[7] *Id.*

[8] Mauricio O. Ríos, Florian Bruyas, & Jodi Liss, 'Preventing Conflict in Resource-Rich States' (World Bank, June 2015) 7

[9] UN DPA and UNEP, *supra* note 2, at 28

Resource-based conflicts can relate to either the high value abundance or the scarcity of a particular resource. Extractive natural resource conflicts tend to relate to abundance. For instance, the conflicts in Liberia, Angola, and the Democratic Republic of Congo were heavily based around on "high value" extractive resources, such as diamonds, gold, minerals, and oil that were rich and abundant in the regions. Land and water-based conflicts, on the other hand, tend to relate to scarcity. This was the case in Darfur and has been the case for a number of conflicts in the Middle East.[10] Additionally, conflicts will often relate to more than one category of natural resources.

Sometimes the conflict directly relates to the question of who owns or controls a natural resource. In other situations, the conflict may be only tangentially related to the ownership and control of the resources, but the availability of revenue from natural resources acts as a driver of the conflict by fueling access to weapons and influence.

The tension relating to the ownership or control of the natural resource often mirrors and is interwoven with other conflict drivers, such as political and economic disenfranchisement. If a general governance issue exists, then there will certainly be a governance issue relating to the ownership and management of natural resources. As such, over time, what starts as a conflict over political rights may evolve into a conflict over the ownership of natural resources.[11]

In keeping with the overall approach of the book, this chapter undertakes a detailed exploration of one dimension of natural resources, in this case, the development of peace agreement provisions relating to extractive natural resources. The lessons learned from the negotiation and design of extractive resource provisions are broadly applicable to disputes relating to land and to water.

This chapter addresses a number of conundrums related to the ownership, management, and associated revenue of extractive natural resources that the parties face during peace negotiations and peace processes. First, this chapter discusses the puzzle of whether and how to address extractive resource ownership, management, and revenue allocation in a manner that promotes durable peace. Next, the chapter provides a conceptual and legal primer for understanding the frameworks states have used to govern the ownership, management, and associated revenue of extractive resources. Then, the chapter explores a number of instances of key state practice to analyze and highlight how the parties involved in peace negotiations have sought to manage the conundrums they faced when seeking to solve the puzzle of extractive resources.

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[10] UNEP, *supra* note 1, at 8

[11] For more analyses about the relationship between natural resources, peace, and security, *see generally* Benjamin Smith, 'Resource wealth as rent leverage: Rethinking the oil-stability nexus' (2017) 34(6) Conflict Management and Peace Science 597-617; Paul Collier and Anke Hoeffler, 'Resource Rents, Governance, and Conflict' (2005) 49(4) Journal of Conflict Resolution 625-633; Nils Petter Gleditsch, 'Environmental Change, Security, and Conflict' in Chester A. Crocker et al. (eds), *Leashing the Dogs of War* (United States Institute of Peace, 2007); Sanjeev Khagram and Saleem Ali, 'Environment and Security' (2006) 31(1) Annual Review of Environment and Resources, 395-411; Christine Bell, 'Economic Power-sharing, Conflict Resolution and Development in Peace Agreements' (Political Settlements Research Programme, 2018); Sandra S. Nichols et al., 'When Peacebuilding Meets the Plan: Natural Resource Governance and Post-Conflict Recovery' (2011) 12(1) The Whitehead Journal of Diplomacy and International Relations 9-24

The Puzzle: Whether and how to address extractive natural resource ownership, management, and revenue allocation in a manner that promotes durable peace.

Efforts to solve the puzzle of whether and how to address extractive natural resource ownership, management, and revenue allocation in a manner that promotes durable peace are complicated by the fact that natural resources can be both a driver of the conflict and a key factor in promoting a durable peace. A number of factors make the negotiated resolution of extractive natural resource-based conflicts a highly complex endeavor.

Conflict Drivers

Natural resources drive conflict in a number of ways. Natural resources can fuel unfair distribution of wealth resulting from extraction and demand of scarce resources that exceeds supply, both of which can drive conflict.[12] Oftentimes the ownership of natural resources and the associated revenue are captured by the by national government or the dominant political actor and associated political elites. This leads to substantial real or perceived economic disenfranchisement of large sectors of the population, and in particular to regional authorities and actors. Those disenfranchised populations then often take up arms in an effort to wrest control of those resources away from the national government, as was the case of Aceh in Indonesia, where the national government appropriated nearly all of the revenue from the Acehnese oil fields.

Frequently, the national government will engage in an unequal distribution of the revenue associated with natural resources, benefitting one regional, religious, or ethnic group over the rest of the population, as was the case with Iraq and the favored treatment of the Sunni.

The controlling authority also may choose to undertake very little, if any, distribution of the revenue among stakeholders. In these instances, those in power use funds garnered from natural resources not for the benefit of the state, but for the personal enrichment of the political elite, as was the case with Sierra Leone,[13] and Angola.[14] Many parties have a "strategic interest in maintaining instability in order to profit from illegal exploitation and trade of natural resources."[15]

Relatedly, non-state armed actors may access the resources to fund the conflict, as with the government of Sudan relying heavily on oil revenue to fund the conflict with South Sudan and Darfur. In some cases, non-state armed actors accesses resources to sustain the armed conflict. In Sierra Leone, the Revolutionary United Front (RUF) used the sale of blood diamonds to fund its revolutionary movement. During the confusion and disarray of a conflict, resources are also extracted and sold by illicit actors for personal gain. These illicit actors then become stakeholders in the conflict, and seek to resist or undermine the efforts of the parties to

[12] UN DPA and UNEP, *supra* note 2, at 10-12
[13] Jimmy D. Kandeh, 'Ransoming the state: elite origins of Subaltern terror in Sierra Leone' (1999) 26 Review of African Political Economy 349
[14] Jesse Salah Ovadia, 'The Reinvention of Elite Accumulation in the Angolan Oil Sector: Emergent capitalism in a rentier economy' (2013) 25 Cadernos de Estudos Africanos 33
[15] UN DPA and UNEP, *supra* note 2, at 19

negotiate a peace. This was the case in Sierra Leone, where many illicit diamond miners and smugglers became additional parties to the conflict.[16]

The conflict may transform from a political conflict to one associated primarily with economic gain, as was the case with timber extraction by the Khmer Rouge on the border between Thailand and Cambodia after their expulsion from Cambodia.[17] Because of the geographic nature of the distribution of extractive natural resources, in cases where these unequal distributions correspond to ethic, religious or other divides, they may substantially augment the difficulty of resolving the conflict.[18] Moreover, if there tends to be a high concentration of resources in the territory of a sub-state entity with a marginalized population, this may fuel the drive for external self-determination, as was the case in South Sudan.[19]

This can also be seen in the case of Ethiopia, where all land and natural resources belong to the state, rather than to the regional units or individuals.[20] The resource-rich Gambella region is home to the Anuak people,[21] who perceive government and private industry extraction of resources[22] as a threat to their political power and culture.[23] The seizure of land has led to reports of violence between the local citizens and federal government agents.[24] In response to the perceived threat, militant groups such as the Anuak-led Gambella Peoples' Liberation Front have conducted raids on state infrastructure.[25]

In many cases, the centralized control of the resources is coupled with a localization of the negative environmental and social impacts associated with the extraction of the resources, as was the case with Bougainville and Papua New Guinea. The copper mine in Bougainville generated minimal economic benefit for the people of Bougainville, but they were wholly and exclusively subjected to the quite substantial negative environmental and social impacts. Moreover, in some conflicts, natural resources are governed by customary institutions rather than legal structures, making resources a conflict driver due to the subjective customs related to extraction.[26]

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[16] Ian Smillie, Lansana Gberie, and Ralph Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds & Human Security' (Partnership Africa Canada, 2000)

[17] Thailand's official policy on the Khmer Rouge was that of non-cooperation. Due to this, the Thai government required that any timber it imported from Cambodia be obtained by the Phnom Penh authorities rather than the Khmer Rouge. The Cambodian government "charged loggers operating in Khmer Rouge zones a flat rate of USD 35 per cubic meter for the provision of these certifications, enabling their enemy, the Khmer Rouge, to raise the funds to pursue their war effort," eventually leading to millions of USD per month paid out to the Khmer Rouge. *The Khmer Rouge and the funding of the civil war* (Global Witness Publishing, 1996); UNEP, *supra* note 1, at 13

[18] Nicholas Haysom and Sean Kane, 'Negotiating Natural Resources for Peace: Ownership, Control, and Wealth-Sharing' (Centre for Humanitarian Dialogue Briefing Paper, Oct. 2009) 5

[19] UN DPA and UNEP, *supra* note 2, at 28

[20] Ethiopia Constitution (1994) arts. 51, 52

[21] 'State of the World's Minorities 2006 – Ethiopia' (*Minority Rights Group International*, 22 Dec. 2005)

[22] Kaleyesus Bekele, 'Ministry of Mines, South West to Sign PSA for Gambella Block' (The Reporter, 7 Jan. 2012)

[23] Georgette Gagnon, 'Targeting the Anuak: Human Rights Violations and Crimes Against Humanity in Ethiopia's Gambella Region' (2005) 17(3) Human Rights Watch 6-7

[24] Felix Horne, 'Forced Displacement and "Villagization" in Ethiopia's Gambella Region' (Human Rights Watch, 16 Jan. 2012)

[25] 'State of the World's Minorities 2006 – Ethiopia' (*Minority Rights Group International*, 22 Dec. 2005)

[26] UN DPA and UNEP, *supra* note 2, at 12

Opportunity to Support Durable Peace

The effective management of natural resources as the result of a peace agreement can substantially promote the durability of that agreement in a number of ways. The revenue generated from the extraction of those resources serves as a near immediate and highly visible peace dividend that demonstrates the real and practical value of peace.[27] The funds generated from the extraction of the natural resources also provides a ready fund to pay for reconstruction and the implementation of various aspects of the peace agreement.[28] While the international community invariably provides resources for peace implementation, the marshaling of these resources can often be slow, conditional, and driven by the specific interest of each donor. Ready access to revenue generated by a state's own resources provides the state with the ability to respond quickly and to prioritize projects that it deems are necessary to secure the peace. In the case of a party exercising an agreed path to external self-determination, such as South Sudan, natural resources in theory can provide a ready source of income to help stabilize the economy of the new state.

A properly designed peace agreement can create a system for more professional and efficient management of the resources and expand the value of those resources. Increasing the value of the resource, assuming it is equitably shared, creates a greater opportunity cost of a return to conflict.[29]

Undertaking equitable access to the benefits of the resource is a very concrete and tangible means of removing a driver of conflict, and demonstrating the willingness and ability to undertake equitable arrangements in the political, security, and other sectors of governance covered by the peace agreement. State control of resources, particularly under an effective power-sharing arrangement, can exclude illicit actors or spoilers from accessing the resources to fund any efforts to undermine the implementation of the peace agreement.[30]

While extractive industries present an opportunity to fund peace in the short-term, without the existence of strong safeguards and the institutions necessary to support them, they also present significant risks to the development of a durable peace. Optimism about the potential of extractive resources to fund redevelopment often outpaces the development of regulations and safeguards against corruption, abuse of local communities, and environmental pollution.[31] Consequently, corrupt and poorly regulated extractive industries can continue to provide funding to existing or new non-state armed actors, as was the case with the Khmer Rouge's illicit timber trade.[32] The rapid post-conflict development of large-scale mines, and the attendant community displacement, pollution, and private security forces can also lead to immediate local grievances and reduce opportunities to develop sustainable livelihoods.[33]

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[27] *Id.* at 96
[28] UNEP, *supra* note 1, at 20-21
[29] UN DPA and UNEP, *supra* note 2, at 96
[30] *Id.* at 95
[31] Le Billion, *supra* note 4, at 14; UN DPA and UNEP, *supra* note 2, at 29
[32] *The Khmer Rouge and the funding of the civil war* (Global Witness Publishing, 1996); UNEP, *supra* note 1, at 13
[33] Sadaf Lakhani, 'Extractive Industries and Peacebuilding in Afghanistan: The Role of Social Accountability' (United States Institute of Peace, 30 Oct. 2013) 4-7; *see also* Javed Noorani, 'Afghanistan's Emerging Mining Oligarchy' (United States Institute of Peace, 22 Jan. 2015) 7-8; UN DPA and UNEP, *supra* note 2, at 29

Without trusted mechanisms in place to resolve local grievances, local communities may turn again to insurgent groups and violence. This was the case in Afghanistan where local grievances surrounding the rapid development of multinational mines pushed communities closer to insurgent groups and reignited violence in previously peaceful areas.[34]

Heightened Complexity of a Negotiated Resolution

There are a number of factors that complicate the natural resource puzzle when it comes to determining whether and how to allocate the ownership, management, and associated revenue of extractive natural resources in a manner that promotes durable peace.

This puzzle is particularly difficult for mediators and non-state parties given the complex technical nature of regimes for the management of questions relating to natural resources. Mediators are often skilled at political negotiations and frequently have experience with governance and security in a prior professional capacity. International mediators, however, seldom have an expertise in natural resource management.

Non-state actors, and in some instances, state actors, often do not possess the background knowledge to fully understand the implications of decisions related to natural resources made during the peace negotiations.[35] As will be discussed below, the decisions relating to natural resources can translate into the allocation of billions of dollars in revenue. While it is possible for the mediator to bring technical experts onboard to the peace negotiations, it is much more difficult for the non-state parties to do so.

This puzzle is further complicated by the plethora of relevant actors and stakeholders party to any given natural resource conflict. Negotiators must consider actors who may not be at the table but will ultimately shape the long-term impact of the agreement.[36] The interests of local and indigenous communities, in particular, may differ from the interests of actors represented at the table.[37] While the parties at the negotiating table are frequently focused on the potential benefits to be gained from extractive resources, local and indigenous communities may be equally or even more concerned about the significant potential socio-environmental costs, as they will frequently endure the most costs.[38] If the peace agreement fails to anticipate these concerns and address the responsibility to mitigate associated risks, future local grievances over socio-environmental damage may reignite the conflict.[39]

Negotiations over globally traded oil and other fungible resources do not take place in a vacuum, but rather in a broader political economy in which neighboring states, multinational

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[34] Javed Noorani, 'Afghanistan's Emerging Mining Oligarchy' (United States Institute of Peace, 22 Jan. 2015) 7
[35] UNEP, *supra* note 1; UN DPA and UNEP, *supra* note 2
[36] Simon J.A. Mason, Damiano A. Sguaitamatti, and María del Pilar Ramirez Gröbli, 'Stepping Stones to Peace? Natural Resource Provisions in Peace Agreements' in Carl Bruch, Carrol Muffett, and Sandra S. Nicholas (eds), *Governance, Natural Resources, and Post-Conflict Peace Building* (Routledge, 2016) 71, 92; UN DPA and UNEP, *supra* note 2, at 29
[37] Haysom and Kane, *supra* note 18, at 28
[38] Mason, Sguaitamatti, and Gröbli, *supra* note 36, at 100; *See also* Haysom and Kane, *supra* note 18, at 28
[39] Lakhani, *supra* note 33, at 4-5

companies, and international regulatory bodies each play a key role.[40] Without sufficient global support for market regulation at both the regional and international level, domestic peace agreements may be insufficient tools to meaningful alter the role of extractive resources in conflict, as was the case with Sierra Leone's domestically-focused Lomé Agreement.[41]

External actors not officially present at the table may also play an active role in shaping the process. While likely not formally part of a negotiation process, the national oil company, international oil companies, and those involved in the illegal extraction and sale of resources will no doubt exert influence on the peace process. In the case of Yemen, the French oil company TOTAL played an outsized role in the National Dialogue and constitutional process. Despite the fact that the state parties had agreed on a federal state structure, TOTAL, working with the French government, continued to press for a unitary state, even to the extent of seconding a French expert to advise the National Dialogue on the constitutional aspects of a unitary state. For TOTAL, it was more economically efficient to negotiate and contract with a single government, than to have to negotiate with provincial governments.

The peace process as it relates to natural resources is also complicated by the near myopic focus on the question of ownership, with substantially less attention paid to the details of management and revenue distribution. Mediators are complicit in this omission, as they tend to favor moving the "technical issues" into a post-peace agreement process.[42] This is understandable given the many competing priorities during the brief window of a peace negotiation, such as the need to establish a monopoly of force, plan for internal or external self-determination, create conditions for the return of refugees, design power-sharing arrangements, and create governance structures, among other challenges.

Because conflict is often primarily related to securing or continuing access to financial resources for a dominant political group, reallocation of natural resources is significantly more difficult to negotiate than topics in the political and security arenas. It is also exceptionally difficult to engage with and negotiate a change in behavior for the illicit operators and the spoilers who are destined to lose out with the establishment of a functional and professional process for managing natural resources.[43]

A negotiated outcome to an extractive natural resource based conflict entails not only an arrangement between the sub-state entities and the state, but also between sub-state entities, as natural resource wealth is frequently redistributed to some degree among the sub-state entities.[44] This gives sub-state entities without actual geographic possession of the natural resources a stake in negotiating ownership, management and allocation of revenue. This was the case in Yemen, where the six-region structure for the state proposed in the 2011 draft constitution prevented the Houthis from accessing the land that held rich oil and coastal resources.[45] The topic, much like power-sharing, becomes more multi-dimensional than other topics on the agenda during the

[40] Le Billion, *supra* note 4, at 122
[41] Haysom and Kane, *supra* note 18 at 91-101
[42] UN DPA and UNEP, *supra* note 2, at 91
[43] *Id.* at 10-12
[44] *Id.* at 95
[45] Mohammed Ghobari and Agnus McDowall, 'Houthis Abduct Yemeni Official Amid Wrangling over Constitution' (Thomson Reuters Africa, 17 Jan. 2015)

peace negotiations, and can create an outsized role for certain, non-resource rich sub-state entities beyond what one might have originally anticipated.

Conceptual and Legal Primer

There are a substantial number of both resource rich and resource scarce states around the globe. These states provide a rich body of comparative state practice from which to identify the key conceptual approaches for allocating the ownership, management and associated revenue of extractive natural resources, and the various legal norms, rules, processes, and procedures used to design and implement natural resource arrangements. A number of international legal obligations relate to natural resources, including the consideration of the interests of local and indigenous populations, as well as the international Kimberly Process for the regulation of the diamond trade.

Ownership, Management, Revenue Allocation

This section will explore comparative state practice relating natural resource ownership, management, and revenue allocation.

Ownership

Generally, states utilize three methods to allocate ownership of extractive natural resources: national ownership, local ownership, and shared ownership.

National Ownership

Prior to the 19th century, natural resources largely existed in the legal domain of private landowners or sub-state entities. During this time, nation-states were created out of sub-states opting to join in political union. Hence, as will be discussed below, Canada, the United Arab Emirates, and the United States have a higher degree of local ownership of natural resources. Many other states, however, came into being as unitary states or were initially unitary and then undertook a degree of devolution of power. These states, which are by far the majority, exercise national ownership of natural resources, and claim to utilize those resources for the benefit of the entire nation.[46]

Many states maintain national ownership of their extractive natural resources and in a large number of these states, this system is constitutionally protected, including in Kazakhstan,[47] Russia, Norway, Indonesia, Venezuela,[48] and many of the Middle Eastern and African oil-producing states, such as Kuwait,[49] Nigeria,[50] Qatar,[51] and Syria.[52] In fact, of the 14 Middle

[46] Haysom and Kane, *supra* note 18, at 10
[47] Kazakhstan Constitution (1995) art. 6(3)
[48] Venezuela Constitution (1999) Ch. VII, art. 113
[49] Kuwait Constitution (1962) art. 21
[50] Nigeria Constitution (1999) art. 44(3)
[51] Qatar Constitution (2003) art. 29
[52] Syria Constitution (1973) art. 14(1)

Eastern and African oil-producing states,[53] 13 exert complete national ownership. States that maintain national ownership over extractive natural resources commonly have highly centralized governments. Most of the Gulf States are monarchies while the other Middle Eastern oil-producing states are highly centralized (e.g., Egypt and Iran). A significant number of the non-Gulf States are represented by a republican form of government, yet often these governments are weak democracies (e.g., Indonesia, Russia and Venezuela), non-democratic (e.g., Chad), or former *de facto* military dictatorships (e.g., Libya and Angola).

Local Ownership

Very few states vest ownership of natural resources with sub-state entities. Such ownership generally exists in federal states, mirroring the general framework of decentralized government. Notably, local ownership is often accompanied by other means of indirect national government involvement in tax structures or regulations related to foreign direct investment.

By way of example, the United Arab Emirates is a federation of seven emirates, with political power concentrated in Abu Dhabi, which controls the vast majority of the state's economic and resource wealth.[54] Under the constitution, each emirate owns its own oil resources and controls oil production and development within its respective territory. Although, the constitution does vest the emirates with the responsibility of utilizing these oil resources "for the benefit of the national economy."[55] Argentina also vests ownership of natural resources with the province in which those resources are located.[56] Notably, these provinces possess the right to enter into related international agreements "with the knowledge of Congress," so long as they do not infringe on the powers of the national government and are consistent with the country's foreign policy.[57]

Shared Ownership

Some states have a system of shared state and local ownership of natural resources. The shared ownership approach often comes about as a compromise between sub-state entities that would prefer to have ownership rights, and a national government unwilling to relinquish potentially wide-reaching control over valuable and strategically important resources. In a shared ownership system, laws, regulation, and other agreements between the national and local governments typically provide different levels of government with varying levels of authority over the use and management of the resources or different avenues for providing direct streams of revenue to the national government.

Canada is often cited as an example of complex asymmetrically shared control over natural resources. In Canada, each province owns and administers the extractive natural

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[53] Middle Eastern and African oil-producing states include Algeria, Angola, Chad, Egypt, Iran, Kuwait, Libya, Nigeria, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen.
[54] 'United Arab Emirates Country Analysis Brief' (U.S. Energy Information Administration)
[55] United Arab Emirates Constitution (1996) art. 23
[56] Argentina Constitution (1994) § 124; Ann L. Griffiths (ed), *Handbook of Federal Countries* (McGill-Queen's University Press, 2005)
[57] Argentina Constitution (1994) § 124

resources within its borders.[58] The provinces levy taxes and collect royalties from the resources extracted from within the territory of the province. The federal government retains control over inter-provincial and international aspects of the trade in natural resources.[59] The federal government also owns and administers natural resources on Canada's frontier lands and offshore resources, though this is subject to occasional disputes by some provinces.

While the revenue from natural resources belongs to the province within which it lies, the Canadian government undertakes equalization payments to provinces to ensure that each province maintains the opportunity to provide comparable levels of public services at comparable levels of taxation.[60] When determining the amount of equalization payments that a province should receive, the government considers a province's need based on the province's revenue from many different sectors, including natural resources.[61]

Management

While ownership and management issues are closely linked, ownership is not in fact synonymous with management authority, and many agreements address these two issues separately. The entity that owns the resource may, but does not always, have the authority to manage the extraction and sale of those resources.

The management of natural resources entails determining which resources may be exploited and when, issuing exploration permits, issuing license for the extraction of resources, negotiating revenue contracts, revoking licenses and terminating contracts, creating macro-development plans for the resources, ensuring health and safety of workers, and environmental protection.[62]

Notably, the question of the management of natural resources is as important, if not more important than the question of ownership. While the parties are certain to focus on the question of ownership during peace negotiations, they seldom actually address the question of management. In fact, "fewer than a quarter of peace negotiations aiming to resolve conflicts linked to natural resources have addressed resource management mechanisms."[63]

National ownership generally results in a management scheme designed at the state (rather than local) level, and where it exists, local ownership is often curtailed in some manner by national government management through regulations, taxation, or other revenue-sharing requirements.

Although the party that owns the resource may also manage it, many states also design an entity in which representatives from both the national and local governments possess joint

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[58] *See* Canada Constitution (1867) Ch. 6, art. 92(A)
[59] *Id.* at Ch. 6, art. 91, cl. 2. (This provision establishes the authority of the Parliament of Canada to regulate trade and commerce.)
[60] 'Reconciling the Irreconcilable: Addressing Canada's Fiscal Imbalance' (The Council of the Federation, 2006) 6
[61] Paul Boothe, 'Taxing Spending, and Sharing in Federations: Evidence from Australia and Canada' in Paul Boothe (ed), *Fiscal Relations in Four Countries: Four Essays* (Forum of Federations, 2003) 9
[62] *See* Canada-Nova Scotia Offshore Petroleum Resources Accord (1986) Arts. 12-13
[63] UNEP, *supra* note 1, at 5

authority to manage natural resources. One such entity is a joint natural resource authority, which is generally an independent institution acting without exclusive national or local oversight, but is rather composed of representatives of different levels of government. Joint authorities are most commonly found in federal states that have significant power-sharing between the national government and sub-state entities.

Composition of a joint authority may vary depending on the particular circumstances of the state and the interests represented. Some states have one single joint management authority that represent national government and all the sub-state entities, while other states have multiple authorities, and each authority manages the relationship between a particular sub-state entity and the region and the national government.

States may allocate varying levels of authority to joint natural resource authorities. In some states, the authority has near complete control over maintenance, regulation, and licensing of natural resources, while other states create a more limited role for the authority. States often take into account the particular governmental structure of the state, the location of resources, and the capabilities of the parties involved when allocating power to the joint authority.

In Australia, the joint authority is essentially a bilateral committee with one representative of the Australian Government Minister for Resources and one counterpart from the Provincial ministry.[64] The Australian joint authority has fairly wide-ranging powers and may issue grants, revoke licenses, and regulate existing license agreements to explore, drill, and extract oil.[65]

In 1990, Canada created the Canada-Nova Scotia Offshore Petroleum Board as a joint authority to manage Nova Scotia's offshore petroleum resources. The Board, which was established through an Accord between the federal government and the Nova Scotia provincial government, and which is comprised of representatives of both governments, has the authority to manage nearly all aspects of the exploitation of petroleum resources.[66] This authority is subject to a limited right of veto held by both the federal government and the Nova Scotia government.[67]

Prior to 2009, Greenland and Denmark operated a Joint Committee on Mineral Resources in Greenland, which served to facilitate discussion between and provide advice to the governments of Denmark and Greenland on the exploitation of natural resources. Although not responsible for licensing and contracting, the Joint Committee was encouraged to comment on the granting of prospecting, exploration, or production licenses.[68]

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[64] Petroleum (Submerged Lands) Act 1967 (Australia), § 8(a) (Although the Offshore Petroleum Act repeals the Petroleum (Submerged Lands) Act 1967, it maintains the structure and most of the powers of the Joint Authorities. *See* Offshore Petroleum Act 2006 (Australia))

[65] 'Mineral and Petroleum Exploration & Development in Australia: A Guide for Investors' (Department of Industry, Tourism and Resources, 2005) 1

[66] Nova Scotia Offshore Petroleum Resources Accord (1986) art. 3

[67] Canada-Nova Scotia Offshore Petroleum Resources Accord (1986) arts. 12-18

[68] 'Legal Foundations' (Website of Bureau of Minerals and Petroleum, Greenland)

Revenue Allocation

Oil producing states have implemented numerous formulas for revenue allocation revenue. Some states apply the same formula to share oil revenue as used for other budgetary distributions, while others favor the derivation principle, whereby each sub-state entity's share relates to the oil revenue originating in its territory. Still others follow different criteria such as population, social needs, or tax capacity.[69]

A state's approach to revenue allocation is generally informed by the ownership and management structure, as well as the unique characteristics of the state. As such, the approaches states have employed to allocate oil revenue do not readily fall into discrete categories, nor is there a systematic method of addressing the issue of revenue allocation.

In the United Arab Emirates, for instance, each emirate collects the revenue from oil produced in the emirate, but a certain percentage must be shared with the national government.[70] In Canada, each province owns and controls natural resources in its territory and allocates revenue as it chooses,[71] but as noted above, the federal government provides equalization grants to the non-resource rich provinces through other sources of federal revenue.[72]

In Indonesia, from 2001, the national government receives 85 percent of revenue from oil production, while the producing province receives 15 percent.[73] The 15 percent allocation of resources to the producing provinces corresponded to an increased devolution of political authority and obligations relating to health, education, and public works.[74] In Saudi Arabia, as well as the other oil-producing Gulf monarchies, the ruling family directly controls the allocation of oil revenue, and no clear set formula for allocation of oil revenue can be discerned.

Notably, when in 1998 the World Bank agreed to fund the Petroleum Development and Pipeline Project to develop and export Chad's oil resources, the World Bank required Chad to adopt a Petroleum Revenues Management Law. Under the law, the government was obligated to utilize 80 percent of the oil revenues on its "priority sectors" (education, health, social services, environment and infrastructure development). The remaining 20 percent was apportioned as five percent for the oil-producing region of Doba, 10 percent for an escrow account for future generations, and five percent left to the government's discretion.[75] The government of Chad, however, did not ultimately apportion oil revenues as per the law. In 2008, the government of Chad paid off its outstanding World Bank loans and extracted itself from the obligation to allocate the revenue according to the law.

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[69] Ehtisham Ahmad and Eric Mottu, 'Oil Revenue Assignments: Country Experiences and Issues' (International Monetary Fund Working Paper, 2002) 203

[70] United Arab Emirates Constitution, art. 127 (In reality, only the oil-rich Abu Dhabi Emirate and the economically strong Dubai Emirate fund the federal budget.); UNDP-POGAR, 'Local Government: United Arab Emirates'

[71] *See* Canada Constitution (1867) Ch. 6, art. 92A

[72] Boothe, *surpa* note 61

[73] Law No. 22/2001 Petroleum and Natural Gas (23 Nov. 2001); *See also* Mark Turner, 'Implementing Laws 22 and 25: The Challenge of Decentralization in Indonesia' (2001) 8 Asian Review of Public Administration 69, 73

[74] Mark Turner, 'Implementing Laws 22 and 25: The Challenge of Decentralization in Indonesia' (2001) 8 Asian Review of Public Administration 69, 72

[75] *See* The World Bank, 'Chad-Cameroon Petroleum Development and Pipeline Project'

Many oil-producing states also implement stabilization and/or intergenerational funds as a way to address possible fluctuations in production levels and related revenue, and to ensure that wealth from the resource is reserved for future generations.

A stabilization fund aims to minimize the effects of fluctuations in oil prices or production levels. Such fluctuations can create large differences from one year to another in the revenue of oil-producing states. With a stabilization fund, the state directs all or a portion of yearly oil revenue into the fund, and the government then accesses the fund for state expenditures. This ensures that the governmental budget does not fluctuate significantly from year-to-year, especially in countries that maintain budgets that are highly dependent on oil revenues. Access to the fund may also be permitted in the case of a national economic crisis or in order to develop non-oil industries.

In contrast to a stabilization fund, the purpose of an intergenerational fund is to conserve a portion of resource wealth specifically for future generations. Such funds can ensure that the state's citizens continue to benefit from the non-renewable oil resource. While some oil producing states maintain separate stabilization and intergenerational funds, other states implement intra-state oil funds that fulfill both objectives.

For instance, in 1990, the Norwegian Government established the Government Petroleum Fund of Norway to minimize the impacts of short-term variations in oil revenues.[76] The fund also acts as a mechanism to address the long-term challenge of continuing government expenditure after oil resources are exhausted. Specifically, the Norwegian government seeks to secure funding for future government pension payments.[77] The Government of Kazakhstan created a similar National Fund of Kazakhstan to reduce economic volatility from fluctuating oil prices, and to serve as a savings fund for future generations.[78]

The state of Alaska in the United States maintains a specialized oil fund that operates as a stabilization fund and a type of modified intergenerational fund. Revenue from the Alaska Permanent Fund is only distributed for two purposes: an annual dividend payment made directly to qualifying residents of Alaska,[79] and protection against inflation.[80]

The Rights of Local Populations

UN General Assembly Resolution 1803 (XVII) provided that peoples have a right to "permanent sovereignty over their natural wealth and resources" and that "the exploration,

[76] In 2006, the Norwegian government changed the Fund's name to the "Government Pension Fund."; Norges Bank Investment Management (Norway GPFG)' (SWF Institute)
[77] Benn Eifert, Alan Gelb, and Nils Borje Tallroth, 'The Political Economy of Fiscal Policy and Economic Management in Oil-Exporting Countries' (The World Bank Policy Research Working Paper 2899, 2002) 10
[78] 'Republic of Kazakhstan: Selected Issues' (International Monetary Fund, 2005) 14
[79] Alaska residents receive an annual tax dividend that is allocated from the state's oil revenue through the Alaska Permanent Fund. This dividend is called the "Permanent Fund Dividend" and is distributed to qualifying Alaska residents; 'The Permanent Fund Dividend' (Alaska Permanent Fund Corporation)
[80] Inflation proofing is the annual transfer (by legislative appropriation) of a portion of Fund income to the principal to protect the value of the principal from inflation.

development and disposition of such resources…should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable."[81] This Resolution was initially applied to interstate conflicts in the context of decolonization, but is increasingly applied to intrastate conflicts as well.[82]

While international law relating to natural resources has historically applied to interstate conflicts, there is increasing attention paid to the impact of international law on natural resource allocation in intrastate conflicts, particularly as it relates to a people's "collective cultural attachment" to land and resources.[83]

Free, prior, and informed consent is the right of indigenous peoples to "give or withhold consent to a project that may affect them or their territories."[84] The right to free, prior, and informed consent is set forth in a variety of international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization Convention No. 169, and the Convention on Biological Diversity.[85] Free, prior, and informed consent involves an ongoing process with indigenous peoples in the consultation and implementation of procedures that will directly affect them. This can include practices such as participatory mapping and data collection.[86] This framework, which helps to ensure that the territories and resources of indigenous peoples are not exploited, is often relevant in peace processes for conflicts relating to resources.

Kimberley Process

Conflict diamonds, often referred to as blood diamonds, are rough diamonds traded by state and non-state armed actors to finance armed conflict.[87] Blood diamonds financed and exacerbated a number of post-Cold War conflicts, including in Sierra Leone, in which somewhere between $300 million and $450 million US dollars' worth of diamonds were sold by various factions to fuel the conflict.[88]

To address this growing scourge, in the late 1990s, the United Nations and a number of non-governmental organizations met for a series of negotiations called the Kimberley Process. The negotiations produced the Kimberley Process Certification Scheme, "a voluntary international agreement regulating the diamond trade through certification of legitimate diamonds."[89] The Kimberley Process requires that its members certify shipments of diamonds as

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[81] G.A. Res. 1803, U.N. GAOR, 17th Session., U.N. Doc. A/RES/1803 (XVII 1962)
[82] *See* Lillian Aponte Miranda, 'The Role of International Law in Intrastate Natural Resource Allocation: Sovereignty, Human Rights, and Peoples-Based Development' (2012) 45(3) Vanderbilt Journal of Transnational Law 785, 787
[83] *Id.* at 840
[84] 'Free, Prior and Informed Consent' (Food and Agriculture Organization of the United Nations)
[85] *Id.*
[86] UN DPA and UNEP, *supra* note 2, at 29
[87] Franziska Bieri, *From Blood Diamonds to the Kimberley Process: How NGOs Cleaned Up the Global Diamond Industry* (Routledge, 2016) 1
[88] J. Andrew Grant and Ian Taylor, 'Global Governance and Conflict Diamonds: The Kimberley Process and the Quest for Clean Gems' (2004) 93(375) The Round Table: The Commonwealth Journal of International Affairs 385, 387
[89] Bieri, *supra* note 87

conflict-free, pass national legislation related to conflict-free diamonds, and commit to being transparent about their diamond-related data. To date, the Kimberley Process, established in 2003, has been joined by 81 states, which represent 99.8 percent of the global production of rough diamonds.[90] The initial negotiations and meetings of the Kimberley Process were supplemented by the adoption of UN General Assembly Resolution 55/56 in 2000, which "mandated an expanded Kimberley Process, giving the forum the task of drawing up detailed proposals for an international certification scheme for rough diamonds."[91]

Key State Practice

This chapter draws on the following instances of key state practice for a discussion of the various conundrums the parties to a peace negotiation face when confronting the puzzle of negotiating extractive natural resource ownership, management, and revenue allocation. The paragraphs that follow highlight the relationship between each peace process and natural resource arrangements. For more on these conflicts, negotiations, and agreements, consult the Appendix.

The conflict between **Aceh** and **Indonesia** was rooted in claims that the Acehnese community was not reaping the benefits of the exploitation of the region's widespread oil and gas resources.[92] The 2005 Memorandum of Understanding that ended the conflict provided for special autonomy for Aceh, including Aceh's exercise of authority over its public affairs. The agreement aimed to provide Aceh with a more direct benefit from the exploitation of its resources, such as by providing that "Aceh would have control of over 70 percent of revenues from the province's oil and gas production."[93] The Indonesian parliament subsequently enacted legislation implementing the principles of self-government set forth by the Memorandum of Understanding in 2005.

In **Iraq**, 95 percent of government revenues are generated by oil. Iraq's oil resources are not evenly distributed throughout the state, but rather, are concentrated in the Kurdish North and Shia Arab South. During the constitution drafting process in 2005, federalism and wealth-sharing related to oil were at the forefront of the conversation. Ultimately, the new Iraqi constitution provided the autonomous Kurdistan region, as well as potential future regions, greater control over their own oil management and revenues.[94] At the same time, the constitution vested ownership of oil in "all the people of Iraq in all regions and governorates."[95]

While the 2001 peace agreement between **Papua New Guinea** and **Bougainville** granted autonomy to the region of Bougainville, it left the question of extractive resources to be addressed in the subsequent constitution drafting process. In 2004, the Bougainville Constitution

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[90] 'About' (KimberleyProcess.org)
[91] Grant and Taylor, *supra* note 88, at 392
[92] 'Briefing: Aceh' (Minority Rights Group International, 2001)
[93] Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki, 2005)
[94] Haysom and Kane, *supra* note 18, at 32
[95] Iraq Constitution (2006) art. 111 ("Oil and gas are owned by all the people of Iraq in all the regions and governorates.")

granted customary rights over all natural resources to the "People of Bougainville."[96] The Bougainville Constitution also explicitly addressed the legacy of environmental damage and instructed the Autonomous Bougainville Government to "take all possible measures to prevent or minimize damage and destruction" and to manage the resources to meet the "development and environmental needs of present and future generations."[97]

The Comprehensive Agreement on the Bangsamoro, signed in 2014 by the Government of the **Philippines** and the **Mindanao** based Moro Islamic Liberation Front, detailed a process for establishing an autonomous Bangsamoro region in exchange for disarmament that built upon a number of other agreements and negotiations between the parties. The 2001 Tripoli Agreement contained a number of provisions relating to the shared control and management of the region's oil resources.

Between 1991 and 1999, **Sierra Leone's** supply of "blood diamonds" incentivized and prolonged a devastating conflict over their extraction that claimed the lives of over 75,000 people and displaced half of the country's population.[98] In 1999, the Lomé Peace Agreement gave the Sierra Leone government control over diamonds and designated the profits from those resources as public money to be spent on development and post-war rehabilitation and reconstruction. To oversee this arrangement, the agreement created a "Commission for the Management of Strategic Resources, National Reconstruction and Development," an autonomous body in charge of monitoring compliance with the agreement's provisions.[99] Notably, the agreement also appointed as Chairman of the Commission the leader of the Revolutionary United Front Foday Sankoh, who ultimately ignored this responsibility and continued to fund the RUF through the illicit trade of diamonds.[100]

The adoption of the 2005 Comprehensive Peace Agreement between **Sudan** and **South Sudan** ended the years long war, which, was substantially, but not exclusively, driven by competition over oil resources. Oil was used "as a rallying cry by the South, which charged the Sudanese government with exploiting the resource without providing tangible benefits to local populations."[101] The vast majority of Sudan's oil originates from the state's central and southern regions. After extraction, Sudanese oil travels north, via pipelines, to Sudan's oil refineries and export terminals. The Agreement on Wealth Sharing, one of the six protocols of the agreement, set for detailed provisions for natural resource management and revenue allocation.[102] Notably, the agreement did not address the question of ownership.

In 2020, **Sudan** concluded a multi-track Juba peace agreement with non-state parties representing **Darfur** and some of the non-state parties in **Southern Kordofan** and **Blue Nile**, in addition to other intra-Sudan regional parties. These agreements provided for the ownership of natural resources, in particular oil and gold, by the people of Sudan, but with special dispensation

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[96] The Constitution of the Autonomous Region of Bougainville (2004) Part 3, 23
[97] *Id.*
[98] Ian Smillie, Lansana Gberie, & Ralph Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds & Human Security' (Partnership Africa Canada, 2000)
[99] Lomé Peace Agreement (Lomé, 1999) Article VII (1-6)
[100] 'Implementing the Lomé Peace Agreement,' (Conciliation Resources, 2000) 39
[101] Haysom and Kane, *supra* note 18, at 30
[102] *Id.*

of revenue for previously marginalized areas. The agreements also set forth detailed arrangements for the cooperative management of resources, the review of existing contracts, and the allocation of revenue.

Prior to the outbreak of a civil war in 2015, the government of **Yemen** relied heavily on dwindling oil resources to provide the majority of government revenue.[103] Chronic corruption and mismanagement in this sector helped fuel the outbreak of fighting in 2014, and the instability and resulting depletion of revenue has presented an obstacle to resolving the conflict.[104] The Draft Constitution of 2015 attempted to ward off a civil war by creating a federal system where power would be shared among the federal government, regional governments, and local *wilayas*. The Constitution outlined general principles for a formula for the allocation of future revenue, and to manage resources, it called for future federal legislation to create an "independent national council made up of representatives of the federal government, regions and wilayas."[105] It also ambiguously provided that both the *wilayas* and this independent national body (on which *wilayas* would be represented) would be responsible for managing natural resources and awarding contracts.[106] Partly due to ambiguities such as this one over power-sharing the draft constitution was never adopted, and Yemen tipped into a wide-ranging civil war.[107]

CONUNDRUMS

When the parties seek to negotiate a durable peace in a conflict that entails extractive natural resources, they must first determine if and when to broach the subject in the peace process. Once the parties determine the timing of discussing natural resources in the broader context of negotiations, they oftentimes address the technical matters of ownership, management, and revenue allocation.[108] Each of these four issues presents a number of conundrums.

Timing

Before entering the more technical aspects of a natural resource-based negotiation, the parties must decide at what point in the peace process to incorporate discussion of natural resources. Negotiating the ownership, management, and revenue allocation of natural resources during a peace process can help the parties to achieve a durable agreement, especially if tensions over resources drove conflict. Alternatively, including discussions relating to natural resources can derail the peace process if it is too contentious of an issue among the parties.

A main conundrum the parties face is where to place this discussion of natural resources on the timeline of the negotiation process. Laying the foundation for the negotiation of natural resources by determining precisely when the topic is introduced into the larger peace process has

[103] Sujit Choudhry and Richard Stacey, 'Oil and natural gas: Constitutional Frameworks for the Middle East and North Africa' (Center for Constitutional Transitions, International IDEA and the United Nations Development Programme, 2014) 75
[104] Charles Schmitz, 'Building a Better Yemen' (Carnegie Endowment, 2012) 1
[105] Yemen Draft Constitution (2015) arts. 357, 387-390
[106] *Id.* at arts. 387-390
[107] Darin Johnson, 'Conflict Constitution-Making in Libya and Yemen' (2017) 39(2) University of Pennsylvania Journal of International Law 293, 325
[108] Haysom and Kane, *supra* note 18, at 26

tangible consequences on the outcome of negotiations and the prospects for durable peace. Determining the order of agenda items in a negotiation, if done thoughtfully, can create momentum to achieve durable agreements on topics including natural resources. Alternatively, including natural resource negotiations too early in the process can forestall debate over other important issue areas or derail any momentum that has been created by previous discussions.

Approaches to Resolving the Timing Conundrum

In Aceh, the conflict itself was rooted in the unequal distribution of resource-related wealth, which, in effect, marginalized the Acehnese community.[109] Natural resources were at the heart of the conflict that claimed tens of thousands of lives and were prioritized before the parties resolved issues of demobilization, disarmament, and reintegration) or external self-determination.

Questions of demobilization, disarmament, and reintegration and self-determination were both predicated on the issue of resource distribution. Acehnese non-state armed actors would not consider incorporating a program of demobilization, disarmament, and reintegration into the agreement until the main cause for which they fought had been secured. Similarly, one of the goals of external self-determination is economic independence and the ownership of the resources within the confines of a state's territory. From the perspective of the Indonesian government, by resolving the question of resources first, the Acehnese desire for self-determination would be reduced. In this way, it proved to be mutually advantageous to begin the peace negotiations with the subject of natural resources.

The destruction caused by the 2004 Indian Ocean tsunami further induced both parties to achieve an agreement despite the contentiousness of the conflict. Located 90 miles from the epicenter of the earthquake, which triggered the tsunami, Aceh suffered tens of thousands of casualties and widespread destruction. The non-state armed actors agreed to a ceasefire four days after the tsunami, and shortly thereafter entered into peace talks with Indonesia. Because reconstruction was a paramount and pressing concern, external self-determination became less of a priority than the revenue stream to be derived from natural resources.[110]

In contrast to Aceh and Indonesia, wealth sharing of natural resource revenue was discussed at the very end of the peace process between Sudan and South Sudan.[111] Unlike the largely single-issue conflict in Aceh, the South Sudanese conflict was driven by a number of factors including the misallocation of oil resources, racism, tribal conflict, and political disenfranchisement. To start peace negotiations with the emotionally charged, highly technical issue of natural resource distribution would have absorbed all of the energy in the talks, likely becoming an immediate barrier to agreement on other issue areas.

Devising a mutually agreed-upon formula for resource sharing would prove to be complicated and fraught with risk. In the context of the conflict, oil ownership was an existential

[109] 'Briefing: Aceh' (Minority Rights Group International, 2001)
[110] C. Bryson Hull, Bill Tarrant, 'Tale of war and peace in the 2004 tsunami' (Reuters, 17 Dec. 2009)
[111] Haysom and Kane, *supra* note 18, at 30

question for both Sudan and South Sudan, and, given the perceived inequitable existing arrangement between Sudan and South Sudan, an issue area fraught with mistrust on both sides. Information asymmetry regarding the contracts between Sudan and foreign investors such as China and Malaysia created an unequal bargaining position for South Sudan and further complicated the situation.

To build momentum in the peace process, Sudan and South Sudan negotiated issues of self-determination and religion prior to broaching the topic of natural resources. The Machakos Protocol, agreed upon in 2002, set forth principles of a phased process of self-determination for South Sudan, mechanisms for power-sharing, a ceasefire, and an agreement on the role of religion among other topics.[112] Discussion of oil is noticeably absent from this agreement. By agreeing to a substantive protocol on a number of other contentious issues, the parties built mechanisms for information sharing and trust with each other, as well as with mediators, such as Norway, who had pre-existing expertise in natural resource management. This strategy proved successful, as ultimately the parties reached a detailed set of agreements on certain aspects of natural resource management, which were set forth in the 16-page 2004 Agreement of Wealth Sharing, which was incorporated into the 2005 Comprehensive Peace Agreement.[113]

The Bougainville Peace Agreement also left the question of extractive resources to be addressed later. The Agreement did not include mentions of natural resources, focusing instead on the conflict driver of autonomy and laying out a process for a future independence referendum and weapons disposal.[114] Because natural resource extraction was a central driver of the conflict and could serve as a spoiler of a peace agreement, the parties decided to table negotiating this question until after the agreement was signed.[115]

The parties to the conflict in Bougainville postponed addressing the question of resources until three years later. In 2004, the Bougainville Constitution partially resolved the conflict over natural resources by granting customary rights to the "People of Bougainville in relation to the land and the sea and natural, mineral and oil resource."[116] After the majority stakeholder of the mine transferred its holdings to both Papua New Guinea and the government of Bougainville, each was given an equal 36.4 percent ownership interest in the mine.[117]

In 2019, to prepare for a vote likely in favor of independence, Papua New Guinea pressured the Bougainville government to achieve fiscal self-reliance and reopen the mine, which would have the potential to reopen the wounds of the conflict. Strong public resistance in Bougainville kept attempts to reopen the mine at bay.[118] With the arrival of the referendum date, however, the forces coalescing around the reopening of the mine redoubled their efforts to overcome this public resistance. Amid this pressure, rather than resolving the conflict, the referendum's narrow focus on political independence may instead reignite it.

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[112] *See* Machakos Protocol (Machakos, 2002)
[113] Comprehensive Peace Agreement, Agreement on Wealth Sharing (Sudan, 2005) Chapter III
[114] Bougainville Peace Agreement (Arawa, 2001) Introduction, arts. 1-3
[115] Paul R. Williams and Carly Fabian, 'Bougainville's Faustian Bargain' (The Diplomat, 7 Nov. 2019)
[116] The Constitution of the Autonomous Region of Bougainville (2004) Part I, art. 23
[117] Williams and Fabian, *supra* note 115
[118] RNZ, 'Bougainville mining plan meets with outrage' (RNZ, 6 Feb. 2019)

At no point in this slow and elongated peace negotiation process did natural resources, the core driver of the conflict, receive direct attention. As Bougainville illustrates, leaving decisions related to natural resources to be decided later in the peace process does not always ensure that the issue will be resolved.

At whatever point a party decides to negotiate natural resources in a peace process, at the beginning or the end, or even in a parallel process or in a subsequent constitutional law, they will likely turn first to the instinctual question of ownership. As will be discussed in the section below, just as timing proved to be a deceptively complicated question, ownership, too, can be an equally surprising and perplexing issue.

Ownership

The conundrum of determining natural resource ownership is the most high profile and emotional the parties to a peace negotiation can face, yet it is often the least important question they address, making it immensely difficult to negotiate.

Ownership is the preeminent question that the parties seek to address when resolving a conflict featuring disagreement over natural resources, and it often sets the framework for how natural resources are addressed throughout the peace agreement. Often, each party to a conflict desires to have complete ownership of the contested natural resource. No party to the conflict wants to concede ownership of a resource that could prove to be immensely valuable in the future.

While the parties may know, or have an idea of the extent of the existing resource reserves, by their nature, it is not possible to know the complete extent of future reserves. Reserves could be minimal, substantial, or in an unclear location. This can create complications if a sub-state entity agrees to share ownership with the national government, only to discover years later that greater oil reserves exist elsewhere, suddenly shifting the incentive to share ownership with the state.

The parties to a conflict have generally pursued four main approaches to address the ownership conundrum: ownership by the people; the state; a sub-state entity; or shared ownership between the state and one or more sub-state entities. States may opt for a fifth approach, which involves agreeing not to decide the question of ownership during the process of conflict resolution and peace negotiations, instead shifting the conversation to topics of management and revenue allocation.

Opaque language about ownership “by the people” often helps achieve an agreement and serves a symbolic function in unifying disparate parties around a set of principles. Nonetheless, it is exceedingly difficult to implement natural resource ownership by “the people” in a post-conflict context.

In opting for national ownership of a resource in a post-conflict context, the parties face this issue of under-developed government institutions and likely issues of corruption. In a conflict-ridden state without strong institutions, exclusive ownership of the natural resource by

the state creates friction among national and local governments over revenue, geographic boundaries and/or regional wealth disparities. In recent post-conflict contexts, the parties to peace negotiations rarely agree to exclusive ownership of a resource by the state itself, unless the state defeats a party and forces them to the negotiation table. For the same reasons, the parties also seldom agree to exclusive ownership by the sub-state entity.

An alternative to national or local ownership is shared national-local ownership. In a functional federal state, shared ownership can be effective because it enables regional entities to maintain a high level of autonomy from the national government. Shared ownership may also enable a higher degree of community and local involvement in exploitation policies and greater control of revenues to spurn local development. Though, shared ownership, particularly if associated with local management, requires the local government to have sufficient capacity to carry out its responsibilities effectively. Oftentimes, this capacity either does not exist or has been destroyed over the course of conflict.

In certain contexts, the parties agree to asymmetrical ownership, which is a form of shared ownership in which one sub-state entity owns significantly more of a resource than other sub-state entities, and may have a greater share than the state. Asymmetrical shared ownership and management, which often translates into increased revenue for the producing sub-state entities, may become a driver of conflict if there are not adequate mechanisms to equalize development between oil-rich and non-oil producing sub-state entities.

With shared ownership, sub-state entities maintain control over substantial portions of their oil resources, while also allowing the national government to regulate the transportation of oil inter-regionally and internationally. Another disadvantage to shared ownership, however, is the difficulty in deciding how to implement joint ownership of oil resources between the national government and sub-state entities to the satisfaction of all parties involved.

In other cases, the parties leave ownership undetermined in peace agreements, despite, and perhaps because of, their position at the heart of the conflict at hand.

Approaches to Resolving the Ownership Conundrum

In some cases, the parties agree to a form of opaquely described national ownership that is noted in a constitution or peace agreement as vesting ownership in "the people." For instance, the Iraqi Constitution of 2005 vested the ownership of oil resources in "all the people of Iraq in all regions and governorates."[119]

As the 2005 Iraqi constitutional negotiations ended, oil and gas became the linchpin issue, stalling negotiation of all other unresolved subjects until an agreement was reached on these resources.[120] Iraq's 71-member constitutional committee, faced with approaching deadlines

[119] Iraq Constitution (2006) art. 111
[120] Ashley S. Deeks and Matthew D. Burton, 'Iraq's Constitution: A Drafting History' (2007) 40 Cornell International Law Journal 1, 66

and under pressure from international actors,[121] sought to moved forward with a final agreement, and consequently opted for vague language on ownership by "all the people" that would allow discussion on other matters to continue. Rather than elaborating on what this ownership by "all the people" entails, the constitution provided more specific language on the management of natural recourses and associated revenue allocation.[122]

This vague language may have helped to move the constitution drafting processes forward, but uncertainty over oil ownership continued to bedevil Iraqi efforts to manage its natural resources. A series of oil management laws stalled in parliament in 2007 due to disagreement between Kurdistan and the national Iraqi government over ownership of those resources. In 2018, a new Iraqi oil law was passed, but it again focused on resource management, not ownership.[123]

Yemen's 2014 National Dialogue Conference Outcomes Document, which outlined the results of a transitional dialogue process, similarly declared that "natural resources are the property of the people of Yemen," before shifting to a more detailed conversation about the management and development of natural resources.[124]

By framing this in terms of "the people" of Yemen rather than the state or sub-state entities, the rhetoric surrounding resource ownership sought to posit it as a unifying factor for the Yemeni people. Because the Outcomes Document did not refer to discrete political or ethnic groups when discussing oil ownership, and rather mentioned ownership by a singular and unified Yemeni people, the Document did not validate claims of particular groups' legitimacy and claims to territory where those resources may be based. This notably reflects the fractious political context in which the document was negotiated. The 2015 draft constitution, which aimed to prevent a civil war, followed suit and described water as "owned by the people of Yemen," before it discussed the specifics of water management and preservation.[125]

The Philippines opted for asymmetrical regional ownership of natural resources in face of self-determination movements and conflicts. For decades, the Moro people agitated for self-determination in the region of Mindanao, calling for the creation of distinct Muslim political structures to reflect their distinct cultural characteristics.[126]

In addressing this decades-long insurgency, the Philippines Constitution of 1987 provided that all natural resources are the property of the federal state and are nontransferable, with the "exploration, development, and utilization of natural resources…under the full control and supervision of the State," excluding agricultural lands, with an explicit exception for the Autonomous Region of Muslim Mindanao.[127] In particular, the Constitution granted the

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[121] Sharon Otterman and Lionel Beehner, 'Iraq: Drafting the Constitution' (Council on Foreign Relations, 27 Apr. 2005)
[122] Iraq Constitution (2006) art. 111
[123] Ruba Husari, 'Iraqi oil law puts elections before state-building,' (Middle East Institute, 26 Apr. 2018)
[124] National Dialogue Conference Outcomes Document (Yemen, 2013-2014) § I art. II(8)
[125] Yemen Draft Constitution (2015) Ch. VIII, art. 381
[126] Bryony Lau, 'The Philippines: Peace Talks and Autonomy in Mindanao' in George Anderson and Sujit Choudhry (eds), *Territory and Power in Constitutional Transitions* (OUP 2019), 20
[127] Philippines Constitution (1987) arts. 10(15-21), art. 12(2)

autonomous region legislative authority over all "ancestral domain and natural resources" within its respective territory.[128]

In addition to regional legislative authority, the Moro National Liberation Front, and later the Moro Islamic Liberation Front, pushed strongly for the region to achieve fiscal autonomy, which it perceived to be central to autonomous governance. During the protracted peace process between Mindanao and the Philippines, the Moro Islamic Liberation Front negotiated with the goal of steadily increasing the amount of natural resource revenue it was able to generate on its own over the course of several years.[129] Ultimately, the 2017 Bangsamoro Organic Law, which established the Bangsamoro Autonomous Region, replacing the Autonomous Region of Muslim Mindanao, codified regional ownership and authority over natural resources.[130]

The question of natural resources was particularly acute during the conflict in Aceh between the Free Aceh Movement and Indonesia, and was resolved through asymmetrical ownership.[131] Aceh is rich in natural resources, and provides 15 to 20 percent of Indonesia's oil and gas output, along with other resources such as timber and minerals.[132] The contrast between Aceh's economic potential and its pervasive and persistent poverty embodied for the people of Aceh the extent of the Indonesian government's neglect and indifference,[133] and inspired the drive for external self-determination.[134]

The 2005 Memorandum of Understanding ending the conflict outlined asymmetrical ownership of natural resources. The MoU granted Aceh "sole jurisdiction", which may mean ownership, over natural resources in the territorial sea surrounding Acehnese territory.[135] The context of the devastating tsunami in the months prior, mentioned previously, contributed to both parties' willingness to accept this arrangement.

In the Sudan/South Sudan conflict, ownership of oil resources was among "the most contentious issues, going right to the heart of the dispute over the government's sovereignty and self-determination of the South, was the ownership of land and natural resources."[136] The parties left this topic for the end of the negotiation process for this very reason. South Sudan claimed that the community living on a particular plot of land owned the resources of that land. Sudan alternatively "argued that the state ownership of surface and subsurface land was the prerequisite for an equitable and legitimate redistribution of natural resources."[137]

Because oil ownership could derail the possibility for peace in Sudan, the wealth-sharing protocol of the Comprehensive Peace Agreement explicitly provided that it was "not intended to

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[128] *Id.* at art. 10(20)
[129] Lau, *supra* note 126, at 210
[130] Republic Act No. 11054 (Manila, 2017) art. V, § 2(d)
[131] 'Profile: Aceh's Separatists' (BBC News, 9 Dec. 2002)
[132] *State of the World 2006: Special Focus: China and India* (WorldWatch Institute, 2006) 123
[133] 'Indonesia: A Reconstruction Chapter Ends Eight Years after the Tsunami' (The World Bank, 26 Dec. 2012)
[134] Achim Wennmann and Jana Krause, 'Resource Wealth, Autonomy, and Peace in Aceh' (Center on Conflict, Development, and Peacebuilding Working Paper 3, 2009) 5
[135] Memorandum of Understanding Between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki, 2005) art. 1.3.3
[136] Wennmann and Krause, *supra* note 134, as cited in UN DPA and UNEP, *supra* note 2, at B, 81
[137] *Id*.

address the ownership," affirming the establishment of a future process to resolve ownership disputes.[138] The parties recognized that an impasse on oil ownership would prevent agreements on other issues such as revenue sharing.[139] The issue of ownership between the two groups was so complicated that it was only solidified after the secession of South Sudan in 2011. In the Comprehensive Peace Agreement, the parties instead focused on oil management and revenue allocation.

In the case of the 2020 Juba Agreement between Sudan and a number in intra-state parties, the parties broadly agreed that the land and natural resources in Sudan shall be utilized for the benefit of all the people of Sudan.[140] More specifically, the agreement provided that the "[t]he Sudanese people shall own the natural resources found on its soil and underground," but that the people of the regions where such resources are located shall have "special rights that must be met according to specific agreements and percentages."[141] Throughout the Agreement, the parties sought to provide ownership to the people, but with special dispensation for the previously marginalized populations. As discussed below, the parties also sought to tap the natural resource wealth of Sudan to pay for the implementation of the agreement and to save for future generations.

As these instances of state practice illustrate, though natural resource ownership is often perceived to be the crux of conflict between the parties and a straightforward transactional negotiation, in practice, the parties rarely negotiate it in a detailed fashion. Instead, the parties turn to the complicated and technical questions of resource management and revenue allocation.

Management

The conundrum the parties face when incorporating provisions related to natural resource management into peace agreements center around how to provide for efficient management when there is an eclectic array of interested parties each seeking to have a role in management processes. Delegating the power of management to a single party may be more efficient, but it is not inclusive of all the interests at play in a peace process.

While the precise framework for managing natural resources may not be the first question negotiating parties seek to answer during peace talks, management can be both a key to neutralizing the drivers of conflict and a key to establishing durable peace. Though, as stated previously, because of the detailed and technical nature of management discussion, they are often pushed to post-peace agreement processes.[142] Indeed, only a quarter of negotiations linked to natural resources address specific resource management mechanisms.[143]

If the parties decide to negotiate natural resource management in the context of conflict resolution, there are several component parts that are often included in the negotiations, each of which can be negotiated separately and requires a degree of background technical knowledge,

[138] Comprehensive Peace Agreement, Agreement on Wealth Sharing (Sudan, 2005) Ch. III, art. 2.1
[139] UN DPA and UNEP, *supra* note 2, at Part B, 81
[140] Darfur Agreement Between the Transitional Government Sudan and Darfur Parties to Peace (Juba, 2020) § C ¶ 2
[141] *Id.* at § C ¶ 22.1
[142] UN DPA and UNEP, *supra* note 2, at 91
[143] UNEP, *supra* note 1

including extraction management; existing and future contracts; the authority to contract; and the creation of joint mechanisms. Each component of natural resource management can fall under the purview of national, regional, or local governments, or a combination.

Approaches to Resolving the Management Conundrum

One method of resolving the management conundrum is to bring the responsibility of management under the control of the national government. Following a devastating conflict incited and exacerbated by the extraction of diamonds, Sierra Leone and the Revolutionary United Front agreed that the national government "shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone."[144]

The Lomé Agreement also stipulated the creation of a Commission for the Management of Strategic Resources, National Reconstruction and Development by the national government, which would monitor the legitimate exploitation and export of extractive resources such as gold and diamonds. Through this Commission, "all exports of Sierra Leonean gold and diamonds shall be transacted by the Government."[145]

This centralized control over resource management formally shifted control of these natural resources away from non-state armed actors. To achieve an agreement, the parties appointed RUF leader Foday Sankoh as Chairman of the Commission, who ultimately ignored the responsibilities of this role and the requirements of the agreement, and continued to fund the RUF through the illicit resources trade. This tradeoff may have been necessary given the stalemate nature of the war, the failures of previous attempts at peace agreements, and calls for increased power sharing on behalf of the RUF, but it enabled a continuation of past resource management tactics that sustained the conflict. [146]

Instead of vesting control over resource management in one national body, the parties to a peace negotiation can choose to share management authority among federal and regional groups, through management councils or commissions. Iraq's 2005 constitution established a combined approach for resource extraction management, providing that "the federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields."[147] The constitution also applied this national-regional management technique to the creation of a draft joint management council, the Federal Oil and Gas Council, which was given the power to determine and administer Iraq's oil and gas policies and plans.[148] The constitution stipulated membership of both national and regional government authorities on the Council,[149] which could coordinate federal and regional laws within the

[144] Lomé Peace Agreement (Lomé, 1999) art. VII(1)
[145] Lomé Peace Agreement (Lomé, 1999) Part I, art. VII(5); art. VII(1)
[146] 'Implementing the Lomé Peace Agreement' (Conciliation Resources, 2000) 28, 30-33, 39
[147] Iraq Constitution (2005) art. 112
[148] The Federal Oil & Gas Draft Law - The Iraqi Government Version English Translation, as Compiled by the Federal Ministry of Oil (2011) arts. 1-2, 5
[149] The Federal Oil & Gas Draft Law - The Iraqi Government Version English Translation, as Compiled by the Federal Ministry of Oil (2011) art. 5

framework of the federal legislative framework.[150] This shared management tactic reflects Iraq's ownership "by all people" principle discussed earlier.

By creating a joint management system, Iraq's draft legislation addressed several issues closely related to federalism disputes, such as whether regional governments can sign oil development contracts without direct interference from Iraq's national government.[151] Though the draft framework legislation did not become official, Iraq's Kurdistan Regional Government adopted legislation within the draft framework that tracked its regional oil and gas provisions, and created a model contract for oil production agreements with outside investors.[152]

Uncertainties over whether Iraq's national or regional governments would maintain natural resource contracting authorities under the federal system led to lengthy disputes between Iraq's national government and the regional Kurdistan government. Foreign oil companies were attracted to the "superior" contract terms offered by the autonomous Kurdistan government, but Iraq's national government refused to recognize or enforce natural resource contracts between foreign companies and the Kurdistan government.[153] Iraq's national government even declared many contracts between private oil companies and the regional Kurdistan government to be illegal.[154]

Yemen, too, sought joint management of its natural resources, including water and oil.[155] The National Dialogue Conference Outcomes Document provided the natural resources owned by "all the people" would be managed and developed by producing *wilayas* along with regional and national authorities.[156] This was enshrined in the 2015 draft constitution. The 2015 draft constitution also provided for a natural resources management council, "composed of representatives of the federal government, regions and wilayas," which would create relevant policy, conduct evaluations, and liaise with *wilayas* and regions on the topic of natural resource management.[157]

The Yemen draft constitution further provided that *wilayas* would be responsible for local oil and gas service contracts,[158] building off the National Dialogue Conference Outcomes Document, which called for the "cancelation of all monopoly contracts in oil exploitation and related services including the transport of oil derivatives in a manner that achieves public interest."[159] Ultimately, the constitution's provisions never came to fruition, due to disagreements over the federal structure.

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[150] Christopher M. Blanchard, 'Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy' (Congressional Research Service, 3 Nov. 2009) 25
[151] *Id.* at 10; The Federal Oil & Gas Draft Law - The Iraqi Government Version English Translation, as Compiled by the Federal Ministry of Oil (2011) Art. 14
[152] Blanchard, *supra* note 150, at 13
[153] Tara Patel, 'Total Chief Says Kurdistan Oil Contracts "Better" Than Iraq' (Kurd Net, 11 Feb. 2012)
[154] 'Iraq Approves $560 Mln for Kurdistan Oil Payments' (Kurd Net, 1 Apr. 2012)
[155] Yemen Draft Constitution (2015) Ch. VIII, art. 381; National Dialogue Conference Outcomes Document (Yemen, 2013-2014) § I, art. II(8)
[156] National Dialogue Conference Outcomes Document (Yemen, 2013-2014) Sec I art. II(8)
[157] Yemen Draft Constitution (2015) arts. 387-388
[158] *Id.* at art. 389
[159] National Dialogue Conference Outcomes Document (Yemen, 2013-2014) Introduction Decisions art. 42

Sudan's Comprehensive Peace Agreement, which avoided any discussion of ownership, established the National Petroleum Commission. The Commission was created to be a joint-management body for oil management, specifically for contract management.[160] The Commission consisted of the President of the Republic, the President of the government of Southern Sudan, a group of eight permanent members, and a group of non-permanent regional representatives.[161] Four of the permanent members were to be representatives of the national government and four of South Sudan, with up to three to come from the producing regions in which the development is being considered.[162] The Commission was designed to balance the interests of three distinct groups, the national government, the secessionist minded South Sudan, and the oil producing regions.

In the Juba Agreement, the parties sought to by and large mimic the mechanisms set forth in the Comprehensive Peace Agreement, but to improve upon its failings. The Agreement provided that the regions would be a "genuine partner" with the national government with respect to managing natural resources extracted from the territory of the regions. The Darfuri parties were precise in ensuring the region of Darfur would be engaged "throughout all the phases of allotment, awarding, contracting, production and marketing."[163] The Agreement also prioritized environmental protection, providing the regions with the primary responsibility for environmental regulation in order to ensure public health. [164]

Given the history of corruption associated with prior natural resource contracts, the parties agreed that the regions would be entitled to review all of the existing natural resource exploitation contracts relating to their territory. Pending the review, they would be "entitled to make adjustments to these contracts to ensure the fair and equitable allocation of revenue, as well as sufficient environmental protections." [165] The regions were also entitled to participate in the negotiation of any new contracts, and those contracts would be governed both by regional law and national law.[166]

Aceh also approached natural resource management from a shared national-regional perspective, but did not initially include specific provisions for a joint management commission like Yemen or Sudan. The Law on the Governing of Aceh, which came after the signing of the peace agreement, provided that future contracts "may be executed provided that the entire content of such cooperation contract agreements has been jointly agreed by the Government and Aceh Government."[167] This Law indicated that all future oil and gas projects would be jointly managed between the government of Indonesia and the Aceh government, and included the

[160] Comprehensive Peace Agreement, Agreement on Wealth Sharing (Sudan, 2005), Ch. III, B art. 3.4
[161] *Id.* at art. 3.3 a-d
[162] Agreement on Wealth Sharing (Sudan, 2004), art. 3.3 b-d
[163] Darfur Agreement Between the Transitional Government Sudan and Darfur Parties to Peace (Juba, 2020) § C ¶ 23.1
[164] *Id.*
[165] Darfur Agreement Between the Transitional Government Sudan and Darfur Parties to Peace (Juba, 2020) § C ¶ 24.1
[166] *Id.* at § C ¶ 24
[167] Law on the Governing of Aceh (2006) Law No. 11/2006, Ch. XXXIX, art. 252(A)

potential future creation of a joint implementing agency.[168] The Law respected existing contracts, allowing them to stay in effect until the natural termination date for the contract.[169]

The opportunity to design a functional approach to managing the development of natural resources, may also serve as an opportunity to build support for other dimensions of the negotiations, such as those relating to state structure, power-sharing, and mitigating the consequences of prior marginalization. Similarly, the question of how to collecting and allocating revenue can be addressed in ways that support or frustrate agreement on these other dimensions

Revenue Allocation

When considering the allocation of revenue derived from extractive natural resources in a peace negotiation, the primary conundrum the parties face is how to allocate revenue in a way that is fair and equitable for each of the parties that believe they have an entitlement to a share of those resources.

The parties must also identify and assess what constitutes a "valid" claim of entitlement to natural resource revenue while deciding how to prioritize these claims during negotiations. Complicating these primary revenue allocation questions even further is the common misperception that there are more resources or revenue to be had than may actually exist. Relatedly, the parties must consider how to find a balance between fair and equitable allocation of finite revenue with the need to fund the effective operation of the national government.

Though it is beyond the scope of this chapter, the parties must also determine how to match the allocation of resource revenue with the state's governance structure. Whether a state is unitary or federal can alter revenue allocation mechanisms and the considerations of those involved in the peace negotiations.

There are three core approaches to collecting and distributing oil revenue: direct collection and retention by national or local governments; collection into a single account and then subsequent sharing based on an agreed-upon formula; or a hybrid approach.[170]

Direct collection and retention often is established through a provision in a peace agreement or constitution that establishes the authority of a national or local government to collect and retain revenue.[171] Single point collection involves the collection of all revenue from oil extraction into a single account. That revenue is then divided and redistributed between the national and local governments based on a formula typically agreed on through a peace agreement, constitution, or subsequent legislation.[172] The parties are often highly concerned with revenue collection and allocation because the collecting or allocating authority has the potential to retain an unfair share of the revenue, or in other cases, guard against graft and corruption.

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[168] *Id.* at Part 4, art. 160
[169] *Id.* at Ch. XXXIX, art. 252(A)
[170] Haysom and Kane, *supra* note 18, at 23
[171] Haysom and Kane, *supra* note 18, at 23
[172] Haysom and Kane, *supra* note 18, at 24

Approaches to Resolving the Revenue Allocation Conundrum

Sierra Leone adopted a direct collection and retention approach. The Lomé Peace Agreement designated revenue garnered from the sale of gold and diamonds as public funds, to be put in an account used for public works, education, and health projects in primarily rural areas. The Agreement also provided that funds from resource revenue should be appropriated to incapacitated victims of war and other post-war reconstruction efforts.[173] As previously mentioned, RUF leader Foday Sankoh was appointed Chairman of the Commission for the Management of Strategic Resources and continued to fund the RUF through the trade of illegal diamonds.[174] After his arrest for atrocity crimes, the Commission was disbanded.[175]

In 2009, 10 years after the Lomé Peace Agreement, Sierra Leone implemented a Mining Act. This Act included extensive provisions for community development, such as revenue sharing and communal governance.[176] Implementation lagged, however, and the Act has had a minimal impact on the allocation of natural resource wealth to the local communities.[177]

Other states approach revenue sharing from a formula-based perspective. The peace agreement between Sudan and the Sudanese People's Liberation Movement/Army allocated revenue to three separate entities. The agreement provided that oil revenue would be channeled from exports above an annually-established benchmark price into a national Oil Stabilization Account. The agreement provided that after this payment is made, revenue would be allocated to the oil-producing region based on the proportion of oil they contributed, with each region receiving a minimum of two percent of the revenue. Then, the remaining oil revenue would be divided equally between the Government of Southern Sudan and the national government in northern Sudan.[178]

Soon after the signing of the Agreement, the application of this Article became a source of conflict between Sudan and South Sudan. In 2006, for example, Sudan claimed that the oil production rate was 330,000 barrels per day while the South claimed that production was as much as 450,000 barrels per day.[179] The South subsequently viewed the payment it received, which was based off Sudan's oil production rate, as woefully inadequate.[180]

After South Sudan gained independence from Sudan under the terms of the Comprehensive Peace Agreement, it assumed control of over 75 percent of Sudan's oil production.[181] Despite South Sudan's independence and the fact that it had two-thirds of the

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[173] Lomé Peace Agreement (Lomé, 1999) Part I, art. VII(6)
[174] 'Implementing the Lomé Peace Agreement' (Conciliation Resources, 2000) 39
[175] 'Natural Resource Management: Lomé Peace Agreement' (University of Notre Dame Peace Accords Matrix)
[176] The Mines and Minerals Act (Sierra Leone, 2009), Part XVI
[177] Jared Schott et al., 'Development from the ground up? Mining community development agreements in Sierra Leone' (The World Bank, 2015)
[178] Comprehensive Peace Agreement (Sudan, 2005) Ch.III, art. 5
[179] 'Natural Resource Management: Sudan Comprehensive Peace Agreement' (University of Notre Dame Peace Accords Matrix)
[180] *Id.*
[181] 'Sudan 'stealing oil' from South – Pagan Amum' (BBC News, 1 Dec. 2011)

former unified state's oil fields, export facilities remain in the North.[182] In late 2011, South Sudan accused the Sudanese government of stealing oil from South Sudan as it was being transported through the North and being held in export terminals there.[183] South Sudan's lead negotiator accused Sudan of stealing over $600 million of oil.[184] In early 2012, Sudan claimed responsibility for confiscating oil, but argued that it did so because South Sudan was not paying its appropriate transit fees.[185] South Sudan then shut down virtually all of its oil production because of this dispute with Sudan over transit fees, a topic that was not discussed in depth in the original Agreement.

On September 27, 2012, the Presidents of Sudan and South Sudan signed the Cooperation Agreement, beginning a lengthy process for the resolution of this dispute.[186] This Agreement included language describing eight future agreements to be implemented, including an "Agreement concerning Oil and related Economic Matters."[187] This Oil Agreement determined the specific payments from South Sudan to Sudan for processing and transporting oil, as well as a payment the government of South Sudan must pay to Sudan for lost revenue due to its secession. The agreement also established "mutual forgiveness" of past oil-related claims and joint evaluation of facilities.[188]

As with the management of resources, the parties to the Juba Agreement track relating to Darfur sought to learn the lessons from and improve upon the arrangements from the Comprehensive Peace Agreement. The parties thus set forth a very precise formula that 40 percent of the revenue from the mineral and petroleum resources in Darfur would belong to the region for an initial 10-year period. Local populations would be entitled to three percent of that revenue. The parties also agreed that the national government and the local governments would consider the needs of future generations and invest a specified percentage of revenue for the benefit of future generations.[189]

Some parties have addressed revenue sharing in peace negotiations through a combination of formula-based revenue sharing and direct ownership. In Aceh, the 2005 Memorandum of Understanding granted Aceh the right to retain 70 percent of its revenues from current and future oil and gas extraction, attempting to address a key conflict driver. The Memorandum of Understanding also includes an ambiguous provision stipulating that the Indonesian and Acehnese governments will manage the resources jointly.[190] At the time,

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[182] Ulf Laessing and Khalid Abdelaziz, 'Sudan says taking some South Sudan oil but won't close pipe' (Reuters, Jan. 15, 2012)
[183] 'Sudan 'stealing oil' from South – Pagan Amum' (BBC News, Dec. 1, 2011)
[184] Anne W. Kamau and Witney Schneidman, 'South Sudan: Resolving the Oil Dispute' (Brookings Institute, 2012)
[185] Ulf Laessing and Khalid Abdelaziz, 'Sudan says taking some South Sudan oil but won't close pipe' (Reuters, Jan. 15, 2012)
[186] The Cooperation Agreement between The Republic of the Sudan and The Republic of South Sudan (Addis Ababa, 2012)
[187] *Id.*
[188] Agreement between The Government of the Republic of South Sudan and The Government of the Republic of the Sudan on Oil and Related Economic Matters (Addis Ababa, 2012) arts. 4, 7, 9, 10, 12
[189] Darfur Agreement Between the Transitional Government Sudan and Darfur Parties to Peace (Juba, 2020) § C ¶¶23.2, 25.1-2
[190] Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki, 2005)

Acehnese civil society objected to this combined revenue-sharing approach. The method by which revenue was first collected by the Indonesian national government and then distributed to the local government fomented suspicion of revenue as a tool of political influence, rather than of regional reconstruction and development.[191] A further complicating factor was that the extraction of oil and gas in Aceh was on the decline since 2001,[192] with one of the largest gas fields ceasing production in 2014.[193] The rather dramatic resource and revenue depletion was not foreseen or adequately taken into consideration in the text of the peace agreement or subsequent Law on the Governing of Aceh.[194]

Yemen's 2015 constitution also provided for a program of revenue sharing among the various levels of local government after an initial collection by the federal government. The constitution provided that a federal law shall ensure that "annual national revenues shall be divided amongst the federal and regional governments, wilayas, districts and the cities of Sana'a and Aden,"[195] taking into consideration "transparency and equitable distribution," the needs of producing regions, and allocation of a share of revenues to the federal government.[196]

This law was never drafted, as the 2015 constitution was rejected quickly and "categorically" by Yemen's Houthi opposition movement.[197] The process to approve the Constitution was notably fraught with sectarian tensions. For instance, the Yemeni President's chief of staff was kidnapped by armed members of the Houthi movement while on his way to present the draft Constitution to parliament.[198] The Houthis strongly opposed the constitution and the revenue sharing approach as their three delineated provinces would not have access to the coast or to oil resources. These tensions contributed to civil war, the very outcome the Constitution sought to avert.

The Iraqi Constitution defined a program of oil revenue sharing through a hybrid approach as well. Article 112 of the Iraq Constitution set forth two conditions on the distribution of oil revenue. First, revenue from "present" fields must be distributed in a fair manner to all parts of the country, based on population, and in a manner that would ensure balanced development throughout Iraq.[199] Second, an allotment must be made for regions that were "unjustly deprived" under the former regime and for regions damaged afterwards.[200] The Constitution mandated that an equitable share of the national revenues be allocated to the regions and governorates sufficient to discharge their responsibilities and duties.[201]

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[191] 'Aceh: Can Autonomy Stem the Conflict?' (International Crisis Group, 2001) 8 as cited in Wennmann and Krause, *supra* note 134; Michelle A. Miller, 'What's Special About Special Autonomy in Aceh?' in Anthony Reid (ed), *Varandah of Violence: The Background to the Aceh Problem* (Singapore University Press, 2006) 297 as cited in Wennmann and Krause, *supra* note 134

[192] Craig Thorbun, 'Building Blocks and Stumbling Blocks: Peacebuilding in Aceh' (2012) 93 Indonesia 83, 89

[193] Fergus Jensen, 'Indonesia's Arun LNG project to ship final cargo, imports due soon' (Reuters, 14 Oct. 2014)

[194] 'Aceh: Can Autonomy Stem the Conflict?' (International Crisis Group, 2001) 8 as cited in Achim Wennmann, 'Breaking the Conflict Trap? Addressing the Resource Curse in Peace Processes' 17(2) Global Governance 265, 271

[195] Yemen Draft Constitution (2015) art. 357

[196] *Id.* at art. 390

[197] 'Yemen's Houthis Reject Draft Constitution' (Project on Middle East Democracy, 9 Jan. 2015)

[198] Chris Johnston, 'Yemeni president's chief of staff seized by gunmen' (The Guardian, 17 Jan. 2015)

[199] Iraq Constitution (2006) arts. 111, 112

[200] *Id.* at art. 112(1)

[201] *Id.* at art. 121(3)

Since the implementation of the Iraqi constitution, controversy over the implementation of joint ownership and related revenue sharing has continued, especially with regard to the authority of the Kurdish Regional Government to independently sign contracts and manage the oil reserves in the region. These disputes caused Iraq's national government to limit its revenue payments to the Kurdistan region, payments that were necessary to pay private oil companies operating in the region. The national government maintained it was the only authority entitled to export oil from Iraq. After nearly six months of dispute, the national government agreed to pay $560 million to Kurdish oil producers so that exports could continue.[202] The dispute over these payments contributed in part to the Kurdish referendum on independence, and its destabilizing consequences.

CONCLUSION

At once both emotionally-laden and inaccessibly technical in nature negotiated approaches to natural resource ownership, management, and revenue allocation can serve to mitigate the drivers of conflict and achieve durable peace, or they may have the opposite effect. The proper management of valuable extractive resources such as oil and diamonds can create opportunities for reconciliation, trust-building, and empowerment. Revenue sharing systems can provide much-needed resources to conflict-stricken regions, investment in public services, and a highly public peace dividend. Agreements on natural resource ownership, management, and revenue allocation can just as easily catalyze the return of conflict, as each decision the parties face in negotiating these subjects can set the stage for mounting tensions.

This chapter has sought to illustrate that parties in peace negotiations are provided with a unique moment to draft language that can reshape a state's economy, relationship to resources, budget priorities, and relations between segments of its population. Assigning ownership by a region over the natural resources that exist within its territorial bounds, as in the case of Philippines and Mindanao, can accelerate the end of an entrenched, decades-long insurgency. Describing oil ownership as "by the people" of a state, as in Iraq, can smooth over lingering tensions between groups demanding ownership of natural resources, while paving the way for more technical discussions related to management and revenue-sharing.

This chapter has also illustrated how decisions hastily made in good-faith during peace negotiations on the topic of natural resources can tip states back into conflict and erode hopes for a durable peace. The case of Sierra Leone illustrated how formally shifting the control of natural resources away from non-state armed actors who had used them to fund insurgencies, and towards a centralized commission, did not prevent the armed actors from accessing diamonds. Though the decision to appoint RUF leader Foday Sankoh as head of the commission was an essential compromise to achieve an agreement, it set the stage for a return to the very practices that fueled the conflict. In Sudan, the imprecision in the agreement contributed to continued tensions between Sudan and southern Sudan, tensions that were only resolved years after South Sudan's secession in 2011, and a destabilizing oil shut-in.

[202] Serena Chaudhry and Mariam Karouny, 'Iraq approves $560 mln for Kurdish oil payments' (Reuters, 27 Mar. 2012)

The instances of key state practice highlighted in this chapter: Papua New Guinea/Bougainville, Indonesia/Aceh, Iraq/ Kurdistan, the Philippines/Bangsamoro, Sierra Leone, Sudan/South Sudan, Sudan/Darfur, and Yemen, illustrate the impact of each component of natural resource ownership, management, and revenue allocation on the prospects for a durable peace. Each technical detail must be acknowledged by the parties to a peace negotiation, with each conundrum deliberately confronted according to the specific context of the conflict. Decisions to address and negotiate or to avoid the subject of natural resources must be undertaken with careful consideration and an understanding of how particular choices fit into the larger landscape of the conflict.

The next chapter will explore a closely related topic: external self-determination.