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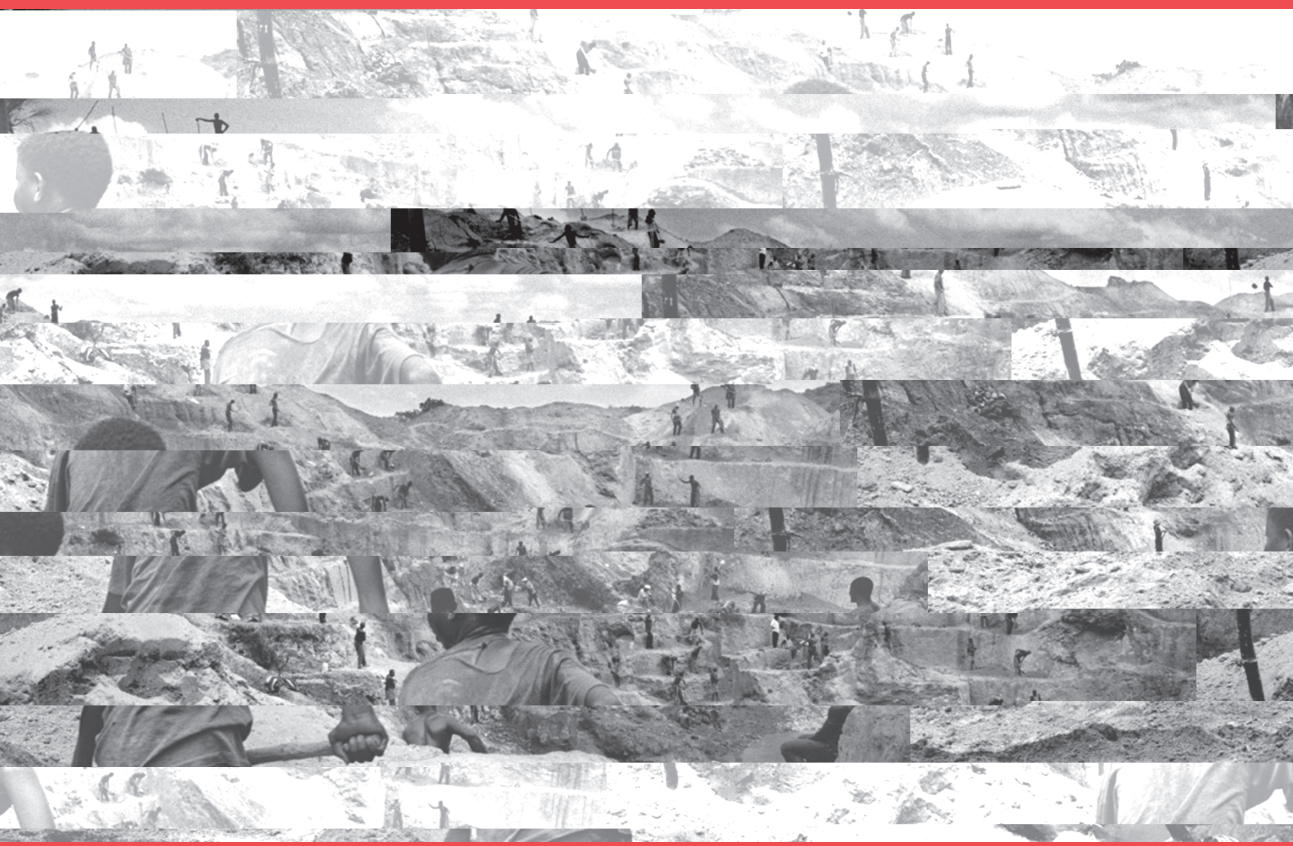
Corporate War Crimes



Prosecuting the Pillage of Natural Resources

James G. Stewart

OPEN SOCIETY FOUNDATIONS

Corporate War Crimes: Prosecuting the Pillage of Natural Resources

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Open Society Justice Initiative

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ISBN: 978-1-936133-32-1

Published by
Open Society Institute
400 West 59th Street
New York, NY 10019 USA
www.soros.org

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Table of Contents

Acknowledgments		7
I.	Introduction	9
II.	Sources of Law Prohibiting Pillage	11
III.	Terminology: Pillage, Plunder, Spoliation, and Looting	15
IV.	Defining Pillage: Elements of the Offense	19
V.	The Armed Conflict Requirement	23
VI.	A Nexus to the Armed Conflict	29
VII.	Appropriation of Property	33
VIII.	Ownership of Natural Resources	39
IX.	Exceptions in the Laws of War	53
X.	Consent	63
XI.	The Mental Element of Pillage	67
XII.	The Criminal Responsibility of Corporations and Their Representatives	75
XIII.	Jurisdiction	85
XIV.	The Obligation to Prosecute	91
XV.	Annex 1: Table of Cases	95
XVI.	Annex 2: Pillage Elements Worksheet	125
Notes		133

Acknowledgments

This manual was written by James G. Stewart and edited by William Kramer, David Berry, Ken Hurwitz, and Robert O. Varenik.

This project benefited from the feedback of a number of leading experts and organizations in areas of law that inform each of the sections of *Corporate War Crimes*. In particular, we are very grateful to the following experts for constructive and often highly detailed criticisms of an earlier draft.

- Ana Elizabeth Bastida, Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, Scotland.
- Bruce Broomhall, Professor of Law, Université du Québec à Montréal, Canada.
- Antonio Cassese, President, International Criminal Tribunal for Lebanon and Professor University of Florence, Netherlands and Italy.
- Andrew Clapham, Professor of Public International Law, Graduate Institute of International and Development Studies, Switzerland.
- Roger Clark, University Professor of Law, Rutgers University Camden, United States
- Norman Farrell, Deputy Prosecutor, International Criminal Tribunal for the former-Yugoslavia, the Netherlands.
- Ward Ferdinandusse, War Crimes Prosecutor, National Division, Netherlands.

- Marco Sassòli, Professor, Universite de Geneve, Switzerland.
- Nico Schrijver, Chair of Public International Law, Grotius Centre for International Legal Studies, Faculty of Law, Leiden University, Netherlands.
- Stefan Talmon, Professor of Public International Law, University of Oxford, United Kingdom.
- Martin Witteveen, Judge International Crimes, District Court, The Hague, Netherlands.
- University of California–Los Angeles Law Clinic, United States.

The participation of these individuals and organizations in the review of this publication should not, however, be taken to imply endorsement of the contents.

The Justice Initiative bears sole responsibility for any errors or misrepresentations.

I. Introduction

Since the end of the Cold War, the illegal exploitation of natural resources has emerged as a primary means of financing armed violence. In countries as diverse as Afghanistan, Angola, the Democratic Republic of the Congo, East Timor, Liberia, and Sierra Leone, the sale of natural resources within conflict zones has not only created perverse incentives for war, it has also furnished warring parties with the finances necessary to sustain some of the most brutal hostilities in recent history. As a consequence of the illegal trade in minerals, metals, timber, and other natural resources, armed conflicts in which participants are able to draw upon easily accessible natural resource wealth are often more bloody, financially costly, and intractable than other forms of armed violence.

Resource wars also contribute to the so-called resource curse, whereby the richest nations in terms of resource endowment are poorest in terms of social development and most prone to violent upheaval. While there is broad consensus that the correlation between resource wealth and armed violence must be addressed through a range of initiatives geared at fighting corruption, policing the resource sector domestically, and building judicial capacity in countries recovering from war, the liability of foreign businesses for trading in illicit conflict commodities is also vital. Resource wars, after all, are entirely dependent on commercial actors to purchase, transport, and market the resources that are illegally acquired in order to sustain violence.

As part of this growing interest in resource wars, *Corporate War Crimes: Prosecuting the Pillage of Natural Resources* explores the elements of corporate liability for the war crime of pillage. Although the term pillage has a long pedigree in the laws of war, the

offense also features as a contemporary war crime in the statutes of all modern international criminal courts and a large number of domestic criminal systems. In essence, pillage means theft during war, and is synonymous with other equally evocative terms such as looting, spoliation, and plunder.

A substantial body of jurisprudence has applied the offense in practice. Modern courts such as the International Criminal Tribunal for the former Yugoslavia (ICTY) enforce the offense as a matter of course. At present, Liberia's former president Charles Taylor and the former vice-president of Congo Jean-Pierre Bemba are facing trial before international courts for having allegedly perpetrated acts of pillage during war, but the most important precedents derive from World War Two. In the wake of that conflict, a significant number of business representatives were prosecuted for pillaging natural resources in circumstances that are often strikingly similar to corporate practices in modern resource wars.

"Various reports have pointed to links between the activities of some African, European, and Middle Eastern companies and the atrocities taking place in the Democratic Republic of the Congo. Their activities allegedly include gold mining, the illegal exploitation of oil, and the arms trade."

Prosecutor, International Criminal Court

By exploring these cases and the law governing pillage in detail, *Corporate War Crimes* seeks to guide investigative bodies and war crimes prosecutors engaged with the technicalities of these issues. We also hope that this manual will be useful for advocates, political institutions, and companies interested in curbing resource wars. Our belief is that the deterrent effect created by even a single case is likely to transform conflict financing in a large number of ongoing conflicts. At the same time, we are conscious of the potential humanitarian consequences of depriving warring factions of access to resource wealth in some contexts, and of the serious dangers of tarnishing reputable companies that provide the legitimate investment essential to rehabilitating economies ravaged by war. With this balance in mind, this project seeks to act as a catalyst for reinvigorating prosecution of the war crime of pillage and to bring accountability to companies that illegally trade in conflict commodities.

II. Sources of Law Prohibiting Pillage

The Prohibition of Pillage in International Humanitarian Law

1. The laws of war, also known as international humanitarian law, protect property against pillage during armed conflict. In the Hague Regulations of 1907, for instance, two provisions categorically stipulate that "the pillage of a town or place, even when taken by assault, is prohibited,"[1] and that "pillage is formally forbidden."[2] After the end of World War Two, the Geneva Conventions of 1949 again reaffirmed that "pillage is prohibited."[3] These provisions bind all states. The Geneva Conventions are presently ratified by all states within the international community, and both the Hague Regulations and Geneva Conventions are also widely accepted as reflecting customary international law. In both these respects, the prohibition of pillage is universally binding.[4]

2. The prohibition against pillage governs civil war as well as interstate warfare. Although the provisions concerning pillage contained in the Regulations and Geneva Conventions traditionally applied uniquely during armed conflict between states, developments in more recent years have seen the extension of the offense to non-international armed conflicts. Article 4(2)(g) Additional Protocol II of 1977, which governs "armed conflicts not of an international character" explicitly prohibits pillage. Although a strict reading of this provision would limit the offense to the pillage of property from "persons who do not take a direct part or who have ceased to take part in hostilities,"

experts have never seen this restriction as limiting the scope of the offense.[5] The International Committee of the Red Cross' extensive review of state practice concludes that the prohibition of pillage is a norm of customary international law applicable in both international and non-international armed conflicts, and that the limitation based on "persons who do not take a direct part in hostilities" does not reflect the state of customary international law.[6] This, as we will see in the following section, is reinforced by provisions of criminal codes and statutes that criminalize acts of pillage in identical terms within both of these contexts.

Further Reading

Jean-Marie Henkaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Vol. I*, 182–185 (Cambridge Univ. Press, 2005), also available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule52.

For a compilation of state practice on pillage, see ICRC, *Customary IHL Database*, http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule52.

Codifications of the Crime of Pillage

3. Pillage is also a criminal offense in the statutes of international courts and in the domestic criminal law of most countries. The offense enjoys a long history. The criminal nature of pillage first featured within the Lieber Code of 1863, which stipulated that "all pillage or sacking, even after taking place by main force [...] are prohibited under the penalty of death."[7] The fact that acts of pillage can be criminally punished was again reflected in the work of the Commission of Responsibilities established at the end of World War Two, which listed pillage as one of the war crimes perpetrated during the conflict.[8] Since then, pillage has featured in all international criminal statutes and a raft of domestic criminal legislation governing war crimes. This section sets out various examples of these codifications.

4. The statutes of two international courts codify pillage and plunder as equivalents. Article 6(b) of the Statute of the Nuremberg Charter criminalized "plunder of public or private property," while the French version of the same statute prohibited "le pillage des biens publics ou privés."[9] The Statutes of the International Criminal Tribunal for the former Yugoslavia replicated the linguistic differences contained in the Nuremberg Charter by again criminalizing "pillage" and "plunder" in the French and English versions respectively. As the next chapter of this manual examining the terminology confirms, both courts have treated pillage and plunder as synonyms in practice.

5. Other codifications of the offense within international criminal statutes list "pillage" as a war crime, but do so by adopting archaic language devoid of contemporary legal meaning. The Statutes of the International Criminal Court (ICC) and the Iraqi Special Court prohibit "pillaging a town or place even when taken by assault."[10] The reference to a town or place even when taken by assault might be consistent with the wording contained in one of the provisions within the Hague Regulations of 1907, but the language adds nothing of contemporary relevance.[11] As the definitions of pillage set out in chapter IV of this manual show, the reference to a town or place even when taken by assault is legally redundant in modern international criminal law.

6. The final group of international criminal statutes that codify pillage are considerably simpler than their various counterparts. The Statutes of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) simply list "pillage" among war crimes applicable within their jurisdiction.[12] This less complicated approach avoids the antiquated language and duplication in terminology adopted in other international criminal statutes. Moreover, these definitions reinforce the potential application of pillage in non-international armed conflicts, because both the Statutes of the ICTR and the SCSL apply uniquely to armed conflicts not of an international character.

7. A large number of states have also codified pillage within their national legal orders, albeit through divergent methodologies. The U.S. War Crimes Act exemplifies a trend amongst several domestic lawmakers toward criminalizing pillage by simply cross-referencing pertinent treaty provisions within a criminal statute. Section 2441(c)(2) of the U.S. War Crimes Act 1996 defines war crimes as including any conduct "prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed October 18, 1907." Article 28 of the Hague Regulation, to which the provision refers, states that "[t]he pillage of a town or place, even when taken by assault, is prohibited." In this sense, U.S. federal courts have jurisdiction over an offense that also features within the Statute of the International Criminal Court.

8. Other countries have incorporated pillage within their national legal order by referring to the definitions of war crimes contained within the ICC Statute or customary international law more generally. The Canadian Crimes Against Humanity and War Crimes Act (2000) typifies this trend. The act criminalizes pillage by prohibiting "war crimes" and defining the term as any infraction that attracts individual criminal responsibility "according to customary international law or conventional international

law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission."[13] As previously seen, the war crime of pillage is prohibited in both custom and convention, thereby satisfying the definition contained within this legislation.[14] Other countries, such as the United Kingdom, implement pillage as a domestic offense by cross-referencing the relevant article of the ICC Statute that governs war crimes.[15] By either methodology, pillage becomes an independent domestic crime within each of the countries.

9. A third and final group of states, which includes Germany and Australia, criminalize pillage by defining the offense explicitly within domestic legislation rather than cross-referencing provisions of treaties or international criminal statutes. The Australia International Criminal Court (Consequential Amendments) Act 2002, for instance, makes pillage a federal crime by explicitly replicating the ICC Elements of the Crime within national criminal legislation. Sections 268.81 and 268.54 of the Australian Act emulate the ICC's definition exactly. Similarly, German legislation has also codified pillage as part of a comprehensive code governing international crimes. In the German Code, however, pillage is attributed an independent definition that ostensibly departs from the wording of the ICC Elements of Crimes.[16] In these and other states that have adopted equivalent legislation, pillage exists in domestic criminal law independently of international treaties or statutes.

III. Terminology: Pillage, Plunder, Spoilation, and Looting

10. The previous chapter noted a duplication of the terms pillage and plunder in the statutes of international criminal tribunals. Unfortunately, this overlapping terminology is exacerbated by the use of the labels spoliation and looting. In this section, we explore jurisprudence that highlights the common legal meaning of pillage, plunder, spoliation, and looting, pointing out that pillage is the only one of these terms that features in treaties governing the laws of war. This clarity allows subsequent chapters to draw on cases involving the plunder of natural resources, and justifies use of these cases as precedents in jurisdictions that only criminalize pillage.

11. Plunder and pillage are legally synonymous. As early as the 17th century, Grotius used the two terms interchangeably,[17] creating a practice that became widespread among subsequent commentators.[18] At the turn of the 19th century, Westlake again described pillage as "indiscriminate plundering," amounting to "the unauthorized taking away of property, public or private."[19] Aside from the clear linguistic equivalence of pillage and plunder identified within the French and English versions of the Statutes of the Nuremberg Tribunal,[20] the Nuremberg Tribunal's judgment also used the terms interchangeably by addressing the widespread incidents of property violations during World War Two under a heading entitled "pillage of public and private property," and by treating the terms pillage and plunder as analogues throughout the course of its reasoning.[21]

12. The ICTY's Statutes not only replicated the Nuremberg Charters' linguistic differences; the tribunal's verdicts also reflected the essentially interchangeable nature of the two labels. In more than one judgment, an accused was convicted of pillage in the original version of the judgment, but of plunder in the English translation.[22] The tribunal also acknowledged that the "the unlawful appropriation of public and private property in armed conflict has varyingly been termed "pillage," "plunder," and "spoliation," and that the term plunder "should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as 'pillage'."[23] The finding that plunder merely *includes* pillage stemmed from a hesitation that "pillage in the traditional sense implied an element of violence."[24] Although the tribunal considered that it was not necessary for their purposes to rule on this issue, a more thorough investigation reveals that its hesitation was unfounded. Even though a select number of historical definitions of pillage had associated the offense with physical violence,[25] this association was never broadly accepted.[26] On this basis, modern codifications of pillage almost invariably omit reference to overt violence in defining the offense.[27] For all these reasons, pillage and plunder share a common meaning in modern international criminal law.

"[t]he prohibition of the unlawful appropriation of public and private property in armed conflict is well-established in customary international law where it has been variously referred to as 'pillage', 'plunder' and 'looting'."

Brima Trial Judgment, para. 751

13. The term spoliation also describes the same offense. Like plunder, the label spoliation does not feature in international treaties or codified lists of international crimes, but in the wake of World War Two, prosecutors preferred the term spoliation over the more legally correct alternative. The directors of IG Farben, for instance, were charged with spoliation, prompting the court to clarify that "the term 'spoliation,' which has been admittedly adopted as a term of convenience by the prosecution, applies to the widespread and systematized acts of dispossession and acquisition of property in violation of the rights of the owners, which took place in territories under the belligerent occupation or control of Nazi Germany during World War II."[28] The same tribunal then confirmed that "spoliation is synonymous with the word 'plunder' as employed in Control Council Law No. 10, and that it embraces offenses against property in violation of the laws and customs of war of the general type charged in the indictment."[29] By extrapolation, the terms spoliation, plunder, and pillage share a common legal meaning.

14. To exacerbate an already unnecessary duplication of terms used to describe pil-

IV. Defining Pillage: Elements of the Offense

15. Although pillage enjoys a long history in the laws of war, the earliest codifications of the crime did not identify the elements of the offense with any degree of precision. The Lieber Code of 1863, for instance, made pillaging a capital offense but failed to expand on the elements of the crime or clarify when the offense was perpetrated. More than a century later, the initial definitions of pillage adopted by the ICTY simply defined pillage as "embrac[ing] all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law."[35] Since then, the Assembly of States Party to the International Criminal Court has adopted the so-called ICC Elements of Crimes, which are an influential but non-binding series of definitions adopted by consensus vote in order to "assist" the court in its adjudicative function.[36] According to the ICC Elements of Crimes, "pillaging" in both international and non-international armed conflicts includes the following key legal components:[37]

1. The perpetrator appropriated certain property;
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use; [*]
3. The appropriation was without the consent of the owner;

4. The conduct took place in the context of and was associated with an international or non-international armed conflict; and

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

[*] As indicated by the use of the term "private or personal use," appropriations justified by military necessity cannot constitute the crime of pillaging.

16. While the definition above provides an extremely useful guide that inspires the structure of the remainder of this manual, one of these requirements does not reflect accepted understandings of the offense in customary international law. By restricting pillage to appropriation "for personal or private purposes," the ICC Elements of Crimes depart from the vast majority of relevant World War Two cases that condemned acts of pillage perpetrated in furtherance of the Axis war effort. In one instance involving Japanese seizure of oil stocks from Singapore, a judge declared that "the seizure and subsequent exploitation by the Japanese armed forces of the oil resources of the appellants was economic plunder of private property in violation of the laws and customs of war."[38] The reference to "personal or private purposes" within the ICC definition not only contradicts this and other similar historical precedents, it also runs counter to modern interpretations of the offense. As a more recent war crimes judgment has reaffirmed, the laws of war "do not allow arbitrary and unjustified pillage for army purposes or for the individual use of army members."[39] For all these reasons, the Special Court for Sierra Leone was correct in declaring that "the requirement of 'private or personal use' is unduly restrictive and ought not to be an element of the crime of pillage."[40]

17. Moreover, the reference to military necessity in a footnote to the phrase "personal or private purposes" is also inconsistent with the laws of war. To reiterate, the ICC Elements of Crimes contain a footnote stipulating that "[a]s indicated by the use of the term 'private or personal use', appropriations justified by military necessity cannot constitute the crime of pillaging." This position is inaccurate. For one reason, military necessity cannot act as an independent and separate justification for pillage, primarily because military necessity was already taken into account in crafting the exceptions contained in the Hague Regulations. During the negotiating of the regulations, diplomats and military personnel who drafted the convention considered but dismissed military necessity as a justification for pillage, precisely on the grounds that the necessary exceptions were already explicitly incorporated into the Hague Regulations.[41] Moreover, it is also a settled principle of the laws of war that military necessity will not act as a justification for a violation unless the term "military necessity" is explicitly listed as an exception to the rule in question.[42] This is not the case for pillage, which is prohibited in absolute terms.[43]

18. Instead of limiting pillage to appropriation "for personal or private purposes" or "military necessity," most war crimes jurisprudence defines pillage as appropriation without the consent of the owner subject to a series of exceptions contained in the Hague Regulations. The U.S. Military Tribunal established at Nuremberg after World War Two, for instance, defined pillage in the *IG Farben* case by stipulating that "[w]here private individuals, including juristic persons, proceed to exploit the military occupancy by acquiring private property against the will and consent of the former owner, such action, not being expressly justified by any applicable provision of the Hague Regulations, is in violation of international law."[44] Modern war crimes jurisprudence also adopts this position. The *Martić Trial Judgment*, to cite but one example, defined pillage as appropriation of either public or private property without the consent of the owner, subject to the same set of limitations set out in the Hague Regulations.[45] Consequently, the remainder of this manual uses the criteria in the ICC Elements of Crimes, substituting exceptions contained in the Hague Regulations for the overly restrictive requirement that exploitation must occur "for personal or private purposes."

> "for the crime of plunder [pillage] to be established, the appropriation of private or public property must be done without lawful basis or legal justification... According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle."
>
> *Martić Trial Judgment*, para. 102.

19. We also recommend using this definition in non-international armed conflicts. This is legally controversial. Formally speaking, only foreign military occupiers are able to exercise the exceptions contained in the Hague Regulations. Consequently, when a leader of the Revolutionary United Front rebel group claimed that the exceptions in the Hague Regulations justified his appropriation of property during the civil war in Sierra Leone, the SCSL declared the argument "to be misconceived."[46] According to the SCSL, "[t]he rights and duties of occupying powers, as codified in the 1907 Hague Convention and the Fourth Geneva Convention, apply only in international armed conflicts."[47] Despite this formality, we would advise prosecutors to assume the contrary as a matter of caution rather than law. First, there is a small body of jurisprudence that extends aspects of the Hague Regulations of 1907 to warring factions operating in non-international armed conflicts.[48] Second, the policy arguments for allowing rebel groups to seize certain types of property during war are sometimes strong—there is little basis

for expecting rebel groups to comply with the laws of war without offering certain privileges. Third, as a subsequent section of this manual explains in greater detail, rebel groups are often proxies for foreign governments.[49] Under these circumstances, a rebel group acting as an agent for a foreign state might be able to formally claim privileges that derive from the law governing international armed conflicts. For all these reasons, we advise prosecutors to adopt a cautious approach that treats the exceptions contained in the Hague Regulations as applicable in both international and non-international armed conflicts.

20. In light of this synthesis of the law governing pillage, the remainder of this manual adopts the ICC's definition as a basis for assessing the liability of commercial actors for the pillage of natural resources in conflict zones, except that it substitutes exceptions to the Hague Regulations for the reference to "private or personal use" in the Elements. This, as we have seen, aligns with most historical and contemporary definitions of the offense.

Further Reading

Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, pp. 272–280 (Cambridge, 2002).

Gunénaël Mettraux, *International Crimes and the Ad Hoc Tribunals*, 96–98 (Oxford, 2005).

V. The Armed Conflict Requirement

21. War crimes can only be perpetrated during armed conflict. As a consequence, evidence that the illegal exploitation of natural resources took place during an armed conflict is essential in sustaining a charge of pillage. To use language adopted in the ICC Elements of Crimes, the relevant conduct must have *taken place in the context of and been associated with an international or non-international armed conflict*. In order to clarify the definition of international and non-international armed conflict, this chapter explores the law defining both concepts. The chapter also highlights a third approach that avoids the cumbersome process of distinguishing between these two types of armed conflict by simply concluding that an armed conflict existed without classifying the hostilities one way or the other. Although either or both of these types of conflict might arise in any given situation, courts are increasingly adopting the easier approach in pillage cases on the basis that the offense shares the same content in both types of armed conflict.

The Definition of International Armed Conflict

22. International armed conflict is armed violence between two or more states. According to Common Article 2 of the Geneva Conventions, "the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them." In other words, an international armed conflict is the resort to

armed force between two parties to the Geneva Conventions. An armed conflict between two or more states can arise in a number of ways. The *Tadić Appeal Judgment* found that:

> [i]t is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.[50]

23. The first of these standards is easily established. There is incontestably an international armed conflict when two states wage war directly against one another—conflict between Britain and Germany during World War Two is one obvious example. When pillage takes place in this context, the qualification of the armed conflict as international is a mere formality and will probably not require careful assessments of fact or law. The two standards for indirect international armed conflicts are, however, significantly more complex.

24. In applying the first of these standards, namely international armed conflict through foreign intervention, the *Blaškić Trial Judgment* found that the conflict between a non-state group named the Croatian Defense Council and the Bosnia Herzegovina Army was rendered international based on the Croatian government's military intervention in Bosnia-Herzegovina. The presence of an estimated 3,000 to 5,000 regular Croatian Army troops was found to have had an impact on the conflict between the Croatian Defense Council and the Bosnia Herzegovina Army, sufficient to render the conflict between the two warring parties an international armed conflict.[51] In a similar fashion, the *Kordić and Čerkez Judgment* found that Croatian military intervention rendered the conflict between Bosnian Croats and Bosnian Muslims international "by enabling the Bosnian Croats to deploy additional forces in their struggle against the Bosnian Muslims."[52] While open to a degree of criticism,[53] this same reasoning was endorsed by a Pre-Trial Chamber of the ICC, which concluded that Ugandan presence in the Northeast of the Congo was sufficient to internationalize surrounding conflict between non-state groups.[54]

25. An international armed conflict also exists where states wage war against one another by using domestic military groups as proxies. Three different standards determine whether an armed entity could be considered a proxy for a foreign state, each of

which differs according to the nature of the entity and the control exerted by the state.[55] By far the most common form of state control over foreign organized military groups is that "of an overall character".[56] In practice, this term means that a state must have "a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group" but that it "does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation."[57] On this basis, a number of judgments have found that the armed conflict that took place in the Republika Srpska within Bosnia was international in nature because the Federal Republic of Yugoslavia had overall control over the Army of the Serbian Republic of Bosnia and Herzegovina forces during their hostilities with the Army of Bosnia and Herzegovina.[58] Likewise, the ICC has held that because the Ugandan government was the main supplier of weapons and ammunition to Congolese rebel groups, the conflict concerned was international.[59]

26. Finally, an international armed conflict can also arise where a foreign army occupies territory belonging to another state, irrespective of whether armed violence ever erupted. During World War Two, a number of countries simply capitulated to occupation on the basis that armed resistance was futile. On the basis of this capitulation, the German occupiers denied that the laws of war applied in these territories, claiming that the law only applies where there are hostilities. In response, the drafters of the Geneva Conventions of 1949 explicitly included a provision that "[t]he Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."[60] This development has special importance for the liability of commercial actors for pillaging natural resources in a number of modern contexts, because it establishes that the offense might be perpetrated even when foreign occupation was not met by substantial military resistance, or in instances where resistance subsided a long time prior to the exploitation of natural resources.

Further Reading

Prosecutor v. Tadić, IT-94-1-A, Judgment, 15 July 1999, paras. 88–171.

C. Byron, "Armed conflicts: International or non-international?," *Journal of Conflict and Security Law*, Vol. 6, No. 1, June 2001.

J.G. Stewart, "Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict," *International Review of the Red Cross*, June 2003, Vol. 85, No. 850, 313.

Non-International Armed Conflict

27. Pillage is also a war crime in civil wars. The technical term for civil war within the Geneva Conventions is "conflict not of an international character," but commentators and courts also frequently use the phrase non-international armed conflict to describe the same phenomenon. The leading definition of non-international armed conflict was articulated in the *Tadić Appeals Chamber Decision on Jurisdiction*, which found that "an armed conflict exists whenever there is... protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."[61] The terms "protracted armed conflict" and "organized armed groups" are understood to demand an appraisal of the intensity of armed violence between the two warring factions and an assessment of the military character of the parties engaged in this violence. As the International Committee of the Red Cross has argued "ascertain[ing] whether there is a non-international armed conflict does not depend on the subjective judgment of the parties to the conflict; it must be determined on the basis of objective criteria; the term 'armed conflict' presupposes the existence of hostilities between armed forces organised to a greater or lesser extent; there must be the opposition of armed forces and a certain intensity of the fighting."[62]

"ascertain[ing] whether there is a non-international armed conflict does not depend on the subjective judgment of the parties to the conflict; it must be determined on the basis of objective criteria; the term 'armed conflict' presupposes the existence of hostilities between armed forces organised to a greater or lesser extent; there must be the opposition of armed forces and a certain intensity of the fighting."

International Committee of the Red Cross

28. In terms of intensity, the *Tadić* definition emphasizes that armed violence must be "protracted." Although this term cannot be defined in the abstract, factors such as the duration of hostilities, the types of weapons used, and the number of victims caused by hostilities are all relevant to this assessment. Courts, for instance, have found that armed violence of a relatively limited duration might constitute an armed conflict. In the *La Tablada* case, the Inter-American Commission of Human Rights found that an armed attack by a military group on a state army barracks that lasted a mere 30 hours was governed by the laws applicable in non-international armed conflict because of the nature of the hostilities between essentially military groups.[63] Similarly, a non-international armed conflict need not produce massive loss of life. The ICTY,

for instance, has concluded that hostilities in 2001 between Macedonian forces and a national liberation organization constituted a non-international armed conflict, even though the armed confrontations between the two groups only caused 168 deaths over the course of the year.[64] Together with the *La Tablada* case, this decision provides some rough guidance as to the lower end of what might satisfy intensity requirements necessary to prove a non-international armed conflict.

29. The second criterion for establishing a non-international armed conflict requires an assessment of the command structure of the warring factions. This inquiry is important in order to distinguish armed conflict from ordinary criminality, riots, or isolated terrorist acts, all of which are capable of precipitating widespread violence which would not be governed by the laws of war. The element of organized military command might involve assessing whether the group has an organized hierarchical structure, controls territory, and is capable of formulating a common military strategy. Other factors considered in practice include the existence of a military headquarters, the promulgation and enforcement of laws, and the issuance of internal rules and regulations. In applying these standards to hostilities between the Kosovo Liberation Organization (KLA) and Serbian armed forces, one war crimes trial concluded that the KLA was a sufficiently organized military group, even though the organization operated in secrecy underground and its commanding officers did not meet regularly because of the threat posed by their militarily superior adversary.[65] The existence of a military chain of command, the organized nature of armed confrontations and the internal regulations within the KLA were deemed sufficient to convert the violence between the KLA and Serb forces into a non-international armed conflict.[66]

Further Reading

Prosecutor v. Limaj et al., Case No. IT-03-66-T, Judgment, paras. 83–179 (Nov. 20, 2005).

International Committee of the Red Cross, *How Is the Term "Armed Conflict" Defined in International Humanitarian Law?*, March 2008 http://icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/$file/Opinion-paper-armed-conflict.pdf.

The Unified Approach

30. Recent war crimes trials have dispensed with the task of classifying armed conflicts as either international or non-international where the war crimes charged share

a common legal meaning in both types of conflict. This practice has allowed courts charged with adjudicating certain war crimes to avoid what often proves to be a time consuming, imprecise, and controversial process of classifying armed conflicts. A number of courts have adopted this unified approach in cases involving allegations of pillage, based on the supposition that the offense shares the same elements in both types of conflict. In the *Martić Trial Judgment*, for instance, the ICTY applied the crime of pillage to a conflict that was not qualified as either international or otherwise, precisely because pillage is criminalized in both types of war.[67]

"It is immaterial whether the armed conflict was international or noninternational in nature."

Delić Trial Judgment, para. 40

31. This unified approach to conflict qualification has also gained ascendancy as the preferable means of addressing other offenses that share the same origins as pillage. For example, the *Orić Trial Judgment* prosecuted the war crime of wanton destruction, which also derives from the Hague Regulations, without qualifying the surrounding conflict as either international or non-international.[68] In this and the other instances, courts merely determine that there was protracted armed violence between organized armed groups, then proceed to assess the substantive elements of the offense without attempting to ascertain whether the surrounding conflict was purely internal, whether military groups were otherwise under the control of foreign states, or whether the conflict was rendered international by the intervention of foreign state forces. The unified approach to conflict qualification thus simplifies the task of proving armed conflict for the purpose of cases involving corporate liability for the pillage of natural resources.

Further Reading

Prosecutor v. Martić, Case No. IT-95-11-T, Judgment, paras. 41–43 (June 10, 2007).

VI. A Nexus to the Armed Conflict

32. According to the elements of all war crimes contained in the ICC Elements of Crimes, the illegal exploitation of property must take place "in the context of" and "associated with" an armed conflict in order to constitute pillage. This so-called nexus requirement distinguishes war crimes from other violations of domestic criminal law. The distinction stems from the observation that pre-existing rates of ordinary crime, such as murder, robbery, rape, and fraud are not spontaneously transformed into war crimes as soon as war erupts. In the context of allegations of corporate responsibility for illegally exploiting natural resources in conflict zones, the nexus requirement thus delineates actions governed by domestic law from those susceptible to prosecution as pillage.

33. The distinction is important, because even though acts amounting to pillage are unquestionably prohibited by domestic analogues such as theft, receiving stolen property or money laundering, pillage offers a number of advantages over these domestic alternatives. Like other war crimes, pillage is not subject to statutes of limitations,[69] falls within the jurisdiction of international criminal courts,[70] and triggers state obligations to investigate and prosecute violations.[71] A robust understanding of the nexus requirement is therefore essential in assessing potential liability for corporate implication in the illegal exploitation of natural resources.

34. According to decisions rendered by the ICC, the terms "in the context of" and "associated with" are best interpreted in light of earlier war crimes jurisprudence.[72] This jurisprudence has emphasized that conduct must be "closely related" to a surrounding armed conflict in order to constitute a war crime. In elaborating on the meaning of this standard, the Appeals Chamber of the ICTY has opined that "[w]hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment—the armed conflict—in which it is committed."[73] According to the chamber, "[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed."[74] At times, courts also appear to have condensed this standard into the question of whether the crime occurred "under the guise of an armed conflict,"[75] but we view the term "closely related" as a better reflection of the relevant jurisprudence.

35. One series of cases has sought to define further guidelines for determining whether a particular act is closely related to armed conflict, but it seems doubtful whether these criteria are an accurate reflection of the law governing war crimes. According to the *Kunarac Appeal Judgment*,

> In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.[76]

The passage is controversial because each of the factors is unnecessarily limited—civilians can perpetrate war crimes, combatants can be victims of war crimes, war crimes can be committed irrespective of the military's ultimate goals, and can certainly be perpetrated in a personal capacity. Given that each of the criteria in the *Kunarac Appeal Judgment* is at least incomplete, it seems doubtful whether the test is a meaningful guide to differentiating domestic offenses from war crimes. Courts are thus likely to focus more on whether commercial actions were "closely related" to armed conflict in the sense identified in the previous paragraph.

36. Companies operating in conflict zones will satisfy these standards in a range of circumstances. In instances where companies collaborate directly with armed groups involved in the exploitation of natural resources as part of their war effort, the resulting property transactions are clearly "shaped by and dependent upon the surrounding hostilities." Without the warring factions participation in war, there would be no commerce. Even a company that purchases natural resources independently from civilians during armed violence might be "closely related" to hostilities and perpetrate pillage, since war will frequently play a substantial part in the ability of businesses to purchase conflict commodities such as diamonds, coltan, or gold. In this sense, the armed conflict provides the company's "ability" to perpetrate the crime. After all, resource wars by definition involve the financing of armed violence through illicit trafficking in natural resources by commercial actors.

> "What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment—the armed conflict—in which it is committed."
>
> *Kunarac Appeals Judgment*, para. 58

37. A corporation is not required to acquire natural resources from a battlefield during active hostilities to perpetrate pillage—the illegal exploitation of conflict commodities may still be closely related to hostilities when the corporate acts occur after hostilities in a particular region and away from open gunfire. As one leading authority declared, "the requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting."[77] This is consistent with a large number of convictions of corporate representatives for pillaging property during World War Two, which frequently occurred a considerable distance from battlefields and well after sustained confrontations in the region had ceased. As a consequence, the illegal exploitation of natural resources from outside a particular zone of combat or after foreign troops depart can still constitute pillage, provided the acts remain closely related to hostilities in a broader sense.

38. Likewise, a company is not required to support or otherwise endorse one side of the conflict in order to perpetrate pillage. War crimes jurisprudence has found that it is not necessary that the crime alleged "be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war."[78] For example, in one case involving allegations of war crimes perpetrated in Rwanda, a civilian mayor was initially acquitted of war crimes charges on the grounds that he had not acted "for" either of the

warring factions in perpetrating acts of murder. The Appeals Chamber overturned this finding on the basis that war crimes do not necessitate a relationship with the warring parties.[79] This position again accords with precedents derived from World War Two, where numerous business representatives and other civilians were convicted of pillage even though their commerce was not formally linked to a particular army.[80] Even companies operating more independently in the peripheries of a surrounding conflict are therefore potentially bound by the prohibition against pillage.

39. Finally, a recent Dutch judgment dealing with war crimes suggests that acts that "stimulate warfare" can also satisfy the nexus requirement for war crimes. In this particular case, the Dutch court found a business employee named Joseph Mpambara guilty of torture, but acquitted him of war crimes because his acts were insufficiently linked to an armed conflict.[81] After a comprehensive review of the jurisprudence dealing with the nexus requirement, the court dismissed war crimes charges on the basis that the defendant's acts did not "contribut[e], not even in the least, to the accomplishment of the RAF [Rwandan Armed Forces] in its conflict with the RPF [Rwandan Patriotic Forces]."[82] Similarly, the fact that the defendant was accompanied by soldiers was not sufficient to establish a nexus, since the soldiers assistance in the torture "did not serve any military purpose."[83] By contrast, commercial actors involved in exploiting natural resources from war zones frequently "stimulate warfare," contribute to the trajectory of ongoing violence, and become linked to the military purposes of armed groups. In all these regards, companies and their employees who illegally exploit natural resources during warfare might be liable for pillage.

Further Reading

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William Schabas, *UN International Criminal Tribunals*, 236–239 (Cambridge, 2007).

Antonio Cassese, *International Criminal Law*, 49–50 (2nd ed, Oxford, 2008).

VII. Appropriation of Property

40. According to the ICC Elements of Crimes, a person accused of pillaging natural resources must "appropriate" property during armed conflict in order to commit pillage. In many instances, foreign companies operating in conflict zones "appropriate" natural resources directly from the rightful owners by extracting the resources themselves. In other circumstances, companies appropriate natural resources indirectly from the owner by purchasing the commodities from an intermediary. This chapter focuses on defining the term "appropriation," and explores the prodigious jurisprudence that shows that appropriation includes both direct and indirect alternatives. In other words, pillage encompasses extraction of natural resources directly from the owner as well as purchasing resources illegally acquired during war. As will become apparent, the significance of this interpretation is hard to overstate, because it means that an entire supply chain perpetrates pillage provided that it satisfies other elements of the crime. Before we proceed to investigate this law in detail, it is worth recalling that this section only deals with the objective element or *actus reus* of pillage, leaving a subsequent section to explore the contours of intention required to prove pillage.

Direct Appropriation

41. Companies operating in conflict zones frequently appropriate natural resources directly from the owners, usually in one of three ways. First, companies appropriate natural resources directly from the owner by collaborating with a warring army. In a classic illustration of this scenario, the Nuremberg Tribunal convicted Walther Funk for his role in the management of a commercial enterprise named the Continental Oil Company, which exploited crude oil throughout occupied Europe in conjunction with the German army.[84] According to Funk's own testimony, whenever German troops seized oil wells German officials assigned the Continental Oil Company the task "of producing oil in these territories and of restoring the destroyed oil-producing districts."[85] The Nuremberg Tribunal unanimously considered that this constituted pillage, finding Funk personally culpable for his role in these practices.[86] In the same way, commercial actors that collaborate with rebel groups or foreign governments in the extraction of natural resources in conflict zones "appropriate" these resources from the true owners.

42. Second, companies also exploit natural resources directly from the owner by relying on the authorization of a warring party to exploit resource wealth. For instance, the U.S. Military Tribunal at Nuremberg found Paul Pleiger, the manager of Mining and Steel Works East Inc. (BHO), guilty of pillaging coal from mines located in Poland.[87] According to the tribunal, BHO exploited these Polish coal mines after the Reich government issued a so-called trusteeship to the company. Given that the Reich government had no authority to seize these properties, Pleiger became personally culpable for the appropriation his company carried out. In particular, Pleiger personally appointed a local manager to the mines, maintained an active interest in the development of these sites, and supervised a yield in excess of 50,000 tons of coal from the area each year of the war.[88] Although the tribunal never addressed the issue specifically, this type of extraction constitutes appropriation for the purposes of the offense.

43. Third, overharvesting of an otherwise legitimate concession provides another common form of direct appropriation of natural resources from an owner. In a number of contemporary armed conflicts, corporate representatives take advantage of the surrounding climate of insecurity to overharvest concessions lawfully granted to them. For instance, the Liberian Truth and Reconciliation Commission cited one foreign company for "unlawfully extract[ing] approximately 80,000m^3 of logs monthly by clear cutting its concession area in violation of Liberian law and FDA regulations."[89] In fact, a World Bank contractor concluded that the same company had not respected the legal cutting limits in any of the three years of operations during the war, and that "[o]ver harvesting

in concession area" was common practice during the conflict.[90] Each of these scenarios illustrates common forms of resource "appropriation" during war.

Indirect Appropriation—Receiving Stolen Property

44. The term "appropriate" also includes indirect appropriation from an intermediary by purchasing stolen property. First and foremost, a literal interpretation of the ICC Elements of Crimes supports this reasoning. Given that the term "appropriate" appears in the elements without qualification, a literal interpretation would extend the term to situations where a purchaser "appropriates" the property from a warring faction or foreign army. As this section will show, an analysis of customary international law on the topic provides compelling corroboration of this literal interpretation.

45. A considerable body of international precedent explicitly supports the view that receiving stolen property during war falls within the rubric of the term "appropriate" as employed in the ICC Elements of Crimes. In one example, an individual named Willi Buch was convicted of pillage for purchasing silverware at auction, which the German Kommandantur at Saint-Die had illegally requisitioned in occupied France.[91] In a similar case, a German couple and their daughters were convicted of pillage for purchasing furniture and other property from a German custodian in charge of an abandoned farm.[92] When reflecting upon the daughters' convictions, the UN War Crimes Commission reasoned that "[t]he case against the daughters of the Bommer couple is an illustration of how receiving stolen goods may, under the same principles, equally constitute a war crime."[93]

46. A range of other cases apply this thinking to corporate representatives for pillage, by openly accepting that receiving stolen property constitutes pillage. A Tribunal of Military Government for the French Zone of Occupation in Germany tried and convicted representatives of the Roechling firm for pillage arising out of the commerce in illegally seized scrap metal from the German Raw Materials Trading Company, known by the acronym ROGES.[94] Herman Roechling, the director of the Roechling firm, was convicted of pillage for purchasing illegally seized property known as "Booty Goods" from ROGES. The tribunal rejected Roechling's claim that the seizures were justified by the Reich annexing French territory because "[k]nowingly to accept a stolen object from the thief constitutes the crime of receiving stolen goods."[95] Hermann Roechling was thus convicted of pillage on the basis that he was "a receiver of looted property."[96]

47. In a much larger number of instances, individuals were convicted of pillage for appropriating property from an intermediary in terms that tacitly support this position. A table annexed to this manual indicates that at least 26 pillage cases have involved receiving stolen property during war. In the *IG Farben* case, for instance, company representatives were convicted of pillage for purchasing "land, buildings, machinery, equipment" from the Boruta factory, which the Reich Ministry of Economics had seized.[97] Similarly, representatives of the firm Krupp were convicted of pillage for purchasing an office in Paris "not from the rightful owners of the premises but from the provisional administrator of the Société Bacri Frères by virtue of a decision of a commissariat for Jewish questions."[98] And in one final example, the chairman of the Hermann Goering Works was convicted of pillage because his company "was the recipient of considerable property seized in Poland."[99] These and the other examples evidenced within the annex confirm that, as a matter of customary international law, pillage can involve either direct or indirect appropriation from the rightful own

"It is not correct to say, as defense counsel says, that because a crime has been completed no further crime may follow from it. Receiving stolen goods is a crime in every civilized jurisdiction and yet the larceny, which forms its basis, has already been completed."

U.S. Military Tribunal at Nuremberg, *Pohl Case*, p. 1244.

48. This definition is not conceptually troubling. While it is essential not to confuse the scope of pillage in customary international law with domestic notions of theft, national law is helpful in confirming that there is nothing philosophically objectionable in treating receiving stolen property as a subset of pillage. In at least one national jurisdiction, theft and receiving stolen property are also amalgamated into a single offense on the basis that the original thief and the receiver both appropriate property with the intent to deprive the rightful owner of the asset.[100] As the commentary to the U.S. Model Penal Code argues, "[a]nalytically, the receiver does precisely what is forbidden by [the prohibition against theft]—namely, he exercises unlawful control over property of another with a purpose to deprive."[101] On a similar basis, a leading British commentator has rightly observed that "[a]lmost every handling is also a second theft—the handler dishonestly appropriates property belonging to another with the intention permanently to deprive the other of it."[102] So while a number of other countries still maintain a distinction between theft and receiving stolen property that derives from the way the crimes developed historically,[103] this distinction neither affects the definition of pillage in international law nor raises compelling conceptual criticisms that justify a departure from customary international law.

49. There is thus good reason to agree with the United Nations War Crimes Commission's conclusion that "[i]f wrongful interference with property rights has been shown, it is not necessary to prove that the alleged wrongdoer was involved in the original wrongful appropriation."[104] As a result, the purchase by commercial actors of "appropriated" natural resources falls within the meaning of pillage, irrespective of whether the commercial actors were implicated in the initial extraction of the resources. This highlights how many commercial actors involved in the purchase of conflict commodities can commit pillage as principal perpetrators even though they were not involved in the initial misappropriation.

VIII. Ownership of Natural Resources

50. In order to establish a case of pillage, property must be appropriated without the consent of the rightful owner. Consequently, a court tasked with adjudicating allegations of pillage will have to determine ownership of the property in question. This chapter draws on four areas of law that might require consideration in determining ownership of natural resources. Which of these areas of law is relevant will depend on the circumstances of each particular case, but as a general rule national law and constitutional principles are most likely to define ownership within war crimes cases involving allegations of natural resource pillage.

Ownership of Natural Resources in National Law

51. In the past, cases involving the pillage of natural resources have defined ownership by considering the domestic law governing mineral rights. At Nuremberg, for instance, representatives of the firm Krupp were charged with having pillaged a tungsten mine in northern France, which lead a judge in the case to define ownership of the tungsten ore by assessing the applicable French law. The judge stated that "[u]nder French law all mineral rights are owned by the State but the extracted ores become the property of the individual to whom the government grants a lease or concession for the

purpose of exploiting a mine."[105] A similar approach to defining ownership of natural resources in modern resource wars will require courts to assess ownership based on laws applicable within the country at war. To that end, this section provides an overview of natural resource ownership in various national legal systems.

52. Ownership in natural resources varies between jurisdictions and depending on the nature of the natural resource—forestry in Liberia is not subject to the same system of ownership as oil in Iraq. There are, however, three models of natural resource ownership which cover most scenarios.[106] The first of these models, known as the claims system, confers ownership of minerals on anyone who discovers the deposit, subject only to certain formalities. According to this model of ownership, undiscovered minerals belong either to the state or to no one and become the property of whoever asserts first title. In the United States, for instance, minerals such as gold, silver, tin, and copper located on public land are still subject to a claims system.[107] By contrast, the accession system stipulates that natural resources such as timber or copper belong to the owner of the land where the resources are found. This system derives from Roman law, which considered ownership of land to imply ownership of all property below the surface to the center of the earth and above as far as the sky. The accession system remains in force with respect to many natural resources in the United Kingdom, although the British Government has created exceptions for specific minerals such as oil, gas, and coal.[108] The third and final model of resource ownership is known as the concession system, which typically vests ownership of natural resources in the state, and gives a particular state organ authority to grant rights to search for, extract, process, and sell these resources.

> "The deposits of mineral substances, including artificial deposits, underground water and geothermal deposits on surface or in the sub-soil or in water systems of the National Territory, are the exclusive, inalienable and imprescriptible property of the State. However, the holders of mining or quarry exploitation rights acquire the ownership of the products for sale by virtue of their rights."
>
> Congolese Mining Code (2002), Article 3

53. Although a court will have to investigate the laws applicable within the specific country at war in order to bring pillage charges, the concessionary system is likely to be the most common model. In the vast majority of developing nations, where resource wars are most prevalent, domestic legislation indicates that the state owns specific natural resources within the territory, except when these resources are allocated to a

private party through a concession or agreement.[109] In Ecuador, for example, the Ecuador Mining Law of 1991 states that "[a]ll the mineral substances existing in the territory....belong to the inalienable and imprescriptible domain of the State..." Likewise, Article 14(1) of the Sierra Leonean Mines and Minerals Decree of 1994 states that "[a]ll rights or ownership in, of searching for, mining and disposing of minerals in, under or upon any land in Sierra Leone and its minerals continental shelf are vested in the Republic of Sierra Leone." By way of further example, Section 2 of the Philippines Mining Act (1995) states that "[a]ll mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State." Most states have passed legislation that contains equivalent provisions.

54. Many state constitutions also address the ownership of natural resources. Article 9 of the Constitution of the Democratic Republic of the Congo states that "the State exercises a permanent sovereignty over Congolese soil, sub-soil, waters and forests as well as maritime and airspace. The modalities of the management of the State's domain mentioned in the preceding sentence are determined by law."[110] Similar provisions are contained in the Chinese Constitution, which also emphasizes that "[m]ineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land and beaches that are owned by collectives in accordance with the law...." These provisions provide anecdotal examples of legislative and constitutional provisions that are likely to determine ownership of natural resources in cases focused on the pillage of resource wealth.

55. It nonetheless bears recalling that natural resources are sometimes privately owned, either when the resource in question is governed by a claims or accession system of ownership or when a state has conferred title in the resource to a private party. For example, Congolese legislation recognizes the right of private entities to acquire ownership in natural resources when it stipulates that "[t]he deposits of mineral substances, including artificial deposits, underground water and geothermal deposits on surface or in the sub-soil or in water systems of the National Territory, are the exclusive, inalienable and imprescriptible property of the State. However, the holders of mining or quarry exploitation rights acquire the ownership of the products for sale by virtue of their rights."[111] Similarly, according to the Peruvian Law of Sustainable Use of Natural Resources, natural resources at their source, be these renewable or nonrenewable, are owned by the nation, but the products derived from them, and obtained in the form as prescribed under the law, are owned by the title holders of rights granted to them.[112] Consequently, prosecutors should bear in mind that private entities can also own natural resources that are pillaged from conflict zones.

Further Reading

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International and Comparative Mineral Law and Policy: Trends and Prospects (Elizabeth Bastida et al. eds., Kluwer, 2005).

Elizabeth Bastida, Basic Instruments and Concepts of Mineral Law, http://www.natural-resources.org/minerals/education/docs/Mineral%20Law%20&%20Policy-Unit2.pdf.

Permanent Sovereignty over Natural Resources

56. The doctrine of permanent sovereignty over natural resources has the potential to affect the reliance on domestic law in determining ownership of natural resources in certain contexts. In general terms, sovereignty dictates which entity can freely dispose of natural resources, or in other words, who has the power to determine ownership. The doctrine's relevance to pillage is disputed. In the *Uganda v. Congo* case, the International Court of Justice concluded that although permanent sovereignty over natural resources "is a principle of customary international law," there was nothing suggesting that it is "applicable to the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State."[113] Nonetheless, as Judge Koroma cogently argues in a separate opinion in that case, "these rights and interests [permanent sovereignty over natural resources] remain in effect at all times, including during armed conflict and occupation."[114] Consequently, this section reviews the development of permanent sovereignty over natural resources then goes on to explore the two instances where this principle may be most relevant for present purposes.

57. The doctrine of permanent sovereignty over natural resources developed during the decolonization process in order to ensure that newly-independent states were not bound to respect pre-existing resource concessions agreed to during colonial rule. At the same time, newly-independent states involved in drafting the notion of permanent sovereignty were motivated to emphasize that "peoples" still struggling for independence had power over their nations' resource wealth. As a result of these two purposes, the first codifications of the right to permanent sovereignty over natural resources inconsistently vested ownership in "peoples," "nations," and "states." For instance, in

the most frequently cited source of the right to permanent sovereignty over natural resources, UN General Assembly Resolution 1803, states that "[t]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned."[115] And yet, the preamble to the same resolution speaks of "the inalienable right of all States freely to dispose of their natural wealth and resources..."[116] This duality was replicated in the African Charter of Human and Peoples' Rights,[117] and apparently also in the International Covenants on Civil and Political Rights and Economic, Cultural and Social Rights.[118] In addition, a large number of General Assembly resolutions speak of "countries" or "states" as the holders of permanent sovereignty over natural resources.[119]

"Even if, as I suspect, the question of permanent sovereignty in relation to independent States is a right of States rather than peoples, in the context of colonial self-determination it seems clearly to be a peoples' right."

Professor James Crawford

58. Although some scholars argue that only peoples enjoy permanent sovereignty over natural resources,[120] a majority of experts tend to the view the right as one that inheres in peoples or states depending on the context. Schrijver, for instance, advocates for a return to the roots of permanent sovereignty by favoring a people-centered interpretation of the concept,[121] but later concedes that "a clear tendency can be discerned to confine the circle of direct permanent sovereignty subjects solely to States, that is all States."[122] In the same vein, despite clear wording in human rights treaties stating that "[a]ll peoples may, for their own ends, freely dispose of their natural wealth," Hossain argues that "[a]t the core of the concept of permanent sovereignty is the inherent and overriding right of a state to control and dispose of the natural wealth and resources in its territory for the benefit of its own people."[123] Others, such as Brownlie conclude that, loosely speaking, "permanent sovereignty is the assertion of the acquired rights of the host State which are not defeasible by contract or perhaps even by international agreement,"[124] whereas the UN Security Council has referred to peoples' rights to natural resources on more than one occasion.[125] Given that permanent sovereignty over natural resources vests in both peoples and states, the doctrine can arguably be relevant to pillage cases in either scenario.

59. In the first of these scenarios, the people's right to permanent sovereignty over natural resources may be relevant where resources are appropriated from peoples who enjoy an unrealized right to self-determination. Crawford, for instance, states that "even if, as I suspect, the question of permanent sovereignty in relation to independent States

is a right of States rather than peoples, in the context of colonial self-determination it seems clearly to be a peoples' right."[126] The same opinion finds support in the views of the UN legal advisor involved in drafting the principles, who suggests that the terms "peoples and nations" were originally intended to cover non-self-governing territories "which could not be covered by any concept of the sovereignty of States over natural resources."[127] In this light, ownership of Nauruan phosphates exploited during the Australian, New Zealand, and British mandate over Nauru,[128] for instance, might be determined pursuant to rules of permanent sovereignty over natural resources, not the national law of the trustee nations. In these sorts of instances, permanent sovereignty might be central to liability for pillage.

60. In the second scenario, an independent state's right to permanent sovereignty over natural resources might be pertinent if privately owned resources were expropriated by national decree. This occurs most frequently where a state seeks to rescind a previous concession over natural resources, despite the binding contractual agreements between the recipient of the concession and the state. Determining ownership in this context may require recourse to the state's right to permanent sovereignty over natural resources. Although many would argue that this type of expropriation is inherent in a state's inherent territorial sovereignty, a majority of states attribute the ability to permanent sovereignty over natural resources. In the Amoco award, for instance, the U.S.-Iran Claims Tribunal explicitly found that "the right to nationalize property is today unanimously recognized, even by states that reject the notion of permanent sovereignty over natural resources, considered by a majority of states as the foundation of such a right."[129] On this basis, the doctrine may have some role to play in the limited number of cases involving pillage of resources previously expropriated by a government.

Further Reading

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Kamal Hossain and Subrata Roy Chowdhury (eds.), *Permanent Sovereignty over Natural Resources in International Law*, (St. Martin's Press, 1984).

Indigenous Ownership of Natural Resources

61. In other circumstances, indigenous groups might own natural resources within a conflict zone. Although it is important to recall that ownership and sovereignty are distinct concepts, a number of recent cases have found that indigenous groups have proprietary interests in natural resources in areas they traditionally occupied, as well as procedural entitlements surrounding the use and allocation of these resources. Indigenous peoples might thus enjoy ownership of certain natural resources illegally exploited during armed conflict, irrespective of whether national mining legislation or domestic constitutional principles explicitly recognize these rights. It is therefore essential to understand the legal principles and precedents governing indigenous rights to natural resources, because this body of law might require closer consideration in assessing the liability of commercial actors for the pillage of natural resources within countries at war.

62. A number of international instruments support the notion of indigenous property rights in natural resources located within areas traditionally occupied by indigenous peoples. The International Labor Organization's Convention (No. 169) concerning Indigenous and Tribal Peoples, for example, affirms indigenous peoples' rights of ownership and possession of the lands they traditionally occupy, and requires governments to safeguard those rights and to provide adequate procedures to resolve land claims.[130] In addition, the United Nations Declaration on the Rights of Indigenous Peoples confirms the rights of indigenous people to "lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired."[131]

63. International courts have implemented these rights by relying on the human right to property. In the *Awas Tingni Community* case, the Inter-American Court of Human Rights found that Nicaragua had violated the human right to property enjoyed by the Awas Tingni indigenous community by issuing concessions over their traditional lands to companies interested in developing roads and exploiting forestry from the territory.[132] According to the court, the property rights protected by the human rights conventions are not limited to those property interests already recognized by states or defined by domestic law—the right to property has an autonomous meaning in international human rights law. As such, property rights of indigenous peoples are not defined exclusively by a state's formal legal regime, but also include property that arises from indigenous custom and tradition.[133]

64. These principles were further advanced by the Inter-American Commission on Human Rights in the *Maya Indigenous Communities* case, where the commission

Nico Schrijver, "Unravelling State Sovereignty? The Controversy on the Right of Indigenous Peoples to Permanent Sovereignty over their Natural Wealth and Resources," in *Changing Perceptions of Sovereignty and Human Rights* (Nico Schrijver and Jenny Goldschmidt eds., 2008).

James s. Anaya, *Indigenous Peoples in International Law*, pp. 141–148 (Oxford, 2004).

A Rebel Group's Ownership of Resources under Its Control

66. In many civil wars such as those in the Democratic Republic of the Congo, Burma, and Cote d'Ivoire, rebel factions take over large portions of territory, then establish their own parallel administration. This often involves rebel groups appointing their own minister of mines, creating a separate body charged with granting mining concessions and issuing formal decrees cancelling earlier mining rights. The two conflicting systems of resource regulation create an inescapable tension. On the one hand, concessions issued by state authorities become irrelevant formalities in rebel-held territory where national law is ignored. On the other, decrees issued by rebel movements purporting to grant rights in natural resources contravene constitutional principles and the terms of the national legislation. Even though certain national jurisdictions have accepted that the rebel groups' seizures might be lawful to the extent that the group effectively controls the territory,[140] a growing body of more recent jurisprudence insists that ineffective national law remains applicable in rebel held territories.

67. During the American Civil War, the Confederate rebellion established in the South of the United States purported to pass legislation seizing state property. In *White v. Texas*, the United States Supreme Court was asked to determine the right of two individuals named White and Chiles to national bonds they purchased from the Confederacy after the bonds had been seized by Confederate legislation. In declaring the legislative acts that claimed to seize the property null and void, the Supreme Court reasoned that while an unlawful government might be capable of passing laws regulating marriages and protecting other basic functions of daily life, "acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of the like nature, must, in general, be regarded as invalid and void."[141] The Confederacy thus had no power to pass legislation seizing state bonds, meaning that White and Chiles received no title in the bonds they purchased.[142]

68. The U.S. Supreme Court's reasoning on this topic was later adopted by the International Court of Justice, albeit in a slightly different context that did not involve rebel groups as such. In an important advisory opinion dealing with the consequences of South Africa's then continuing presence in Namibia, the International Court of Justice applied the U.S. Supreme Court's conclusion in *White v. Texas* in a case that dealt with natural resource exploitation more explicitly. In advising states on the legal implications arising from South Africa's illegal presence in Namibia, the International Court of Justice reasoned that:

> In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.[143]

69. Consequently, attempts by the then South African government to grant title in Namibian natural resources were "illegal and invalid," since the expropriation of natural resources could hardly be reconciled with the humanitarian exceptions to the general rule—expropriating natural resources is not analogous with registering births, deaths, and marriages. One of the judges on the case explicitly confirmed this interpretation in a separate opinion by stating that "other States should not regard as valid any acts and transactions of the authorities in Namibia relating to public property, concessions, etc."[144] Other leading authorities, such as the UN Security Council and United Nations Council for Namibia, later confirmed this view.[145] And even though the case involved foreign occupation rather than legislation passed by a rebel group, the principles derived from the advisory opinion would appear to apply with equal relevance to situations where a rebel group seizes territorial control in a civil war.

70. The European Court of Human Rights has tacitly confirmed this view in a case involving the seizure of private property from an entity that was not recognized as a state by the international community. In *Loizidou v. Turkey*, the court ruled that the petitioner's right to property was violated by expropriations premised on legislation enacted by an unrecognized government, namely the Turkish Republic of Northern Cyprus (TRNC). The TRNC had seized control of the property in Northern Cyprus following the Turkish military intervention in the territory in May 1974, which sparked the partitioning of Cyprus along ethnic lines. Over the years that followed, the TRNC

authorities established a government, promulgated a constitution, and declared independence. The international community, however, universally rejected these claims, relegating the TRNC to a status approximately equivalent to a rebel group in most contemporary resource wars. As a consequence of the TRNC's unrecognized status, the European Court of Human Rights deemed the provision of the TRNC Constitution that purported to expropriate private property void. In reliance of the International Court of Justice opinion on Namibia, the European Court declared that:

> [t]he Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely.... The Court confines itself to the above conclusion and does not consider it desirable, let alone necessary, in the present context to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'. It notes, however, that international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, for instance as regards the registration of births, deaths and marriages...[146]

71. As previously mentioned, certain domestic jurisdictions adopt a different interpretation in their own private international law,[147] but it is doubtful whether these limited exceptions remain valid in light of the more recent international precedents identified above. Moreover, international criminal courts and tribunals will follow precedents derived from public not private international law, thereby confirming the reasoning in the *White v. Texas*, *Namibia*, and *Loizidou* cases. Consequently, domestic courts are also likely to adopt this position in order to ensure that their domestic standards are compliant with those applicable before international courts. This pressure for harmonized standards between international and domestic legal systems is especially strong in international criminal law, because the ICC's complementary jurisdiction creates real incentives for national courts to follow international interpretations. In the vast majority of instances, then, national legislation will define ownership in natural resources during war, even when rebel groups promulgate new law in territory they control. As a later section explains, potentially adverse humanitarian effects of this interpretation are partially offset by aspects of the law of war.[148]

Further Reading

Antonello Tancredi, "A Normative 'Due Process' in the Creation of States Through Secession, in Secession," *International Law Perspectives* 171, 200-207 (Cambridge, 2006).

Brad R. Roth, *Governmental Illegitimacy in International Law*, 152–159 (Clarendon Press, 1999);

Enrico Milano, *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality and Legitimacy*, 136-150 (Martinus Nijhoff, 2006).

Ownership through Recognition of Governments and New States

72. In some instances, it may be necessary for a court adjudicating allegations of pillage to identify the government. In international law, recognition serves this purpose. This recognition can have important consequences for determining ownership of natural resources in conflict zones, because it effectively distinguishes actions that would be illegal when carried out by private actors from those that are legitimate exercises of sovereign authority. In other words, the forcible acquisition of natural resources by an unrecognized group will generally amount to theft, whereas a recognized government not only has the authority to control natural resources through regulations in force, it also enjoys the power to amend legislation governing resource exploitation or to expropriate pre-existing property rights. In order to clarify the potential relevance of these issues, this section provides an overview of the law governing the concept of recognition in international law together with a series of cases that highlight how the doctrine might potentially impact corporate liability for pillaging natural resources from war zones.

73. In certain conflicts, recognition plays very little role in determining ownership of natural resources, because the UN Security Council has passed resolutions that prevent states from recognizing a particular faction as a government. In the case of the Turkish Republic of Northern Cyprus, for instance, Security Council Resolution 541 (1983) called upon all states "not to recognise any Cypriot State other than the Republic of Cyprus ..."[149] As a result, the European Court of Human Rights was adamant that the constitution passed by the TRNC purporting to acquire private property was null and void.[150] These types of situations have also arisen in Rhodesia, Namibia, and Kuwait, creating situations where warring factions are unlikely to be able to claim the rights of a government over resource wealth.[151] In these situations, armed groups have no title to state-owned or privately held mineral wealth, rendering corporate trade with these groups equivalent to receiving stolen property.

74. Recognition is also less relevant when a de facto administration of part of a country has no plausible claim to represent a national government. In the Democratic

Republic of the Congo, for instance, rebel groups controlled large portions of Congolese territory, but never claimed to represent the national government or to secede from the Congo. In such situations, recognizing these rebel movements as the governments of the Congo would violate international law, which stipulates that "[r]ecognizing or treating a rebellious regime as the successor government while the previously recognized government is still in control constitutes unlawful interference in the internal affairs of that State."[152] While states might recognize these groups as rebellions or insurgencies, these forms of recognition have not been exercised since the American Civil War and would only mean that rebel groups become bound by the law governing international armed conflict.[153] As the subsequent section on exceptions in the laws of war will show, rebel groups would not enjoy the right to exploit natural resources in these circumstances.

"[c]ourts of high repute have held that confiscation by a government to which recognition has been refused has no other effect in law than seizure by bandits or by other lawless bodies."

New York Supreme Court, *Sokoloff v. National City Bank of New York* (1924)

75. In other instances, however, recognition by foreign governments will play an important role in determining which group enjoys governmental status in foreign courts when multiple parties claim to represent the state. A case heard in U.S. courts relating to competing claims to government during the Liberian civil war best highlights this scenario. In *Bickford v. Liberia*, the Interim Government of Liberia and the National Patriotic Reconstruction Assembly Government (NPRAG) both sought payment of funds held in the United States that belonged to the state of Liberia.[154] The funds, held in the United States as a result of payments to the Liberian state mining company, unquestionably belonged to the state of Liberia. The only question requiring clarification was which of the two entities represented the state. To answer the question, the court obtained a certificate from the U.S. Department of State indicating that it favored the claim of the interim government. By implication, the exploitation of natural resources by the NPRAG "government" was unlawful insofar as this unrecognized government went beyond transactions such as the registration of births, deaths, and marriages. Companies that trade natural resources with unrecognized governments such as these therefore risk liability for pillaging these commodities.

76. Companies are also vulnerable to criminal prosecution for trading natural resources with secessionist movements that are not recognized as new states. During the Biafran civil war, for instance, a Nigerian separatist group traded oil expropriated from within territory under its control, but failed to garner sufficient recognition from

foreign states to achieve political autonomy. The extraction of oil was therefore unlawful for reasons similar to those applicable in the NPRAG government mentioned above—the Biafran separatist movement had no capacity to displace state ownership in the oil it sold to businesses or to substitute for the state during the conflict. By contrast, the widespread recognition of Bangladesh after it claimed independence from Pakistan enabled the Bangladeshi authorities to legitimately exercise eminent domain over natural resources within the territory. Unlike failed succession attempts in Biafra and elsewhere, Bangladeshi authorities could therefore issue decrees granting commercial actors rights to resource wealth. As the next paragraph shows, this analysis becomes more complicated when some states recognize the secessionist movement as a new state while others do not.

77. The more problematic scenario arises when foreign states are split in their recognition of competing governments within a country at war. There are several pertinent examples of this phenomenon. At the outset of the Angolan Civil War in 1975, countries aligned with the Soviet bloc recognized the MPLA Government (the People's Republic of Angola), while the United States, South Africa, and others supported and recognized the claims of the Democratic People's Republic of Angola lead by UNITA. Although this situation later changed as the MPLA gained ascendancy over the ensuing years of bloodshed, the task of identifying the government capable of allocating natural resources during these initial years was inescapably problematic—both armed groups had internationally supported claims to constitute the lawful government of the state. Although complexities of this sort probably make a conviction for pillage less viable during this period, they are nonetheless rare and need not detract from the range of situations where armies trading natural resources with commercial actors are simply never recognized.

Further Reading

Ian Brownlie, *Principles of Public International Law*, pp. 85–102 (Oxford, 7th Edition, 2008).

Brad R. Roth, *Governmental Illegitimacy in International Law*, 152–159 (Clarendon Press, 1999).

Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, pp. 1–111 (Oxford, 1998).

IX. Exceptions in the Laws of War

78. In the earlier section dealing with the definition of pillage, we observed that the majority of contemporary war crimes trials define pillage as appropriation of either public or private property without the consent of the owner, subject to limitations set out in the Hague Regulations.[155] As that section shows, these exceptions in the Hague Regulations color the interpretation of pillage; not "private or personal use" or "military necessity" as set out in the ICC Elements of Crimes.[156] In keeping with this position, this chapter explores the law governing each of the exceptions contained in the Hague Regulations, showing that although an army might have a limited ability to exploit resources in occupied territory for the benefit of the local population, the forcible exploitation of natural resources from outside occupied territories or where an occupying army does not apply the proceeds of resource sales to the needs of the local population constitutes pillage.

Requisitions "for the Needs of the Army of Occupation"

79. The Hague Regulations condone requisitions of privately owned property "for the needs of the army of occupation."[157] The term is widely understood as meaning property essential to the army's immediate upkeep. *The Krupp Judgment*, for instance, considered

that requisitions entailed "billets for the occupying troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the army of occupation, and the like."[158] Other authorities define the category as including such things as "food and supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like."[159] Even allowing for a broader interpretation in modern warfare, natural resources extracted or traded for profit during war are not comparable to these objects, all of which are necessary for the day-to-day needs of an army.

80. The transfer of requisitioned property to areas outside occupied territory would also contradict "the needs of the army of occupation." In a decision of obvious relevance for companies exporting natural resources acquired from contemporary conflict zones, an Anglo-German Mixed Arbitral Tribunal found that the shipment to Germany of a quantity of cotton seized by the German army of occupation in Antwerp during World War One could not constitute a requisition because the export of the property evidenced a purpose that was patently inconsistent with the immediate needs of the occupying army.[160] Companies exporting minerals such as gold, coltan, and cassiterite from conflict zones can therefore be confident that the resources were not legitimately requisitioned.

81. The sale of requisitioned property is also categorically prohibited, further undermining suggestions that conflict commodities could be legitimately requisitioned. A robust body of judicial authority emphasizes that requisitions cannot be effected for the purposes of commerce without transgressing the "needs of the army of occupation."[161] In the words of one Belgian court, "[i]f a measure was taken in reliance on Article 52 [of the Hague Regulations], the chattel must be used for the needs of the army of occupation and therefore cannot, in principle, be sold."[162] The French Cour de Cassation has agreed with this finding, insisting that although international law might afford an army the right to requisition property owned by private individuals, "it does not give an army of occupation the right to sanction the transfer to private individuals of goods taken from others by acts of violence."[163] On the strength of these various precedents, leading commentators confirm that "not only requisitioning for shipment to the occupant's home country has been held illegal, but also requisitioning for resale and profit rather than for the use of the occupying army."[164] Requisitions, therefore, will not suffice to pass title in natural resources traded by rebel groups or foreign armies.

Moveable State Property "of a Nature to Serve Operations of War"

82. Article 53 of the Hague Regulations stipulates that "[a]n army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations."[165] Although the provision contains an ambiguity this section explores in more detail, publicly owned moveable resources, such as artisanal diamonds or gold, do not fall within the correct interpretation of the rule.

83. The rule contains a contradiction. One the one hand, the authoritative French equivalent of the phrase "used for military purposes," is "of a nature to serve operations of war."[166] This implies that an occupying army can only seize moveable state property that could be used immediately in battle, such as "depots of arms, means of transport, stores and supplies." On the other, as one leading commentator points out, "cash, funds and realizable securities" are also listed in the rule, even though they inevitably require conversion in order to serve military purposes.[167] Given this ambiguity, the provision's negotiating history becomes important. This history confirms that the word "nature" in Article 53 was intended to limit legitimate seizures of state moveable property to property which, "by its very nature" is capable of military use.[168] In fact, the word "nature" was inserted precisely in order to avoid the argument that "everything that can be converted into money can serve the goals of war."[169] Consequently, a majority of commentators rightly interpret the term "of a nature to serve operations of war" as only covering objects "susceptible to direct military use."[170] Diamonds, gold, and timber, of course, are no more susceptible of direct military use than art, which is frequently the subject of pillage proceedings.[171]

84. A number of cases support this interpretation. In the *Krupp* case, for instance, the U.S. Military Tribunal at Nuremberg found that "machinery and raw materials" hurriedly removed by corporate representatives from a state-owned steel works in Ukraine during an evacuation constituted pillage.[172] The tribunal rejected arguments that the state property was legitimately seized, finding that "the property removed did not fall into any category of movable public property which the occupant is authorized to seize under the Hague Regulations."[173] If publicly owned machinery and raw materials from a steel works cannot be lawfully seized as state moveable property, forcible acquisition of artisanal minerals such as gold and diamonds cannot be justified based on the same provision. This reasoning is consistent with a variety of other decisions, which have

condemned the trade in a wide range of state property that was seized then sold by occupying forces.[174] And although at least one decision has adopted a divergent position,[175] it is difficult to reconcile the position adopted in this case with the bulk of the case-law on the subject, the majority position among academics or the negotiating history set out above. The preferable interpretation of Article 53(1), to cite a Belgium court, is that "the decision of the enemy to alienate a chattel which he has seized in pursuance of Article 52 or Article 53, and all subsequent alienations, must be regarded as unlawful."[176] This precludes commercial exploitation of state owned moveable resources, including natural resources like alluvial diamonds.

Munitions-de-Guerre

85. The Hague Regulations also recognize the ability of an army to seize munitions of war, irrespective of whether these munitions are owned by public or private parties. Article 53(2) of the Hague Regulations reads "all appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made."

86. The precise definition of the term munitions of war, together with its more frequently deployed translation "munitions-de-guerre," has primarily centered around the legality of seizing privately held crude oil stocks from occupied territories. In the leading case on point, colloquially known as Singapore Oil Stocks, a Singaporean court considered competing claims to crude oil reserves located in Singapore that were initially attributed to a Dutch oil conglomerate, then seized by Japanese troops during the war, before ultimately being recaptured by British forces when Singapore was liberated toward the end of the war.[177]

87. In rejecting the British government's claim that the crude oil they had recaptured constituted munitions-de-guerre, the court drew on a passage contained in the then British Manual of Military Law that rightly defined the term munitions-de-guerre as "such things as are susceptible of direct military use."[178] On the strength of this definition, the court ruled that the need for sophisticated installations and considerable processing to extract and refine the oil meant that the crude oil failed to qualify as "arms or ammunition which could be used against the enemy in fighting."[179] Clearly, most commodities that motivate contemporary resource wars are even less likely to satisfy

this standard, because resources such as diamond, gold, coltan, and cassiterite can only deliver a military application once converted into cash or exchanged for arms.

88. Two years after the decision in *Singapore Oil Stocks*, a revised British manual emerged repudiating the rule in question on the largely unsubstantiated grounds that "there is no justification for the view that 'war material' means materials which could be used immediately without being processed in any way for warlike purposes: for example crude oil could be included in the term 'war material.'"[180] Unfortunately, this change of position was maintained in subsequent editions of the British Military Manual. The most recent version asserts that an army may seize "raw materials such as crude oil."[181] As this section shows, however, this definition is inconsistent with the majority of expert opinion, the negotiating history to the Hague Regulations, and law applied in contemporary war crimes jurisprudence.

89. The vast majority of expert commentators interpret the term munitions of war as implying property "susceptible of direct military use."[182] After completing a full review of the negotiating history to the Hague Regulations, one leading commentator also concluded that the regulations "did not include within the conception of munitions-de-guerre real property or raw materials which would require processing of a costly or lengthy character in order to make them suitable for use in war—despite the fact that when so processed they might be of the utmost value."[183] The preferable definition of munitions of war is thus reflected in the U.S. Military Manual, which defines the concept as "everything susceptible to direct military use."[184]

90. Courts prosecuting pillage have also endorsed this interpretation in practice. In the *Esau* case in 1948, for example, the Special Court of Cassation in the Netherlands ruled that the chief commissioner of Germany's high frequency research council could be held guilty of plunder of public and private property for ordering the removal of a range of scientific instruments together with a sum of gold for war related purposes. In response to the claim that the property was munitions of war, the court ruled that "[n]either the text nor the history of Article 53 gave grounds for the thesis that the term 'munitions-de-guerre' should be extended to materials and apparatus such as boring machines, lathes, lamps, tubes, and gold, nor even to the other objects removed, however important they might be for technical or scientific research."[185] Over half a century later, the *Naletilić Trial Judgment* independently reached a similar conclusion in defining war booty as "material obviously related to the conduct of military operations."[186] The *Hadžihasanović Judgment* also adopted the standards contained in the *Singapore Oil Stocks Judgment* when it declared that "weapons, ammunition, and any other materials

which have direct military applications, even if they are private property, may be seized as war booty."[187] The seizure of natural resources and crude oil cannot be reconciled with this standard.

Usufruct

91. The Hague Regulations restrict the appropriation of immoveable state property through the Roman law device known as usufruct. Article 55 of the Hague Regulations stipulates that "[t]he occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct." The term usufruct literally means "use of fruit." As the translation suggests, the doctrine traditionally allowed an occupant to exploit and consume the fruit from an occupied orchard on the condition that the value of the trees and land was preserved.

92. The extrapolation of this paradigm to natural resource exploitation during war was originally premised on the misconceived perception that minerals were naturally renewable—Roman legal scholars believed that resources within the ground automatically regenerated.[188] These geological misconceptions not only infiltrated early interpretations of usufruct in the law of war, the inaccuracy has endured even in the face of commonly accepted scientific understandings to the contrary. Soon after the Brussels Declaration of 1874 adopted the doctrine of usufruct as a then novel means of limiting an occupying power's rights over immoveable state property, one author argued that the principle entitled an occupying army to "lop forests and work the mines."[189] Having copied this original error, several contemporary military manuals still state that a belligerent has a right "to work the mines" of publicly held property,[190] without recognizing the fallacy of treating minerals as fruits.

93. The misconception of mineral wealth as renewable creates an inescapable internal contradiction. Mining depletes a limited supply of resources, when the central tenet of usufruct demands preservation of capital. As one of the earlier commentators queried: "[t]he products of mines and quarries are certainly not a fruit, but a part of the ground. It is therefore the substance of the thing which the exploiter successively depletes; how can the usufructuary have the right to exploit the mines and quarries when he must conserve the substance?"[191] Evidently, the U.S. Department of State shared this misgiving. In a memorandum addressing the legality of Israeli oil exploita-

tion in occupied Sinai in light of usufruct, the State Department officials argued that "[r]esources such as oil deposits, which are irreplaceable and have value only as they are consumed, cannot be used without impairing the capital of the oil bearing land."[192] For these reasons, the exploitation of non-renewable resources contradicts the expressed wording of Article 55, which mandates that the occupying power "must safeguard the capital of these properties."

94. Commentators are conscious of this legal fiction but reluctant to declare that an occupying army is categorically prohibited from exploiting resources in all contexts. In an article that resembles much of the academic writing on the subject,[193] Claggert and Johnson argue that usufruct "logically prohibits any exploitation of minerals."[194] They nonetheless endorse a portion of definitions of usufruct derived from a number of civil law countries that permit a usufruct to continue exploitation at pre-occupation rates.[195] As the authors themselves acknowledge, the interpretation that a usufruct is entitled to continue pre-occupation rates of extraction is "a not wholly logical compromise between the basic concept of usufruct and a misconceived application of that concept in the law of ancient Rome."[196] The compromise, which is illogical and based on obsolete science, employs a legal fiction that places a state's natural resource wealth in the hands of any foreign army.

"Just as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner."

In Re *Krupp*, at 623.

95. A number of cases have rejected this position in practice. To cite but one illustration, the *Ministries Judgment* at Nuremberg found Paul Pleiger, chairman of Mining and Steel Works East Inc., guilty of pillage. Through this company, Pleiger was responsible for the massive exploitation of state held mines in occupied Russia.[197] In response to submissions that Article 55 of the Hague Regulations allowed seizures of this nature, the tribunal held that "[t]his claim is far too broad."[198] The tribunal thus concluded that the manganese, coal, and iron exploited from these state-owned properties "were seized and used without regard to the rules of usufructuary."[199] Other cases involving pillage of natural resources simply overlook usufruct without addressing the concept at all. For example, of the pillage cases set out in Annex A to this manual, we anticipate that courts could have but did not consider usufruct in over 10 instances, often in contexts that led to convictions for pillaging state-owned natural resources.[200]

Precedents of this nature would preclude all exploitation of all non-renewable natural resources in conflict zones.

96. Despite these precedents, we cautiously endorse the fiction that non-renewable resources can be exploited by an occupying army, provided that the money from these sales is spent exclusively on the humanitarian needs of the local population. Allowing this exception accounts for one of the real concerns with enforcing pillage. A report by a UN panel of experts in 2007, for instance, recommended against imposing sanctions on companies involved in the illicit diamond trade, precisely because "the considerable dependence on artisanal mining... exposes these miners to potentially severe consequences should measures be taken that could threaten an already vulnerable livelihood."[201] A Congolese NGO expressed the same concern in more striking terms, arguing that "calling regulations or relationships established by warring factions for the exploitation of resource wealth 'illegal' is meaningless in a country where the illegal informal economy has been the sole mechanism of survival for large parts of the population."[202] But instead of dispensing with legality altogether, usufruct might be interpreted as creating a limited exception that responds to these humanitarian concerns.

97. This appears to have been the position adopted at Nuremberg. The *Nuremberg Judgment*, for instance, found that "[t]hese articles [in the Hague Regulations] make it clear that ... the economy of an occupied country can only be required to bear the expense of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear." Although the phrase "expense of the occupation" could be interpreted very broadly,[203] the more compelling interpretation limits the term to costs associated with an occupier's humanitarian obligations toward the local population.[204] A wider reading of the exception risks permitting a legal fiction to justify a self-financing military occupation, thereby creating perverse incentives for war. A wider interpretation would also allow a nation's resources to be used to fuel violence against its own people, contradicting the declaration in the *Nuremberg Judgment* that, "[j]ust as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner."[205]

98. In the face of these concerns, courts have rightly limited the term "expenses of the occupation" to the humanitarian needs of the local population. The International Court of Justice, for instance, found that exploitation of natural resources "carried out for the benefit of the local population" was "permitted under international humanitarian law."[206] As a result, if courts endorse the fiction that the doctrine of usufruct applies to non-renewable resources, proceeds from natural resource exploitation in occupied

territory must be spent exclusively on the needs of the local population in order to avoid criminal liability for pillage. In this light, a company or business representative perpetrates pillage by acquiring natural resources through an occupying army when proceeds from the transaction are not spent on the local population. A range of factors are capable of satisfying this standard. These might include situations where (a) the occupier uses proceeds from the sale to purchase weapons or to finance the war effort more broadly; (b) where proceeds from resource rents only benefit military or political elites; or (c) when the proceeds from illicit resource transactions are repatriated to a foreign country or region beyond the occupied territory.

99. Some also argue that a usufruct cannot exploit natural resources beyond pre-occupation rates, although we do not consider this claim sufficiently settled to justify criminal liability. According to many interpretations of usufruct, an occupying army cannot increase rates of exploitation within the territory it controls. As one expert explains, an occupant "may not cut more timber than was done in pre-occupation days."[207] In accordance with this interpretation, the French Court of Cassation held that a businessman who felled in excess of 13,000 trees from state and municipal forests in occupied France during World War Two "could not escape civil and criminal responsibility," because the exploitation exceeded rates permitted by pre-existing regulations.[208] There is, however, considerable opposition to this interpretation. In a dispute involving the drilling of new oil fields in the Sinai, the Israeli government argued that usufruct "includes the obligation and right to continue reasonable, considered and orderly new drillings."[209] Given the number of experts who support this minority view,[210] criminal charges for violating the principle seem difficult to justify. Accordingly, pending legal clarification, we do not recommend charging companies that are only responsible for exploiting natural resources beyond pre-occupation rates.

100. These principles should extend to territories administered by rebel groups during civil wars. As previously mentioned, this proposition is legally controversial, because only foreign military armies who establish an occupation are formally able to exercise the exceptions contained in the Hague Regulations. Recall, for instance, the SCSL's finding that at least in the context of pillage, a range of arguments favors extending these exceptions to non-international armed conflicts as a matter of prosecutorial strategy. To reiterate, certain cases have already extended aspects of The Hague Regulations, which include the right to usufruct, to warring factions operating in non-international armed conflicts. Moreover, offering rebels privileges in the laws of war also creates incentives for them to comply with this body of rules during the course of their hostilities. Finally, rebel groups are frequently subject to the law applicable to international armed conflict insofar as they fight as proxies for foreign governments.[211] With respect to usufruct

specifically, if the doctine serves purely humanitarian purposes, then extending it to civil wars merely promotes the plight of civilian populations in rebel-held territories. In this sense, applying usufruct in civil wars is not only sage prosecutorial strategy, it also furthers fundamental aspirations of international humanitarian law.

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Eliu Lauterpacht, *The Hague Regulations and the Seizure of Munitions-de-guerre,* 32 Brit. Y.B. Int'l L. 218, 226 (1955).

X. Consent

101. Pillage is essentially appropriation of property without consent. In the words of the U.S. Military Tribunal at Nuremberg, "[w]e deem it to be of the essence of the crime of plunder or spoliation that the owner be deprived of his property involuntarily and against his will."[212] This focus on the lack of consent is reinforced by the definition of pillage within the ICC Elements of Crimes, which also insists that "the appropriation was without the consent of the owner."[213] Importantly, this consent must come from the rightful owner. In the context of natural resource exploitation, the earlier chapter on ownership concluded that in most countries suffering the scourge of resource wars, either the state or private parties own natural resource wealth. When the state owns the resources, it frequently consents to the exploitation and trade of these resources by passing legislation that defines procedures for obtaining the right to exploit resources and by empowering a state body to allocate these resources. When private entities own resources, a commercial contract most frequently provides consent. Although this manual cannot explore the various national laws that govern these principle in great detail, this section illustrates several broad examples of the absence of consent in war-time resource extraction and provides guidance on how to determine consent in a particular context.

102. Companies operating in conflict zones often ignore the need for state consent entirely by relying on authorizations granted by rebel groups or foreign military forces. In one such example, the Nazi Hans Kehrl was convicted of pillage for having

exploited large quantities of iron, crude steel, and coal from the Vitkovice Works in then Czechoslovakia.[214] Like a number of companies operating in modern resource wars, Kehrl purported to derive authority from a decree issued by a warring party to the hostilities.[215] The illegitimacy of these sorts of decrees had serious legal ramifications—Kehrl himself was convicted for pillaging steel and coal from the mines. In a similar case, six directors of the firm IG Farben were convicted of pillaging the Strassbourg-Schiltigheim oxygen and acetylene plants in Alsace-Lorraine on the basis that the German civil administration's decree confiscating the plants was "without any legal justification under international law."[216] As a result, the company's directors were found criminally liable because they "acquired these plants from the German Government without payment to or consent of the French owners."[217] Thus, the concessions issued by rebel groups or foreign military in modern war zones will not protect companies against liability for pillage, because these concessions have neither a greater claim to legal justification in international law, nor go further in obtaining adequate consent in accordance with applicable state legislation.

> "[w]e deem it to be of the essence of the crime of plunder or spoliation that the owner be deprived of his property involuntarily and against his will."
>
> *IG Farben* case, at 1134

103. In other circumstances, businesses trade in state-owned natural resources without regard to the various forms of consent expressed in relevant national legislation. These forms of consent often vary depending on the nature of the natural resource and the means of extraction. In the context of industrial mining, for instance, states generally consent to exploitation of valuable resources by issuing a concession or entering into a mining agreement that gives the recipient the exclusive right to extract specific resources within a given area.[218] In some countries, consent to undertake artisanal mining functions differently, by allowing a state representative to designate artisanal mining zones and then by licensing others to exploit and sell resources from these zones.[219] In the Congolese context, for example, the Mining Code of 2002 allows the minister of mines to designate a specific zone from which licensed Congolese nationals can exploit artisanal resources,[220] provided they are then on-sold to registered middlemen (négotiants), who in turn trade the commodities to registered trading houses (comptoirs).[221] It follows that the trade in artisanal resources such as diamonds or gold harvested from outside designated zones or by individuals who have no state-sanctioned authority to act in these capacities is devoid of consent and therefore illegal. The misappropriation of natural resources in violation of these rules is legally equivalent to Wilhelm Stuckart's

conviction for pillaging "cut and uncut precious stones,"[222] because in both instances property is acquired without respecting the proprietors' wishes.

104. Business entities can also pillage natural resources from private owners by exploiting resources allocated to competitors or by simply stealing extracted resources from warehouses or from vehicles during transportation. As the previous section on ownership shows, private entities often own natural resource wealth. In these circumstances, consent must emanate from the private owner, generally through a binding contract or lease. A number of precedents govern the pillage of privately owned property in violation of these standards. For instance, in one war crimes trial convened in Poland soon after the end of World War Two, Joseph Buhler was found guilty of pillage for "economic exploitation of the country's resources," in this instance through the issuance of decrees confiscating privately held mining rights and mining shares.[223] Companies operating in modern-day war zones might not issue decrees or seize private shareholdings in mines in precisely the same way, but in certain circumstances they also benefit from the backing of warring parties to exploit privately held property in natural resources without the consent of the rightful owners. This, once again, risks liability for pillage when the transaction is bereft of the owner's consent.

105. The purchasers of illicitly-seized conflict resources also appropriate property without the owner's consent. Jurisprudence from World War Two again best illustrates the absence of consent in these contexts. In the *Roechling* case, the German businessman Hermann Roechling was found guilty of pillage for purchasing scrap steel from the German company ROGES, knowing that the merchandise had been illegally seized without the consent of the owners. The company ROGES was a mere front established for the German Army High Command and other Nazi authorities, tasked with acquiring property from German military and economic agencies then selling the property to German industry.[224] As previously seen, the tribunal established in the French zone of occupation in Germany convicted Roechling of pillage for purchasing from ROGES, declaring that "Hermann Roechling, like all other German industrialists in the same circumstances, was a receiver of looted property."[225] These allegations are similar to incidents in contemporary resource wars, where businesses have traded with warring factions who exploit natural resources they do not own. In both these situations, the rightful proprietors of the resources do not consent to the trade.

106. Coercion can also vitiate consent in natural resource exploitation during war, which also gives rise to criminal liability for pillage. As the *IG Farben* case famously stated, "[w]hen action by the owner is not voluntary because his consent is obtained by

threats, intimidation, pressure, or by exploiting the position and power of the military occupant under circumstances indicating that the owner is being induced to part with his property against his will, it is clearly a violation of the Hague Regulations."[226] During war, commercial transactions involving natural resources frequently satisfy this standard. In a relatively obvious example, the director of the Dresden Bank, Karl Rasche, was found guilty of pillaging the Rothschild-Gutmann share in the Vitkovice steel plants by negotiating the "sale" of the shareholdings on behalf of the German authorities while one of the owners of the steel plant was held by the Gestapo in Vienna.[227] This, according to the tribunal, constituted pillage.

107. In a further example of coercion, the directors of IG Farben were convicted of pillaging French chemical industries by compelling three of the then primary producers of dyestuffs to agree to participate in a venture named Francolor, in which Farben acquired a 51 percent shareholding to the severe economic detriment of the other participants.[228] After sustained protest, the French companies resigned themselves to essentially gifting their market dominance to a foreign company that was instrumental in the enemy's war effort. The transaction was deficient because Farben had used their relationship with the German army to influence negotiations, such that the transaction was undertaken "in utter disregard of the rights and wishes of the owner."[229] Representatives of IG Farben were thus convicted of pillage for their role in the deal. There are, therefore, a range of circumstances through which businesses acquiring natural resources during war do so without the consent of the rightful owner. A more intricate understanding of how these principles function in a specific context will nonetheless require a closer understanding of the domestic law governing the allocation of the natural resources in the country at war.

Further Reading

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XI. The Mental Element of Pillage

108. Intent differentiates liability for the pillage of natural resources within a conflict zone from the unwitting participation in the trade of stolen conflict commodities. Unfortunately, the Geneva Conventions themselves are unhelpful in defining the mental element required to perpetrate the offense—the Conventions merely stipulate that "pillage is prohibited."[230] The requisite mental elements may therefore vary depending on the jurisdiction that prosecutes pillage. This reality requires a careful study of the applicable standards within the criminal code, legislative act or statute applicable within the jurisdiction that will hear the charges. As a general rule, however, at least two graduated degrees of intention—direct and indirect intent—are possible. As the *Martić Trial Judgment* ruled, "with respect to the *mens rea* of this crime, the unlawful appropriation of the property must have been perpetrated with either direct or indirect intent."[231] In the context of pillage, direct intent refers to a situation where an accused acquires natural resources with the purpose of unlawfully depriving the owner of the property, whereas indirect intent implies a lower degree of intent approximately equivalent to recklessness in certain common law jurisdictions and *dolus eventualis* in civil law systems. This chapter explores these alternatives in greater detail, providing examples of both that might guide future pillage cases.

Direct Intent

109. In all jurisdictions that criminalize pillage, direct intent will suffice to prove the offense. The "direct" intention to perpetrate pillage requires that a business representative purposefully acquires natural resources knowing that the owner does not consent. Hermann Roechling's conviction for the pillage of iron ore from mines in eastern France typifies this standard. Roechling was the president of the board of a family company, which owned three subsidiaries in the iron, steel, and coal industries.[232] After the German invasion of France, Roechling was appointment as general plenipotentiary for the region, which handed him exclusive administrative authority over mines located within the territory. Roechling promptly seized steel plants at Moselle and Meurthe-et-Moselle that yielded 9 million tons of liquid steel per annum "without furnishing to the real owners a proper inventory."[233] In convicting Roechling of pillage, the French Tribunal found that in March 1944 German authorities operating in the region celebrated the mining of 100 million tons of ore from pits located in eastern France alone.[234] Clearly, Reochling's purpose was to acquire natural resources while knowing that the property he acquired was obtained without the true owner's approval. In the words of the tribunal itself, "[t]he act committed by him constitutes, especially in this case, a robbery."[235] The corporate appropriation of natural resources based on the authority of a foreign government or domestic rebel factions will frequently satisfy this same standard.

110. Many national criminal jurisdictions also distinguish a marginally lower standard of direct intent, where the perpetrator does not want to acquire property unlawfully but is nonetheless aware that this is a virtually certain consequence under the prevailing circumstances.[236] In many jurisdictions, this is known as oblique intention. Again, the example of the company ROGES from the World War Two jurisprudence illustrates the application of this principle to the corporate pillage of natural resources.[237] To recall, ROGES was created by the German Army High Command together with other Nazi authorities.[238] The company was tasked with acquiring property from German military and economic agencies, then on-selling the property to German industries. The Krupp firm purchased two categories of property from ROGES—illegally seized property known as "booty goods" and so-called "purchased goods" that the German economic agencies were compelled to purchase from vendors on the black market.[239] The tribunal found that Krupp "received wares and goods of all kinds from ROGES," particularly large quantities of scrap steel.

111. The tribunal was also satisfied that the Krupp directors received clear indicators that the Booty Goods were in fact stolen property. According to the tribunal, the pur-

chased goods were delivered to the Krupp firm with an attached invoice reflecting the price ROGES had paid for the property, whereas stolen booty goods were simply sent to Krupp without an invoice or any other indication of price.[240] In reimbursing ROGES for its "commerce," Krupp would immediately repay the amount indicated on the invoices for purchased goods, whereas the two companies would negotiate a nominal price for booty goods some considerable time after Krupp received the property. From the disparity in these accounting procedures, the tribunal deduced that "the Krupp firm knew the source of these goods purchased from ROGES and that certain of these items such as machines and materials were confiscated in the occupied territories and were so-called booty goods."[241] Six representatives of the firm were convicted of pillaging the booty goods as a consequence.

112. The same principles will apply to companies operating in modern conflicts, where correspondence from military groups selling natural resources, transportation records, the origins of certain types of resources and other relevant evidence also render the illicit origins of the commodities virtually certain.

Indirect Intent—Probably Stolen

113. Commercial actors are also guilty of pillage in a number of jurisdictions based on what international courts often refer to as an indirect standard of intent. As previously mentioned, indirect intent involves taking impermissibly high risks, which national legal systems describe as recklessness or *dolus eventualis*. Some but not all criminal jurisdictions will allow liability for pillaging natural resources based on an indirect standard of intent. Ad hoc international criminal tribunals, for instance, have consistently affirmed that pillage can be perpetrated with only indirect intent. As mentioned earlier, the *Martić Trial Judgment* and other international jurisprudence have clearly found that pillage may be perpetrated "with either direct or indirect intent."[242] These findings are especially important for other courts, because they purport to represent the current state of customary international law on the issue. Nonetheless, there remains some doubt whether the ICC Statutes are equally broad.[243] This inconsistency is also true at a domestic level. In some, indirect intent will suffice to prove pillage—a number of common law jurisdictions adopt a rule that, in the absence of specific language defining the *mens rea* requirement for a crime (as is the case with pillage), intent should be interpreted as at least implying recklessness.[244] Similarly, in continental European jurisdictions, case-law extends the concept of *dolus eventualis* to all offenses, which would logically extend to pillage.[245] Yet, other national jurisdictions may insist that only direct

intent suffices.[246] For the benefit of those jurisdictions where indirect intent might suffice to prove pillage, this section provides a general overview of indirect intent standards, then explores how these standards might apply to commercial actors pillaging natural resources.

114. Indirect intent encompasses different concepts in different jurisdictions, but knowledge that natural resources are probably stolen provides helpful general guidance. In many common law jurisdictions, recklessness means "consciously disregarding a substantial and unjustifiable risk that the material element exists or will result".[247] In continental European jurisdictions, the concept of *dolus eventualis* demands that the perpetrator perceive the occurrence of the criminal result as possible, and that he or she at least makes peace with this possibility.[248] In a bid to harmonize these differences, ad hoc international criminal tribunals refer to indirect intent as requiring proof of "awareness of a substantial likelihood" or "knowledge that the offense was a probable consequence of the act or omission."[249] Conveniently, this latter description aligns with definitions of intention attributed to theft in the U.S. Model Penal Code. The Model Penal Code stipulates that theft is perpetrated when a person "purposely receives, retains, or disposes of moveable property of another knowing that it has been stolen, or believing that it has probably been stolen..."[250] On this basis, the rest of this manual employs the phrase "probably stolen" for ease of reference in describing indirect intent, conscious that the actual legal test will vary from jurisdiction to jurisdiction

115. A range of evidence can be used to establish that a company acquired natural resources from a war zone knowing that they were probably stolen. Although the type of proof necessary will very much depend on the circumstances of each case, several indicators are especially common. Payment of a price well below market rates is a primary factor in establishing knowledge that property is stolen within domestic legal systems.[251] At Nuremberg, six representatives of the firm Krupp were convicted of pillage for purchasing machinery in occupied France for "a ridiculously low price."[252] The principles underlying the conviction parallel events in certain contemporary resource wars, where companies purchase minerals from warring factions at prices well below market rates available elsewhere.[253]

116. In other situations, the clandestine nature of certain mineral transactions also serves as an indicator that natural resources acquired from a conflict zone were probably illicitly acquired. For example, purchasing conflict commodities like diamonds from known arms traffickers or a warlord under a shroud of secrecy could suggest that the purchasers knew that the property was probably stolen. In the same vein, unheeded warnings from reputable authorities that property stems from illicit sources

can also evidence the requisite degree of knowledge. A company that continues to source natural resources from a warring faction, even once informed of the origins of their merchandise by investigators, public authorities, NGOs or other credible sources, is therefore aware that their resources are probably stolen. Depending on the circumstances, other types of evidence such as transportation logs, commercial contracts, and testimony from customs officials might also be useful in demonstrating the applicable mental element.

117. A

fies slightly the means of proving the mental elements for pillage. This section briefly explains this variation, in order to avoid confusion about how usufruct intersects with intention. As the following paragraphs explain, in situations where usufruct applies, the focus shifts from whether companies acquired natural resources aware of the certainty, virtual certainty, or probability that the resources were acquired without the owner's consent, to whether they were aware that the requirements of usufruct were not satisfied.

119. This chapter has shown that different jurisdictions adopt different mental elements for pillage, depending on the extent to which they embrace direct and indirect standards of intent.[258] In the context of pillage, these mental elements modulate the degree of awareness an individual must possess in order to merit blame for pillaging natural resources. As we have seen, each of the three standards (awareness with certainty, awareness of a virtual certainty, and awareness of the probability) relate to the illegality of the underlying resource transaction.[259] In most circumstances, this illegality is proved where the businessperson is aware that the resources in question are acquired without the owner's consent. As the U.S. Military Tribunal at Nuremberg declared "[w]e deem it to be of the essence of the crime of plunder or spoliation that the owner be deprived of his property involuntarily and against his will."[260] Nonetheless, because usufruct acts as an exception to the need for consent, establishing intent in this scenario requires proof of an awareness that the exploitation in question did not comply with the law of usufruct.

120. The first means of establishing this awareness is to show that the exploitation was not "carried out for the benefit of the local population."[261] Earlier in this manual, we concluded that a range of factors are capable of proving this standard, including situations where (a) the occupier uses proceeds from the sale to purchase weapons or to finance the war effort more broadly; (b) where proceeds from resource rents only benefit military or political élites; or (c) when the proceeds from illicit resource transactions are repatriated to a foreign country or region beyond the occupied territory.[262] The second means of establishing this awareness, also articulated earlier, arises where the occupying army exploits resources at a rate that exceeds that "done in pre-occupation days."[263] In cases where occupying armies of rebel groups exploit state-owned immovable natural resources from territories they control, the emphasis in pillage prosecutions will therefore shift to showing the business representative was aware of these elements, which render the transaction illegal.

Further Reading

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XII. The Criminal Responsibility of Corporations and Their Representatives

Individual Criminal Responsibility of Business Representatives

121. The traditional means of prosecuting corporate criminality involves indicting representatives of a company in an individual capacity for crimes perpetrated during the course of business. As early as 1701, a British court dismissed the corporate structure as irrelevant in criminal trials of business representatives, declaring that "a corporation is not indictable, but its individual members are."[264] This reasoning continues to govern white-collar crime in common law jurisdictions, where individual business representatives are frequently prosecuted for offenses like insider trading, tax evasion, and fraud. Civil law states adopt the same approach. In Germany, for instance, the absence of criminal liability of the corporate entity itself requires public prosecutors to "find out individual allegations against single employees of the company and to accuse these employees individually."[265] Other jurisdictions, such as France, have codified provisions within the Criminal Code that formally stipulate that "the criminal responsibility of the corporate entity does not exclude that of natural persons who are perpetrators or

accomplices to the same act"[266] In all of these different systems, criminal courts are perfectly capable of prosecuting business representatives for pillage perpetrated during the course of commercial activities in a conflict zone. This chapter explains the legal basis for and precedents supporting this form of individual criminal liability.

122. The individual liability of corporate representatives for war crimes such as pillage is premised on the idea that civilians can be prosecuted for violations of the international laws applicable during war. The liability of civilians for war crimes was made clear after World War Two, when the Nuremberg Tribunal stated that "[i]nternational law... binds every citizen just as does ordinary municipal law. Acts adjudged criminal when done by an officer of the Government are criminal also when done by a private individual."[267] The Geneva Conventions of 1949 and Additional Protocol II signed several decades later contributed to the notion that the laws of war bind civilians by creating norms that bind rebel groups, even though these groups almost never negotiate or endorse the relevant treaties. Broad consensus has thus emerged that the laws of war bind individuals even though they are not party to the relevant international law treaties. As a reflection of this consensus, numerous domestic military manuals now accept that "acts constituting war crimes may be committed by combatants, noncombatants, or civilians."[268]

"[r]esponsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand [Company Board]. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets."

IG Farben Case, p. 1153.

123. A host of jurisprudence has ratified this theory by convicting civilians of war crimes in practice. In the *Essen Lynching* case, for instance, three German civilians were convicted of murder as a war crime for their role in intercepting then killing captured British airmen. The civilians, who formed part of a local crowd that intervened when the airmen were transported to a Luffewaffe base for interrogation, were held criminally responsible for their part in throwing the captives from a bridge and then firing upon the survivors.[269] In the *Hadamar* trial, civilian personnel of a medical institution located in Hadamar, Germany, were found guilty of the same offense for administering lethal injections to over four hundred Russian and Polish nationals admitted to their sanitarium.[270] The convicted perpetrators included a chief administrative officer, the institution's bookkeeper, and a telephone switchboard operator.[271] Elsewhere, civilian judges and prosecutors were convicted of murder as a war crime for their role in

sham trials engineered to give the unlawful executions of prisoners the semblance of legality.[272]

124. In a World War Two case of particular relevance, members of a German family were convicted of pillage for retaining illegally-acquired property from a deported civilian's farm.[273] In commenting on the this trial, the United Nations War Crimes Commission described the verdict as "confirmation of the principle that laws and customs of war are applicable not only to military personnel, combatants acting as members of occupying authorities, or, generally speaking, to organs of the State and other public authorities, but also to any civilian who violates these laws and customs."[274] A much wider body of precedent also holds civil administrators, politicians, concentration camp inmates and other civilians liable for war crimes.[275] As one modern international criminal tribunal has found, "the laws of war must apply equally to civilians as to combatants in the conventional sense."[276] On this basis, courts in Belgium and Switzerland have convicted civilians of war crimes in recent years.[277]

125. A vast body of jurisprudence confirms that this reasoning is equally applicable to individual corporate representatives acting in a commercial capacity. After World War Two, the Nuremberg Judgment's conclusion that crimes against international law "are committed by men, not by abstract entities," was deployed to ensure that the corporate structure did not shield business representatives from individual criminal liability. As we have noted earlier in this manual, the *IG Farben Judgment* stipulated that "responsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand [Board]. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets."[278] On the basis of this statement and the practice reviewed, there is little doubt that the traditional approach to prosecuting commercial actors for international crimes involves dispensing with the corporate entity and assessing whether individual business representatives satisfy requirements for regular modes of liability such as aiding and abetting, instigating or direct perpetration.

126. A number of courts, both historical and contemporary, have convicted individual businessmen for various war crimes in accordance with this approach. Soon after the close of hostilities in World War Two, two businessmen were convicted for murder as a result of commercial transactions involving the supply of the industrial chemical Zyklon B to the Nazi's, cognizant that the merchandise was destined to asphyxiate civilians in gas chambers.[279] In concluding its review of this case, the United Nations War Crimes Commission again described the affair as "a clear example of the application of the rule

that the provisions of the laws and customs of war are addressed not only to combatants and to members of state and other public authorities, but to anybody who is in a position to assist in their violation."[280]

127. In more recent years, Dutch courts have also prosecuted businessmen for war crimes.[281] In one of these cases, a Dutch businessman named Frans Van Anraat was convicted of inhuman treatment as a war crime for commercial transactions that involved the sale of chemicals ultimately subjected upon Iraqi Kurds.[282] The court held Van Anraat personally responsible for transactions performed through intermediary firms in which he was a leading figure. These subsidiaries supplied a total of 1,400 metric tons of a vital chemical precursor to the then government of the Republic of Iraq knowing that the chemicals would used as mustard gas during the ongoing hostilities against Iran.[283] In sentencing Van Anraat to 17 years imprisonment for his complicity in the war crimes that ensued, the appellate court cautioned that "[p]eople or companies that conduct (international) trade, for example in weapons or raw materials used for their production, should be warned that—if they do not exercise increased vigilance—they can become involved in most serious criminal offences."[284]

128. Modern international criminal courts have also convicted businesspeople for these most serious international crimes. Before the International Criminal Tribunal for Rwanda, members of the commercial radio station Radio Station Milles Collines were charged and convicted of incitement to genocide even though their calls for bloodshed were made during their employment with a commercial broadcasting facility.[285] Similarly, the tribunal also convicted a tea factory director of genocide for failing to prevent or punish acts of genocide perpetrated by his employees.[286] Although these judgments relate more to genocide than war crimes, they demonstrate the probable stance of courts when called to adjudicate international offenses perpetrated by individuals acting in commercial capacities. This same stance was evident from language adopted by an internationalized court operating under UN mandate in Kosovo, which completed a review of the principles governing the issue by stating that "not only military personnel, members of government, party officials or administrators may be held liable for war crimes, but also industrialists and businessmen, judges and prosecutors..."[287] In short, business representatives, like other civilians, can be convicted of war crimes.

129. Commercial actors engaged in the pillage of natural resources are prone to criminal sanction on this same legal basis. As previously noted, the *IG Farben Judgment* defined pillage as "[w]here private individuals, including juristic persons, proceed to exploit the military occupancy by acquiring private property against the will and consent of the former owner."[288] In a classic illustration of the application of these standards to

corporate representatives for acts of pillage in which they personally participated, the director of the Dresden Bank, Karl Rasche, was found guilty of pillage in a personal capacity for his role in the transfers of Jewish property to German interests. According to the court, Rasche was criminally culpable because the confiscations concerned were "carried out under the control of the Dresdner Bank, whose policies in these respects reflected the attitude and purposes of defendant Rasche."[289]

130. The focus on assessing the individual responsibility of business representatives evidenced in the Rasche trial also leads to the differentiated liability of company employees depending on their implication in specific transactions. In the *IG Farben* case, Georg Von Schitzler was convicted of plunder for his role in the company's exploitive practices in France and Poland but discharged of responsibility for similar corporate practices in Norway and Alsace-Lorraine.[290] As justification for the partial acquittal, the tribunal recalled that "[r]esponsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand [Board]."[291] On the other hand, perpetrating, aiding, and abetting or instigating pillage of natural resources renders individual business representatives guilty of a war crime.

Corporate Criminal Responsibility

131. While the concept of corporate criminal liability was discussed during the negotiation of the Statute of the International Criminal Court, states ultimately rejected the proposal to include corporate criminal liability within the court's jurisdiction.[292] A large number of domestic criminal courts, however, have jurisdiction over war crimes perpetrated by companies even if the International Criminal Court does not. The domestic capacity to try corporate entities for criminal offenses was initially unique to Anglo-American legal systems, but other jurisdictions have gradually adopted laws permitting corporate criminal liability in the past decades. As a reflection of the growth, two contemporary surveys of a limited number of national jurisdictions reveal that over two dozen states in the Americas, Europe, Asia, and Australasia have promulgated laws permitting the prosecution of corporate entities.[293] This chapter explores the legal basis upon which these criminal courts can assert jurisdiction over acts of pillage perpetrated by corporate entities, and highlights the circumstances under which a corporation will be attributed criminal blame for the offense.

132. Domestic legal systems adopt a number of different legislative techniques to ensure that corporations might be prosecuted for violations of international criminal law. Legal systems that favor the codification of a comprehensive criminal code often

dedicate a provision to corporate criminal liability among the preliminary provisions of their code, before proceeding to prohibit war crimes elsewhere within the same legal instrument. In Australia, for example, the Australian Commonwealth Criminal Code of 1995 initially states that "[t]his Code applies to bodies corporate in the same way as it applies to individuals,"[294] then later lists and defines pillage as a domestic criminal offense.[295] By implication, Australian courts can convict corporate entities of pillag

133. In other countries, an interpretative act enables prosecutors to charge companies with war crimes that are defined in separate legislation. Section 35 of the Canadian Interpretation Act, for example, states that "[i]n every enactment ... 'person', or any word or expression descriptive of a person, includes a corporation."[296] Consequently, the statement within the Canadian Crimes Against Humanity and War Crimes Act that every "person" who commits a war crime is guilty of an indictable offense must be read as including companies.[297] British courts, likewise, will enjoy jurisdiction over corporate entities responsible for pillage based on a strikingly similar legislation.[298] In the same vein, U.S. federal courts are also capable of prosecuting corporate entities for pillage, because the terms of the Dictionary Act of 2000 compel an interpretation of the American War Crimes Act of 1996 as conferring jurisdiction over corporate entities for war crimes.[299]

134. Customary international law does not affect these domestic laws. In recent months, a United States Court of Appeal rendered an opinion concluding that companies could not be sued pursuant to the American Alien Tort Statute for "violations of the laws of nations," on the grounds that "the concept of corporate liability for violations of customary international law has not achieved universal recognition or acceptance as a norm in the relations of States with each other."[300] This conclusion is certainly controversial, but the controversy does not affect the ability of states to try corporations in accordance with the rules of domestic criminal legislation set out above. Most importantly, a state is perfectly free to define its criminal law governing corporations in terms that extend beyond the scope of customary international law, and states frequently exercise this right when passing legislation implementing international crimes.[301] Consequently, customary international law has no bearing on the legislation set out in the preceding paragraphs. As the majority in the US Appeals Court rightly recognized, "[n]or does anything in this opinion limit or foreclose criminal, administrative, or civil actions against *any* corporation under a body of law *other than customary international law*—for example the domestic laws of any State."[302] Prosecutors, judges, and other officials are therefore entitled to interrogate their own national legislation in assessing the viability of prosecuting companies for pillage.

135. Courts adopt different standards for determining when a corporation is guilty of a criminal offense, each of which relies on a different theory of blame attribution. These different means of attributing criminal responsibility to a company fall into three broad categories. The first holds companies vicariously liable for criminal offenses perpetrated by company employees "within the scope of his employment and with intent to benefit the corporation." This theory, which is frequently described by reference to the latin phrase *respondeat superior*, holds the corporate entity vicariously liable for their employees' criminal offenses perpetrated in the course of business. Companies might therefore be convicted for the pillage of natural resources in conflict zones in jurisdictions that adopt *respondeat superior*, provided at least one of their employees is implicated in the pillage of conflict commodities. These countries include Austria, South Africa, and the United States.

"Companies convicted of criminal offences are vulnerable to a range of important sanctions including pecuniary fines, 'imprisonment' through court orders requiring the company to suspend business, or compulsory compliance regimes supervised by court-appointed managers. Courts can even issue a kind of corporate death penalty by requiring that a company be dissolved permanently."

Celia Wells, *Corporations and Criminal Responsibility*, p. 37.

136. Other jurisdictions have opted for a more restrictive model of corporate criminal responsibility that only holds a corporate entity criminally liable when a senior member of the company's management is responsible for the offense. In this model of corporate criminal liability, only crimes perpetrated by senior management make the company criminal liability. In 1971, the British House of Lords affirmed this so-called identification model on the grounds that only sufficiently senior employees could constitute the corporation's "directing mind and will."[303] In more recent years, legislation within Canada has also endorsed the identification model of corporate criminal liability. According to the amended Canadian Criminal Code, an organization is a party to the offense requiring a specific intent if one of its "senior officers" is a party to an offense, directs subordinates to commit an offense, or fails to intervene when cognizant of an impending violation. The overarching condition that the senior officer's conduct must by motivated "at least in part to benefit the organization," will generally describe the corporate pillage of natural resources during war, which is almost invariably characterized by the illegal acquisition of natural resources for corporate profit. Canadian and British courts might thus hear allegations of corporate liability for pillage where evidence suggests that senior management illegally acquired resource wealth from conflict zones.

137. The third and final method of attributing criminal liability to companies focuses on failures in corporate culture. In certain jurisdictions, corporate entities operating during armed violence can be convicted of pillage for their failure to create a corporate policy that prevents the offense. In Australia, for instance, criminal courts can convict companies of offenses for a body-corporate's failure "to create and maintain a corporate culture that required compliance with the relevant provision."[304] Likewise, according to the terms of the Swiss Penal Code, a corporation can be criminally responsible independently of the criminal liability of its employees "if the corporation can be said to have not taken all reasonable and necessary organizational measures to prevent such a breach."[305] While a rigorous analysis of whether these provisions couple with war crimes will be essential in each particular jurisdiction, there are strong possibilities that companies could be convicted of pillaging natural resources based on these standards. The failure to instill a culture of respect for property rights in natural resources while mining within a foreign conflict zone might thus give rise to corporate criminal liability, especially where the company culture is entirely indifferent to the origins of these natural resources.

138. Corporate criminal liability and the individual criminal liability of business representatives should function in tandem. A number of experts agree that "a dual focus on the firm and the individual is necessary. Neither can be safely ignored."[306] This seems especially true in the context of liability for pillaging natural resources. On the one hand, a range of factors militate in favor of prosecuting corporations—corporations are better placed than state authorities to detect, prevent and sanction the illegal exploitation of natural resources undertaken by their employees in foreign conflict zones, are often too large to locate a specific representative who appropriated resources with the culpable mental element, and are frequently more able to pay reparations to victims upon conviction.[307] On the other, prosecuting individual business representatives is also vital in certain circumstances. For example, smaller firms involved in trafficking conflict commodities are frequently dissolved after each illicit transaction as a means of subterfuge, leaving individual criminal responsibility as the only feasible means of redress. There is also broad recognition that only individual criminal liability is likely to create a disincentive that transcends the pressures of corporate culture,[308] which seems particularly important within the extractive industry. Thus, the dual use of corporate and individual criminal liability will allow prosecutors to tailor their case to the circumstances and, as the subsequent section shows, expands the number of jurisdictions capable of trying the offense.

Further Reading

Anita Ramastray and Robert C. Thompson, *Commerce, Crime and Conflict, Legal Remedies for Private Sector Liability for Grave Breaches of International Law: A Survey of 16 Countries,* (2006) http://www.fafo.no/pub/rapp/536/536.pdf.

Megan Donaldson and Rupert Watters, *"Corporate Culture" as a Basis for the Criminal Liability of Corporations, Prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business,* (Feb. 2008) http://www.reports-and-materials.org/Allens-Arthur-Robinson-Corporate-Culture-paper-for-Ruggie-Feb-2008.pdf.

Criminal Responsibility of Legal and Collective Entities (Albin Eser et al. eds., 1999).

XIII. Jurisdiction

Active Personality—Jurisdiction Based on Nationality

139. The first and most compelling basis for prosecuting commercial actors for the pillage of natural resources involves state prosecutors bringing charges against their own companies or business representatives. The so called "nationality" or "active personality" principle entitles states to assert criminal jurisdiction over offenses perpetrated by their nationals overseas. The concept extends to companies registered within a state's jurisdiction as well as individual citizens operating abroad. In common law jurisdictions, war crimes are widely recognized as one of this limited category of offenses that warrant extra-territorial application. In the United Kingdom, for instance, active personality attaches to a limited series of explicitly defined offenses including war crimes.[309] British courts, therefore, have a strong claim to jurisdiction over corporate entities alleged to have pillaged natural resources in conflict zones. While the United States has also adopted active personality in relation to only a limited range of criminal offenses, the U.S. War Crimes Act of 1996 also includes provisions that confer criminal jurisdiction on U.S. federal courts over pillage perpetrated by "a national of the United States," regardless of whether the offense occurred "inside or outside the United States."[310] The act thus furnishes federal courts with jurisdiction over both American companies and citizens alleged to have perpetrated pillage in foreign conflicts.

140. In the vast majority of civil law systems, active personality is a general principle of criminal jurisdiction governing even minor criminal infractions. Thus in Spain, for example, acts considered by Spanish criminal law to be crimes are susceptible to prosecution before local courts, "even if they are committed outside the national territory."[311] The active personality principle has gained such a strong foothold within continental legal traditions that the Swedish Supreme Court has even upheld convictions for violations of the Swedish traffic code committed on foreign roads.[312] These principles have profound implications for a state's ability to investigate and prosecute acts of pillage perpetrated by companies and their representatives.

141. Other states are also capable of investigating and charging companies and their representatives for pillage based on active personality jurisdiction. A recent survey of a portion of criminal jurisdictions reveals that the vast majority of states surveyed extend domestic criminal jurisdiction to crimes of nationals committed overseas.[313] These states include countries as diverse as Argentina, Japan, and South Africa. To provide one illustration, Russian courts could have exercised jurisdiction over the infamous Russian arms smuggler Viktor Bout for what a UN panel of experts described as a leading role in the transportation of illegally acquired natural resources from theaters of war to Western markets.[314] There are thus established jurisdictional grounds that allow foreign courts to adjudicate allegations of pillage when law enforcement mechanisms within war-torn societies are no longer functioning adequately. These jurisdictional bases, which will vary according to the country concerned, can generally be identified in criminal codes or specific legislation governing international crimes.

Further Reading

Ilias Bantekas and Susan Nash, *International Criminal Law* (Cavendish, 2nd e., 2003), p. 152 .

Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge, 7th ed., 1997), p. 111.

Antonio Cassese, *International Criminal Law* (Oxford, 2003), pp 281–282.

Universal Jurisdiction

142. Universal jurisdiction provides another basis upon which states can investigate and prosecute corporations or their representatives for pillaging natural resources. The often controversial notion of universal jurisdiction has developed based on the idea that certain offenses are sufficiently grave that all states can assert criminal jurisdiction

over the perpetrators regardless of where the offenses took place or the nationality of the respective participants. War crimes clearly meet the requisite degree of gravity. As a Swiss Military Court found when exercising universal jurisdiction over a Rwandan mayor accused of war crimes, "given their qualification as war crimes, these infractions are intrinsically very serious."[315] War crimes are also widely regarded as peremptory in character and thus enjoy a higher rank in the international hierarchy of norms than treaty law or even ordinary customary rules. The *Kupreškić Trial Judgment* affirmed this proposition in declaring that "most norms of international humanitarian law, in particular those prohibiting war crimes, crimes against humanity and genocide, are also peremptory norms of international law or jus cogens, i.e. of a non-derogable and overriding character."[316] On the strength of a comprehensive synthesis of state practice on the subject, the International Committee of the Red Cross has also concluded that "[s]tates have the right to vest universal jurisdiction in their national courts over war crimes."[317]

143. There are at least two different variations of universal jurisdiction. One group of states has enacted a more restrained form of universality that requires the presence of the accused within the state's territory before jurisdiction can be asserted. In Canada, the Crimes against Humanity and War Crimes Act provides that any person who has committed a war crime within or outside Canada may be prosecuted on the condition that the accused is present in Canada after the offense was committed.[318] This jurisdictional principle may allow the investigation and prosecution of foreign companies or their representatives who, aside from operating in war zones, also maintain offices or carry out commerce within Canadian borders. One might therefore anticipate a more frequent exercise of universal jurisdiction conditional upon the presence of the author within countries that enjoy this jurisdictional capacity in response to allegations of corporate pillage, especially given the ever increasing mobility of commercial actors within a globalized market.

144. Other states have enacted an unconditional or pure rendition of universal jurisdiction, which presents states with even greater possibilities for the judicial scrutiny of corporate pillage. These unconditional versions of universal jurisdiction formally disregard the requirement that the accused be present within the territory. The German Code of Crimes against International Law states that "[t]his Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offences designated therein even when the offence was committed abroad and bears no relation to Germany."[319] In declining to exercise the jurisdiction conferred by this article over acts of torture allegedly committed by Donald Rumsfeld and others in Afghanistan, Cuba, and Iraq, the German prosecutor general insisted that she retained a discretion not to proceed in cases committed abroad "if a perpetrator is neither present

in the country nor can be expected to be present."[320] Nonetheless, according to German criminal procedure, this discretion will not exist when the perpetrator is German or located within German territory.[321] This not only covers German business representatives operating abroad, it also has consequences for foreign businesses that operate within Germany.

145. Other courts, particularly in Spain, have already proved willing to exercise unconditional universal jurisdiction over individuals for pillaging natural resources. In February 2008, a Spanish judge confirmed the indictment of several high ranking Rwandan military officials for a range of international crimes that included the pillage of natural resources in the Democratic Republic of the Congo.[322] In particular, the court indicted the chief of staff of the Rwandan Army for the pillage of natural resources, ignoring that an official Belgian Parliamentary Commission indicated that the same Rwandan official habitually sold minerals to a series of companies jointly owned by a Swiss national.[323] As previous chapters of this manual demonstrate, there is little legal basis for distinguishing between the indicted Rwandan military leader who extracted the resources and the Swiss businessman who purchased the proceeds. Although changes to the Spanish law on universal jurisdiction now mean that this case will proceed on the basis that nine of the victims were Spanish, the case remains an important illustration of the potential of universal jurisdiction. It is plausible that universal jurisdiction could be employed to charge businesses and their representatives implicated in the illegal acquisition of natural resources from war zones.

Further Reading

Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford Univ. Press, 2003).

Universal Jurisdiction: National Courts and The Prosecution Of Serious Crimes Under International Law (Stephen Macedo ed., 2004).

The Jurisdiction of International Courts

146. The final series of courts capable of exercising jurisdiction over the pillage of natural resources are international. The Special Court for Sierra Leone, for instance, could indict foreign corporate representatives involved in the pillage of diamonds during the Sierra Leonean wars. The same is true of other internationalized criminal tribunals, which serves as important cautions to commercial actors in contemporary conflicts, since each of these courts was established after the conflict was underway in order to

enforce international criminal norms like pillage, which were perpetrated prior to the tribunals' establishment. The creation of similar ad hoc bodies might thus create serious risks of criminal liability for companies implicated in the illicit trade of natural resources during war.

147. The International Criminal Court, however, is the more likely venue for prosecution of corporate representatives in the pillage of natural resources. Unlike its various ad hoc predecessors, the International Criminal Court enjoys the ability to commence proceedings in a large number of states, either against nationals of states parties to the court's statute or in relation to citizens of non-states parties who have perpetrated international crimes within the territory of a member state. In other words, the International Criminal Court has jurisdiction over Belgian and British nationals who perpetrate pillage in Iraq, but also over American or Chinese business representatives responsible for pillaging natural resources from the Congolese conflict and other situations within the court's territorial jurisdiction.[324]

148. The ICC prosecutor appears to be aware of this potential. In a press release dated July 16, 2003, his office publicly acknowledged that "various reports have pointed to links between the activities of some African, European, and Middle Eastern companies and the atrocities taking place in the Democratic Republic of Congo... Their activities allegedly include gold mining, the illegal exploitation of oil, and the arms trade."[325] The statement then cautioned that "[t]he Office of the Prosecutor is establishing whether investigations and prosecutions on the financial side of the alleged atrocities are being carried out in the relevant countries."[326] The warning was subsequently reissued in more striking terms during an address to the United Nations General Assembly several months later. During the address, the prosecutor personally reported that:

> [d]ifferent armed groups have taken advantage of the situation of generalised violence and have engaged in the illegal exploitation of key mineral resources such as cobalt, coltan, copper, diamonds and gold... Those who direct mining operations, sell diamonds or gold extracted in these conditions, launder the dirty money or provide weapons could also be authors of the crimes, even if they are based in other countries.[327]

149. Statements of this sort not only identify the availability of a supranational jurisdiction capable of adjudicating acts of pillage perpetrated by business representatives, they also impart a degree of pressure on national courts to exercise other forms of jurisdiction over these offenses. To conclude this manual, we now turn to a range of other formal legal obligations that compel states to exercise jurisdiction over pillage.

XIV. The Obligation to Prosecute

150. States not only enjoy jurisdiction over acts of pillage; there are also a range of obligations to investigate and prosecute appropriate cases. The obligations stem from a range of sources in both international law and domestic criminal law. Together, these legal duties create an overlapping network of pressures that are likely to affect a prosecutor's exercise of discretion when faced with allegations of commercial pillage. Moreover, they also create positive duties on states that may have implications for international institutions, political bodies, and government officials faced with these issues. In this chapter, we briefly outline several of these obligations.

151. The laws of war themselves create an obligation to investigate and prosecute acts of pillage. At the end of World War Two, signatories to the Geneva Conventions agreed to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."[328] Although pillage is not technically a grave breach of the Geneva Conventions, there is significant evidence that customary international law now extends the same duty to all war crimes. For instance, the International Committee of the Red Cross' study of customary international humanitarian law concludes that states must "investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects."[329] Given that both corporations and businesspeople are nationals of states, the obligation implies a duty to prosecute both entities for pillaging natural resources.

152. The notion of "complementarity" in the Statute of the International Criminal Court creates another legal incentive for domestic courts to investigate and prosecute acts of commercial pillage that fall within their jurisdiction. In simple terms, a case of commercial pillage will only be admissible before the ICC if national courts that enjoy jurisdiction are "unwilling" or "unable" to bring proceedings.[330] In at least one recent instance, this rule has forced British courts to try their own soldiers for war crimes allegedly perpetrated in Iraq.[331] Along with the prosecution of Dutch business representatives for war crimes before courts within the Netherlands in the past decade, the British trial suggests that the pressure of complementarity may have implications for allegations of commercial liability for pillage. This is especially true when the ICC prosecutor announces that "[t]hose who direct mining operations, sell diamonds or gold extracted in these conditions... could also be authors of the crimes, even if they are based in other countries."[332] This manual has provided guidance on the law necessary to achieve that possibility.

153. In other circumstances, resolutions issued by the United Nations Security Council impart another layer of legal duty to prosecute specific allegations of commercial pillage. For instance, after a United Nations panel of experts alleged that a large number of predominantly Western companies had illegally exploited natural resources from the Democratic Republic of the Congo between the years 2000 and 2003, the UN Security Council issued resolution 1457 urging all states to "conduct their own investigations, including as appropriate through judicial means."[333] Later, the council issued resolution 1499 insisting that information should be provided to relevant governments to enable them to "take appropriate action according to their national laws and international obligations."[334] As a matter of international law, UN Security Council resolutions of this sort that are issued under Chapter VII of the UN Charter are formally binding on all member states of the United Nations. The war crime of pillage provides the substantive framework that enables states to comply with these obligations.

154. Certain domestic criminal jurisdictions also contain obligations for courts to hear allegations of pillage, primarily by restricting the scope of discretion open to prosecutors. In a number of civil law countries, for instance, a doctrine called *partie civile* enables victims or their representatives to bring charges directly before criminal courts.[335] To cite one apt example, a group of nongovernmental organizations recently used *partie civile* to lodge a criminal complaint against the multinational timber company Dalhoff, Larsen, and Horneman for allegedly receiving stolen timber during the Liberian civil war.[336] In an appropriate context, *partie civile* could also be used to initiate a criminal charge for pillaging natural resources. Similarly, the German doctrine of *Legalitätsprinzip* implies mandatory prosecution of all provable cases within the

jurisdiction. Although there are numerous exceptions, this principle would appear to extend to business representatives from or resident in Germany.[337] These domestic obligations to investigate and prosecute crimes compliment the international duties identified above. In unison, these obligations promote a resurgence of commercial liability for pillaging natural resources in the modern era.

XV. Annex 1: Table of Cases

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
IG Farben	Trials of War Criminals	1143	Boruta Factory	Poland	Factory, land, buildings, machinery, equipment	Businessman	Farben requested and received a lease from the Reich Ministry of Economics to manage the Boruta factory, which was located in territory occupied by Germany. Although competition was fierce, Farben ultimately purchased the "land, buildings, machinery, equipment."	Criminal	Receiving	Guilty
IG Farben	Trials of War Criminals	1143-1144	Winnica Factory	Poland	Plant and equipment	Businessman	Although Farben acquired the French shares in the Winnica factory, there was not sufficient evidence that the French were coerced. There was evidence of plunder of plant equipment.	Criminal	Theft	Partially Guilty
IG Farben	Trials of War Criminals	1144-46	Norsk-Hydro	Norway	Shares	Businessman	The Norwegian company Norsk-Hydro, which was owned by French shareholders, was forced to participate in the Nodisk-Lettmetall project with Farben and the German Reich. The French majority shareholding in Norsk-Hydro was converted in a minority shareholding at a meeting, which the French shareholders were prevented from attending.	Criminal	Theft	Guilty
IG Farben	Trials of War Criminals	1146-47	Mulhausen Plant	France	Factory	Businessman	The plant was initially leased to Farben by the German chief of civili administration, then after a formal decree of seizure and confiscation transferring the property to the Reich, it was sold to Farben. "Farben acquired these plants from the German government."	Criminal	Receiving	Guilty
IG Farben	Trials of War Criminals	1147	Strassbourg-Schiltigheim	France	Factory	Businessman	In the case of the oxygen and acetylene plants, referred to as Strassbourg-Schiltigheim, similar action was taken by Farben. After first taking a lease, Farben proceeded to, and did, acquire permanent title to the plants following the governmental confiscation.	Criminal	Receiving	Guilty
IG Farben	Trials of War Criminals	1147	Diedenhofen	France	Factory	Businessman	Although the plant was leased by Farben, the Tribunal found that there was no evidence that Farben ever acquired title or that the lease was without the owner's consent.	Criminal	Receiving	Not Guilty
IG Farben	Trials of War Criminals	1147	Francolor Agreement	France	Shares	Businessman	Farben coerced three of the major French dyestuff producers to enter into a new company called Francolor in which Farben enjoyed a majority interest. The French companies only reluctantly agreed when Germans refused to issue licences, cut off raw material, and the Vichy government consented.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
IG Farben	Trials of War Criminals	1151	Rhône-Poulec	France	Factory	Businessman	Although Farben threatened to strangle the supply of natural resources and bring illegitimate patent claims, this did not amount to plunder because the Rhone-Poulec factory was not in occupied territory and could not be physically seized.	Criminal	Theft	Not Guilty
IG Farben	Trials of War Criminals	1152	Continental Oil Company	Russia	Oil	Businessman	Whilst Farben made elaborate plans to plunder Russia, they were never completed and there was inadequate evidence to link Farben to plunder in the Russian theatre.	Criminal	Receiving	Not Guilty
Singapore Oil Stocks			Singapore Oil Stocks	Singapore	Oil	Military	The Japanese Army seized crude oil owner by three Dutch companies and exploited it during the war. When the British recaptured the area, they claimed that the oil was captured as war booty and therefore passed into the hands of the British. The court found that the Japanese had committed "economic plunder".	Civil	Theft	Damages to owners of conces-sions
Krupp	Trials of War Criminals	1348	Austin Plant	France	Factory	Businessman	Krupp leased the Austin plant from an administrator appointed by the German occupier, who had seized the plant because it was Jewish-owned.	Criminal	Conversion	Guilty
Krupp	Trials of War Criminals	1351	Paris Office	France	Offices	Businessman	The Krupp firm's representative in Paris, Walter Stein, acting as attorney-in-fact for Krupp Essen, obtained a lease of the property with right to purchase it within 6 months after the date of the lease. The deal was not made with the rightful owners of the premises but from the provisional administrator of the Societe Bacri Freres by virtue of a decision of a commissariat for Jewish questions.	Criminal	Theft, Receiving	Guilty
Krupp	Trials of War Criminals	1350, 1353	Austin Machinery	France	Machinery	Businessman	Krupp purchased machinery from a German appointed adminsitrator, who had seized it from a Jewish owner. Krupp paid "a ridiculously low price" for the machinery and the court found six representatives guilty of plundering the property "by purchasing and removing the machinery."	Criminal	Receiving	Guilty
Krupp	Trials of War Criminals	1353-1358	ELMAG Plant	France	Machinery	Businessman	Krupp removed several pieces of machinery it had initially illegally leased from a German adminstrator. The true owners, a French company known in German as ELMAG, were deprived of large numbers of machines when the Germans retreated from France.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Krupp	Trials of War Criminals	1358	Alsthom Plant	France	Machinery	Businessman	The Krupp firm dismantled and used several bending machines for the production of submarines. Alsthom, the owner of the machines, objected and refused to pay the price offered on a number of occasions. Subsequently, Krupp declared that it considered that the machine was confiscated by the German Inspectorate and that it was for them to settle the affair.	Criminal	Theft, Receiving	Guilty
Krupp	Trials of War Criminals	1361	Other French Plants	France	Machinery	Businessman	The Krupp firm obtained this machinery from the local French economy, partly through their own efforts, and partly through those of various government offices. Some French machines were obtained from booty depots. Some were directly requisitioned from French firms, with payment offered to the owners after the confiscation. Some were purchased by Krupp through its representatives in Paris.	Criminal	Theft, Receiving	Guilty
Krupp	Trials of War Criminals	1361	ROGES	Europe	Household goods, raw materials, textiles, machines, tools, shoes, scrap metal	Businessman	ROGES, the German Raw Material Trading Company, seized goods in conjunction with the German military or purchased goods through the black market. "The Krupp firm received wares and goods of all kinds from ROGES." Krupp also knew of the source of these goods, because the items were sent without an invoice and a price was later settled with ROGES.	Criminal	Receiving	Guilty
Krupp	Trials of War Criminals	1364	Holland Phase I	Holland	Fire-tubes, iron for reinforced concrete and shaped iron	Businessman	Between 1942 and Sept 1944, the German authorities seized products owned by Dutch municipal and private enterprises, which were then shipped by Krupp to Germany. "The prices for these goods were arbitrarily set by the German authorities without the consent or approval of the Dutch owners."	Criminal	Receiving, Theft	Guilty
Krupp	Trials of War Criminals	1366	Rademaker	Holland	Machinery	Businessman	A member of the Reich Ministry for War Production came to the factory with a requisition order. The following day he returned with Krupp firm to dismantle and remove machines.	Criminal	Theft	Guilty
Krupp	Trials of War Criminals	1368	De Vries Robbe	Holland	Zinc wire, bolts, and nuts	Businessman	In April 1944, the De Vries firm was advised by the Reich Ministry for Armament and War Production that it had been placed under Krupp's sponsorship. German military authorities carried away wire, bolts and nuts, which were shipped to Krupp. Krupp then came and designated machinery that was also shipped to them.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Krupp	Trials of War Criminals	1369	Lips Firm	Holland	Machinery	Businessman	In December 1944, members of Krupp came to the Lips plant, removed machinery and threatened that they would call the Wehrmacht if the company did not co-operate. "Active resistance was impossible, but the Lips owners refused to accept money in order to emphasise that the transaction was forced."	Criminal	Theft	Guilty
Flick	Trials of War Criminals	1205	Rombach	Lorraine	Factory	Businessman	Flick leased a factory in Lorraine owned by French industrialists. The court (wrongly) decided that the seizure was justified by military necessity, but found that retaining possession violated the Hague Regulations. Flick invested all profits into the factory, only because he expected to acquire title. "While the original seizure may not have been unlawful, its subsequent detention from the rightful owners was wrongful."	Criminal	Theft	Guilty
Flick	Trials of War Criminals	1209	Vairogs	Latvia	Factory	Businessman	Flick acted as a trustee of this factory, that the Germans invested in significantly in order to reactivate. There was no plunder because evidence suggested that raw materials for production came from Germany. The capital for operations came from the German state.	Criminal	Theft	Not Guilty
Flick	Trials of War Criminals	1209-1210	Dnjepr Stahl	Ukraine	Factory	Businessman	Flick acted as a trustee of the Dnjepr Stahl property. The trusteeship was negotiated with the BHO (Germany government body), which the Court (wrongly) concluded had a right of usufruct over the property. In our opinion, this decision is anomolous.	Criminal	Theft, Receiving	Not Guilty
Roechling	Trials of War Criminals	1112	Warehouse stock	Meurthe-et-Moselle, France	Warehouse stocks	Businessman	Hermann Roechling was found guilty of plunder for having sold warehouse stocks in a firm he had no authority to govern.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Roechling	Trials of War Criminals	1112–1113	Société Lorraine Miniere et Métallurgique	Moselle, France	Factory, iron ore	Businessman	From February 1941 to March 1944 Goering had the iron works in the Moselle divided among various German firms (with the right to acquire the plants by purchase from the German government after the cessation of hostilities) ; in this connection Hermann Roechling had the plants of the Société Lorraine Miniere et Métallurgique at Thionville (Karlshuette) assigned to him, the management of which already devolved upon him by virtue of his administrative office. The court explicitly found that "Knowingly to accept a stolen object from the thief constitutes the crime of receiving stolen goods". The court concluded that in total 100 milion tons of iron ore was exploited in the region, and that H. was guilty because the factories "produced maximum quotas for the German war potential."	Criminal	Receiving	Guilty
Roechling	Trials of War Criminals	1113, 1124	Tréfileries et Cableries Julien Wuerth	Moselle, France	Factory, iron ore	Businessman	In April 1941 Hermann Roechling was also assigned the "Trefileries et Cableries Julien Wuerth at Reichshoffen," which he had leased since June 1940. In order to put the plant into operation he had ordered several months prior that his cousin acquire machinery from France. The court concluded that in total 100 milion tons of iron ore was exploited in the region, and that H. was guilty because the factories "produced max. quotas for the German war potential."	Criminal	Receiving, Theft(?)	Guilty
Roechling	Trials of War Criminals	1115	Roechling Machines	Holland, Belgium, France	Machinery	Businessman	Hermann Roechling was convicted for removing the rolling mill of Ymuiden in Holland, the Halles D'Angleur-Arthus in Belgium, and a 950-ton iron framework in Meuthe-et-Moselle. The court found that "he is guilty... for taking away essential equipment belonging to factories in those countries."	Criminal	Theft	Guilty
Roechling	Trials of War Criminals	1116, 1120	French Government Credit	France	Credit	Businessman	Hermann Roechling was found guilty of plunder for having induced the French government to credit a German company with 180 million francs, which were used to reduce Roechlings debts while selling material at less than cost to the German government.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Roechling	Trials of War Criminals	1116	ROGES	France	Machinery, Raw Materials	Businessman	Hermann Roechling was guilty of plunder for purchasing "booty" from ROGES, the official German Raw Materials Trading Company, knowing that it was illegally seized. The court found that Reochling purchased RM558,000 from the purchasing department (which was presumably legal) and RM175,000 from the booty department (which was not legal). The court found that "Hermann Roechling, like all other German industrialists in the same circumstances, was a receiver of looted property."	Criminal	Receiving	Guilty
Roechling	Trials of War Criminals	1118	Societe Lorsar	France	Metal Products	Businessman	The Societe Lorsar was a Paris based subsidiary of Roechling, which was procurement agency for the German Army. It procured somewhere between 500 and 120 million francs of metal products for the Germans, although these were only nominally paid for through a fictious "clearing account," which was in fact forced credit never repaid	Criminal	Receiving	Guilty
Roechling	Trials of War Criminals	1118	Perrin Patents	France	Patents	Businessman	Hermann was charged with plundering patents concerning the steel production methods of a rival, but the court held that he only threatened to do so and never made good on the threat. Essentially, the seizure never took place.	Criminal	Patent Violation	Not Guilty
Roechling	Trials of War Criminals	1122	Societe de Credits et							

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	695	Continental Oil Company	Soviet Union	Oil	Businessman	Keppler was originally a manufacturer and businessman, who was made deputy-chairman of the Continental Oil company, which plundered Soviet oil. The Court acquitted him, stating that "from the evidence, we cannot draw the conclusion that he participated or directed the Continental Oil Company, in its spoliation activities or programs."	Criminal	Theft	Not Guilty
Ministries	Trials of War Criminals	695	DUT	Poland	Furniture	Businessman	Keppler was convicted of plunder for his role as chairman of an organization established by the Nazi's called the "Deutsche Umsiedlungs-Treuhandgesellschaft (DUT)." The company was reasonable for administering deportees' property, particularly furniture. The Court found that Keppler's participation in the seizures and administration of this property constituted plunder.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	697	Food	Europe	Food	Minister	Darre was Reich Minister of Food and Agriculture. Darre was found guilty of plunder for exploiting food and agricultral products from occupied Europe in total disregard of the needs of the local populations.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	701	Lammers	Europe	Food, art, cultural objects, furniture, mining rights	Minister	Lammers was Reich Minister and Chief of the Reich Chancellery. Lammers was convicted of plunder for his role in issuing laws and decrees that served as a pretext for plundering property in the Netherlands, Poland and Russia; seizing food and mining rights in Poland; stealing art and cultural treasures in occupied Europe; and illegally acquiring Jewish household goods in Paris.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	720	Coal Decree	Poland	Coal	Civil Servant	Stuckart, a civil servant active in the German agency charged with spoliation of Polish property (Main Trustee Office East), was found guilty for having signed a decree that provided for the assignment of the coal mines for the so-called Incorporated Eastern Territories to the district of the Upper Silesian Coal Management, and "gave the Reich Minister of Economy wide and arbitrary powers with respect to the coal industry thus taken over."	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	720	Polish Valuables Decree	Poland	Money, shares, mortgages, deeds, gold, silver, precious stones	Civil Servant	Stuckart, a civil servant active in the German agency charged with spoliation of Polish property (Main Trustee Office East), was found guilty for having signed a decree that provided for the expropriation various property in Poland. The property included "Money, specie, bills, stocks and other securities of all kinds; bills of exchange and checks; mortgages and land charge deeds; unclaimed gold and silver; foreign exchange; cut and uncut precious stones; and other valuables."	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	725	Eastern Art Treasures	Poland	Food, art	Civil Servant	Berger was chief of the political directing staff of the Reich Ministry for the Occupied Eastern Territories. He was acquitted of plundering art and food, as a result of a lack of evidence that he was implicated in spoliation programs.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	730		Poland	Food, ore, petroleum	Civil Servant, Businessman	Koerner was Goering's deputy, and had various roles as a civil servant and in various mining companies. He was convicted of plundering food, ore and petroleum in Poland through the issuance of directives to that effect.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	731	Brick Works	Poland	Factory	Businessman	Koerner was also convicted, in his capacity as representative of the Herman Goering Works, for receiving considerable property including earth works. The Tribunal stated that "[t]hrough the HTO much property was plundered and taken over by the Reich. Attention is called to the fact that defendant Koerner was chairman of the Aufsichtsrat of the Hermann Goering Works, which organization, according to a report in evidence, was the recipient of considerable property seized in Poland through the Main Trustee Office East. Notable among the property thus mentioned were certain brick works."	Criminal	Receiving	Guilty
Ministries	Trials of War Criminals	734	Russian Oil and Food Meeting	Russia	Steel, oil, and food	Civil Servant, Businessman	Koerner was Goering's deputy. He held various positions as a civil servant and on the boards of mining industries. He was convicted for plunder in Russia for having indicated at a top secret meeting that, "The economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place."	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	738	Poldihuette Steel	Czecho-slovakia	Factory, profits	Businessman	Pleiger held managerial roles within the Hermann Goering Works. In exchange for another Polish factory the HGW had illegally seized, Pleiger convinced the owners of Poldihuette to issue new shares in the company and gift them to the HGW. In so doing, HGW acquired a 75% share in Poldhuette, one of the world's largest steel refining enterprises. Pleiger was convicted of plundering Poldihuette and the profits that resulted from the enterprise.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	738	Vitkovice Coal	Czecho-slovakia	Factory, profits	Businessman	Pleiger managed Hermann Goering Works. HGW acquired, apparently without consent, Vitkovice Coal works and exploited the factory without concern for the needs of the population. The profits were placed at the Reich Marshall's disposition.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	739, 741	Polish Iron Works	Poland	Factory, machinery	Businessman	The Hermann Georing Works, and Pleiger as its representative, was assigned two iron works and foundries in Poland by the German High Command. Although the assignment was initially by way of lease, it provided for means to acquire the works permanently and Pleiger sought to exercise these rights. During the period HGW controlled the factories, hundreds of machines were expropriated.	Criminal	Receiving, Theft	Guilty
Ministries	Trials of War Criminals	741	Plundered Coal	Poland	Coal	Businessman	Pleiger was convicted for plundering coal from mines. "We find further spoliation activities in Poland by Pleiger in behalf of the Hermann Goering Works in connection with the coal mines in Upper Silesia" "on 23 July 1940, [HTO] gave to the Hermann Goering Works a so-called "trusteeship" of all peat coal mines in Upper Silesia. Subsequently, certain of these coal enterprises were by the Reich government transferred to a subsidiary of the Hermann Goering Works... there was taken from such coal mines in 1940, 62,000 tons; 1941, 62,400 tons; 1942, 69,300 tons; 1943, 74,800 tons; and in 1944, 77,900 tons, and that of these amounts two-thirds went to Germany.	Criminal	Receiving, Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	744	Russian Manganese	Russia	Manganese, coal, ron, ore	Businessman	Pleiger was also the manager of a company named BHO. In that capacity, he was convicted of plundering manganese ore, iron mines, coal and ore mining in Russia. According to the Court, he himself reported that BHO had mined 110,000 tons of manganese in 1942 from Russian sources.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	753	Czech Banks	Czecho-slovakia	Banks, credit	Civil servant	Kehrl was convicted of plundering Czech banks in Bohemia-Moravia	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	755	Bruenner-Waffen	Czecho-slovakia	Factories	Civil servant	"There is ample credible evidence in the record to satisfy beyond reasonable doubt that such acquisitions were accomplished in no small measure through coercive measures." "It was not necessary for Mr. Kehrl to threaten us personally. We were quite aware of who Mr. Kehrl was, and Mr. Kehrl never made any secret of it. For example, when, immediately after 15 March, he came to Prague and said that he had to take over armament concerns for Goering, we realized what was going on; in our position such suggestions were orders of the Reich authorities, the Reich government, and all the power of the Third Reich."	Criminal	Theft, Coercion	Guilty
Ministries	Trials of War Criminals	758	Vitkovice Coal	Czecho-slovakia	Factories	Civil Servant	Kehrl was convicted of plundering the Vitkovice Coal Factory, but detailing Louis Rothschild, then negotiating with the other Rothchilds in order to secure their holding in the plant. Although the agreement of sale was never fully completed, Kehrl played a vital role in taking possession of the plant and controlling it.	Criminal	Theft, Coercion	Guilty
Ministries	Trials of War Criminals	760	Aryanization	Czecho-slovakia	Factories	Civil Servant	Kehrl was convicted of plunder for his role in planning and organizing the confiscation of businesses in occupied Czeckoslovakia. "The Czech stockholders either had to sell their stocks or become unimportant minorities..." Kehrl was convicted for his "active participation in the acquisition and control of these industries."	Criminal	Theft, Coercion	Guilty
Ministries	Trials of War Criminals	763	Kehrl Plan	France, Belgium	Raw materials, wool, cotton, flax	Civil Servant	Kehrl was convicted of plunder for hundred of thousands of tons of wool, cotton, flax and rags in Belgium and France.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	769	Ostfaser G.m.b.H	Russia	Raw materials, wool, textiles, cellulose, paper	Businessman	Kehrl was found guilty of plunder in his capacity as chairman of various companies exploiting raw materials from Russia.	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	773	BEB Bank	Czecho-slovakia	Bank	Businessman	Rasche, the chairman of the Dresdner Bank, was found guilty of plunder for having coerced owners of the BEB Bank to decrease their shareholding in the bank, then issue new shares in favour of the Dresdner Bank. The court found that "the BEB was taken over and dominated by the Dresdner Bank and Rasche, by and through coercive police-state measures, including the use of threats and concentration camps and Aryanization of holdings in such bank..."	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	776	Aryanization	Czecho-slovakia	Jewish property	Businessman	Rasche, the chairman of the Dresdner Bank, was found guilty of plunder for his involvement in the spoliation of jewish proerty through Aryanization. The court found that "The foregoing references allude to but a small part of the evidence, which establishes clearly that Rasche participated with the Dresdner Bank in the Reich's indefensible program of Aryanization in connection with the illegal program of spoliation of Czechoslovakian economy."	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	777	Rothschild–Gutmann	Czecho-slovakia	Shares	Businessman	Rasche, the chairman of the Dresdner Bank, was found guilty of plundering the Rothschild-Gutmann share in the Vitkovice steel plants. Rasche obtained the "consent" for the sale by negotiating with one of the Rothschild owners while he was held by the Gestapo. This was highly coercive.	Criminal	Theft, Coercion	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Ministries	Trials of War Criminals	778	Handelstrust West	Netherlands	Various properties	Businessman	"It is amply proved that, through coercion, Aryanization tactics, and other police-state measures, vast amounts of property were transferred to German interests, and that the Dresdner Bank and Rasche took an active part in various ways in such nefarious traffic. In Holland, this was largely done through the agency of the Handelstrust West, a concern organized and controlled by the Dresdner Bank as a subsidiary. The Aryanization activities and the traffic in confiscated property in Holland, as carried out by this agency, it is abundantly proved, was extensive and was carried out under the control of the Dresdner Bank, whose policies in these respects reflected the attitude and purposes of defendant Rasche."	Criminal	Theft, Receiving	Guilty
Ministries	Trials of War Criminals	784	Oil, Coal and Ore	Poland	Oil, coal, ores	Minister	von Krosigk, the Nazi Finance Minister, was convicted of plunder for his role in the "formulation, implementation and furtherance of the Reich's spoliation program as it dealt with Poland." Of most importance, von Krosigk's responsibility was established because he ordered that, "Oil, coal, ores, and other raw materials are to be taken out of the East for the purposes of the German, nay the European economy."	Criminal	Theft	Guilty
Ministries	Trials of War Criminals	793	Reich Main Pay Office	France	Precious metals	Minister	von Krosigk, who was the German Finance Minister, was convicted of plunder for his role in "administering plundered property taken over by the Ministry of Finance through the Reich Main Pay Office..." In particular, the court found that he ordered the Pay Office, also known as the War Booty Office, to use "precious metals, precious stones, and pearls", together with objects made out of platinum, gold and silver. He was found guilty for his "part in the custody and subsequent administration and liquidation of the Reich's illegally confiscated property..."	Criminal	Receiving	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Pohl	Trials of War Criminals	988	Pohl	East	Gold, clothing, industry	Officer, Businessman	Pohl was the head of the SS adminsitration WVHA, but also the chairman and principal shareholder of the OSTI (East Industry). He was convicted of plunder for acting as a clearing house for property looted from concentration camp detainees as part of Action Reinhardt, then for his actions in dealing with stolen property through the OSTI.	Criminal	Receiving, Theft	Guilty
Pohl	Trials of War Criminals	997	Frank	East	Gold, clothing, industry	Officer	Frank was an SS member, and deputy to Pohl, in the management of the WVHA, which was charged with the management of concentration camps and supply of slave labor to surrounding industry. He was convicted for plunder because he knowingly took a major part in the redistribution of property stolen from both the concentration camp and industry. Indeed, he openly referred to the property acquired as "originating from thefts, receiving of stolen goods and hoarded goods." The court found that "any participation of Frank's was post facto participation and was confined entirely to the distribution of property previously seized by others. Unquestionably this makes him a participant in the criminal conversion of chattels, but not in the murders which preceded the confiscation."	Criminal	Receiving	Guilty
Pohl	Trials of War Criminals	1244	Mummenthey	East	Loans		As the manager of the German Earth and Stone Works (DEST), Mummenthey was convicted for his role in the plunder of money obtained from the Action Reinhardt. The Court found that "the Allach Ceramic Works under Mummenthey received a loan of over 500,000 marks in May 1943 from the Reindhardt fund through the DWB." On review, the court reiterated that this amounted to plunder even though Mummenthey did not participate directly in the Action Reinhardt, because in accepting the loan, "he derives some benefits." According to the Court, "Nevertheless, it is not correct to say, as defense counsel says, that because a crime has been completed no further crime may follow from it. Receiving stolen goods is a crime in every civilized jurisdiction and yet the larceny, which forms its basis, has already been completed"	?	?	?

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Nuremberg Judgment	Trial of Major War Criminals	238, 281, 295, 329, 346	Nuremberg	Various	Raw materials, scrap metals, machines, food, crude oil, art, furniture, textiles	Various	Goering, Rosenberg, Seyss-Inquart and Schacht were all convicted of plunder for the systematic exploitation of raw materials, scrap metals, machines, food, crude oil, art, furniture and textiles. The Court variously described these acts as pillage, plunder and spoliation.	Criminal	Theft	Guilty
Yamashita	Law Reports of Trials of War Criminals, Vol. IV	1, 6	Yamashita	Phillipines	Money, valuables, food and other private property	Military	Yamashita was found guilty of faliing to prevent or punish troops under his control, who pillaged money, valuables, food and other private property throughout Manilla between 1 Jan and 1 March 1945.	Criminal	Theft	Guilty
Trial of Franz Holstein and Twenty-Three Others	Law Reports of Trials of War Criminals, Vol. VIII	22–26	Holstein	France	Personal property of villages	Military	Various members of German units active in occupied France were convicted of pillage for the theft of the personal property of villagers as part of a program of reprisals for acts of the French Resistance. The reprisals also included murder, torture and destruction of property. According to the Court, "convictions on the count of pillage were made for the lootings which took place at Dun-les-Places, Vermot and Vieux-Dun."	Criminal	Theft	Guilty
Trial of Hans Szabados	Law Reports of Trials of War Criminals, Vol. IX	59	Szabados	France	Personal property, radios, food	Military	The accused, a German non-commissioned officer of the 19th Police Regiment, was convicted for pillage when he stole radio sets, food and personal belongs during a raid on French towns. The raid also involved destruction of property, murder and arson.	Criminal	Theft	Guilty
Trial of Alois and Anna Bommer and their Daughters	Law Reports of Trials of War Criminals, Vol. IX	62	Bommer	France	Furniture	Civilians	The accused were a family of five members, who were convicted of theft and receiving stolen property belonging to French citizens as a result of purchasing furniture and other belongings from a German custodian in charge of a deported person's farm.	Criminal	Receiving	Guilty
Trial of Karl Lingenfelder	Law Reports of Trials of War Criminals, Vol. IX	67	Lingenfelder	France	Horses and vehicles	Civilian	The accused, Karl Lingenfelder, a German from Mussbach, came to France as a settler in the first days of occupation and took possession of a farm called " Bello " at Any, Moselle, whose owners had been expelled by the German authorities. He was convicted of pillage for removing four horses and two vehicles belonging to the French farm he had occupied during the war.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Trial of Christian Baus	Law Reports of Trials of War Criminals, Vol. IX	68	Baus	France	Furniture, crockery, bed linen	Civilian	The accused, a German transport contractor, was appointed by the German authorities to manage a number of French farms. Some of the moveable property from one of these farms had been given to the accused by the owner, Joseph Hocquart, for his personal use during the assignment. During the retreat, he took a large amount of property from the farms, including that entrusted to him.	Criminal	Theft, Embezzel-ment	Guilty
Trial of Heinrich Weber	Law Reports of Trials of War Criminals, Vol. IX	70	Weber	France	Wireless	Civilian	The accused, Heinrich Weber, a German farmer who settled in France during the war, was charged with having abused his lodger's confidence by removing the latter's wireless set to Germany. He was convicted under Article 408 of the Penal Code and Article 2, paragraph 8, of the Ordinance of 28th August, 1944, the penalty being a short term of imprisonment as provided in the Penal Code (six months).	Criminal	Embezzel-ment	Guilty
Trial of Elisa Kespar	Law Reports of Trials of War Criminals, Vol. IX	71	Kespar	France	Furniture	Civilian	The accused, Elisa Kespar, wife of a German settler in France, removed to Germany the furniture of the French family whose dwelling she occupied with her husband. She was convicted for abuse of confidence and sentenced to imprisonment for four months.	Criminal	Embezzel-ment	Guilty
Unnamed Trial	Law Reports of Trials of War Criminals, Vol. IX	71	Horse Sale	France	Horse	Civilian	The accused, a German engineer who rented a French enterprise, was convicted for abusing the owner's confidence by selling a horse belonging to the enterprise and " dissipating " the money received from the sale. The conviction was made under Article 408 of the Penal Code and Article 2, paragraph 8, of the Ordinance of 28th August, 1944.	Criminal	Embezzel-ment	Guilty
Trial of August Bauer	Law Reports of Trials of War Criminals, Vol. IX	65	Bauer	France	Sewing machine, furniture	Civilian	In the case against August Bauer, a German gendarme, the accused was convicted for stealing a sewing machine and other objects, which he took to Germany during the retreat from France. He was also convicted for removing and using furniture, which his predecessor in the gendarmerie post had stolen from a French inhabitant and which the accused knew belonged to this Frenchman. The conviction on this latter case was for receiving stolen goods.	Criminal	Receiving	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Trial of Wili Buch	Law Reports of Trials of War Criminals, Vol IX	65	Buch	France	Silverware	Civilian	Wili Buch, a paymaster (Oberzahlmeister) during the occupation of France, was convicted of receiving stolen goods through purchase. The German Kommandantur at Saint-Die had seized silverware which a French doctor had left behind in crates before leaving the locality. The goods were sold at an auction by the Kommandantur and part of it bought by the accused.	Criminal	Receiving	Guilty
Trial of Benz	Law Reports of Trials of War Criminals, Vol IX	65	Benz	France	Various personal property	Civilian	A German couple named Benz had come during the war to settle in Metz. When going back to Germany at the end of the war they took with them various moveable properties belonging to French inhabitants, including that of the owner of the flat they occupied in Metz. The husband was convicted for theft and the wife for receiving stolen goods.	Criminal	Receiving	Guilty
Trial of Elisabeth Neber	Law Reports of Trials of War Criminals, Vol IX	65	Neber	France	Crockery	Civilian	In the trial of Elisabeth Neber, another German settler in France (Lorraine), the accused was found guilty of receiving crockery stolen by her nephew from a French woman, which she took with her when returning to Germany towards the end of the war.	Criminal	Receiving	Guilty
Trial of Takashi Sakai	Law Reports of Trials of War Criminals, Vol XIV	1	Sakai	China	Food, Books	Military	The accused, Takashi Sakai, was a commander of a Japanese Infantry Brigade in China, between 1939-1945. He was convicted of pillaging rice, poultry, other food and books. The court used the terms plunder and pillage interchangeably.	Criminal	Theft	Guilty
Trial of Dr. Joseph Buhler	Law Reports of Trials of War Criminals, Vol XIV	23	Buhler	Poland	Mining rights, industrial equipment, raw materials, iron ores, crude oil, chemicals, coal	Official	Buhler, was entrusted with the highest functions of German Civil Administration in occupied Poland. He was convicted of "looting of Polish art treasures," "seizure of public property," "economic exploitation of the country's resources," and systematically depriving Polish citizens of private property. Decrees were issued confiscating mining rights and mining shares, installations and equipment of the mineral oil industry, raw materials, iron ores, crude oil, nitrogen, phosphates and coal. Ultimately, this amounted to pillage.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Trial of Hans Albin Rauter	Law Reports of Trials of War Criminals, Vol XIV	89	Rauter	Netherlands	Clothes, wireless sets, personal property	Official	Rauter served as Higher S.S., Police Leader and General Commissioner for Public Safety in occupied Netherlands. He was convicted of pillaging household items such as clothes and wireless sets. In the disposition, the court equated extortion and larceny in Dutch law with the international crime of plunder of private property.	Criminal	Theft, Extortion	Guilty
The Prosecutor v. Tihomir Blaskic	ICTY website	142	Blaskic	Bosnia	Money, jewels	Military	Blaskic was commander of HVO armed forces in central Bosnia during the time the acts were committed. He was accused of, in concert with HVO, aiding and abetting in the planning, preparation or execution of each of the crimes alleged (against Bosnian Muslims). Money and jewels were among items stolen from the living and the dead. Blaskic was convicted of the plunder on the basis that he did not take precautions to prevent crimes that were reasonably foreseeable outcomes of his orders. The decision was upheld on appeal.	Criminal	Theft	Guilty
The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delilc, and Esad Landoo	ICTY website	391–394	Delalic et al	Bosnia	Money, watches, wallets, a signed cheque, bank card, jewellery (rings, chains, bracelets) and other valuables	Military	Delic and Mucic were charged with the plunder of private property perpetrated in a prison camp, through both direct involvement with the alleged crimes and by virtue of their alleged positions as superiors. Money, watches, and other property belonging to persons detained in the prison camp were stolen. The charges were dismissed on jurisdictional grounds - it was found that the thefts as alleged in the Indictment were not serious enough to give the International Tribunal authority for prosecution.	Criminal	Theft	Dismissed
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	545–549	Hadzihasa-novic and Kubura–Miletici	Bosnia	Livestock, valuables	Military	The village of Miletici was attacked in April 1993. The prosecution alleged that units subordinated to Hadzihasanovic and Kubura plundered property, and Hadzihasanovic and Kubura failed to take necessary and reasonable measures to prevent the acts from being committed or to punish the perpetrators.	Criminal	Theft	Dismissed

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	549–556	Hadzihasa-novic and Kubura–Guca Gora	Bosnia	Clothing, household appliances, furniture, jewellry, technical equipment, food, building materials	Military	The village of Guca Gora was attacked in June 1993. Indictment alleges Hadzihasanovic knew or had reason to know that members of units under his control were about to commit acts of plunder or had done so, and that he failed to take the necessary and reasonable measures to prevent those acts from being committed or to punish the perpetrators. Charges were dismissed after Chamber found that the accused took preventive measures to prevent acts of plunder and measures to punish the perpetrators.	Criminal	Theft	Dismissed
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	556–562	Hadzihasa-novic and Kubura–Maline	Bosnia	Cars, tractors, trucks, a bicycle, food, tobacco, livestock, household appliances	Military	The village of Maline was attacked in June 1993. The civilian population was evacuated. Some villagers returned to prevent plundering, which they witnessed upon their return. The plundering was done not only by ABiH soldiers, but also by Muslim civilians from a neighbouring village. Hadzihasanovic was found to have taken preventative measures to prevent acts of plunder and measures intended to punish perpetrators. Kubura was found not to have had effective control over the perpetrators of the crimes committed in Maline.	Criminal	Theft	Dismissed
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	562–568	Hadzihasa-novic and Kubura–Cukle	Bosnia	Tractors, livestock, furniture, household appliances,	Military	The village of Cukle was attacked in June 1993. After a breach of the defensive line, HVO units and civilians withdrew. Plundering occurred in stores and homes in the empty village. Hadzihasanovic was found to have taken preventative measures to deal with acts of plunder and measures intended to punish perpetrators.	Criminal	Theft	Dismissed (Hadziha-sanovic)
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	568–581	Hadziha-sanovic and Kubura –Susanj/ Ovnak/ Brajkovici/ Grahovcici	Bosnia	Cars, household appliances, radio, VCR, tractor, televisions, photographs, technical equipment, building material, food	Military	This area was attacked in June 1993. Extensive, repeated plundering of stores and homes followed, perpetrated both by military personnel (largely members of the military police) and civilians. Hadzihasanovic was fourn to have taken preventative measures to prevent acts of plunder and measures intended to punish perpetrators. Kubura was found to have preventive measures to prohibit plunder but failed in his duty to punish the perpetrators of those crimes. Thus Kubura was found responsible for acts of plunder.	Criminal	Theft	Dismissed (Hadziha-sanovic), Guilty (Kubara), and upheld on appeal

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	581–592	Vares	Bosnia	Automobiles, food, stationary, furniture, household appliances, clothing	Military	Vares was attacked in November 1993. Homes and stores were extensively and repeatedly plundered, both by military personnel and civilians.	Criminal	Theft	Guilty (Kubura), and upheld on appeal
The Prosecutor v. Edver Hadzihasanovic and Amir Kubura	ICTY website	581–592	Vares	Bosnia	Automobiles, food, stationary, furniture, household appliances, clothing	Military	Vares was attacked in November 1993. Homes and stores were extensively and repeatedly plundered, both by military personnel and civilians. Kubura was found a) to have been in control of the subordinates who pillaged Vares, and b) Kubura failed in his duty to take necessary and reasonable measures to prevent the crimes, and did not take punitive measures against those responsible. Thus, Kubura was responsible for acts of plunder.	Criminal	Theft	Guilty (Kubura)
The Prosecutor v. Goran Jelisic	ICTY website	11	Luka camp	Bosnia	Money, watches, jewellry, valuables	Military	It was alleged that money, watches, jewellry, and other valuables were stolen from persons detained at Luka camp upon their arrival in May 1992.	Criminal	Theft	Accused pleaded guilty
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	283–287	Novi Travnik	Bosnia	Cars	Military	Novi Travnik was attacked in October 1992. Buildings were destroyed and cars were stolen by HVO soldiers. Kordic was convicted on the grounds that he was a high-ranking political official, and plunder was a feature of HVO attacks committed as part of a common plan. Thus he was implicated in the commissioning of these crimes. This line of reasoning was given for all charges on which he was convicted.	Criminal	Theft	Guilty (Kordic)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	284	Busova-a	Bosnia	Cars, property	Military	Busova-a was attacked in January 1993. The town was plundered for a number of months, pillaged, and destroyed. In May 1993, there were complaints about local police robbing locals of their cars and property.	Criminal	Theft	Guilty (Kordic)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	284	Lon-ari	Bosnia	Livestock, valuables	Military	Lon-ari wa attacked in April 1993. Houses were pillaged and destroyed, and cattle was stolen and destroyed.	Criminal	Theft	Guilty (Kordic)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	284	Grahovci	Bosnia	Cars, buses, livestock,	Military	Grahovci was attacked after January 1993. The HVO set fire to buildings in the town, and pillaged cars buses, and livestock.	Criminal	Theft	Guilty (Kordic)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	285	Rotilj	Bosnia	Vehicles, tractors, cattle, valuables	Military	The village of Rotilj was attacked in April 1993. Houses were looted and burned down. .	Criminal	Theft	Guilty (Kordic)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	285	Han-Plo-a-Grahovci	Bosnia	Cars, tractors, cattle	Military	The village of Han-Plo was attacked between April and June 1993. The mosque was burned and destroyed, followed by houses. Kordic was convicted on the grounds that he was a high-ranking political official, and plunder was a feature of HVO attacks committed as part of a common plan. Thus he was implicated in the commissioning of these crimes.	Criminal	Theft	Guilty (Kordic)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	285	Vitez	Bosnia	Watches, gold, money, cars, trucks, tractors	Military	After October 1992, several properties were looted and destroyed. The noted items were among those plundered. Cerkez was convicted on grounds that he was a co-perpetrator by virtue of his position as commander of the brigade. This was the reason given for both of his convictions.	Criminal	Theft	Guilty (Kordic and Cerkez)
The Prosecutor v. Dario Kordic and Mario Cerkez	ICTY website	285–286	Stari Vitez	Bosnia	Money, valuables	Military	In January 1993, homes and religious buildings were plundered and destroyed. The noted items were among those plundered.	Criminal	Theft	Guilty (Kordic and Cerkez)
The Prosecutor v. Milan Martic	ICTY website	133	Martic–Hrvatska Dubica		Cars, tractors, tools, cattle, machinery, and furniture	Military	In September and October 1991, Hrvatska Dubica was attacked and taken over. Some houses were burned, and there was widespread looting committed both by armed groups, local civilians, and detained prisoners. Martic was convicted on the basis that the commission of the crimes was a foreseeable consequence of the implementation of the common purpose of the joint criminal enterprise.	Criminal	Theft	Guilty
The Prosecutor v. Milan Martic	ICTY website	135	Martic–Cerovljani		Car	Military	In September 1991, the village of Cervljani was attacked. A number of houses were burned and one car was noted to have been plundered. This charge was thrown out as it was found that there was not sufficient evidence to establish that the appropriation resulted in grave consequences for the victim.	Criminal	Theft	Not guilty
The Prosecutor v. Milan Martic	ICTY website	142	Martic–Saborsko		Cars, tractors, livestock	Military	Serb soldiers and policemen who participated in the attack looted businesses and homes. Nearly every household in Saborsko had a tractor stolen. Martic was convicted on the basis that the commission of the crimes was a foreseeable consequence of the implementation of the common purpose of the JCE.	Criminal	Theft	Guilty

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
The Prosecutor v. Mladen Naletilic and Vinko Martinovic	ICTY website	211–213	Naletilic and Martinovic		Gold jewellery, a computer, other valuables, a car, household appliances, nameplates from doors,	Military	Mostar was attacked in May 1993, and the court found that there was a serious pattern of plunder that took place over the course of the next few months. Martinovic was found guilty of plunder as he knew that it was being committed by his subordinates in several instances but did not take reasonable steps to prevent it or punish the ofenders. In other cases, he was present at the time of plunder and played a strong role in organizing and committing the acts. Naletilic was convicted of plunder as he had notice of plunder taking place but did not take reasonable measures to prevent the plunder or punish the offenders. Both convictions were upheld on appeal.	Criminal	Theft	Guilty (Naletilic and Martinovic)
Prosecutor v. Blagoje Simic, Miroslav Tadic, and Simo Zaric	ICTY website		Simic et al.		Cars, car keys, car documents, jewellery, money, farm equipment, household appliances, furniture, gambling machines, goods from factories, gold jewellery, a gas station was appropriated, other valuables	Military	Immediately after takeover in April 1992, widespread looting occurred in Bosanski Samac municipality in the the towns of Bosanski Samac, Odzak, Kornica, Hrvatska Tisina, Novo Selo, Hrvatska Dubica, Grebnice, Tramosnica, Gornji and Donji Hasici, and Gornica. Civilians performing forced labour were also required to assist with the plundering. While many of the listed items were stolen outright, others were then sold after the fact. The Trial Chamber did acknowledge that the plundering took place, but ruled that the Prosecution had not proved beyond a reasonable doubt that any of the accused had been sufficiently involved in the commission of the crime to warrant a conviction.	Criminal	Theft	Not guilty (all accused)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	131	Lalehun	Sierra Leone	Doors, roofs, zinc from houses	Military	From mid-February to at least mid-March 1998, Kamajors looted in Lalehun. They looted the noted items, told to take other items they wanted, and burned nine houses. Citizens were ordered to carry loads of looted goods for the Kamajors. The charges in Lalehun and Koribondo were dimissed on the basis that such acts were not included in Norman's (the commanding officer) order, thus it could not be established beyond a reasonable doubt that Fofana knew or had reasons to konw the criminal acts would be committed.		Theft	Charge dismissed

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Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	137–138	Koribondo	Sierra Leone	Videos, tape-recorders, money, generators, rice, zinc, household property	Military	After the capture of Koribondo in February 1998, the Kamajors looted property from houses.		Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	258	Bo Town–OC Bundu's House	Sierra Leone	Ammunition	Military	In February 1998, OC Bundu (a police officer, thus considered a collaborator with the junta) was forced to go to his house by Kamajors, where they took his ammunition. The Chamber was satsifed that bboth the general requirements of war crimes and the specific elements of pillage as a war crime were established. Fofona was convicted of pillage for the incidents in Bo on the basis that these elements were met and he was the superior officer of those committing the crimes. However, the Chamber found that although Kondewa was present at the meeting where the attack on Bo was planned, this evidence does not establish beyond a reasonable doubt that Kondewa aided and abetted in the planning, perparation or execution of the criminal acts.	Criminal	Theft	Guilty (Fofona), Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	258	Bo Town–Pharmacies	Sierra Leone	Medicine	Military	In February 1998, Kamajors under command of TF2-017 looted medicine from two pharmacies.	Criminal	Theft	Guilty (Fofona), Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	151, 258	Bo Town–TF2-001	Sierra Leone	Watch, money (15 000 leones), suitcases destroyed, valuables	Military	In February 1998, a group of Kamajors entered a victim's (a police officer, thus considered a collaborator with the junta) house and threatened him. They searched the house for ammunition and soldiers. While searching, the Kamajors broke suitcases and took valuable belonging to victim's family. They also took his watch and 15 000 leones.	Criminal	Theft	Guilty (Fofona), Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	151	Bo Town–MB Sesay's House	Sierra Leone	Women's dresses, men's clothes, fans	Military	In February 1998, a group of Kamajors entered the victim's (considered a collaborator with the junta) hotel and looted civilian property, which is noted. Then they set the hotel on fire. This particular civilian was targeted specifically as he was considered a junta collaborator.	Criminal	Theft	Guilty (Fofona), Not guilty (Kondewa)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	152	Bo Town–other looting	Sierra Leone	Clothes, shoes, utensils, other household property, and the business, which was worht 800 000 leones	Military	In February 1998, Kamajors looted a number of properties and shops, taking a variety of property.	Criminal	Theft	Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	151	Bo Town–TF2-067	Sierra Leone	Tape recorder, radio, video, freezer	Military	Sometime after the arrival of ECOMOG in Bo, Kamajors came to this victims house and stole the listed items. They also tried to take a double bed but it was too large for them to carry. ECOMOG came to help and the Kamajors ran away. After ECOMOG left, Kamajors returned and took more items.	Criminal	Theft	Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	151	Bo Town–TF2-056	Sierra Leone	Television, freezer, water filter, other items	Military	Sometime after the arrival of ECOMOG in Bo, Kamajors came to this victim's house and stole the television, freezer, water filter and other items. They accused the victim of being a junta soldier and said they were taking the items because they belonged to the junta. The victim was not a junta, and the items taken were his personal property.	Criminal	Theft	Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	165	Bonthe Town –Government buildings	Sierra Leone	Household items and equipment	Military	In February 1998, Kamjor commander Lamina Gbokambama and his men looted the listed items from a number of government-owned buildings.	Criminal	Theft	Not guilty (Fofona), Guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	166	Bonthe Town–TF2-116	Sierra Leone	Money (17 900 000 leones)	Military	In February 1998, a house in Bonthe was looted and vandalized by Commander Julius Squire and his troops.	Criminal	Theft	Not guilty (Fofona), Guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	166	Bonthe Town –Government hospital/ doctor's quarters	Sierra Leone	Materials, drugs, household materials	Military	On same day as TF2-116 looting, Kamajors looted materials and drugs from the government hospital and household materials from the doctors' quarters.	Criminal	Theft	Not guilty (Fofona)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	171	Bonthe District–Motumbo	Sierra Leone	Money (140 000 leones)	Military	In March 1998, TF2-086 and her business partner Jitta went to Sabongie. They were ambushed on their way back by five Kamajors. Jitta was then killed and TF2-086 was cut on the neck with a machete, stabbed, and left for dead. She nearly died. Kondewa was found criminally responsible as a superior.	Criminal	Theft	Guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	180–181	Kenema–TF2-144	Sierra Leone	Mattress, money, personal property	Military	In late February 1998, TF2-144 and his family were told to vacate the house as it was to be used as a place for worship. Five days later a different group of Kamajors came and started removing the victim's personal belongings, including the mattress in which he stored his money.	Criminal	Theft	Not guilty (Fofona), Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	186	Talia/Base Zero–Mattru Jong–TF2-109	Sierra Leone	Furniture, household items, clothing	Military	In late 1997, TF2-109 was captured by Kamajors along with other women and three men in her village of Mattru Jong and taken to Talia. They also took her property, which is noted.	Criminal	Theft	Not guilty (Kondewa)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	292	Talia/Base Zero–TF2-096's friend	Sierra Leone	Money (40 000 leones)	Military	TF2-09's friend was selling cassava and accused of being a rebel by Kondewa's bodyguards. She was arrested and taken to Nyandehun where she was held in a cage until 40 000 leones were paid to Kondewa.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	193	Sembehun–Checkpoints	Sierra Leone	Food, personal items, money, clothing	Military	In November 1997, Kamajors came to Sembehun and took control of the area. They set up checkpoints and took food and other property from villagers who were stopped.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	193–194	Sembehun–Mr. Fofana	Sierra Leone	Car	Military	One villager, Mr Fofana, was harrassed at the entry check point and was stripped of his clothes, money, and car. The Kamajors did end up giving his car back, though Kamajors in another town ultimately ended up with the car after he fled.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	194	Sembehun–Mrs. Gorvie	Sierra Leone	Car	Military	The same evening as the attack on Mr. Fofana, Mrs. Gorvie was stopped by Kamajors at the same checkpoint. Although sick, she was forced out of the car and left on the ground. Her car was taken from her.	Criminal	Theft	Charge dismissed

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	194	Sembehun–villages	Sierra Leone	Livestock, food, clothing	Military	The Kamajors also went to the surrounding villages and looted food and other goods, both on the night of their arrival and the next night. Items taken are noted.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	194–195	Sembehun–TF2-073	Sierra Leone	Car, car keys, garage keys, generator, car tires, other gadgets and personal items	Military	Kamajors came to TF2-073's house in the evening. They surrounded him at gunpoint and inspected his garage for arms and ammunition. They found other items in his garage and house, which the took and are noted. TF2-073 did eventually get his car back but it was damaged and he had to spend a lot of money repairing it. Kondewa was convicted on the basis that he had knowledge that the pillage was being committed, but he made no attempt to punish the offenders. In fact, he chose to support their actions by using the vehicle himself. Fofana was acquitted on the basis that it could not be established that he had a superior-subordinate relationship with the Kamajors.	Criminal	Theft	Guilty (Kondewa), Not guilty (Fofana)
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	195	Yakarji	Sierra Leone	Van	Military	Kamajors visited a village called Yakarji, and stole TF2-073's brother-in-law's van. They also beat the man and he died from his injuries a few weeks later.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	196	Shenge	Sierra Leone	Goods, livestock, food, petrol	Military	Kamajors visited Shenge with the three cars they'd looted in Sembehun and returned in the evening with the items listed.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	198	Bradford–second arrival	Sierra Leone	Clothing, food, 63 bags of husk rice	Military	Kamajors arrived in Bradford on four separate occasions in March 1998. They pillaged on the second, third, and fourth visits. In the second instance were items taken that are noted in the facts of the case.	Criminal	Theft	Charge dismissed
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	198–199	Bradford–fourth arrival	Sierra Leone	Money (1 600 000 leones)	Military	Kamajors arrived in Bradford in late March 1998 and fired at civilians. They took money (1 600 000) from TF2-1268's wife and then shot her.	Criminal	Theft	Charge dismissed

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Moinina Fofana and Allieu Kondewa	Special Court for Sierra Leone	204	Masiaka	Sierra Leone	Tapes, bicycles, clothing	Military	T42-021, a child soldier, was initiated and trained by the Kamajors to fight. In his first mission after training, he shot an unarmed woman in the stomach, T42-021 and the other Kamajors took the noted possesions back to their base along with other women they'd captured.	Criminal	Theft	Charge dismissed
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	400	Bo District–Sembehun	Sierra Leone	Money (800 000 leones), cassette player	Military	In June 1997, a group of soldiers travelling by van entered Sembehun. Their leader introduced himself as Bockarie and identified himself as a member of the RUF. Bockarie and his subordinates first entered the house of Ibrahim Kamara, the section chief, whom they forced to the ground and then stole money from. The group then went to the house of Tommy Bockarie, demanded his cassette player, and when he refused, shot him dead. It was found that all three defendents shared in the JCE the requisite intent to commit these crimes.	Criminal	Theft	Guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	356	Kono District–Tombodu	Sierra Leone	Bicycle, money (500 000 leones), cigarettes	Military	Rebels appropriated a bicycle, money, and cigarettes from TF1-197.	Criminal	Theft	Guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	400	Kono District–Koidu Town	Sierra Leone	Vehicles, food	Military	AFRC/RUF fighers engaged in a systematic campaign of looting upon their arrival in Koidu, marking the continuation of "Operation Pay Yourself". Some items taken were of significant value (vehicles), others were on such a large scale to cumulatively constitute a serious violation (food).	Criminal	Theft	Guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	400	Kono District –Koidu Town– Tankoro Bank	Sierra Leone	Money	Military	AFRC/RUF fighters looted funds from the Tankoro Bank. Sufficient funds were taken to constitute a serious violation.	Criminal	Theft	Guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	476	Freetown–TF1-235	Sierra Leone	Money, watch	Military	In January 1999, rebels appropriated 209 000 leones and a wristwatch from witness TF1-235. For all charges in Freetown and the Western Area, the three Accused were acquitted on the grounds that no JCE could be established among the accused, and that no subordinate-insubordinate relationship could be established between the Accused and the fighters committing the criminal acts.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	476	Freetown–TF1-021	Sierra Leone	Money	Military	In January 1999, rebels appropriated 80 000 leones from TF1-021 at the Rogbalan Mosque in Kissy	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	476	Freetown–Wellington clinic	Sierra Leone	Money (300 000 leones), rice, jewellery, food, medical supplies, other supplies	Military	In January 1999, rebels entered a clinic in Wellington and appropriated the listed items.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	476	Freetown–Witness TF1-235	Sierra Leone	Money and property	Military	In February 1999, a group of rebels attacked this house of TF1-235 and took money and property from those hiding there.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	477	Freetown–Witness TF1-331	Sierra Leone	Money (50 000 leones)	Military	In Februar 1999, armed rebels appropriated 50 000 leones from TF1-331.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	477	Freetown–Witness TF1-104	Sierra Leone	Money	Military	In February, rebels accused TF1-104 of being a soldier and appropriated money from him.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Issa Hassan Sesay, Morris Kallon, and Augustine Gbao	Special Court for Sierra Leone	477	Kissy–Connaught Hospital	Sierra Leone	Money (5000 leones)	Military	In February 1999, rebels near Connaught Hospital in Kissy forced TF1-022 to undress and appropriated 5000 leones from him.	Criminal	Theft	Not guilty (Sesay, Kallo, Gbao)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	397	Kono District–Tombudo	Sierra Leone	Palm wine (5 gallons)	Military	In March 1998, soliders under command of 'Savage' forcefully appropriated five gallons of palm wine from a civilian and consumed it.	Criminal	Theft	Guilty (Kamara)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	397	Kono District–Yardu Sando	Sierra Leone	Boxes and valuable property	Military	In April 1998, AFRC and RUF soldiers attacked Yardu Sando and stole boxes and valuables from civilian homes.	Criminal	Theft	Guilty (Kamara)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	398	Freetown–State House	Sierra Leone	Vehicles	Military	In April 1998, witness TF1-334 was present when Brima ordered the Operation Commander to collect all the vehicles parked at UN House and have them delivered. The witness also noted that the rooms in the State House were extensively vandalized and looted.	Criminal	Theft	Guilty (Brima, Kamara, Kanu)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	399	Freetown–Kissy–TF1-104	Sierra Leone	Food, money	Military	In January 1999, two men wearing plain clothes and military trousers and one other man wearing full military uniform and carrying a gun took away money and food from witness TF1-104 and his family.	Criminal	Theft	Guility (Brima, Kamara, Kanu)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	399	Freetown–Kissy–TF1-021	Sierra Leone	Money (15 000 leones)	Military	During the January 1999 invasion of Freetown, soldiers attacked a mosque and took 15 000 leones from TF1-021.	Criminal	Theft	Guilty (Brima, Kamara, Kanu)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	399	Freetown–Kissy–TF1 084	Sierra Leone	Televisions, radio, money ($200) gold-plated watch,	Military	In January 1999, "rebels" wearing military uniforms looted civilian homes of the listed items.	Criminal	Theft	Guilty (Brima, Kamara, Kanu)
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	399	Freetown–Kissy–TF1-083	Sierra Leone	Money, clothes, other valuables	Military	In January 1999, armed "rebels" broke into a house. TF1-083 told the court that the noted items were stolen.	Criminal	Theft	Guilty (Brima, Kamara, Kanu)

Case Name	Source	Page No.	Incident Name	Location	Property Type	Perpetrator Type	Incident Description	Civil or Criminal	Domestic Equivalent	Verdict
Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu	Special Court for Sierra Leone	399	Freetown–Kissy - Locust and Samuel	Sierra Leone	Money, clothing	Military	On the same day as the previous incident, TF1-083 encountered several armed "rebels" who took the witness' shirt and wore it, and another rebel took money from his pocket.	Criminal	Theft	Guilty (Brima, Kamara, Kanu)
The Prosecutor v. Ephram Setako	ICTR website	13–14	Witness SQY	Rwanda	Undefined	Military	Witness SQY testified that at the end of April 1994, the Accused participated in the looting of the of the European Economic Community building in Kigali. The Chamber found that the Prosecution had not proved any of the pillage allegations against the Accused and acquitted him of the charge. Note that this is the only instance in the ICTR where a charge of pillage was laid: generally pillage/looting was incorporated and/or supported charges related to genocide.	Criminal	Theft	Not guilty

XVI. Annex 2: Pillage Elements Worksheet

Contents

O e ie of Thi Wo k hee 127

I. The A med Conflic and Ne✔ Req i emen **128**
A. International Armed Conflict 128
B. Non-International Armed Conflict 128
C. A Nexus to the Armed Conflict 128

II. App op ia ion 129

Overview of This Worksheet

The following worksheet is intended to help prosecutors and investigators decide if pillage has taken place. By completing the boxes below, it should be possible to determine if all of the elements of the crime are satisfied. Pillage is a complex, multi-part crime; this worksheet, while not intended to be comprehensive, is meant to be helpful in making a decision on whether or not to pursue a pillage prosecution.

I. The Armed Conflict and Nexus Requirements

A. International Armed Conflict

- **Di ec In e na ional A med Conflic** —evidence that the exploitation of natural resources in question took place in association with an armed conflict waged directly between two states. (*See Manual, para. 23*);
- **Fo eign Mili a In e en ion**—evidence that the exploitation of natural resources in question took place in an armed conflict in which a foreign state's troops directly intervened *(See Manual, para. 24)*; or
- **In e na ional Wa h o gh P o e** —evidence that the exploitation of natural resources in question took place in a conflict that involved a foreign state using local military groups as proxies in a conflict against a foreign state. This requires evidence of the foreign state supplying logistics, weapons or other material to the rebel group, as well as some role in directing military operations *(See Manual, para 25)*;
- **Fo eign Occ pa ion i ho Violence** —evidence that the natural resources in question were exploited from a territory that was militarily occupied by a foreign state, even though there were no active hostilities *(See Manual, para 26)*.

B. Non-International Armed Conflict

- **In en i** —evidence of an internal armed conflict's intensity, based on duration of hostilities, the types of weapons used, and the number of victims caused by hostilities *(See Manual, paras 27–28)*; and
- **Mili a G o p** —evidence that the war involved military groups, namely, groups that have organized hierarchical structures, control territory, formulated common military strategy, established military headquarters, or promulgate and enforce laws *(See Manual, para. 29)*.

C. A Nexus to the Armed Conflict

- **Wa P o ide Oppo ni** —eevidence that the armed conflict provided the opportunity for the illicit resource exploitation in question *(See Manual, paras 32–38)*;
- **Wa Mo i a e Illici Re o ce T an ac ion**—evidence that the armed conflict created the motivation for the illicit resource exploitation in question *(See Manual, paras 32–38)*;

- **The Company has a Relationship with Armed Groups**—evidence of the company's relationship with armed groups in extracting resources *(See Manual, paras 32–38)*;
- **The Transaction Finances the Conflict**—evidence that profits from the sale of the specific natural resource being used to finance the conflict *(See Manual, paras 32–38)*.

II. Appropriation

A. Direct Appropriation from Owner—Extraction or Harvesting

- **Collaboration with Military Group**—evidence that the company collaborated with military groups to extract the natural resources in question *(See Manual, para. 41)*;
- **Reliance on Decree by Occupier or Rebel Group**—evidence that the company relied on a decree by a foreign government or rebel group as a basis for exploiting natural resources in the territory *(See Manual, para. 42)*; or
- **Over-harvesting Legal Concession**—evidence that the company operating in a war zone over-harvested natural resources within or around a concession lawfully granted to it *(See Manual, para. 43)*.

B. Indirect Appropriation—Purchasing Illicit Resources

- **Purchasing Illicit Resource**—evidence that the company purchased natural resources that were illegally acquired. The company's intention is irrelevant here *(See Manual, para. 46)*.

III. Ownership of Natural Resources

- **Ownership in National Law**—evidence of the national law that governs ownership of these resources, and if ownership is allocated to private owners, copies of concession or mining agreements conferring title *(See Manual, paras 51–54)*;
- **Permanent Sovereignty over Natural Resource**—if relevant, evidence that the transactions took place in a country where a people enjoy an unrealized right to self-determination, or if the matter is contested, evidence that the natural resources were previously nationalized by the state *(See Manual, paras 56–60)*.

- **Indigeno Righ** —if relevant, evidence of recognized indigenous rights over the natural resources in question that are not explicitly extinguished by legislation *(See Manual, paras 61–65)*.

IV. Absence of Consent

- **Iden if Legal Req i emen of Con en** —evidence of the specific legal requirements for conferring and acquiring the owner's consent to exploit the natural resource in question *(See Manual, paras 101–107)*; and
- **B each of he e Legal Req i emen** —evidence that the company acquired the natural resources in question without complying with the relevant legal requirements for conferring consent *(See Manual, paras 101–107)*.

V. The Mental Element

A. Outside Territories Occupied by Foreign Armies or Rebel Groups

- **Di ec In en ion**—evidence that a company representative purposively acquired the natural resources in question, knowing with certainty that the owner did not consent *(See Manual, paras 108–109)*;
- **Obliq e In en ion**—evidence that a company representative purposively acquired the natural resources in question, knowing with virtually certainly that the owner did not consent *(See Manual, paras 110–112)*; or
- **Indi ec In en** —evidence that a company representative purposively acquired the natural resources in question, aware that the owner probably did not consent *(This test is approximate—see Manual, paras 113–117)*.

B. Within Territories Occupied by Foreign Armies or Rebel Groups

- **U f c Excep ion**—if the resources were initially exploited by a rebel group or foreign army within occupied territory, evidence that the company that appropriates the resources was aware that proceeds from the transaction would certainly, virtually certainly, or probably be used to (a) purchase weapons; (b) enrich elites; or (c) finance warfare *(See Manual, paras 118–120)*.

VI. Individual and Corporate Criminal Liability

- **Liabili of B ine Rep e en a i e**—in relevant jurisdictions, evidence that a specific company representative both performed the appropriation and satisfied the mental element of the crime *(See headings III and IV above) (See Manual, paras 132–135);*
- **Iden ifica ion Theo** —in relevant jurisdictions, evidence that a specific company representative involved in the management of the company both performed the appropriation and satisfied the mental element of the crime *(See headings III and IV above) (See Manual, para 136)*; or
- **Co po a e C l e**—in relevant jurisdictions, evidence that a specific company did not create and maintain a corporate culture that ensured that natural resources were acquired through legal sources *(See Manual, para. 137)*.

Notes

1. Hague Regulations 1907, Article 28.

2. Hague Regulations 1907, Article 47.

3. Geneva Convention IV of 1949, Article 33, second paragraph.

4. Jean-Marie Henckaerts and Louise Doswald-Beck, I *Customary International Humanitarian Law* 182–185 (2005). [hereafter *Customary International Humanitarian Law Study*], Rule 52 ("Pillage is prohibited"). For a compilation of state practice supporting this conclusion, see *Customary International Humanitarian Law Study, Vol II*, pp. 1076–1122.

5. Although Article 4 of Additional Protocol II appears to limit pillage to property taken from *persons who do not take a direct part in hostilities*, the commentaries to the article indicate that the provision is intended to extend to the pillage of public and private property generally. See Commentaries, Additional Protocol II, para. 4542 ("The prohibition of pillage is based on Article 33, paragraph 2 of the fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private.").

6. *Customary International Humanitarian Law Study*, pp. 182–185.

7. Instructions for the Government of Armies of the United States in the Field (Lieber Code), April 24, 1863, Article 44.

8. Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference*, March 29, 1919, Annex A, p. 40.

9. See Nuremberg Charter, Article 6(b).

10. See ICC Statute, Articles 8(2)(b)(xvi) and (e)(v); Iraqi Special Tribunal Statute, art. 2(b)(17). December 10, 2003.

11. The reference to 'even when taken by assault,' is reflective of a period of history when it was lawful to pillage a town as retribution for local resistance to siege. See N. Bentworth, The Law of Private Property in War (London: Sweet & Maxwell,1907), at 8. When the Brussels Declaration of 1864 was confronted with this practice, it elected to do away with even the exception by prohibiting pillage categorically. The Hague Regulations of 1907 emulated this language, even though it was merely intended emphasize that the prohibition of pillage abandoned this earlier exception.

12. Statute of the International Criminal Tribunal for Rwanda, Article 4(f); Statute of the Special Court for Sierra Leone, Article 3(f).

13. Crimes against Humanity and War Crimes Act, 2000 c. 24 (Can.) §§ 6(3) and 6(4).

14. In this respect, §§ 4(4) and 6(4) of the Canadian Crimes Against Humanity and War Crimes Act also state that "[f]or greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date."

15. International Criminal Court Act, 2001, 17, § 50(1) (Eng.) ("'war crime' means a war crime as defined in article 8.2.").

16. Gesetzes zue Einführung des Völkerstrafgesetzbuches [German Code of Crimes against International Law] 30 June 2002 BGBl 2002, I, at 2254, § 9(1) (F.R.G) ("Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of the armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party contrary to international law, such property being in the power of the perpetrator's party, shall be punished with imprisonment from one to ten years.").

17. William Whewell (trans.), *Grotius on the Rights of War and Peace* (Cambridge, 1953), p. 345 ("They who condemn this practice nay, that greedy hands, active in pillage, are so forward as to snatch the prizes which ought to fall to the share of the bravest; for it commonly happens that they who are slowest in fight are quickest in plunder.").

18. See Ernst H. Feilchenfeld, *The International Economic Law of Belligerent Occupation* 30 (Carnegie, 1942) (who uses the two terms interchangeably) [hereafter *Feilchenfeld*].

19. John Westlake, *International Law, Part II: War* (Cambridge, 1907), p. 108.

20. Nuremberg Charter, *supra* note 9.

21. At one point, for instance, the tribunal indicated that "[p]ublic and private property was systematically plundered and pillaged in order to enlarge the resources of Germany at the expense of the rest of Europe." International Military Tribunal (Nuremberg) Judgment (1946), 1 Trial of the Major War Criminals before the International Military Tribunal (1945). p. 228 [hereafter *Nuremberg Judgment*].

22. See for instance Kubura's conviction for "pillage" in the original French, but for "plunder" in the English translation. *Prosecutor v. Hadžihasanović et al.* Case No. IT-01-47-T, Judgment, (March 15, 2006), disposition [hereafter *Hadžihasanović Trial Judgment*].

23. *Prosecutor v Delalić et al.*, Case No. IT-96-21-T, Judgment, (November 16, 1998), para. 591 [hereafter *Delalić Trial Judgment*].

24. *Id.*

25. See Australian Defence Force, Law of Armed Conflict, Commanders' Guide, Australian Defence Force Publication, Operations Series, ADFP 37 Supplement 1—Interim Edition, 7 March 1994, Art. 970 ("pillage, the violent acquisition of property for private purposes, is prohibited"); see also The Law of Armed Conflict at the Operational and Tactical Level, Canadian Office of the Judge Advocate General, 1999, p. 15 ("pillage, the violent acquisition of property for private purposes, is prohibited. Pillage is theft, and therefore is an offence under the Code of Service Discipline.").

26. At Nuremberg for instance, the tribunal observed that "[p]roperty offences recognised by modern international law are not limited to offences against physical tangible possessions or to open robbery in the old sense of pillage." WCC, Vol. X, Notes on the Case, p. 164.

27. See *infra*, Chapter IV of this manual.

28. *United States v. Krauch et al.*, (IG Farben), 8 Trials of War Criminals 1081, p. 1133 [hereafter *IG Farben Case*].

29.

42. The leading case for this proposition is *Heinz Heck et al.* (*Peleus* case) (1949), *Law Reports of Trials of Major War Criminals, Vol. 1* (rejecting a German submarine commander's claim that the killing of surviving crew members of a sunk military vessel was justified by "military necessity" to save his own life and that of the submarine crew). On this basis, military manuals define military necessity as permitting "a state engaged in an armed conflict to use only that degree and kind of force, *not otherwise prohibited by the law of armed conflict*, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy..." U.K. Ministry of Defence, *The Manual of the Law of Armed Conflict* § 2.2 (Oxford, 2005) (emphasis added).

43. See Art. 33, Geneva Convention IV (stating that "pillage is prohibited."); Art. 28 Hague Convention, *supra* note 38 (stating that "the pillage of a town or place, even when taken by assault, is prohibited.") This language contrasts with the right of relief personnel to unrestricted access during war, which can be curtailed by military necessity because the Geneva Conventions state that "[o]nly in case of imperative military necessity may the activities of the relief personnel be limited to their movements temporarily restricted." Additional Protocol I, Art 71(3).

44. *IG Farben Case,* p. 1133.

45. *Prosecutor v. Martić*, Case No. IT-95-11-T, Judgment, (June 10, 2007), para. 102. [hereafter *Martić Trial Judgment*] ("for the crime of plunder [pillage] to be established, the appropriation of private or public property must be done without lawful basis or legal justification... According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle.").

46. *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, para. 982 (March 2, 2009).

47. *Id.*

48. See for instance, *Martić Trial Judgment*, paras. 100-104 (applying the provisions of the Hague Regulations despite have failed to qualify the conflict). Causa originalmente instruida por el Consejo Supremo de las Fuerzas Armadas en cumplimiento de Decreto 158/83 del Poder Ejecutivo Nacional, Cám. Nac. Apel. Cr. y Correcc., Judgment of 30 December 1986, published in en Fallos de la Corte Suprema de Justicia de la Nación, Tomo 309, Vol. II, 1986 (applying terms of the Hague Regulations in non-international armed conflicts).

49. See *infra*, Chapter V of this manual.

50. *Tadić Appeal Judgment,* para. 84.

51. *Prosecutor v. Blaškić*, IT-95-14-T, Judgment, March 3, 2000, paras. 75, 76 and 94 [hereafter *Blaškić Trial Judgment*].

52. *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgment, February 26, 2001, para. 108(2) [hereafter *Kordić and Čerkez Trial Judgment*].

53. See J.G. Stewart, "Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict," *International Review of the Red Cross*, June 2003, Vol. 85, No. 850, pp. 328–333.

54. *Le Procureur c. Thomas Lubanga Dyilo*, Décision sur la confirmation des charges, No.: ICC-01/04-01/06, 29 January 2007 para. 220. For an English translation, see http://www.icc-cpi.int/iccdocs/doc/doc266175.pdf.

55. *Prosecutor* v. *Delalić et al.*, IT-96-21-A, Judgment, 20 February 2001, para. 13 [hereafter *Delalić Appeal Judgment*].

56. *Tadić Appeal Judgment,* para. 137.

57. *Id.*

58. See for example, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, T. Ch., Judgment, September 1, 2004, paras. 144–155; see also *Delalić Appeal Judgment*, paras. 28–50.

59. *Prosecutor v. Katanga et al.*, Decision on Confirmation of Indictment, ICC-01/04-01/07, 30 September 2008, para. 240.

60. Geneva Conventions, Common Article 2.

61. *Prosecutor v. Dusko Tadic aka "Dule" (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)*, IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), October 2, 1995, para. 70.

62. International Committee of the Red Cross, Working Paper, June 29, 1999.

63. See *Juan Carlos Abella v. Argentina*, Case 11.137, November 18, 1997. http://www.cidh.oas.org/annualrep/97eng/Argentina11137.htm.

64. *Prosecutor v. Boškoski*, Case No. IT-04-82-T, Judgment, July 10, 2008, paras. 244 and 249.

65. *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgment, November 20, 2005, para. 132 [hereafter *Limaj Trial Judgment*].

66. *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgment, paras. 83–179 (November 20, 2005).

67. See *Martić Trial Judgment*, paras. 41-46.

68. See *Prosecutor v. Orić*, Case No. IT-03-68-T, Judgment, June 30, 2006, paras. 259–260 [hereafter *Orić Trial Judgment*].

69. See Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 U.N.T.S. 73, 75 (entered into force November 26, 1968); see also European Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity and War Crimes (January 25, 1974) E.T.S. 82; *Customary International Humanitarian Law Study*, Vol. I, pp. 614–618 (concluding that, as a matter of customary international law, "statutes of limitations may not apply to war crimes."); see generally, Ruth A. Kok, *Statutory Limitations in International Criminal Law* (T.M.C. Asser Press, 2007).

70. See *infra*, Chapter XIII of this manual.

71. *Id.*

72. The International Criminal Court has itself followed this course. See *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges, para. 381 (Sept. 30, 2008) ("[a]s neither the Statute nor the Elements of Crimes define the phrases 'in the context of' and/or 'was associated with', the Chamber applies the case-law of the international tribunals").

73. *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment, para. 58 (February 22, 2002) [hereafter *Kunarac Appeal Judgment*]; *Prosecutor v. Blagojević*, Case No. IT-02-60-T, Judgment, para. 536 (January 17, 2005).

74. *Kunarac Appeal Judgment,* para. 58.

75. *Id.*, ("if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict."); *Prosecutor v. Bagambiki et al.*, Case No. ICTR-99-46-T, Judgment and Sentence, para. 793 (February 25, 2004) ("the Chamber considers that when soldiers took part in the massacre of refugees at the Gashirabwoba football field on 12 April 1994, they did so under the guise of the underlying armed conflict."); *Prosecutor v. Stakić*, Case No. IT-97-24-A, Judgment, para. 345 (March 22, 2006) [hereafter *Stakić Appeal Judgment*] ("All of the crimes the Appellant carried out through his role as President of the Crisis Staff were thus, in effect, carried out "under the guise of the armed conflict").

76. *Kunarac Appeal Judgment,* para. 59 (emphasis added).

77. *Kunarac Appeal Judgment,* para. 57; see also *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment, para. 105 ("it is not necessary that actual armed hostilities have broken out in Mabanza commune and Kibuye Prefecture for Article 4 of the Statute to be applicable. Moreover, it is not a requirement that fighting was taking place in the exact time-period when the acts the offences alleged occurred were perpetrated."). See also *Blaškić Trial Judgment*, para. 69 ("This does not mean that the crimes must all be committed in the precise geographical region where an armed conflict is taking place at a given moment").

78. *Blaškić Trial Judgment*, para. 70.

79. *Akayesu Appeal Judgment,* para. 444.

80. IG Farben's acquisition of the Boruta dyestuff factories in Poland from the Reich Ministry of Economics, for instance, was temporarily hampered by the occupying power because "competition developed for the purchase of the property, and price negotiations were protracted." *IG Farben Case*, p. 1143. Likewise, when IG Farben acquired the Nordisk-Lettmetall factory through a coerced shareholder takeover, it only accepted the Reich as a partner in the project reluctantly. The tribunal found that "Farben immediately entered into this large-scale planning and fought for as large a capital participation as possible. It may have accepted the Reich nominees as partners reluctantly, but its consenting participation in the project cannot be doubted." *IG Farben Case,* p. 1145. As for representatives of the Flick concern, the tribunal itself concluded that with one exception "the defendants were not officially connected with the Nazi government but were private citizens engaged as businessmen in the heavy industry of Germany." Trial of Frederick Flick and Five Others (Flick), 6 *Trials of War Criminals*, p. 1191 [hereafter *Flick Case*].

81. The Hague District Court, *Mpambara*, March 23, 2009, LJN: BK0520, Rechtbank's-Gravenhage, 09/750009-06, http://www.rechtspraak.nl.

82. *Id.*, para. 60.

83. *Id.*, para. 62.

84. *Nuremberg Judgment,* p. 306.

85. *Trials of German Major War Criminals* 13 (British Transcripts), 170 http://www.nizkor.org/ftp.cgi/imt/tgmwc/tgmwc-13/ftp.py?imt/tgmwc/tgmwc-13//tgmwc-13-123.04 ("This company was concerned with oil industries all over Europe. It had its beginnings in the Rumanian oil interests and whenever German troops occupied territories where there were oil deposits, that company, which

was a part of the Four-Year Plan, was given the task by the various economic offices, later by the armament industry, of producing oil in these territories and of restoring the destroyed oil-producing districts.").

86. *Nuremberg Judgment,* p. 307.

87. *U.S.A. v. Von Weizsaecker et al. (Ministries Case)*, 14 Trials of War Criminals 314, p. 741 (1949) [hereafter *Ministries Case*]. BHO standards for Berg und Huettenwerke Ost.

88. *Ibid.*

89. See *Report of Liberian Truth and Reconciliation Commission*, Appendices, Volume III: Economic Crimes and the Conflict, Exploitation and Abuse, paras. 29–33.

90. *Report of the Forest Concession Review Committee*, Phase III, May 31, 2005, at 20.

91. Judgment of the Permanent Military Tribunal at Metz, 2nd December, 1947, in 9 *Law Reports of Trials of War Criminals,* p. 65. Likewise, a German settler in France named Elisabeth Neber was found guilty of receiving crockery stolen by her nephew from a French woman, which she took with her when returning to Germany towards the end of the war. *Id.*

92. Trial of Alois and Anna Bommer and their Daughters, Permanent Military Tribunal At Metz, 9 *Law Report of Trials of War Criminals*, (February 19, 1947), p. 64 [hereafter *Bommer Case*].

93. *Id.*

94. *France v. Roechling*, 14 Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, app. B, (1949), pp. 1117–1118 [hereafter *Roechling Case*].

95. *Id.,* p. 1113.

96. *Id.,* p. 1118.

97. *IG Farben Case,* p. 1143; see also *IG Farben Case*, pp. 1146–1147 (convicting Farben executives of pillage for purchasing the Mulhausen Plant from the German Reich and for purchasing the oxygen and acetylene plants, referred to as Strassbourg-Schiltigheim, under similar circumstances).

98. *Krupp Case*, p. 1351. Similarly, members of the firm Krupp were convicting of pillage for purchasing machinery from a German appointed administrator who had seized the machinery from a Jewish owner.

99. *Ministries Case,* p. 731.

100. The Model Code stipulates that "a person is guilty of *theft* if he purposely receives, retains, or disposes of moveable property of another knowing that is has been stolen, or believing that it has probably been stolen..." American Law Institute, *Model Penal Code and Commentaries,* Part II, §223.6 (The American Law Institute, 1980) (emphasis added) [hereafter *Model Penal Code*].

101. *Model Penal Code*, p. 232.

102. See also Smith and Hogan, *Criminal Law* 848–849 (David Ormerod ed., Oxford University Press 2005).

103. In most of these countries, the separation between theft and receiving stolen property occurred at a time in history when lawmakers were seeking to address problems in treating receiving stolen property as a type of complicity in the original theft. As the law on complicity matured, lawmakers realized that it is improper to hold a receiver complicit in an original theft, since the

receiver made no causal contribution to the original offense. See Wayne R. Lafave, *Criminal Law*, 985 (Thomson West, 4th ed. 2003); see also Michele-Laure Rassat, *Droit Penal Special: Infractions Des Et Contre Les Particuliers* para. 187 (Dalloz, 3rd ed., 2001). Nothing in these systems precludes amalgamating the two offenses into a single crime, then treating receiving stolen property as a new act of theft.

104. "Digest of Laws and Cases," 15 *Law Reports of Trials of War Criminals*, p. 130.

105. Dissenting Opinion of Judge Wilkins, *U.S. v. Krupp*, 9 *Trials of War Criminals*, p. 1461. [*hereafter Krupp Case*]. The judgment was dissenting because Wilkins disagreed with the majority's finding that the court had no jurisdiction to consider these allegations of pillage.

106. Eva Liedholm Johnson, "Rights to Minerals in Sweden: Current Situations from an Historical Perspective," 19(3) *Journal of Energy and Natural Resources Law* 278–286, p. 280 (2001) .

107. Jan G. Laitos and Joseph P. Tomain, *Energy and Natural Resources Law* (West Publishing, 1992).

108. Peter C. Morgan, "An Overview of the Legal Regime for Mineral Development in the United Kingdom," 1081–1094, *International and Comparative Mineral Law and Policy: Trends and Prospects* (Elizabeth Bastida et al. eds., Kluwer, 2005).

109. See *infra* Chapter X of this manual.

110. (Unofficial translation.) The original reads "L'Etat exerce une souveraineté permanente notamment sur le sol, le sous-sol, les eaux et les forêts, sur les espaces aérien, fluvial, lacustre et maritime congolais ainsi que sur la mer territoriale congolaise et sur le plateau continental. Les modalités de gestion et de concession du domaine de l'Etat visé à l'alinéa précédent sont déterminées par la loi."

111. Law No. 007/2002 of July 11, 2002 Relating to the Mining Code, Art. 3. [hereafter Congolese Mining Code], Art. 3 (emphasis added).

112. Ley Organica para el Aprovechamiento Sostenible de los Recursos Naturales, Law Nbr 26821, published on 26 June 1997, Article 4.

113. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005 I.C.J, 19 December 2005, para. 244. [hereafter *DRC v. Uganda Case*]

114. *DRC v. Uganda Case*, Declaration of Judge Koroma, para. 11.

115. General Assembly resolution 1803 (XVII) of 14 December 1962, Permanent Sovereignty over Natural Resources, Article 1.

116. *Id.*, Preamble.

117. Article 21(1) of the African Charter on Human and Peoples' Rights states that "[a]ll peoples shall freely dispose of their wealth and natural resources," whereas Article 21(4) of the same treaty indicates that "*states parties* ... shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity."

118. Both Covenants state, at Article 1(2), that "[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law." Nonetheless, the Human Rights Committee has issued a formal opinion that appears to treat this

right as belonging to states. See Human Rights Committee, *General Comment No. 12: The Right to Self-Determination of Peoples (Art. 1)*, March 13, 1984 ("States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph...").

119. See, for instance, GA Res 2158 (XXI), Permanent sovereignty over natural resources, 25 November 1966, para. 1 ("the inalienable right of all countries,"); GA Res 3201 (S-VI), Declaration on the Establishment of a New Economic Order, 1 May 1974, para. 4(e) ("[f]ull permanent sovereignty of every State over its natural resources"); GA Res 3016 (XXVII), Permanent sovereignty over natural resources of developing countries, December 18, 1972, para. 1 ("Reaffirms the right of States to permanent sovereignty over all their natural resources, on land within their international boundaries as well as those found in the sea-bed and the subsoil thereof within their national jurisdiction and in the superjacent waters"); GA Res 3171 (XXVIII), Permanent sovereignty over natural resources, December 17, 1973, para. 1 ("Strongly reaffirms the inalienable rights of States to permanent sovereignty over all their natural resources..."); GA Res 3281 (XXIX) Charter of Economic Rights and Duties of States, December 12, 1974, Article 2, ("Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities."); GA Res 34/201. Multilateral development assistance for the exploration of natural resources, 19 December 1979, preamble ("the permanent sovereignty of States over their natural resources and all economic activities."); GA Res XX, 3517. Draft World Charter for Nature, October 30, 1980, preamble ("Reaffirming the principle of the permanent sovereignty of States over their natural resources").

120. Emerka Duruigbo, *Permanent Sovereignty and Peoples' Ownership of Natural Resources in International Law*, 38 Geo. Wash. Int'l L. Rev. 33 (2006), p. 54.

121. Nico Schrijver, *Sovereighty over Natural Resources*, 268–269 (Cambridge University Press, 1997), p. 371.

122. *Ibid*, p. 390.

123. Kamal Hossain, "Introduction," in *Permanent Sovereignty over Natural Resources in International Law*, (Kalal Hossain and Subrata Roy Chomdhury eds., St. Martin's Press, 1984), p. xiii (emphasis added).

124. Ian Brownlie, *Legal Status of Natural Resources in International Law (Some Aspects)*, pp. 270–271.

125. S/Res/1483 (2003), p. 1 (Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources".); see also S/Res/1511 (2003), p. 1 ("Underscoring that the sovereignty of Iraq resides in the State of Iraq, reaffirming the right of the Iraqi people freely to determine their own political future and control their own natural resources").

126. James Crawford, "The Rights of Peoples: Some Conclusions," in *The Rights of Peoples* (Crawford ed., Oxford University Press, 1992), p. 171.

127. Karol N. Gess, *Permanent Sovereignty over Natural Resources*, 13 Int'l and Comp. L. Q. (1964), p. 446.

128. See Certain Phosphate Lands in Nauru (*Nauru v. Australia*), 1992 I.C.J. 240, June 26 (Preliminary Objections, Judgment); Antony Anghie, *'The Heart of My Home': Colonialism, Environmental Damage, and the Nauru Case*, 34 Harv. Int'l. L. J. 445 (1993).

129. The Amoco International Finance Corp. Case, (1987) 15 Iran-US C.T.R. 189. para. 113.

130. Article 15(1), ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, states that "[t]he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded."

131. United Nations Declaration on the Rights of Indigenous Peoples, Article 26(1), adopted by the General Assembly on September 13, 2007.

132. *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001), paras. 146 and 153 ("the State has violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property, and that it has granted concessions to third parties to utilize the property and resources located in an area which would correspond, fully or in part, to the lands which must be delimited, demarcated, and titled.") [hereafter *Awas Tingni Case*]. Similarly, see *Case of the Saramaka People v. Suriname*, Judgment of November 28, 2007, Inter-Am. Ct.H.R.

133. *Awas Tingni Case,* para. 153.

134. *Maya Indigenous Community of the Toledo District v. Belize,* Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5, rev. 1, para. 5 (2004).

135. *Ibid,* para. 140.

136. *Ibid,* para. 117.

137. *Mabo v. Queensland* (No. 2), (1992) 75 C.L.R. 1, para. 128(3).

138. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, December 11, 1997.

139. *Alexkor Limited and the Government of the Republic of South Africa v. The Richtersveld Community and Others,* Constitutional Court of South Africa, Case CCT 19/03, October 14, 2003, para. 62. available at http://www.saflii.org/za/cases/ZACC/2003/18.pdf.

140. See, for instance, American cases after the Bolshevik revolution in Russia: *Sokoloff v. National City Bank of New York* (1924), 239 NY 158; *Russian Reinsurance Co. v. Stoddard* (1925), 240 NY 149; *Salimoff v. Standard Oil* (1933), 262 NY 220. Similarly, with respect to the Spanish Civil War, see the British judgment *Banco de Bilbao v. Rey*, [1938] 2 All.E.R. 253. See too, *Hesperides Hotels v. Aegean Turkish Holidays*, (1977) 3 W.L.R. 656 (Eng. C.A.).

141. *Texas v. White* 74 U.S. 733, 733 (1868).

142. *Id.,* p. 736 ("[a]s these persons acquired no rights to payment of these bonds as against the State, purchasers could acquire none through them.")

143. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion of 21 June 1971, I.C.J. Reports, para. 125 (1971) [hereafter *Namibia Opinion*].

144. *Namibia Opinion,* Separate Opinion of Judge De Castro, pp. 218–219. See also Mohamed Bennouna, *Le droit international relatif aux matières premières,* 177 R.C.A.D.I. 103, 120 (1982) (affirming that "L'Afrique de Sud ne peut donc disposer légalement des ressources du territoire").

145. The UN Security Council passed a resolution endorsing the decision, which also declared that "franchises, rights, titles or contracts relating to Namibia granted to individuals or companies

by South Africa after the adoption of General Assembly resolution 2145 (XXI) are not subject to protection or espousal by their States against claims of a future lawful Government of Namibia," SC/Res/301, October 20, 1971, para. 12. UN Council for Namibia, Decree No. 1 for the Protection of the Natural Resources of Namibia, (September 27, 1974) (stating that "[a]ny permission, concession or licence for all or any of the purposes specified in paragraph 1 above whensoever granted by any person or entity, including any body purporting to act under the authority of the Government of the Republic of South Africa or the 'Administration of South West Africa' or their predecessors, is null, void and of no force or effect.").

146. *Loizidou v. Turkey*, App. No. 15318/89, 23 Eur. Ct. H.R. 513, para. 44–45 (1996). The European Court of Human Rights has itself upheld this reasoning on a number of occasions. See *Cyprus v. Turkey* ([GC], no. 25781/94, ECHR 2001 IV), *Demades v. Turkey* (no. 16219/90, § 46, 31 July 2003), *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (no. 16163/90, § 31, 31 July 2003), and *Xenides-Arestis v. Turkey* (No. 46347/99, ECHR 2005, December 22, 2005).

147. For guidance in determining the position in Austria, Belgium, Canada, France, Germany, Italy, Japan, Mexico, New Zealand, Poland, Sri Lanka, the UK, and USA, see Stefan Talmon, *Recognition in International Law: A Bibliography*, 11.2 (1 ed. 2000).

148. See *infra*, Chapter IX of this manual.

149. SC Res 541, November 18, 1983, para. 7.

150. *Loizidou v. Turkey*, App. No. 15318/89, 23 Eur. Ct. H.R. 513, paras. 44–45 (1996).

151. SC Res 216 (1965) 12 November 1965, para. 2 ("Decides to call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance to this illegal regime."); SC Res 662 (1990) August 9, 1990 ("Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation."); SC Res 283 (1970) July 29, 1970 ("Calls upon all States maintaining diplomatic or consular relations with South Africa to issue a formal declaration to the Government of South Africa to the effect that they do not recognize any authority of South Africa with regard to Namibia and that they consider South Africa's continued presence in Namibia illegal.").

152. The American Law Institute, *Restatement of the Law, Foreign Relations Law of the United States*, § 203(g).

153. Patrick Daillier and Alain Pellet, *Droit International Public* (L.G.D.J, 2002), p. 569 ("Les pouvoirs de l'autorité "belligérante" sur la portion de territoire qu'elle contrôle sont assimilables à ceux d'un occupant de guerre...").

154. *Republic of Liberia and Another v. Bickford*, 787 F. Supp. 397, 401 United States District Court, Southern District, New York, 24 March 1992 reported in International Law Reports, Vol. 96, p. 90.

155. See *infra* Chapter IV of this manual.

156. See *infra* Chapter IV of this manual.

157. Article 52 stipulates that "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions

and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far is possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible."

158. *Krupp Case*, p. 1345; For other definitions of property generally contemplated by the term requisition, see John Westlake, *International Law, Part II: War* 110 (Cambridge, 1907) ("food for men and animals and clothes, wagons, horses, railway material, boats and other means of transport, and of the compulsory labour, whether gratuitous or otherwise, of workmen to make roads, to drive carts, and for such other services."); see also Percy Bordwell, *The Law of War Between Belligerents*, 320 (Callaghan and Company, 1908) (indicating that "requisitions in kind extend to all objects incidental to the shelter of troops, to the subsistence of the army in campaign, to transportation and communication, to the care of the sick and wounded, to objects of clothing and camp equipment, and finally to all materials, tools, apparatus, etc., suitable for use of the army."); see also Manual of Military Law, (HMSO, 1958) para. 598 [hereafter *U.K. Military Manual 1958*].

159. *U.K. Military Manual 1958*, para. 598.

160. *Ralli Brothers v. German Government*, 2 I.L.R. 446 (Anglo-German Mixed Arbitral Trib. 1923); *Gros Roman et Cie v. German State*, 2 I.L.R. 449 (Franco-German Mixed Arbitral Trib. 1924); *Scotti v. Garbagnati and Marconi*, 15 I.L.R. 604 (Italy Ct. of Cassation 1948) (finding that an order of the German Military Authorities in occupation of Northern Italy purporting to requisition buildings for use as a workshop by an Italian firm engaged in export to Germany was not a lawful act of requisitioning in the meaning of Hague Convention).

161. *De Riard v. Medoro*, Italy, Court of Cassation (United Civil Sections), March 11, 1950, ILR (1950) Case No. 141, pp. 426–427 (interpreting the pertinent provisions of the Hague Regulations as implying that "a requisitioned object may be used and consumed in its natural state, but it cannot be sold or exchanged for another." See also *Muhlmann v. Bauer* 18 I.L.R. 692 (Italy Ct. of Cassation 1951), where the same court held that article 52 of the Hague Regulations was violated "where goods were requisitioned from one person and sold or otherwise transferred to another." Likewise, in *Kostoris v. Meinl*, an Italian court found that a requisition then sale of Jewish property was not sufficient to pass title in the property because "these acts cannot possibly be regarded as dictated by the needs of the army of occupation." *Kostoris v. Meinl*, Court of Appeal of Trieste, January 28, 1949, ILR (1949) Case No. 171, p. 473.

162. *Thiriez v. Deschamps*, 15 I.L.R. 608 (Ct. of First Instance of Mons 1948).

163. *Blum v. Société d'Injection Rapide et de Conservation des Bois*, 22 I.L.R. 1007 (Fr. Ct. of Cassation 1955) (upheld on appeal). See *Société d'injection Rapide et de Conservation des Bois v. Blum*, France, Court of Cassation. October 27, 1958.

164. *Feilchenfeld*, p. 36.

165. See Hague Convention Respecting the Laws and Customs of War on Land (1907), 36 Stat 2277, ch 1, art 53(1).

166. The original reads, « toute propriété mobilière de l'Etat de nature à servir aux opérations de la guerre. »

167. Yoram Dinstein, *The International Law of Belligerent Occupation*, (2nd ed, Oxford University Press, 2009), p. 219 [hereafter *Dinstein*].

168. According to Mechelynck, this reference to "nature" in the original provision was expressly inserted in order to restrict seizures to objects which, "by their very nature," are capable of military use. Albert Mechelynck, *La Convention De La Haye Concernant Les Lois Et Coutumes De La Guerre Sur Terre D'apres Les Actes Et Documents Des Conferences De Bruxelles De 1874 Et De La Haye De 1899 Et 1907*, (Maison d'Éditions et d'Impressions, 1915), p. 407.

169. *Actes De La Conference De Bruxelles*, 121 (F. Hayez, 1874)

170. Max Huber, *La Propriété Publique en Cas De Guerre Sur Terre*, 20 R.G.D.I.P. (1913), p. 668 [hereafter *Huber*] ("il faut comprendre dans la propriété mobilière de l'Etat de nature à servir aux opérations de la guerre, les objets pouvant directement servir à des buts militaire."); see also Charles Cheney Hyde, *Land Warfare*, 21 (Government Printing Office, 1918) (arguing that "[t]he Rules of Land Warfare advert to the fact that while all movable property belonging to the State, and which is directly susceptible of military use, may be taken possession of as booty and utilized for the benefit of the invader's Government,' other movable property, not directly susceptible of such use, 'must be respected and can not be appropriated."); Julius Stone, *Legal Controls of International Conflict*, 715-716 (Stevens and Sons, 1959) [hereafter *Stone*]; Morris Greenspan, *The Modern Law of War* (Univ. Calif. Press, 1959), p. 292 [hereafter *Greenspan*] ("Moveable public property which may not be appropriated by the occupant is that not *directly* susceptible of military use.") (emphasis added). For authors who consider property that only indirectly contributes to military operations, see Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, 200 (Martinus Nijhoff, 2009) [hereafter *Arai-Takahashi*]; *Dinstein*, pp. 218–220.

171. See Wayne Sandholtz, *Prohibiting Plunder: How Norms Change*, 71–100 (Oxford University Press, 2007) [hereafter *Sandholtz*] (detailing the history of the relationship between pillage and art); see also *Menzel v. List*, 49 Misc. 2d 300; 267 N.Y.S. 2d 804, reprinted in 60 Am. J. Int'l L. 851, 853–853 (1966) (discussing the pillage of a painting by Marc Chagall from occupied Belgium).

172. *Krupp Case*, p. 1483.

173. *Id.*

174. See, for example, *P. v. A.G.K and P. Annual Digest* 1948, Case No. 196 (where the Swiss Federal Tribunal found that the German occupant was not entitled to seize a calculating machine owned by the Polish government, because that machine was not one used for operations of war."); see also *Ministero Difesa v. Ambriola*, Italy, Court of Cassation. June 15, 1951, ILR (1951) Case No. 213, pp. 690–691 (reiterating that Article 53 of The Hague Regulations "indeed permits occupying forces to seize cash and securities, depots of arms, means of transportation, magazines and stores, and in general all movable property of the occupied State, but only in so far as they may be of use in military operations, and not for purposes of trafficking with individuals.").

175. See *Al Nawar v. Minister of Defence*, Case H.C. 574/82, Judgment of 11 August 1985, published in Israel Yearbook on Human Rights, Vol. 16, 1986, pp. 321–328.

176. *Thiriez v. Deschamps* (1948) ILR, Case No. 205, p. 609.

177. *Singapore Oil Stocks*. For commentary, see N.V. De Bataafsche Petroleum Maatschappij c. The War Damage Commission, A.J.I.L. 808 (1956), 51, p. 808. B, *The Case of the Singapore Oil Stocks*, Int'l. and Comp. L. Q. 5(1). 84-98 (Jan., 1956); Evan J. Wallach, *The Use of Crude Oil by an Occupying Belligerent State as a Munition de Guerre*, 41(2) Int'l. and Comp. L. Q. 287–310 (April 1992).

178. *Singapore Oil Stocks,* p. 78.

179. *Id., p. 79.*

180. *U.K. Military Manual 1958,* para. 597. For commentary that supports this criticism, see Myres McDougal and Florentino Feliciano, *Law and Minimum World Public Order,* 812, 817 (Yale University Press, 1961).

181. *U.K. Military Manual,* p. 301.

182. Institut de droit International, *Réglementation internationale de la contrebande de guerre,* §2 (1896) (defining munitions-de-guerre as "articles which, to be used directly in war, need only be assembled or combined."); Georg Schwarzenberger, *International Law, Vol I: International Law as Applied by International Courts and Tribunals,* 272 (Stevens & Sons, 1945), ("In the case, however, of private property susceptible to direct military use, only seizure is permitted, and, in accordance with Article 53, paragraph 2, it must be restored and compensation fixed when peace is declared."), Erik Castréns, *The Present Law of War and Neutrality,* 236 (Helsinki, 1954), ("Raw materials and semi-manufactured products necessary for war production can hardly be regarded as munitions of war."); J.M. Spaight, *War Rights on Land,* 412 (Macmillan 1911) ("[w]arlike material, and all property which is directly adaptable to warlike purposes (railways and other means of communication, etc, may be seized by the occupant, whether belonging to the State or to individuals."); see also Department of the Army, *International Law,* Da Pam 27-161-2, p. 177 ("arms and munitions of war include all varieties of military equipment including that in the hands of manufacturers, component parts of or material suitable only for use in the foregoing, and in general all kinds of war materials"). It will be noted that many items that could be extremely useful to a State at war are not included. Such items in occupied areas are heavy industry not yet converted to war production, crude oil and other petroleum products. Efforts to interpret broadly the term of the Hague Regulations 'ammunition of war' have not been successful."; *Greenspan,* p. 296.

183. Eliu Lauterpacht, *The Hague Regulations and the Seizure of Munitions-de-guerre* 32 Brit. Y.B. Int'l L. 218, 226 (1955).

184. Department of the Army, *The Law of Land Warfare,* Field Manual No. 27–10, (July 1956), § 410(a) [hereafter *U.S. Field Manual*].

185. In re Esau, Holland, Special Criminal Court, Hertogenbosch, 483–484 (February 21, 1949) in *Annual Digest and Reports of Public International Law Cases* (1949).

186. *Prosecutor v. Naletilić et al.,* Case No. IT-98-34-T, March 31, 2003, para. 616; see also *Martić Trial Judgment,* para. 102.

187. *Hadžihasanović Trial Judgment,* para. 52.

188. Brice M. Clagett and O. Thomas Johnson, "May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?" 72 *The American Journal of International Law,* 558–585, 558, 568 (1978) [hereafter *Clagett and Johnson*].

189. T.J. Lawrence, *The Principles of International Law,* (D.C. Heath and Co., 2nd ed., 1899), p. 368.

190. *U.S. Field Manual,* § 402; *U.K. Military Manual,* p. 303; New Zealand Defence Force, *Interim Law of Armed Conflict Manual,* DM 112, (1992), § 1341(2) [hereafter *New Zealand Military Manual*]. See also *Feilchenfeld,* p. 55; *Stone,* p. 714.

191. F. Laurent, *Principes De Droit Civil,* 563-564 (1887).

192. Department of State Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez, 16 Int'l Legal Materials 733, 740 (1977) [hereafter *US Department of State Legal Memorandum*].

193. Edward R. Cummings, *Oil Resources in Occupied Arab Territories under the Laws of Belligerent Occupation*, 9 J. Int'l L. and Econ. 533, 563 and 565 (1974) (acknowledging that appropriating property that would be consumed by use, "would not be permissible under the classical law on usufruct," but endorsing certain domestic interpretations that enable an occupying power to exploit mines "already open and in operation at the beginning of the usufruct."); Iain Scobbie, "Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty," in S. Bowen (ed.) *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories*, 221, 250 (Kluwer, 1997) (conceding that "there is room to argue that an occupant, as usufruct, is not entitled even to continue the exploitation of resources in which the displaced sovereign was engaged on its own account," but later condoning a degree of continuing exploitation); *U.S. Department of State Memorandum*, p. 740 (stating that the exploitation of non-renewable natural resources in accordance with the doctrine of usufruct constitutes "an illogical compromise," but latter accepting a degree of exploitation provided new mines are not opened).

194. *Clagett and Johnson,* p. 574.

195. For examples of civil law countries that do not allow a usufruct to exploit non-renewable natural resources, see *U.S. Department of State Legal Memorandum,* pp. 736–739. For other civil law precedents that conclude similarly, see *Clagett and Johnson,* pp. 571–572.

196. *Id.,* p. 570.

197. *Ministries Case,* p. 744 (finding that the company BHO "concentrated its efforts largely upon the manganese ore mines in Nikopol, the iron mines in Krivoi Rog, and the coal and ore mining in the Donetz Basin.").

198. *Id.,* p. 746.

199. *Id.,* p. 747.

200. For example, see *Ministries Case,* p. 734 (convicting Koerner of pillage for having ordered that "[t]he economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place." As a consequence, he became criminally responsible for the plunder that resulted in Russia); see also *Trial of Dr. Joseph Buhler, Law Reports of Trials of War Criminals,* Vol. XIV, p. 23 [hereafter *Buhler Case*] (convicting Buhler of pillage in Poland for "economic exploitation of the country's resources," achieved through the confiscation of mining rights and mining shares, installations and equipment of the mineral oil industry, raw materials, iron ores, crude oil, nitrogen, phosphates and coal). For further examples, see *Annex 1 to this Manual*.

201. *Report of the Secretary-General pursuant to paragraph 8 of resolution 1698 (2006) concerning the Democratic Republic of the Congo,* S/2007/68, para. 57.

202. Dominic Johnson and Aloys Tegera, *Digging Deeper: How the DR Congo's Mining Policy Is Failing the Country,* 16 (Pole Institute, 2005); see also Leiv Lunde and Mark Taylor, "Regulating

Business in Conflict Zones: Challenges and Options" in *Profiting from Peace*, at 332–333 (discussing the difficulties of designing targeted regulations that do not harm civilians.

203. See *R. Dobie Langenkamp and Rex J. Zedalis, What Happens to the Iraqi Oil?: Thoughts on Some Significant, Unexamined International Legal Questions Regarding Occupation of Oil Fields, 14 EUR J INT LAW 417–435, 432 (2003)* ("'Expenses of occupation' might be seen as including a vast range of things. In regard to the occupation of Iraq, could it be understood to include the costs associated with preparing for the invasion, stationing forces overseas and at-the-ready in advance of the invasion, conducting the military operations that result in the occupation, administering the oil fields following the successful wrap-up of operations and the commencement of occupation, providing assistance to the indigenous Iraqi population in helping the creation of a transitional and, eventually, permanent governing structure?").

204. These obligations include duties to ensure education for children, provide food and medical supplies to the local population, maintain medical and hospital establishments and preserve law and order. See Geneva Convention IV, Arts. 50, 55, and 56. See also, Hague Regulations, Art. 43.

205. *Krupp*, at 1341. McDougal and Feliciano make a similar point when arguing that a major purpose of the law of belligerent occupation has been to mitigate the ancient and recurrent demand that "war must support war." McDougal and Feliciano, at 809.

206. *DRC v. Uganda Case*, 249.

207. Gerhard Von Glahn, *The Occupation of Enemy Territory*, 177 (1957). See also, *U.S. Department of State Legal Memorandum*, p. 741 ("an occupant may not open wells in areas where none existed at the time the occupation began, since the prior or normal rate of exploitation was zero"); Claggett and Johnson, pp. 576–577 ("a rule that allows occupants to work mines or wells that were being exploited at the commencement of the occupation is not wholly consistent with this policy".)

208. *Administration of Waters and Forests v. Falk*, p. 563.

209. Government of Israel, Israel: Ministry of Foreign Affairs Memorandum of Law on the Right to Develop New Oil Fields in Sinai and the Gulf of Suez, reprinted in 17 I.L.M. 432 (1978), p. 10.

210. See *McDougal and Feliciano*, p. 812; *Allan Gerson, Off-Shore Oil Exploration by a Belligerent Occupant: the Gulf of Suez Dispute*, 71 A.J.I.L. (1977), p. 731 ("international law forbids exploitation of natural resources, including oil, only where the practice is marked by wanton dissipation of such resources").

211. See *infra*, Chapter V of this manual.

212. *IG Farben Case*, p. 1134.

213. See, Chap. IV. of this manual.

214. *Ministries Case*, pp. 758, 763. (In finding Kehrl guilty of pillage, the tribunal concluded that "through his active participation in the acquisition and control of the industries and enterprises hereinbefore specifically referred to, [Kehrl] violated the Hague Convention with respect to belligerent occupancy.")

215. Id., p. 758.

216. *IG Farben Case*, p. 1147.

217. *Id.,* p. 1146, 1164. In a more specific application of the same reasoning, the manager of Farben's Offenbach plant, Friedrich Jaehne, was found guilty of pillage on the basis of an employee's testimony to the effect that "[n]o negotiations were conducted with these former owners, nor were their interests considered by us. We rather negotiated with the sequestrators appointed by the German Reich."

218. For further information about the distinction between concessions and mining agreements, see Danièle Barberis, *Negotiating Mining Agreements: Past, Present and Future Trends* (Kluwer, 1998).

219. *Congolese Mining Code,* Arts. 5, 109 and 111.

220. *Id.,* Art. 5 (stating that "[a]ny person of Congolese nationality is authorized to engage in artisanal exploitation of mineral substances in the National Territory, provided that he is the holder of an artisanal miner's card, issued or granted by the relevant government entity in accordance with the provisions of the present Code.").

221. *Id.* See also, *Congolese Mining Code,* Arts. 116–126.

222. *Ministries Case,* p. 720.

223. *Buhler Case,* pp. 23, 30, 39.

224. See *Krupp Case,* pp. 1361–1362.

225. *Roechling Case,* p. 1118.

226. *IG Farben Case,* pp. 1135–1136.

227. *Ministries Case,* p. 777.

228. *IG Farben Case,* p. 1150.

229. *Id.* (concluding that "[t]he essence of the offence is the use of the power resulting from the military occupation of France as the means of acquiring private property in utter disregard of the rights and wishes of the owner. We find the element of compulsion and coercion present in an aggravated degree in the Francolor transaction, and the violation of the Hague Regulations is clearly established."); for other incidents of coercion in trade, see the Nordisk-Lettmetal takeover, *IG Farben Case,* p. 1146.

230. Geneva Convention IV of 1949, Article 33, second paragraph. For other codifications of pillage in the law of war, see *infra*, paras. 1–2 of this manual.

231. *Martić Trial Judgment,* para. 104; see also *Hadžihasanović Trial Judgment*, para. 50 ("the mens rea element of the offence of plunder of public or private property is established when the perpetrator of the offence acts with the knowledge and intent to acquire property unlawfully, or when the consequences of his actions are foreseeable.")

232. *Roechling Case,* pp. 1110–1111.

233. *Id.,* p. 1080.

234. *Id.,* p. 1116.

235. *Id.,* p. 1113.

236. In the United Kingdom for example, courts have found that "[a] court or jury may also find that a result is intended, though it is not the actor's purpose to cause it, when (a) the result is a

virtually certain consequence of the act, and (b) the actor knows that it is a virtually certain consequence." *Smith and Hogan,* p. 94. These standards appear to approximate to what German criminal law considered *dolus directus* (2nd degree). See Albin Eser, "Mental Elements: Mistake of Fact and Mistake of Law"*, The Rome Statute of The International Criminal Court: A Commentary*, 889, 906 (Antonio Cassese et al. eds., Oxford Univ. Press 2002).

237. As previously noted, the businessman Roechling was also convicted of pillage for purchasing stolen property from ROGES. See *infra*, para. 104 of this manual.

238. *Krupp Case*, pp. 1361–1362.

239. *Id.*

240. *Id.,* p. 1363.

241. *Id.*

242. *Martić Trial Judgment*, para. 104. Although the terminology seems slightly different to established tests for indirect intent, see also *Hadžihasanović Trial Judgment*, para. 50. (The *Hadžihasanović Trial Judgment* articulated this standard in slightly different terms by stating that "the mens rea element of the offence of plunder of public or private property is established when the perpetrator of the offence acts with the knowledge and intent to acquire property unlawfully, or when the consequences of his actions are foreseeable.")

243. Although the initial decisions of the ICC Pre-Trial Chamber affirm that *dolus eventualis* can attach to international crimes charged before the court, the most recent decision suggests that this is inconsistent with the wording of Article 30 of the statute and the intention of states who drafted it. See Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08, 15 June 2009, 360–369 (concluding that with respect to *dolus eventualis* and recklessness, that "the Chamber is of the view that such concepts are not captured by article 30 of the Statute").

244. In Australia, the Criminal Code Act states that "[t] f the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element." Criminal Code Act 1995, Act No.12 of 1995 as amended. In the United Kingdom, cl. 20 of the draft Criminal Code states that "[e]very offence requires a fault element of recklessness with respect to each of its elements other than fault elements, unless otherwise provided." In the United States, the Model Penal Code insists that "when the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto." See *Model Penal Code*, *supra* note 99, §2.02(3).

245. Jacques-Henri Robert, *Droit pénal général*, 325 (6e éd. refondue. ed. 2005) (describing dol eventuel); Elise van Sliedregt, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, 43–53 (2003) (explaining *dolus eventualis* in civil law jurisdictions and comparing to recklessness); Michael Bohlander, *Principles of German Criminal Law*, 63–67 (2008) (explaining *dolus eventualis* in German criminal law). See also *Commentario Breve al Codice Penale*, 103 (Cedam, 1986) (discussing *dolus eventualis* in Italian criminal law).

246. A number of jurisdictions will not view recklessness as a component of intention. Moreover, if the ICC cannot prosecute pillage perpetrated with indirect intent, this may influence national courts. For example, in the United Kingdom's legislation implementing the ICC Statute, a provision insists that "[i]n interpreting and applying the provisions of the articles referred to in subsection (1) [war crimes] the court shall take into account any relevant judgment or decision of the ICC." U.K. International Criminal Court Act 2001, § 50(5).

247. U.S. Model Penal Code, § 2.02(c). See also *R v. G and another* [2004] 1 A.C. 1034, 1057 (stating that "[A] person acts recklessly within the meaning of section 1 of the Criminal Damage Act 1971 with respect to-(i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk...") (United Kingdom). See also *R v. Crabbe* (1985) 58 ALR 417, 470 ("A person who does an act causing death knowing that it is probable that the act will cause death or grievous bodily harm is...guilty of murder") (Australia).

248. BGHSt 36, 1–20 [9–10] ("the perpetrator is acting intentionally if he recognizes as possible and not entirely unlikely the fulfilment of the elements of an offence and agrees to it in such a way that he approves the fulfilment of the elements of the offence or at least reconciles himself with it in order to reach the intended result, even if he does not wish for the fulfilment of the elements of the crime") (Germany). See also *Commentario Breve al Codice Penale*, Cedam, Padua (1986), p. 103 ("the occurrence of the fact constituting a crime, even though it is not desired by the perpetrator, is foreseen and accepted as a possible consequence of his own conduct.") (Italy).

249. *Prosecutor v. Boškoski*, Case No. IT-04-82-T, Judgment, 358 (July 10, 2008) ("indirect intent may be expressed as requiring knowledge that destruction was a probable consequence of his acts."), 382 ("indirect intent, i.e. in the knowledge that cruel treatment was a probable consequence of his act or omission"); *Prosecutor v. Strugar*, Case No. IT-01-42-T, Judgment, 261 (Jan. 28, 2005) ("the Chamber holds that indirect intent, i.e. knowledge that cruel treatment was a probable consequence of the perpetrator's act or omission, may also fulfill the intent requirement for this crime."); 296 ("the mens rea requirement for a crime under Article 3(b) is met when the perpetrator acted with either direct or indirect intent, the latter requiring knowledge that devastation was a probable consequence of his acts."); *Martić Trial Judgment*, 65 ("The mens rea element of extermination requires that the act or omission was committed with the intent to kill persons on a large scale or in the knowledge that the deaths of a large number of people were a probable consequence of the act or omission"); 79 (reasoning that the term "likely" as a synonym for "probable"); the same jurisprudence appears to treat "an awareness of a substantial likelihood" as a synonym. *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T , Judgment, 509 (Nov. 20, 2005) ("The requisite mens rea is that the accused acted with an intent to commit the crime, or with an awareness of the probability, in the sense of the substantial likelihood, that the crime would occur as a consequence of his conduct.").

250. *Model Penal Code*, § 223.6 (emphasis added).

251. *LaFave*, p. 989 ("[t]he circumstance that the buyer paid an inadequate price for the goods, that the seller was irresponsible, that the transaction between them was secret—these factors all point towards the buyer's guilty knowledge.") *Rassat*, p. 205 ("caractère bizarre de la négociation qui est à l'origine de la détention, liens du receleur et du voleur, absence de facture, prix dérisoire payé ou même absence de prix ... "). See also J.C. Smith, *The Law of Theft*, 211–215 (Butterworths, 4th ed., 1979); *Smith and Hogan*, pp. 853–858.

252. *Krupp Case*

Irmgard Huber served as the chief female nurse, while Adolf Merkle was the institution's bookkeeper in charge or registering incoming and outgoing patients. Philipp Blum was a doorman and telephone switchboard operator, although his tasks extended to burying the bodies of murdered patients. Klein, Ruoff, and Willig were sentenced to be hanged. Wahlmann was sentenced to life imprisonment. Merkle, Blum, and Huber were sentenced to 35 years, 30 years, and 25 years imprisonment respectively. *Id*.

272. *U.S. v. Joseph Altstoetter et al.* (*Justice* case), 3 *Trials of War Criminals*, 954–1201.

273. *Bommer Case*, p. 62. The case is similar to that of Karl Lingenfelder, a German from Mussbach, who came to France as a settler in the first days of occupation and took possession of a farm whose owners had been expelled by the German authorities. He was convicted of pillage for removing four horses and two vehicles from the farm. Trial of Karl Lingenfelder, Permanent Military Tribunal at Metz, 9 *Law Reports of Trials of War Criminals*, at 67 (March 11, 1947).

274. *Bommer Case*, pp. 65–66.

275. For a compilation of only WWII cases, see Digest of Laws and Cases, 15 *Law Reports of Trials of War Criminals,* pp. 58–62.

276. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, para. 634 (Sept 2, 1998). On appeal, the Appeals Chamber ruled that "there is no explicit provision in the Statute that individual criminal responsibility is restricted to a particular class of individuals." *Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Appeal Judgment, para. 436 (June 1, 2001) [hereafter *Akayesu Appeal Judgment*].

277. *Procureur v. Niyonteze*, Tribunal Militaire d'Appel 1A, audience du 15 mai au 26 mai 2000 ; see also *Consolata Mukangango et al.*, Cour d'assises Bruxelles, (June 8, 2001). http://www.justice-tribune.com/index.php?page=v2_article&id=1703.

278. *IG Farben Case,* p. 1153.

279. Trial of Bruno Tesch and Two Others (the *Zyklon B* case), British Military Court, Hamburg, 1 *Law Report of Trials of War Criminals*, 93 (March 8, 1946).

280. *Id.,* p. 103.

281. *Prosecutor v. Van Anraat*, Netherlands, LJN: BA6734, Gerechtshof's-Gravenhage, 2200050906-2, (May 9, 2007) [hereafter *Van Anraat*]; *Prosecutor v. Kouwenhoven*, Netherlands, LJN: AY5160, Rechtbank's-Gravenhage, 09/750001-05 (July 28, 2006).

282. *Van Anraat*, para. 11.5.

283. *Id.,* para. 11.5.

284. *Id.,* section 16 "Grounds for the punishment."

285. *Prosecutor v. Barayagwiza et al.*, Case No. ICTR-99-52-T, Judgment and Sentence, (December 3, 2003).

286. *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgment, (Nov. 16, 2001). Musema was director of a public enterprise named the Gisovu Tea Factory at the time he orchestrated his employees to engage in the killings.

287. *Prosecutor v. Kolasinac*, District Court of Prizren , Case No. 226/200, (January 31, 2003)

288. *IG Farben Case,* p. 1132 (emphasis added).

289. *Ministries Case*, p. 778.

290. *IG Farben Case,* pp. 1156–1157.

291. *Id.,* p. 1153.

292. Cristina Chiomenti, "Corporations and the International Criminal Court," *Transnational Corporations and Human Rights*, 287 (Olivier De Schutter ed., 2006); Andrew Clapham, "The Question of Jurisdiction under International Criminal Law over Legal Persons: Lessons from the Rome Conference on a International Criminal Court," in *Liability of Multinational Corporations Under International Law*, 139 (Menno T. Kamminga and Saman Zia-Zarifi eds., 2000).

293. Anita Ramastray and Robert C. Thompson, *Commerce, Crime and Conflict, Legal Remedies for Private Sector Liability for Grave Breaches of International Law: A Survey of 16 Countries*, (2006) (finding that 11 of 16 jurisdictions surveyed contain legal provisions that allowed for the prosecution of corporate entities for international crimes). See also Megan Donaldson and Rupert Watters, *"Corporate Culture" as a Basis for the Criminal Liability of Corporations*, prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business, (Feb. 2008) http://www.reports-and-materials.org/Allens-Arthur-Robinson-Corporate-Culture-paper-for-Ruggie-Feb-2008.pdf).

294. Commonwealth Criminal Code Act 1995, Section 12.1(1).

295. *Id.,* Section 268.54.

296. Interpretative Act, R.S. 1985, c. I-21, Section 35.

297. Corporations will also be responsible for the war crime of pillage in Canada through an alternative legal route. Section 34(2) of the Interpretative Act stipulates that "[a]ll the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment." Because Article 2 of the Canadian Criminal Code defines the term "every one" as including organizations, all offenses created by the Crimes against Humanity and War Crimes Act, 2000 c. 24 (Can.) can be charged against companies.

298. Section 51(2)(b) of the U.K. International Criminal Court Act 2001 confers British courts with jurisdiction over acts of pillage orchestrated "outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to U.K. service jurisdiction." Article 67(2) states that "[i]n this Part a 'United Kingdom resident' means a person who is resident in the United Kingdom." Finally, section 5 of the Interpretations Act 1978 states that "[i]n any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule." The Schedule states that "'[p]erson' includes a body of persons corporate or unincorporate."

299. The War Crimes Act 18 U.S.C. § 2441(1996) stipulates that "whoever" commits a war crime is subject to criminal punishment including fine, imprisonment and death. The Dictionary Act of 2000 states that "[i]n determining the meaning of any Act of Congress... the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." Dictionary Act, 1 U.S.C. § 1 (2000).

300. *Kiobel v. Royal Dutch Petroleum*, No. 06-4800-cv, 06-4876-cv, 2010 WL 3611392 (2d Cir. September 17, 2010), p. 49.

301. For instance, in implementing genocide into domestic criminal law, a number of states have passed legislation that adds protected groups capable of being victims to genocide. For a survey of this legislation, see Ward Ferdinandusse, Direct Application of International Criminal Law in National Courts, 23-29 (2006). In the context of war crimes, see the intentional extension of grave breaches to non-international armed conflicts in countries like Belgium, even though this goes beyond customary international law. Sonja Boelaert-Suominen, "Grave Breaches, Universal Jurisdiction and Internal Armed Conflicts: Is Customary Law Moving Towards a Uniform Enforcement Mechanism for all Armed Conflicts?," Journal of Conflict and Security Law 5 (2000), pp. 89–90.

302. *Kiobel v. Royal Dutch Petroleum*, pp. 11–12.

303. *Tesco Supermarkets v. Nattrass* [1972] AC 153.

304. Section 12.3(2)(d) Commonwealth Criminal Code Act of 1995, Australia.

305. Article 102(2), Code Pénal Suisse.

306. J. Coffee, "No Soul to Damn, No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 Mich. L. Rev. 386 (1980–1981), p. 410.

307. Id. See generally, Celia Wells, Corporations and Criminal Responsibility (Oxford University Press, 2001); Brent Fisse and John Braithwaite, Corporations, Crime, and Accountability (Cambridge University Press, 1993); Bernd Schünemann, "The Sarbanes-Oxley Act of 2002: A German Perspective," Buffalo Criminal Law Review 8 (2004): 35–50.

308. Coffee, supra note 306, at 409–10 (detailing a series of scenarios whereby incentives within a corporate entity are more compelling than the fear of corporate criminal liability); Schünemann, supra note 307, at 36 (highlighting, in fact, how the use of corporate criminal liability alone "leads to a weakening of the deterrent effect of an individual level"); Fisse & Braithwaite, supra note 307, at 180–81 (detailing instances where individual criminal liability will still be necessary, albeit within a system where corporations have a duty to first institute internal discipline themselves).

309. International Criminal Court Act, 2001, 17, § 51(2)(b) (Eng.) (conferring British courts with jurisdiction over war crimes perpetrated "outside the United Kingdom by a United Kingdom national, a United Kingdom resident or a person subject to U.K. service jurisdiction.").

310. 18 U.S.C. 2441 (1996) § 2441.

311. Article 23.2 Organic Law on Judicial Power, cited in Ana Libertad Laiena and Olga Martin-Ortega "The Law in Spain," *Commerce, Crime and Conflict: A Survey of Sixteen Jurisdictions*, 12 (Fafo AIS, 2006) [hereafter *FAFO Survey*].

312. *Public Prosecutor v. Antoni*, 32 I.L.R. 140 (App. Ct. of Svea 1960).

313. *FAFO Survey*, p. 16.

314. Ugolovnyi Kodeks [U.K.] [Criminal Code] art. 12(1) (Russ.) http://www.russian-criminal-code.com/PartI/SectionI/Chapter2.html ("[c]itizens of the Russian Federation and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this Code...").

315. *Niyonteze Case*, p. 37 ("[q]ualifiées de crimes de guerre, ces infractions sont intrinsèquement très grave").

316. *Prosecutor v. Kupreškić et al.,* Case No. IT-95-16-T, Judgment, para. 520 (January 14, 2000).

317. See *Customary International Humanitarian Law Study,* p. 604. The study defines war crimes as "serious violations of international humanitarian law." See Rule 156, Vol. I, p. 568.

318. Crimes against Humanity and War Crimes Act, 2000 c. 24 (Can.) § 8(b).

319. Entwurf eines Gesetzes zue Einführung des Völkerstrafgesetzbuches [German Code of Crimes against International Law] June 30, 2002 BGBl 2002, I, p. 2254, § 1 (F.R.G).

320. The Prosecutor General at the Federal Supreme Court Karlsruhe, Re: Criminal Complaint against Donald Rumsfeld et, 3 ARP 156/06-2, April 5, 2007, p. 4. http://www.fidh.org/IMG/pdf/ProsecutorsDecisionApril2007ENGLISH.pdf.

321. Code of Criminal Procedure, s. 153f, available online at http://www.mpicc.de/shared/data/pdf/vstgbleng.pdf.

322. See Jean-Paul Puts (trans.), Tribunal Central d'Instruction No. 4, Cour Nationale, Administration de la Justice Royaume d'Espagne, Résumé 3/2000 – D, p. 23 www.veritasrwandaforum.org (« Les actes de pillage ont servi, tantôt au financement de la guerre et des opérations militaires subséquentes, de mêmes que pour l'enrichissement personnel des hauts commandants militaires de l'A.P.R/F.P.R. »).

323. Sénat belge, *Rapport de la Commission d'enquête parlementaire chargée d'enquêter sur l'exploitation et le commerce légaux et illégaux de richesses naturelles dans la région des Grands Lacs au vu de la situation conflictuelle actuelle et de l'implication de la Belgique,* Session 2002–2003, Document législatif n° 2-942/1 (February 20, 2003), § 3.3.1.

324. Statute of the International Criminal Court, Art. 12(2) (stating that "the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national."). See also *Dapo Akande, The Jurisdiction of the International Criminal Court over Nationals of Non-State Parties: Legal Basis and Limits,* 1 J.Int'l Crim. Just. 618–650 (2003) (affirming the Courts ability to seize jurisdiction over nationals of non-state parties who perpetrate international crimes in states party to the convention).

325. The Prosecutor, press release 16 July 2003, "Communications Received By The Office Of The Prosecutor Of The ICC," http://www.icc-cpi.int/library/newspoint/mediaalert/pids009_2003-en.pdf.

326. *Id.*

327. Luis Moreno-Ocampo, Second Assembly of States Parties to the Rome Statute of the International Criminal Court Report of the Prosecutor of the ICC (Sept. 8, 2003).

328. Geneva Conventions, Common Arts 49(GCI), 50(GCII), 129(GCIII), 146(GCIV).

329. *Customary International Humanitarian Law Study,* Rule 158, Vol. I, at 607 (emphasis added).

330. ICC Statute, art. 17(1)(a) ("Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.").

331. See Steven Morris, "British soldier admits war crime as court martial told of Iraqi civilian's brutal death," *The Guardian*, September 20, 2006, (reporting on the trial of British soldiers for inhumane treatment perpetrated in Iraq).

332. Luis Moreno-Ocampo, Second Assembly of States Parties to the Rome Statute of the International Criminal Court Report of the Prosecutor of the ICC (September 8, 2003).

333. S/RES/1457 (2003), January 24, 2003, 15.

334. S/RES/1499 (2003), August 13, 2003, 3.

335. For a helpful outline of *partie civile* in Belgium and France, see Mireille Delmas-Marty and John R. Spencer, *European Criminal Procedures*, 94, 247 (2002).

336. See Global Witness, *Bankrolling Brutality - Why European timber company DLH should be held to account for profiting from Liberian conflict timber*, Briefing Document – 18/11/2009, http://www.globalwitness.org/media_library_get.php/1152/1280525282/briefing_paper_eng.pdf.

337. For a discussion of these exceptions in English, see Markus Dirk Dubber and Mark Kelman, *American Criminal Law: Cases, Statutes, and Comments*, 101–105 (2005).

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Pillage means theft during war. Although the prohibition against pillage dates to the Roman Empire, pillaging is a modern war crime that can be enforced before international and domestic criminal courts. Following World War II, several businessmen were convicted for commercial pillage of natural resources. And although pillage has been prosecuted in recent years, commercial actors are seldom held accountable for their role in fuelling conflict.

Reviving corporate liability for pillaging natural resources is not simply about protecting property rights during conflict—it can also play a significant role in preventing atrocity. Since the end of the Cold War, the illegal exploitation of natural resources has become a prevalent means of financing conflict. In countries including Angola, the Democratic Republic of the Congo, East Timor, Iraq, Liberia, Myanmar, and Sierra Leone, the illicit trade in natural resources has not only created incentives for violence, but has also furnished warring parties with the finances necessary to sustain some of the most brutal hostilities in recent history.

In *Corporate War Crimes*, law professor James G. Stewart offers a roadmap of the law governing pillage as applied to the illegal exploitation of natural resources by corporations and their officers. The text traces the evolution of the prohibition against pillage from its earliest forms through the Nuremburg trials to today's national laws and international treaties. In doing so, Stewart provides a long-awaited blueprint for prosecuting corporate plunder during war.

Corporate War Crimes seeks to guide investigative bodies, war crimes prosecutors, and judges engaged with the technicalities of pillage. It should also be useful for advocates, political institutions, and companies interested in curbing resource wars.

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