

# **The Redistribution of Resources in Internationalized Intra-State Peace Processes by Comprehensive Peace Agreements and Security Council Resolutions**

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## Abstract

The (illegal) exploitation and (bad) management of high value resources like timber, diamonds, gold, minerals and oil constitute key-factors for the inflammation, continuation and termination of numerous intra-state conflicts. Since the 1990s these conflicts have been increasingly settled by the conclusion of comprehensive peace agreements between the conflicted state and belligerent non-state parties. At the example of the Lomé, Accra and Ouagadougou Agreement, which were negotiated to terminate the conflicts in Sierra Leone, Liberia and Côte d'Ivoire, the paper describes and analyzes whether and how these agreements addressed the redistribution of conflict-resources during the peace process. In the course of this documentation, the paper finds a strong involvement of the UN Security Council when it comes to the redistribution of resources and the implementation of all three agreements that goes beyond addressing an immediate threat to peace and security. Focusing on this involvement of the Security Council to exert a strong pull towards the compliance of the parties with these agreements, the paper will discuss the legal nature of the example peace agreements and of the specific obligations concerning the redistribution of resources. The paper finds that, under certain circumstances, internationalized comprehensive peace agreements, with a strong endorsement and involvement of the Security Council, can create effective legal obligations for the parties with respect to the redistribution and treatment of resources during the transition from conflict to peace.

“The war...started because some people felt they would never have access to resources. They still don't.”<sup>1</sup>

## A. Introduction

The access, development as well as management of resources and distribution of resource revenues constitute key factors in the initiation, continuation and termination of numerous current intra-state conflicts.<sup>2</sup> The

<sup>1</sup> International Crisis Group interview with an unnamed diplomat after the conclusion of the Accra Agreement, Freetown, 18 August 2004, cited in International Crisis Group, ‘Liberia and Sierra Leone: Rebuilding Failed States’, Crisis Group Africa Report Number 87 (8 December 2004) available at <http://www.crisisgroup.org/~media/Files/africa/west-africa/liberia/Liberia%20and%20Sierra%20Leone%20Rebuilding%20Failed%20States.ashx> (last visited 28 April 2011), 29; ‘Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the Political Parties’, Accra/Ghana, 18 August 2003, UN Doc S/2003/850, 29 August 2003 [Accra Agreement].

<sup>2</sup> P. N. Okowa, ‘The Legal Framework for the Protection of Natural Resources in Situations of Armed Conflict’, in W. J. M. van Genugten *et al.* (eds), *Criminal Jurisdiction 100 years after The Hague Peace Conference, 2007 Hague Joint Conference on Contemporary Issues of International Law* (2009), 243-260 [Okowa, The Legal Framework for the Protection of Natural Resources]; P. N. Okowa, ‘Natural Resources in Situations of Armed Conflict: Is there a Coherent Framework for Protection?’, 9 *International Community Law Review* (2007) 3, 237-262 [Okowa, Natural Resources in Situations of Armed Conflict]; N. Schrijver, *Sovereignty over Natural Resources, Balancing Rights and Duties* (1997), 255-395 [Schrijver, Sovereignty over Natural Resources]; N. Schrijver, ‘The Plundering of Natural Resources and the Destruction of Environment in Times of Armed Conflict’, in W. J. M. van Genugten *et al.* (eds), *Criminal Jurisdiction 100 Years after the 1907 Hague Peace Conference, 2007 Hague Joint Conference on Contemporary Issues of International Law* (2009), 242-285 [Schrijver, The Plundering of Natural Resources]; S. L. Woodward, ‘Economic Priorities for Successful Peace Implementation’, in S. J. Stedman *et al.* (eds), *Ending Civil Wars, The Implementation of Peace Agreements* (2002), 183-214. *Definitions:* The paper understands resources as material (natural) resources such as oil, gas, diamonds, minerals, forests (timber) and water as well as immaterial (intangible) resources like access to resource-distributing state- and governance-institutions or the establishment of power and wealth-sharing mechanisms. The United Nations Environment Programme (UNEP) recently specified: “*Natural resources* are actual or potential sources of wealth that occur in a natural state, such as timber, water, fertile land, wildlife, minerals, metals, stones, and hydrocarbons.”, see UNEP, ‘From Conflict to Peacebuilding, The Role of Natural Resources and the Environment’ (February 2009) available at [http://hqweb.unep.org/pdf/pcdmb\\_policy\\_01.pdf](http://hqweb.unep.org/pdf/pcdmb_policy_01.pdf) (last visited 28 April 2011), 7; *Resources of conflict* are

inability of a state to share national wealth and resource revenues equitably among its citizens provides a platform to those challenging the legitimacy of the governing authority and can lead to a violent intra-state conflict. Recent research suggests that, over the last sixty years, at least forty percent of all intra-state conflicts have had a link to natural resources. This is no attempt to create a mono-casual explanation. But civil wars, such as those in Liberia, Sierra Leone and Côte d'Ivoire as well as those in Angola or the Democratic Republic of Congo, have been fuelled and prolonged by the (illegal) exploitation of high-value resources, like timber, diamonds, gold, minerals and oil. Other conflicts, including those in Darfur and the Middle East, have involved the struggle for the control of scarce resources, such as fertile land and water.<sup>3</sup> Since the 1990s, violent intra-state conflicts<sup>4</sup> have increasingly been settled by peace agreements between the conflicted state and belligerent non-state parties.<sup>5</sup> The negotiation and implementation process of such agreements is often characterized by a strong involvement of the

*inter alia* natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law, see Global Witness, 'The Sinews of War. Global Witness Publishing' (1 November 2006) available at <http://www.globalwitness.org/library/sinews-war> (last visited 2 May 2011), 7.

<sup>3</sup> UNEP, *id.*, Executive Summary.

<sup>4</sup> *Comment:* The paper will take a broad approach to outline the initial situation in which peace agreements and the redistribution of natural and intangible resources are negotiated. This approach is not limited to the definition of a non-international armed conflict by Protocol II of the Geneva Convention. *Conflict*, in the context of this paper is referred to as a dispute or incompatibility caused by the actual or perceived opposition of needs, values and interests. *Intra-state conflict* refers to civil wars or other struggles that involve the use of force between the state power and a non-state entity mainly within the territory of one state. *Intra-state conflict* is understood as a violent conflict between the state and the non-state entity, which can have various forms of organization and motivation, in this case the access to and the exploitation of resources, see UNEP, *id.*, 7; describing the dimension of intra-state conflict: R. Khan, 'United Nations Peace-keeping in Internal Conflicts', in J. A. Frowein *et al.* (eds), 4 *Max Planck Yearbook of United Nations Law* (2000), 543-581.

<sup>5</sup> C. Bell, 'Peace Agreements: Their Nature and Legal Status', 100 *The American Journal of International Law* (2006) 2, 373-412 [Bell, Peace Agreements]; C. Bell, *On the Law of Peace, Peace Agreements and the Lex Pacificatoria* (2008), 5-7 [Bell, Lex Pacificatoria]; C. Daase, 'Friedensabkommen zwischen staatlichen und nicht-staatlichen Parteien, Chimären zwischen Recht und Politik', in J. Bäumler *et al.* (eds), *Akteure in Krieg und Frieden* (2009), 141-166; R. Licklider, 'The Consequences of Negotiated Settlements in Civil Wars, 1945-1993', 89 *The American Political Science Review* (1995) 3, 681-690; H. Hegre, 'The Duration and Termination of Civil War', 41 *Journal of Peace Research* (2004) 3, 243-252; Woodward, *supra* note 2, 184.

United Nations (UN), which can take various formats and can have an internationalizing effect on the overall peace process.<sup>6</sup> This paper expects that the most comprehensive agreements, subsequently referred to as *internationalized comprehensive peace agreements* (ICPA), will seek to address the roots of the conflicts, *inter alia* the distribution of resources and resource revenues, to exert a sustainable pull towards compliance on the parties of the agreement and to create a stable peace process by establishing incentives for the parties to settle disputes within the framework of the institutions and regulations outlined in the agreement.<sup>7</sup>

As legal literature has not adequately addressed this topic to date,<sup>8</sup> this paper will seek to do so with reference to three specific ICAs, namely for

<sup>6</sup> See examples, among many other: Accra Agreement, *supra* note 1; ‘Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone’, Lomé/Togo, 7 July 1999, available at [http://www.usip.org/files/file/resources/collections/peace\\_agreements/sierra\\_leone\\_07071999.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/sierra_leone_07071999.pdf) (last visited 28 April 2011) [Lomé Agreement]; ‘Agreement between the Government of the Republic of Angola and the União Nacional para la Independencia Total de Angola (UNITA)’, Lusaka/Zambia, 15 November 1994, UN Doc S/1994/1441, 22 December 1994 [Lusaka Protocol]; ‘Arusha Peace and Reconciliation Agreement for Burundi’, Arusha/Tanzania, 28 August 2000, available at <http://www.hdcentre.org/files/Arusha%20peace%20agreement.pdf> (last visited 28 April 2011); ‘Government of the Republic of Côte d’Ivoire and the Force Nouvelle (FN), Ouagadougou Political Agreement’, Ouagadougou/Burkina Faso, 4 March 2007, UN Doc S/2007/144, 13 March 2007 [Ouagadougou Agreement]; see more at <http://peacemaker.unlb.org/index1.php> (last visited 28 April 2011).

<sup>7</sup> The author follows the definition of the UN Peacemaker database, which states: “Comprehensive Agreements address the substance of the underlying issues of a dispute. Their conclusion is often marked by a handshake, signifying that a historic moment has ended a long-standing conflict. Comprehensive Agreements seek common ground between the interests and needs of the parties to the conflict; they resolve the substantive issues in dispute and provide the necessary arrangements for implementing the agreement.”, available at <http://peacemaker.unlb.org/index1.php> (last visited 8 March 2011). Furthermore, there is no legal definition for *peace agreement* or *peace accord*. The reader will find numerous definitions as for instance of the Centre for Humanitarian Dialogue, L. Vinjamuri & A. P. Boesenecker, ‘Accountability and Peace Agreements, Mapping Trends from 1980 to 2006’ (1 September 2007) available at <http://reliefweb.int/node/22983> (last visited 28 April 2011), 6. This article follows C. Bell’s broad working definition, which states that: “Peace agreements are documents produced after discussion with some or all of the conflict’s protagonists, that address militarily violent conflict with a view to ending it.”, Bell, ‘Lex Pacificatoria’, *supra* note 5, 55.

<sup>8</sup> See Bell, ‘Peace Agreements’, *supra* note 5, 374-376; Bell, ‘Lex Pacificatoria’, *supra* note 5, 27-161; Daase, *supra* note 5, 143-147.

Sierra Leone, Liberia and Côte d'Ivoire. The first analytical part of the paper will set the scene, dealing with the role of resources in intra-state conflicts and peace processes from a more general perspective (Part B). The paper will then address the question of whether and how the selected ICPAs address the redistribution of conflict resources (Part C). In each case, the agreement is coupled with Security Council (SC) Resolutions that were adopted in the course of the peace processes.

The examples have been chosen for a similar case comparison. Sierra Leone, Liberia and Côte d'Ivoire are members of the UN, the African Union (AU), the Economic Community of West African States (ECOWAS), the Mano River Union and the Kimberley Process Certification Scheme.<sup>9</sup> In all three countries the UN has been involved since the repeated outbreak of intra-state violence. All conflicts constitute a threat to peace for the entire sub-region and together they are considered to have created one common conflict region, heavily troubled by resource-fuelled conflicts.<sup>10</sup> Each conflict has become the object of one or more peace agreements between the (government of the) state and the non-state parties outlining power-sharing arrangements and the transition from conflict to peace based on an internationalized negotiation process. In sum, the three peace agreements were generated in a common regional, as well as similar political and legal, framework. Hence, it could be expected that all three agreements treat the

<sup>9</sup> SC Res. 1231, 11 March 1998; SC Res. 1346, 30 March 2001; SC Res. 1400, 28 March 2002; SC Res. 1436, 24 September 2002; SC Res. 1446, 4 December 2002; SC Res. 1470, 28 March 2003; SC Res. 1521, 22 December 2003. About the Kimberley Process Certification Scheme, see: [http://www.kimberleyprocess.com/documents/basic\\_core\\_documents\\_en.html](http://www.kimberleyprocess.com/documents/basic_core_documents_en.html) (last visited 28 April 2011).

<sup>10</sup> Lomé Agreement, *supra* note 6, preamble; SC Res. 1231, 11 March 1998; SC Res. 1270, 22 October 1999; SC Res. 1334, 22 December 2000; SC Res. 1346, 30 March 2001; SC Res. 1346, 30 March 2001; SC Res. 1385, 19 December 2001; SC Res. 1400, 28 March 2002; SC Res. 1436, 24 September 2002; SC Res. 1446, 4 December 2002; SC Res. 1470, 28 March 2003; SC Res. 1688, 16 June 2006; SC Res. 1514, 13 November 2003; SC Res. 1795, 15 January 2008; SC Res. 1885, 15 September 2009; SC Res. 1509, 19 September 2003; SC Res. 1521, 22 December 2003; SC Res. 1579, 21 December 2004; SC Res. 1607, 21 June 2005; SC Res. 1626, 19 September 2005. *Comment*: The Truth and Reconciliation Commission for Sierra Leone found that: “[...] countries in the Mano River Union permitted their territories to be used as conduits for the smuggling of diamonds extracted from Sierra Leone. The political elites of these countries benefited enormously from the diamond resources smuggled out of Sierra Leone.”, The Truth and Reconciliation Commission Report, ‘Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission, Vol. 2’ (5 October 2004) available at <http://www.sierra-leone.org/Other-Conflict/TRC Volume2. pdf> (last visited 28 April 2011), 107, para. 554.

distribution of resources and recourse revenues as key factors for the outbreak and continuation of the conflict in a similar way. With a focus on the strong involvement of the SC to exert a strong pull towards the compliance of the parties with the agreement, the paper will discuss the legal nature of the example peace agreements and of the specific obligations they create concerning the redistribution of resources of conflict (Part D). It will be shown that, under certain circumstances, ICPAs, with a strong endorsement and involvement of the SC, can create effective legal obligations for the parties with respect to the redistribution and treatment of resources.

## B. The Context: Resources of Conflict in Intra-State Conflicts

To understand the role of the access to and the exploitation of resources during a peace process, the general connection between intra-state conflicts and resources needs to be briefly introduced.<sup>11</sup> Statistics indicate that, in developing countries,<sup>12</sup> natural resources are often a major source of national income and thus a major object of conflict and instability, if governed badly and shared unfairly.<sup>13</sup> It is not only the formal and *de facto*

<sup>11</sup> Khan, *supra* note 4, 596.

<sup>12</sup> OECD, Definition: "In the context of the Paris Club, countries eligible to receive concessional terms. The Paris Club decides eligibility on a case-by-case basis, but only countries eligible to receive highly concessional IDA credits from the World Bank Group are included. The World Bank classifies as low-income those countries with GNP per capita income of \$755 or less in 2000.", available at <http://stats.oecd.org/glossary/detail.asp?ID=5970> (last visited 28 April 2011); *comment*: Statistics about the role of natural resources in intra-state conflicts see I. Bannon & P. Collier, 'Natural Resources and Violent Conflict, Options and Actions' (2003) available at [www-wds.worldbank.org/servlet/WDSContentServer/WDSPath=IB/2004/05/24/000012009\\_20040524154222/Rendered/PDF/282450Natural0resources0violent0conflict.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer?WDSPath=IB/2004/05/24/000012009_20040524154222/Rendered/PDF/282450Natural0resources0violent0conflict.pdf) (last visited 28 April 2011).

<sup>13</sup> "The common trait in these [...] situations is the inability of weak states to resolve resource-based tensions peacefully and equitably. Indeed, conflict over natural resources and the environment is largely the reflection of a failure of governance, or a lack of capacity. As demands for resources continue to grow, this conclusion highlights the need for more effective investment in environmental and natural resource governance. [...] Countries whose economies depend heavily on natural resources face a greater risk of conflict. Rebel groups fund their activities and wage war with illicit exploitation and trade, while corrupt elites drain off the revenues of

ownership of natural resources which is at stake, but also the access to state institutions, which manage and develop natural resources and distribute resource revenues. Therefore, severe tension may arise concerning the access to and control of these state institutions, which often struggle to handle the competing demands and influences of various actors. In many cases, the institutions of state governance fail to resolve these tensions equitably, hastening the rate at which those institutions are undermined and raising the readiness of these actors to use violence to obtain their goals.<sup>14</sup> The Truth and Reconciliation Commission for Sierra Leone dealt intensively with the connection between intra-state conflicts, regional conflicts, natural resources and governance of natural resources. It describes how diamonds were used by most of the armed factions to finance and support their war efforts. The Commissions concluded, however, that the exploitation of diamonds was not the cause of the conflict in Sierra Leone; rather it was an element that fuelled the conflict.<sup>15</sup>

On the global level the SC President stated in a Presidential Statement that the Council recognizes the role which natural resources can play in armed conflict and post-conflict situations. And moreover, that, in specific

natural resources.”, see UNEP, *supra* note 2, 11; M. L. Ross, ‘What do we know about natural resources and civil war?’, 41 *Journal of Peace Research* (2004) 3, 337-356.

<sup>14</sup> “Weak governance institutions and expressions of authority, accountability and transparency are frequently eroded by conflict. When tensions intensify and the rule of law breaks down, the resulting institutional vacuum can lead to a culture of impunity and corruption as public officials begin to ignore governance norms and structures, focusing instead on their personal gain. This collapse of governance structures contributes directly to widespread institutional failures in all sectors, allowing opportunistic entrepreneurs to establish uncontrolled systems of resource exploitation. Conflict also tends to confuse property rights [...]”, see UN Secretary-General’s High-Level Panel on Threats, Challenges and Change, ‘A more secure world: Our shared responsibility’, Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change, UN Doc A/59/565, 2 December 2004, see *inter alia* paras 22, 38, 39, 91; The report also states that: “A new challenge for the United Nations is to provide support to weak States – especially, but not limited to, those recovering from war – in the management of their natural resources to avoid future conflicts.”, see UN Secretary-General’s High-Level Panel on Threats, Challenges and Change, *id.*, para. 91; C. Clapham, *Africa and the International System, The Politics of State Survival* (1996), 15-24; Okowa, ‘The Legal Framework for the Protection of Natural Resources’, *supra* note 2, 243-245; Okowa, ‘Natural Resources in Situations of Armed Conflict’, *supra* note 2, 237-240.

<sup>15</sup> The Truth and Reconciliation Commission Report, ‘Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission, Vol. 1’ (5 October 2004) available at <http://www.sierra-leone.org/Other-Conflict/TRCVolume1.pdf> (last visited 28 April 2011), 12-13, paras 17, 37-45.

armed conflicts, the exploitation, trafficking, and illicit trade of natural resources contributed to the outbreak, escalation or continuation of armed conflicts.<sup>16</sup> As a matter of conflict prevention in Africa, the SC has affirmed “[...] its determination to take action against illegal exploitation and trafficking of natural resources and high-value commodities in areas where it contributes to the outbreak, escalation or continuation of armed conflict”.<sup>17</sup> The SC has followed on this promise and has taken measures to prevent the illegal exploitation of natural resources, especially of diamonds and timber, from fuelling the continuation of armed conflicts through various resolutions. Furthermore, the SC President called for a more coordinated approach by the UN in armed conflicts and post-conflict peace processes with regional organizations and governments concerned. He emphasized in particular the need for the international community to enable governments in post-conflict situations to better manage their resources *inter alia* by encouraging a transparent and lawful management of natural resources through clarifying the responsibility of management of natural resources and through establishing sanctions committees as well as panels of experts to oversee the implementation of those measures.<sup>18</sup> Also, the importance of taking the resource dimension of conflicts into account when drafting the mandate of UN and regional peacekeeping operations was pointed out, especially by making provisions for assisting governments and organizations and in preventing the illegal exploitation of natural resources by the parties to the conflict.<sup>19</sup> Furthermore, the President’s statement also emphasized the value of the contribution of other UN organizations and the need for a more coordinated approach for co-operation with regional organizations and governments concerned, in addition to commodity monitoring and certification schemes, such as the *Kimberley Process* and the *Extractive Industries Transparency Initiative (EITI)*.<sup>20</sup>

This short overview illustrates to what extent international peace and security may be adversely affected by the failure of states to manage natural resources and proceeds of their sale in a legitimate manner. Indeed, preliminary findings from an analysis of intra-state conflicts indicate that

<sup>16</sup> Statement by the President of the Security Council, UN Doc S/PRST/2007/22, 25 June 2007.

<sup>17</sup> SC Res. 1625, 14 September 2005.

<sup>18</sup> Statement by the President of the Security Council, *supra* note 16.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

conflicts over, and fuelled by, natural resources are twice as likely to relapse into conflict in the first five years following an initial peace agreement was reached and can have spill-over effects on the whole region.<sup>21</sup> This underpins the relevance of the question of whether and how negotiated settlements between conflicting parties that are reached under international auspices deal with the ownership, allocation and treatment of resources and resource revenues in an obligatory manner.

### C. Resources in Internationalized Comprehensive Peace Agreements and Security Council Resolutions

Do the agreements chosen by way of example actually address the distribution of resources? If they do, then how do they address the issue? The following section will focus on the Lomé, Accra and the Ouagadougou Agreements concluded in Sierra Leone, Liberia and Côte d'Ivoire from a comparative perspective. In each case, the agreement chosen constitutes the most recent ICPA between the state and the non-state parties to the armed and resource-fuelled conflict. Part C will be complemented by a documentation of SC Resolutions referring to the peace agreements and their parties, as well as to the management of resources.

#### I. Internationalized Comprehensive Peace Agreements Concluded in Sierra Leone, Liberia and Côte d'Ivoire

The creation of a sustainable intra-state peace process in Sierra Leone, Liberia and Côte d'Ivoire seems to be mutually influenced by the experience of the other countries in the region, in particular when it comes to the regulation of the distribution and exploitation of natural resources and wealth-sharing mechanisms.<sup>22</sup> For all these reasons, one would expect that

<sup>21</sup> *Id.*

<sup>22</sup> As an earlier example: 'Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone', Abidjan/Côte d'Ivoire, 30 November 1996, UN Doc S/1996/1034, 11 December 1996 [Abidjan Agreement]. *Comment:* The Abidjan Agreement was a ceasefire and comprehensive peace agreement, which was violated by the non-state parties. The agreement inter alia provided for the transformation of RUF into a political party and a plan for the socio-economic development and reconstruction of Sierra Leone. It was signed by the President of Sierra Leone, by the leader of RUF, by the President of the Republic of Côte d'Ivoire, by the Special Envoy of the United Nations, by the Representative of

all three peace agreements comprehensively address the ownership, allocation and treatment of those resources which gave rise to and/or fuelled the conflict to guarantee a sustainable transition from conflict to peace in a similar manner.

## 1. Sierra Leone - The Lomé Peace Agreement

The Lomé Agreement, concluded between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF) on 25 May 1999,<sup>23</sup> reaffirms the cessation of hostilities as laid out in the Abidjan Agreement<sup>24</sup> and provides for power-sharing arrangements between the elected government and the RUF. It also includes provisions on Disarmament, Demobilization, Rehabilitation and Reintegration (DDRR) and the transformation of the RUF into a political party. The President of the Republic of Sierra Leone and the leadership of RUF signed the Lomé Agreement as main parties to the agreement. The conclusion of the agreement was witnessed by the Government of Togo, as the Chairmanship of ECOWAS, by the Representative of the Secretary General of the UN, by a representative of the Organization of African Unity (OAU), by a Representative of the Commonwealth Organization and by the United States' Presidential Special Envoy for the Promotion of Democracy in Africa, Reverend Jesse Jackson.

The Lomé Agreement was drafted in a conspicuously legal-looking format, including a preamble and an operative part. The articles were drafted in a detailed manner using a strong obligatory language. The Lomé Agreement referred to the Abidjan Agreement and the ECOWAS Peace Plan<sup>25</sup> and also recalled earlier initiatives for a negotiated settlement of the conflict.<sup>26</sup> The Lomé Agreement furthermore delegated dispute settlement and interpretation functions to third parties, *inter alia* by the request for international peacekeeping troops and by the delegation of the technical implementation of certain resource-sharing arrangements via sales

the Organization of African Unity and by the Representative of the Commonwealth Organization.

<sup>23</sup> Lomé Agreement, *supra* note 6.

<sup>24</sup> Abidjan Agreement, *supra* note 22.

<sup>25</sup> 'ECOWAS Six-Month Peace Plan for Sierra Leone' (23 October 1997-22 April 1998) available at <http://www.sierra-leone.org/conakryaccord.html> (last visited 28 April 2011). *Comment:* The Peace Plan was a road map for the peace process but it did not create legal obligations for the parties to the conflict.

<sup>26</sup> Lomé Agreement, *supra* note 6, preamble.

agreements to international companies.<sup>27</sup> The agreement specified: “For the export or local resale of gold and diamonds by the Government, the CMRRD [Commission for the Management of Strategic Resources, National Reconstruction and Development] shall authorize a buying and selling agreement with one or more reputable international and specialized mineral companies. All exports of Sierra Leonean gold and diamonds shall be transacted by the Government, under these agreements.”<sup>28</sup>

Additionally, in its preamble, the agreement addressed the socio-economic well-being of the country and its people as one key factor for the creation of a sustainable peace.<sup>29</sup> Until the first general elections, the transitional government was charged with the management of scarce public resources, as prescribed by the Constitution, to “[...] the benefit of the development of the people of Sierra Leone [...]”.<sup>30</sup> The agreement provided, in a detailed manner, for the inclusion of RUF into these structures as one aspect of its transformation into a political party in the framework of the agreed power-sharing arrangements. Arts III and V entitled RUF to join a government of national unity through cabinet appointments as, for instance, the Chairmanship of the Board of the CMRRD.<sup>31</sup> With these measures, RUF

<sup>27</sup> Lomé Agreement, *supra* note 6, Art. VII.

<sup>28</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 5.

<sup>29</sup> “Guided by the Declaration in the Final Communiqué of the Meeting in Lomé of the Ministers of Foreign Affairs of ECOWAS of 25 May 1999, in which they stressed the importance of democracy as a factor of regional peace and security, and as essential to the socio-economic development of ECOWAS Member States; and in which they pledged their commitment to the consolidation of democracy and respect of human rights while reaffirming the need for all Member States to consolidate their democratic base, observe the principles of good governance and good economic management in order to ensure the emergence and development of a democratic culture which takes into account the interests of the peoples of West Africa [...]”, Lomé Agreement, *supra* note 6, preamble.

<sup>30</sup> Lomé Agreement, *supra* note 6, Part Two, Governance.

<sup>31</sup> The Government and the RUF express the need to find a transitional mechanism “[...] to incorporate the RUF into governance within the spirit and letter of the Constitution [...]”, Lomé Agreement, *supra* note 6, preamble; incorporated into domestic law by The Commission for the Management of Strategic Resources, ‘National Reconstruction and development Act, 1999 [No. 5 of 1999]’ (1999) available at <http://www.sierra-leone.org/Laws/1999-5.pdf> (last visited 28 April 2011); see also ‘The Revolutionary United Front of Sierra Leone (Participation in Political and Democratic Process) Act, 1999 [No. 4 of 1999]’ (1999) available at <http://www.sierra-leone.org/Laws/1999-4.pdf> (last visited 28 April 2011); an evaluation of the failed integration of RUF as a political party offers The Truth and Reconciliation

received direct access to institutions, which were supposed to be responsible for the management and development of resources as well as for deciding over the usage of resources revenues.

Art. VII regulated the functions and structure of the CMRRD.<sup>32</sup> Referring to the country's severe economic and security situation, the parties agreed that the "[...] Government shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone"<sup>33</sup>. The CMRRD was established and charged with the responsibility to secure and monitor the legitimate exploitation of Sierra Leone's gold and diamonds and other resources that were determined by the parties of the agreement to be of strategic importance for the national security and welfare of Sierra Leone as well as to cater for post-war rehabilitation and reconstruction of the war-shattered country.<sup>34</sup> The CMRRD was responsible for the authorization and licensing of artisanal production of diamonds and gold "[...] in accordance with prevailing domestic laws and regulations"<sup>35</sup> and the Government was to forbid all exploitation, sale, export, or other transaction of gold and diamonds except those sanctioned by the CMRRD.<sup>36</sup> It was furthermore determined that all

Commission Report, 'Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission, Vol. 3A' (5 October 2004) available at <http://www.sierra-leone.org/Other-Conflict/TRCVolume3A.pdf> (last visited 28 April 2011), 331-333, paras 1039-1050.

<sup>32</sup> "The Commission shall be governed by a Board whose Chairmanship shall be offered to the Leader of the RUF, Corporal Foday Sankoh. The Board shall also comprise: two representatives of the Government appointed by the President, two representatives of the political party to be formed by the RUF, three representatives of the civil society and two representatives of other political parties appointed by Parliament [...]", Lomé Agreement, *supra* note 6, Art. VII, para. 12.

<sup>33</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 1.

<sup>34</sup> Lomé Agreement, *supra* note 6, Art. VII, para.1; see also "The management of other natural resources shall be reviewed by the CMRRD to determine if their regulation is a matter of national security and welfare, and recommend appropriate policy to the Government.", Lomé Agreement, *supra* note 6, Art. VII, para. 8; and "The functions of the Ministry of Mines shall continued to be carried out by the current authorized ministry. However, in respect of strategic mineral resources, the CMRRD shall be an autonomous body in carrying out its duties concerning the regulation of Sierra Leones strategic natural resources.", Lomé Agreement, *supra* note 6, Art. VII, para. 9.

<sup>35</sup> Lomé Agreement, *supra* note 6, Art. VII, paras 2-3.

<sup>36</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 2; and further: "[...] All previous concessions shall be null and void [...]", Lomé Agreement, *supra* note 6, Art. VII, para. 2; for an overview of Sierra Leonean domestic law and the incorporation of the

gold and diamonds extracted or otherwise derived from any Sierra Leonean territory were to be sold to the transitional government.<sup>37</sup> The CMRRD's task was also to ensure that all necessary measures against unauthorized exploitation were taken.<sup>38</sup>

The agreement furthermore regulated that the revenues from gold and diamond transactions were to be treated as public assets. They were to be transferred into a special treasury account, to be spent "[...] exclusively on the benefit for the development of the people of Sierra Leone [...]"<sup>39</sup>. It was additionally determined that the Government of Sierra Leone had to seek, if necessary, the assistance and cooperation of other governments to detect violations of Art. VII and to facilitate their prosecution.<sup>40</sup> Disputes about Art. VIII, and other provisions of the Lomé Agreement, were to be referred to a Council of Elders and Religious Leaders.<sup>41</sup> The Lomé Agreement also guaranteed transparency and determined the full access of the public to the records of all correspondence, negotiations, business transactions and any other matters related to the exploitation and management of resources.<sup>42</sup>

It also provided for the incorporation of Art. VII into domestic legislation.<sup>43</sup> The Government of Sierra Leone committed itself "[...] to propose and support an amendment to the Constitution to make the exploitation of gold and diamonds the legitimate domain of the people of Sierra Leone [...]"<sup>44</sup>. The Lomé Agreement determined that the Government of Sierra Leone, through the National Commission for Resettlement,

Lomé Agreement into domestic law, see <http://www.sierra-leone.org/laws.html> (last visited 28 April 2011).

<sup>37</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 3.

<sup>38</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 4.

<sup>39</sup> As for instance for public education, public health, infrastructural development, compensation for incapacitated war victims as well as post-war rehabilitation and reconstruction. Especially rural areas were supposed to benefit, see Lomé Agreement, *supra* note 6, Art. VII, para. 6.

<sup>40</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 7.

<sup>41</sup> Lomé Agreement, *supra* note 6, Art. VIII.

<sup>42</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 10; and furthermore "The Commission shall issue monthly reports, including the details of all the transactions related to gold and diamonds, and other licenses or concessions of natural resources, and its own administrative costs.", Lomé Agreement, *supra* note 6, Art. VII, para. 11.

<sup>43</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 13; see also 'The Lome Peace Agreement (Ratification) Act, 1999 [No. 3 of 1999]' (1999) available at <http://www.sierra-leone.org/Laws/1999-3.pdf> (last visited 28 April 2011).

<sup>44</sup> Lomé Agreement, *supra* note 6, Art. VII, para. 14.

Rehabilitation and Reconstruction (CRRR) and with the support of the international community, should provide appropriate financial and technical resources for post-war rehabilitation, reconstruction and development.<sup>45</sup> In its final part, the parties to the Lomé Agreement also regulated its registration, similar to an international agreement.<sup>46</sup>

In sum, the Lomé Agreement comprised the comprehensive redistribution of natural and intangible resources in a treaty-like manner. It used strong regulative and obligatory language, which was, in some parts, modeled after the constitution. In other parts, the agreement authorized its amendment, and, in its final parts, it covered entirely new terrain in a constitutional manner.

## 2. Liberia – The Accra Agreement

Following the signing of the Accra Peace Agreement between the government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and political parties in 2003,<sup>47</sup> the National Transitional Government of Liberia (NTGL) took office in October 2003 until the first general post-conflict elections were to be held in 2005-2006.<sup>48</sup> The Accra Agreement also called explicitly for the suspension of the existing Liberian constitution.<sup>49</sup>

<sup>45</sup> Lomé Agreement, *supra* note 6, Article XXVIII.

<sup>46</sup> The question whether this act of ratification could be a decisive indicator for an international status of the Lomé Agreement was answered in the negative by the Special Court for Sierra Leone (SCSL), *Decision on Challenge to Jurisdiction, Lomé Accord Amnesty*, SCSL-2004-15-AR 72 (E), 13 March 2004 [Kallon Case]; the decision was strongly criticized *inter alia* by A. Cassese, 'The Special Court and International Law, The Decision Concerning the Lomé Agreement Amnesty', *2 Journal of International Criminal Justice* (2004) 4, 1130; following Cassese: Daase, *supra* note 5, 147-154.

<sup>47</sup> In accordance with Art. I, Political Parties "[...] means Political Parties registered under the laws of the Republic of Liberia.", Accra Agreement, *supra* note 1, Art. I.

<sup>48</sup> *Comment*: The first post-conflict presidential elections took place in a relatively secure environment in October and November 2005. Mrs. Ellen Johnson-Sirleaf, who won the run-off election on 8 November, was inaugurated as President of Liberia on 16 January 2006.

<sup>49</sup> "[...] In order to give effect to paragraph 8(i) of the Ceasefire Agreement of 17<sup>th</sup> June 2003 signed by the GOL, the LURD and the MODEL, for the formation of a Transitional Government, the Parties agree on the need for an extra-Constitutional arrangement that will facilitate its formation and take into account the establishment and proper functioning of the entire transitional arrangement. / b. Accordingly, the

The NTGL was established by the agreement to replace the existing government of Liberia.<sup>50</sup> The Accra Agreement furthermore envisaged that, immediately after the installation of the NTGL, all ministers, heads of autonomous agencies, and heads of public corporations and state-owned enterprises were to resign from office.<sup>51</sup> The NTGL consisted of three branches, namely the National Transitional Legislative Assembly (NTLA), the Executive, and the Judiciary.<sup>52</sup> In all three branches, the non-state parties to the agreement or their former members or leaders were to participate after their complete disarmament as political parties.<sup>53</sup> The agreement included additional provisions on a ceasefire,<sup>54</sup> the deployment of an international stabilization force, an ECOWAS and UN Mission,<sup>55</sup> post-conflict military

provisions of the present Constitution of the Republic of Liberia, the Statutes and all other Liberian laws, which relate to the establishment, composition and powers of the Executive, the Legislative and Judicial branches of the Government, are hereby suspended. /c. For the avoidance of doubt, relevant provisions of the Constitution, statutes and other laws of Liberia which are inconsistent with the provisions of this Agreement are also hereby suspended. / d. All other provisions of the 1986 Constitution of the Republic of Liberia shall remain in force. / e. All suspended provisions of the Constitution, Statutes and other laws of Liberia, affected as a result of this Agreement, shall be deemed to be restored with the inauguration of the elected Government by January 2006. All legal obligations of the transitional government shall be inherited by the elected government [...]", Accra Agreement, *supra* note 1, Art. XXXV; Other provisions referring to the constitution of the Republic of Liberia can be found in the preamble: "Determined to concert our efforts to promote democracy in the sub-region on the basis of political pluralism and respect for fundamental human rights as embodied in the Universal Declaration on Human Rights, the African Charter on Human and People's Rights and other widely recognised international instruments on human rights, / including those contained in the Constitution of the Republic of Liberia [...]", Accra Agreement, *supra* note 1, preamble.

<sup>50</sup> Accra Agreement, *supra* note 1, Art. XXII.

<sup>51</sup> Accra Agreement, *supra* note 1, Art. XXII, paras 1-3.

<sup>52</sup> Accra Agreement, *supra* note 1, Art. XXIII.

<sup>53</sup> Outlining the power-sharing arrangements in a detailed manner: Accra Agreement, *supra* note 1, Art. XXII, paras 5-6; Art. XXIV, paras 3 (b)- 4; Art. XXVI, para. 4, Annex 4.

<sup>54</sup> Accra Agreement, *supra* note 1, Arts II-III.

<sup>55</sup> "The GOL, the LYRD, the MODEL and the Political Parties agree on the need for the development of an Internationalized Stabilization Force (ISF) in Liberia. Accordingly, the Parties hereby request the United Nations in collaboration with ECOWASS, the AU and the ICGL to facilitate, constitute and deploy a United Nations Chapter VII force in the Republic of Liberia to support the transitional government and to assist in the implementation of this agreement." Accra Agreement, *supra* note 1, Art. IV.

and security reform measures<sup>56</sup> and the establishment of an Independent National Commission on Human Rights (INCHR).<sup>57</sup> The Accra Agreement has been signed amongst others by the Liberian Government, LURD, MODEL, the Special Representative of the UN, as well as representatives of the AU, ECOWAS, the European Union, and the Ghanaian Co-Chairs for the International Contact Group on Liberia.

Despite its comprehensiveness, the Accra Agreement did not address natural resources directly but set out strong allocation mechanisms and furthermore addressed explicitly the role of economic development and good governance during the peace processes.<sup>58</sup> The agreement emphasized in particular the importance of the social and economic situation by referring *inter alia* to the stability of the Mano River Union region.<sup>59</sup> The Accra Agreement was, as the Lomé Agreement for Sierra Leone, drafted in a treaty-like manner and used strong regulative and obligatory language.<sup>60</sup>

Art. XVI provided for the establishment of a Governance Reform Commission (GRC), which was supposed to function as a vehicle for the promotion of the principles of good governance in Liberia.<sup>61</sup> The outlined mandate of the Commission was to review the existing Program for the

<sup>56</sup> Accra Agreement, *supra* note 1, Arts V-VIII.

<sup>57</sup> Accra Agreement, *supra* note 1, Arts XII-XIII.

<sup>58</sup> Accra Agreement, *supra* note 1, preamble, Art. XVI, Art. XVII, Art. XXXVI, Art. XXIX, Art. XXXIII, Art. XXXV.

<sup>59</sup> “Concerned about the socio-economic well-being of the people of Liberia; / Determined to foster mutual trust and confidence amongst ourselves and establish mechanisms which will facilitate genuine healing and reconciliation amongst Liberians; / Also determined to establish sustainable peace and security, and pledging forthwith to settle all past, present and future differences by peaceful and legal means and to refrain from the threat of, or use of force; / Recognising that the Liberian crisis also has external dimensions that call for good neighbourliness in order to have durable peace and stability in the Mano River Union States and in the sub-region [...]”, Accra Agreement, *supra* note 1, preamble.

<sup>60</sup> “The Parties to this Peace Agreement undertake that no effort shall be spared to effect the scrupulous respect for and implementation of the provisions contained in this Peace Agreement, to ensure the successful establishment and consolidation of lasting peace in Liberia. / 2. The Parties shall ensure that the terms of the present Peace Agreement and written orders requiring compliance are immediately communicated to all of their forces and supporters. / 3. The terms of the Agreement shall concurrently be communicated to the civilian population by radio, television, print, electronic and other media. [...]”, Accra Agreement, *supra* note 1, Art. XXXII.

<sup>61</sup> Accra Agreement, *supra* note 1, Art. XVI.

Promotion of Good Governance, especially the development of the public sector management reforms. It was established to monitor and ensure transparency and accountability in all government institutions and activities and to ensure a national and regional balance in appointments, in addition to enabling an attractive environment for direct private sector investment.<sup>62</sup>

Furthermore, the agreement entailed the establishment of a Contract and Monopolies Commission (CMC) to oversee the activities of a contractual nature undertaken by the NTGL.<sup>63</sup> Its mandate was to control whether all public financial and budgetary commitments entered into by the NTGL were transparent, non-monopolistic and in accordance with the laws of Liberia and internationally accepted norms of commercial practice to avoid corruption and to guarantee the transparent and accountable management and treatment of state-resources for the post-conflict reconstruction.<sup>64</sup>

The parties to the agreement also called upon the UN, the ECOWAS, the AU, the International Monetary Fund (IMF), the World Bank, the African Development Bank and other international institutions to assign international experts for the purpose of providing technical support and assistance to the NTGL.<sup>65</sup> The parties also called on ECOWAS, in collaboration with the UN, AU, the European Union (EU) and the International Contact Group for Liberia (ICGL) to set up a monitoring mechanism in the form of an Implementation Monitoring Committee (IMC) to ensure the effective and faithful implementation of the agreement.<sup>66</sup> Disputes within the NTGL, arising out of the application or interpretation of the provisions of the agreement, were to be settled through a process of mediation, which was to be organized by ECOWAS in collaboration with the UN, the AU and the ICGL.<sup>67</sup>

<sup>62</sup> Accra Agreement, *supra* note 1, Art. XVI.

<sup>63</sup> Accra Agreement, *supra* note 1, Art. XVII.

<sup>64</sup> The reports of the CMC were to be published, see Accra Agreement, *supra* note 1, Art. XVII, paras a-b.

<sup>65</sup> Accra Agreement, *supra* note 1, Art. XXVI, para. 7.

<sup>66</sup> The Parties also agreed on the need for ECOWAS, in collaboration with the UN, the AU and the International Community, to organize periodic donor conferences for resource mobilization for post-conflict rehabilitation and reconstruction in Liberia, see Accra Agreement, *supra* note 1, Art. XXIX, para. 2 and para. 4.

<sup>67</sup> Accra Agreement, *supra* note 1, Art. XXXVI.

In sum, the Accra Agreement, while not directly and explicitly addressing the management of resources, constituted a comprehensive and highly regulative power-sharing regime governing the access to state institutions as well as the management of state contracts and the treatment of state funds. The agreement also delegated far-reaching functions and authorities to international and regional organizations and suspended and/or amended the constitution.

### 3. Côte d'Ivoire- The Ouagadougou Agreement

The Ouagadougou Agreement was signed on 4 March 2007.<sup>68</sup> With this agreement, the parties decided to move forward in the electoral process to create a stable government. They also pledged to proceed with the disarmament process and they agreed that the state authority should be restored in the entire territory through the redeployment of public administrative structures. The agreement was signed by the President of the Republic of Côte d'Ivoire, by the head of the Forces Nouvelles of the Republic of Côte d'Ivoire (FN)<sup>69</sup> and by the President of Burkina Faso, as the Chairman of ECOWAS and facilitator of the negotiation and implementation process.

Also, this agreement was drafted in a treaty-like form using strong regulative and obligatory language and delegating certain powers to the UN and regional organizations. In the preamble of the agreement, the parties reaffirm – after identifying the problems encountered in the implementation of the Linas-Marcoussis,<sup>70</sup> Accra<sup>71</sup> and Pretoria Agreements<sup>72</sup> – their

<sup>68</sup> Ouagadougou Agreement, *supra* note 6.

<sup>69</sup> This group retains control of the country's diamond mines and, more importantly, a share of the cocoa trade which, as Global Witness investigations have demonstrated, has provided it with around US\$30 million per year, see M. Davis, 'Why should mediators consider the economic dimensions of conflicts?' (23 July 2009) available at <http://www.hdcentre.org/publications/why-should-mediators-consider-economic-dimensions-conflicts> (last visited 28 April 2011), 8-9.

<sup>70</sup> 'Linas-Marcoussis Agreement', Linas-Marcoussis/France, 23 January 2003, UN Doc S/2003/99, 27 January 2003, Art. VI (land-tenure regime).

<sup>71</sup> 'Accord Accra II sur la crise en Côte d'Ivoire', Accra/Ghana, 7 March 2003 (implementation agreement) available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EVIU-63HH5E?OpenDocument> (last visited 8 March 2011); 'Accord Accra III sur la crise en Côte d'Ivoire', Accra/Ghana, 29 – 30 July 2004, UN Doc S/2004/629, 9 August 2004 (implementation agreement).

<sup>72</sup> 'Pretoria Agreement on the Peace Process in Côte d'Ivoire', Pretoria/South Africa, 6 April 2005, UN Doc S/2005/270, 25 April 2005 (implementation agreement);

commitment to respect the sovereignty, independence, territorial integrity and unity of Côte d'Ivoire, their respect for the constitution, their commitment to the above mentioned agreements and their commitment to all relevant SC Resolutions, in particular SC Res. 1633 and SC Res. 1721.<sup>73</sup> The agreement focused on the restoration of state authority and the redeployment of the administration and all public services throughout the national territory. The parties agreed to request the AU, through the intermediary of ECOWAS, to petition the SC for the immediate lifting of the personal sanctions in force against the actors involved in the Ivorian crisis.<sup>74</sup> In the given context, it is most astonishing that the Ouagadougou Agreement remained absolutely silent on the redistribution of natural and intangible resources, as well as on wealth-sharing mechanisms for the socio-economic reconstruction of the country.<sup>75</sup>

'Declaration on the Implementation of the Pretoria Agreement on the Peace Process in the Côte d'Ivoire', Pretoria/South Africa, 28-29 June 2005 (implementation agreement) available at <http://www.dfa.gov.za/docs/2005/ivor0701.htm> (last visited 28 April 2011).

<sup>73</sup> Ouagadougou Agreement, *supra* note 6, preamble; see also SC Res. 1633, 3 June 2005; SC Res. 1721, 1 November 2006; *Comment*: SC Res. 1721 contains unusual strong language to *endorse* a very detailed power-sharing structure for the post-conflict situation adopted by the African Union Peace and the Security Council. The intent of the SC and the legal implications of the usage of the word *endorse* seems ambiguous. As *endorse* could mean *supports* (an indicators for a non-binding nature) but also *approves* or gives *permission* which could imply a binding value; see: Security Council Report, Special Research Report, Security Council Action Under Chapter VII: Myths and Realities, 2008 No. 1 (23 June 2008) available at: [http://www.securitycouncilreport.org/site/c.g1KWLeMTIsG/b.4202671/k.3A9D/Special\\_Research\\_ReportbrSecurity\\_Council\\_Action\\_Under\\_Chapter\\_VII\\_Myths\\_and\\_Realitiesbr23\\_June\\_2008.htm](http://www.securitycouncilreport.org/site/c.g1KWLeMTIsG/b.4202671/k.3A9D/Special_Research_ReportbrSecurity_Council_Action_Under_Chapter_VII_Myths_and_Realitiesbr23_June_2008.htm) (last visited 28 April 2011).

<sup>74</sup> Ouagadougou Agreement, *supra* note 6, Art. IV, para. 4.

<sup>75</sup> In their report submitted pursuant to SC Res. 1584 a panel of Experts for the intra-state conflict in Côte d'Ivoire assessed the role of natural resources, such as cotton, diamonds, and cocoa in fuelling the conflict and the effectiveness of the arms embargo. The panel was especially concerned that the illicit trade of diamonds provides an important income to the rebel group FN. The report called on the UN peacekeeping mission in Côte d'Ivoire and the Kimberley Process Secretariat to evaluate the volume of illicit diamond exports, see Report of the Groups of Experts submitted pursuant to paragraph 7 of Security Council resolution 1584 (2005) concerning Côte d'Ivoire, UN Doc S/2005/699, 7 November 2005.

## II. Security Council Resolutions Referring to Comprehensive Peace Agreements and the Redistribution of Resources in the Example Peace Processes

What role does the UN, especially the SC, play in this context? As far as the example ICPAs are concerned, there is a strong connection between the drafting and the implementation process of these agreements and SC Resolutions referring to them, their parties and the role of the allocation and treatment of resources during the peace processes. Additionally, in some cases, as will be shown, the SC paid more attention to the redistribution of conflict-resources than the ICPA under consideration, and went beyond addressing the agreements and particular situations constituting a threat to peace and security by outlining structures and mechanisms concerning the governance of natural resources for the overall process of transition.

The following section will give a short country-by-country overview of the numerous SC Resolutions, especially those adopted under Chapter VII, which refer to the selected peace agreements between state and non-state parties. The SC Resolutions, *inter alia*, endorse the comprehensive peace agreements or demand their effective implementation, by directly calling upon the non-state parties to put the agreement into practice and/or directly sanctioning those parties in case of violation or non-implementation of the agreement. The SC Resolutions also connect the implementation and non-implementation of the peace agreements with lifting or imposing economic sanctions as, for instance, import/export bans on diamonds. Hence, the SC establishes a connection between the exploitation and management of resources and the creation of a sustainable peace process and economic development by the parties to a peace agreement.

### 1. Sierra Leone

With SC Res. 1181, the SC established the Office of a Special Representative for Sierra Leone to mediate in the ongoing conflict.<sup>76</sup> Regarding the negotiations of the Lomé Agreement, the SC stated in SC Res. 1245 its support for the peace talks between the Government of Sierra

<sup>76</sup> SC Res. 1181, 13 July 1998. *Comment*: A comprehensive overview and reflection of the involvement of external actors, amongst them the UN, offer The Truth and Reconciliation Commission Report, *supra* note 10, 13-14, paras 46-49.

Leone and the representatives of the non-state parties, calling upon “[...] all concerned to remain committed to the process of negotiation and to demonstrate flexibility in their approach to the process [...]” and underlined its strong support for the Special Representative of the Secretary General and the commitment of the international community to support a sustainable peace settlement.<sup>77</sup> Later the SC welcomed the signing of the Lomé Agreement and the first steps taken by RUF, the Economic Community of West African States Monitoring Group (ECOMOG), ECOWAS and the UN Mission (UNOMSIL) towards its implementation.<sup>78</sup> The SC called upon all parties to fulfill their commitments under the concluded agreement and especially called upon the RUF, the Civil Defense Forces, the former Sierra Leone Armed Forces/Armed Forces Revolutionary Council (AFRC) and other armed groups in Sierra Leone to give up their arms in accordance with the provisions of the agreement.<sup>79</sup> The mandate of UNOMISL was extended to the support of the implementation process of the Lomé Agreement.<sup>80</sup> Acting under Chapter VII, the SC recalled that the Government and the RUF had agreed in the peace agreement to provide guarantees for UNOMISL-personnel.<sup>81</sup> As the agreement was repeatedly violated and as violence, mostly financed by the illegal exploitation of resources, was flaring up again, the SC passed Resolution 1306 and established a comprehensive and far-reaching regime to address the illegal exploitation and trade of diamonds, while also emphasizing the necessity to re-establish the state’s authority and sovereignty over the country’s natural resources.<sup>82</sup>

The SC decided that all states should take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory, with the exception of diamonds certified by an effective certification scheme. This scheme was to be established by the Government of Sierra Leone with the assistance of international organizations and co-operation frameworks like the Kimberley Process. The

<sup>77</sup> SC Res. 1245, 11 June 1999, paras 1-3.

<sup>78</sup> SC Res. 1270, 22 October 1999, para. 1; see also SC Res. 1289, 7 February 2000.

<sup>79</sup> SC Res. 1270, 22 October 1999, paras 2-4. And also “Welcomes the return to Freetown of the leaders of the RUF and AFRC, and calls upon them to engage fully and responsibly in the implementation of the Peace Agreement and to direct the participation of all rebel groups in the disarmament and demobilization process without delay [...]”, SC Res. 1270, 22 October 1999, para. 5; see also SC Res. 1289, 7 February 2000.

<sup>80</sup> SC Res. 1270, 22 October 1999, para. 8.

<sup>81</sup> SC Res. 1289, 7 February 2000, para. 15.

<sup>82</sup> SC Res. 1306, 5 July 2000.

Government was requested to inform the Sanctions Committee established by Resolution 1132 about the regulatory details of such a certificate of origin regime. The Sanctions Committee was also asked to make periodic reports to the SC on information submitted to it regarding alleged violations of the measures and persons or entities reported to be engaged in such violations, as well as concerning the extent of the Government's authority over the diamond-producing areas to enable the SC to decide whether to lift or extend its sanctions for a further period, to modify them or to adopt further measures.<sup>83</sup> Taking into account the regional context, the Sanctions Committee was asked to cooperate with the committee established pursuant to Resolution 985 for Liberia.<sup>84</sup>

In 2000, SC Resolution 1313 identified a widespread violation of the Lomé Agreement by the RUF and, as a result thereof, the failure of the consent-based and cooperative approach to establish a sustainable peace process.<sup>85</sup> In that context, the SC further strengthened UNOMISL's mandate, recalling the earlier Resolutions concerning the peace process.<sup>86</sup> After the violation of the Lomé Agreement, the Government of Sierra Leone and RUF signed a ceasefire agreement in Abuja.<sup>87</sup> The SC took note of the ceasefire and expressed its concerns about the failure of the RUF to fully meet its obligations under the agreement, and called upon the RUF to give a more convincing demonstration of its commitment to the ceasefire and the peace process.<sup>88</sup> The SC became more insistent in Resolution 1346 when it expressed its concern about the fragile state of security in Sierra Leone and its neighboring countries, in particular about the continued fighting in the border regions of Sierra Leone, Guinea and Liberia.<sup>89</sup> It recognized the

<sup>83</sup> SC Res. 1306, 5 July 2000; SC Res. 1132, 8 October 1997.

<sup>84</sup> SC Res. 1306, 5 July 2000; SC Res. 985, 13 April 1995; SC Res. 846, 13 April 1995.

<sup>85</sup> SC Res. 1313, 4 August 2000, paras 2-3; *Comment*: The SC openly blames RUF for the violation of the agreement, but in fact the situation, which led to the violation and breach of the agreement, was much more complex, as documented by: The Truth and Reconciliation Commission Report, *supra* note 10; the Commission was established by a domestic legal act, based on Art. XXVI of the Lomé Agreements, see 'The Truth and Reconciliation Act, 2000 [No. 4 of 2000]' (2000) available at <http://www.sierra-leone.org/laws.html> (last visited 28 April 2011).

<sup>86</sup> SC Res. 1313, 4 August 2000, paras 2-3.

<sup>87</sup> 'Ceasefire Agreement between the Government of Sierra Leone and RUF', Abuja/Nigeria, 10 November 2000, available at <http://www.sierra-leone.org/ceasefire1100.html> (last visited 28 April 2011) [Abuja Agreement].

<sup>88</sup> SC Res. 1334, 22 December 2000; see also SC Res. 1346, 30 March 2001, para. 7.

<sup>89</sup> SC Res. 1346, 30 March 2001.

importance of the progressive extension of state authority throughout Sierra Leone *inter alia* by guaranteeing the legitimate exploitation of the natural resources of Sierra Leone for the benefit of its people and by avoiding the continuous fuelling of the conflict by the illegal exploitation of resources. Additionally, the SC considered further strengthening the military component of UNAMSIL to fulfill the overall objective of assisting the Government of Sierra Leone in re-establishing its authority throughout the country, including the diamond-producing areas.<sup>90</sup> The SC explicitly addressed the RUF and encouraged the group to fulfill its commitments under the Abuja Agreement and to transform into a political party. The SC called upon all parties to intensify their efforts towards the full and peaceful implementation of the Abuja Agreement and the resumption of the peace process, taking into account the basis of the Abuja Agreement and relevant SC Resolutions. It urged the governments and regional leaders to continue their full cooperation with the ECOWAS and the UN to promote these efforts, in particular, to use their influence upon the leaders of the RUF to obtain their cooperation towards the fulfillment of the Abuja Agreement and related SC Resolutions and to effectively implement the peace agreement.<sup>91</sup>

This line of engagement was followed in later Resolutions, which referred to the fragile security situation, the implementation of the Abuja Agreement or the continuation of the dialogue between RUF and the Government of Sierra Leone. In summary, the SC Resolutions laid out specific mechanisms to manage and develop the exploitation of natural resources during the entire peace process.<sup>92</sup>

## 2. Liberia

To facilitate the implementation of the Accra Agreement, the contracting parties invited an international stabilization force under a Chapter VII mandate to support the peace process in its initial phase.<sup>93</sup> With

<sup>90</sup> SC Res. 1346, 30 March 2001.

<sup>91</sup> SC Res. 1346, 30 March 2001, para. 10; *Comment*: Like SC Res. 1313, SC Res. 1346 does not explicitly take recourse to Chapter VII UN-Charter, but refers to all previous SC-Resolutions which clearly determined a threat to peace and took measures under Chapter VII. This allows to read SC Res. 1313 and SC Res. 1346 in line with the previous Resolutions and measures.

<sup>92</sup> SC Res. 1385, 19 December 2001; SC Res. 1400, 28 March 2002; SC Res. 1446, 4 December 2002.

<sup>93</sup> Accra Peace Agreement, *supra* note 1, Art. III, Art. IV.

Resolution 1509, the SC established the UN Mission in Liberia (UNMIL).<sup>94</sup> It reaffirmed its support for the Accra Agreement “[...] reached by Liberia’s Government, rebel groups, political parties, and civil society leaders [...]” and stated that the main responsibility for implementing their obligations under the agreement was with the parties.<sup>95</sup> The Resolution addressed LURD and MODEL directly and urged them to work closely together with the established UN Mission (UNMIL) and to follow the Disarmament and Demobilization programme.<sup>96</sup> With Resolution 1521, the SC, acting under Chapter VII, continued to endorse the Accra Agreement and addressed the non-state parties LURD and MODEL as parties to the peace agreement as well as addressees of an arms embargo.<sup>97</sup> At the same time, the SC identified the illegal exploitation of natural resources, such as diamonds and timber, and the illicit trade with such resources as major reasons for the continuation of conflicts in West Africa, and particularly in Liberia.<sup>98</sup> The SC connected its Chapter VII measures and sanctions directly to the fulfillment of obligations deriving from the peace agreement.<sup>99</sup> Acting under Chapter VII it urged all parties to the Accra Agreement “[...] to fully implement their commitments and fulfill their responsibilities in the National Transitional Government of Liberia, and not to hinder the restoration of the Government’s authority throughout the country, particularly over natural resources”<sup>100</sup>.

The SC continuously emphasized the importance of the control of the diamond and timber exploitation by the NTGL and encouraged Liberia to join the *Kimberley Process* to establish transparent accounting and auditing mechanisms, so that resources revenues were used for the benefit of the

<sup>94</sup> SC Res. 1509, September 19, 2003.

<sup>95</sup> SC Res. 1509, September 19, 2003, paras 3-4.

<sup>96</sup> SC Res. 1509, September 19, 2003, para. 17.

<sup>97</sup> SC Res. 1521, 22 December 2003, Part B, para. 2 (a)-(c).

<sup>98</sup> SC Res. 1521, 22 December 2003.

<sup>99</sup> “Expresses its readiness to terminate the measures imposed by paragraphs 2 (a) and (b) and 4 (a) above when the Council determines that the ceasefire in Liberia is being fully respected and maintained, disarmament, demobilization, reintegration, repatriation and restructuring of the security sector have been completed, the provisions of the Comprehensive Peace Agreement are being fully implemented, and significant progress has been made in establishing and maintaining stability in Liberia and the subregion [...]”, SC Res. 1521, 22 December 2003, Part B, para. 5.

<sup>100</sup> SC Res. 1521, 22 December 2003, para. 14.

Liberian people.<sup>101</sup> The SC reaffirmed its findings and measures repeatedly.<sup>102</sup> In Resolution 1607, it expressed its concern about the continuous illegal exploitation of resources and a lack of transparency in granting mining rights and the limited progress in establishing a transparent financial management. The SC emphasized “[...] the need for the international community to help the National Transitional Government increase its capacity to establish its authority throughout Liberia, particularly to establish its control over the diamond- and timber-producing areas and Liberia’s borders”<sup>103</sup>. The SC endorsed the establishment of an Economic Governance Action Plan for Liberia “[...] to ensure prompt implementation of the Comprehensive Peace Agreement and to expedite the lifting of measures imposed by Resolution 1521 (2003) [...]”<sup>104</sup>. Acting under Chapter VII, the SC invited the NTGL to consider the possibility of commissioning independent external advice on the management of Liberia’s diamond and timber resources, in order to increase investor confidence and attract additional donor support and decided to re-establish a panel of experts.<sup>105</sup>

At that time, the Panel of Experts consisted of a timber expert, Arthur Blundell (Canada); an Interpol expert with investigative and arms experience, Damien Callamand (France); a diamond expert, Caspar Fithen (United Kingdom); an expert on humanitarian and socio-economic aspects, Tommy Garnett (Sierra Leone); and an expert on financial matters, Rajiva Sinha (India). Furthermore, a consultant assisted the Panel with expertise in

<sup>101</sup> SC Res. 1521, 22 December 2003, paras 7-13.

<sup>102</sup> “Recalling that the measures imposed under Resolution 1521 (2003) were designed to prevent such illegal exploitation from fuelling a resumption of the conflict in Liberia, as well as to support the implementation of the Comprehensive Peace Agreement and the extension of the authority of the National Transitional Government throughout Liberia,” see SC Res. 1607, 21 June 2005 and SC Res. 1579, 21 December 2004.

<sup>103</sup> SC Res. 1607, 21 June 2005.

<sup>104</sup> SC Res. 1607, 21 June 2005.

<sup>105</sup> SC Res. 1607, 21 June 2005.

The Panel of experts acts under the Security Council Committee established pursuant to Resolution 1521, which was established to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 21 of the same Resolution, SC Res. 1521, 22 December 2003; about the problems of international investment during the transformation period, see J. Ford & K. Tienhaara, ‘Too Little, Too Late? International Oversight of Contract Negotiation in Post-Conflict Liberia’, *17 International Peacekeeping* (2010) 3, 361-376.

money-laundering, Tom Brown (United States).<sup>106</sup> The Panel's tasks were, based on SC Resolution 1579 (2004), to assess the compliance with sanctions imposed on arms,<sup>107</sup> diamonds,<sup>108</sup> timber<sup>109</sup>, as well as the travel bans for those people who were deemed a threat to the peace in the region and to be sources of financing, such as from natural resources, for the illicit trade of arms. Furthermore, the Panel was asked to review the steps taken by the NTGL to establish an effective certificate of origin regime for trade in diamonds with a view to joining the Kimberley Process on the domestic legal level as well as to establish effective control over timber-producing areas and to ensure that Government revenues were not used to fuel the conflict but were harnessed for legitimate purposes. The Panel of Experts also supported the work of the Sanctions Committee by making recommendations.<sup>110</sup> Later it also reviewed the implementation of Liberia's Governance Management Assistance Programme (GEMAP). GEMAP was established to ensure the prompt implementation of the Accra Agreement and to expedite the lifting of sanctions imposed by Resolution 1521<sup>111</sup> and subsequently Liberia's progress in establishing transparent exploitation and financial mechanisms.<sup>112</sup> GEMAP was, like the Accra Agreement, negotiated under the auspices of ECOWAS. The GEMAP Agreement was concluded between Liberia and the ICGL.<sup>113</sup> The agreement established the

<sup>106</sup> Report of the Panel of Experts submitted pursuant to paragraph 8 (e) of Security Council Resolution 1579 (2004) concerning Liberia, S/2005/360.

<sup>107</sup> While Resolution 1903 terminated the arms embargo with regard to the Government of Liberia, the Security Council decided in para. 6 of this Resolution that all States shall notify in advance to the Committee any shipment of arms and related materiel to the Government of Liberia, or any provision of assistance, advice or training related to military activities for the Government of Liberia, SC Res. 1093, 17 December 2009.

<sup>108</sup> The Liberia sanctions regime on the import of rough diamonds from Liberia, terminated with SC Res. 1753, 27 April 2007.

<sup>109</sup> Previously, the SC sanctions regime also included prohibitions on the import of all round logs and timber products from Liberia. The SC decided to let the timber sanctions expire with the adoption of Resolution 1689 in light of Liberia's commitment to transparent management of the country's forestry resources, SC Res. 1689, 20 June 2006.

<sup>110</sup> Report of the Panel of Experts submitted pursuant to paragraph 8 (e) of Security Council Resolution 1579 (2004) concerning Liberia, S/2005/360, 13 June 2005.

<sup>111</sup> SC Res. 1626, 19 September 2005.

<sup>112</sup> SC Res. 1689, 20 June 2006; SC Res. 1731, 29 September 2006.

<sup>113</sup> 'Governance and Economic Management Assistance Program', Monrovia/Liberia, 9 September 2005, available at <http://siteresources.worldbank.org/LIBERIAEXTN/Resources/GEMAP.pdf> (last visited 28 April 2011) [GEMAP Agreement]; The ICGL was composed of representatives of the UN, ECOWAS, the AU, the World Bank

comprehensive co-operation framework designed to improve financial and fiscal administration, transparency and accountability. The international partners and the Liberian governmental institutions sought to ensure that the government and its institutions would manage the funds effectively and transparently and would spend the collected budget on rebuilding the country's infrastructure.<sup>114</sup> The main tool of GEMAP was the appointment of international experts who were positioned directly in the financial offices of several key governmental institutions.<sup>115</sup> These international experts were supposed to work within their respective institutions and to implement, in co-operation with the Liberian leadership, the economic standards set out in the GEMAP Agreement.<sup>116</sup> To achieve these standards, the international experts were equipped with a co-signature authority that actually gave them a veto power.<sup>117</sup> As far as transparency in granting concessions, contracts, and licenses for the exploitation of natural resources were concerned, Liberia complied with the GEMAP Agreement, and joined the Extractive Industries Transparency Initiative (EITI)<sup>118</sup> and the Kimberley Process.<sup>119</sup> The establishment of GEMAP itself was endorsed by SC Resolution 1626.<sup>120</sup> The SC also requested the UN Secretary General to include information on the progress of the implementation of GEMAP in his regular

(WB), the United States of America (USA), Ghana, Nigeria, the United Kingdom (UK), Germany, Spain and Sweden. The GEMAP Agreement was finally signed by the Minister of Planning and Economic Affairs of the NTGL, the Minister of Justice and the Chairman of the NTGL and by two Co-Chairmen of the ICGL, GEMAP Agreement, *id.*, 1.

<sup>114</sup> See GEMAP Agreement, *supra* note 113.

<sup>115</sup> GEMAP Agreement, *supra* note 113, 2.

<sup>116</sup> GEMAP Agreement, *supra* note 113, 1-6.

<sup>117</sup> GEMAP Agreement, *supra* note 113, 1-6.

<sup>118</sup> More information about the *Extractive Industries Transparency Initiative* (EITI) see <http://eiti.org/> (last visited 28 April 2011).

<sup>119</sup> More information about the *Kimberly Process* see <http://www.kimberleyprocess.com/> (last visited 28 April 2011); GEMAP Agreement, *supra* note 113, 3 *et seq.* The UN Security Council had also demanded that Liberia joins the Kimberley Process and the Extractive Industries Transparency Initiative, see *inter alia*, SC Res. 1607, 21 June 2005.

<sup>120</sup> "Welcoming the signing by the National Transitional Government of Liberia (NTGL) and the International Contact Group of Liberia of the Governance and Economic Management Assistance Program (GEMAP) which is designed to ensure prompt implementation of the Comprehensive Peace Agreement and to expedite the lifting of measures imposed by resolution 1521 (2003) [...]", SC Res. 1626, 19 September 2005, preamble.

reports on UNMIL<sup>121</sup> and later expressed its satisfaction with Liberia's progress in establishing transparent exploitation and financial mechanisms. As a result of this satisfactory view, the SC lifted its economic sanctions on Liberia step-by-step.<sup>122</sup>

### 3. Côte d'Ivoire

After the conclusion of the Ouagadougou Agreement, the SC endorsed the agreement and began to concern itself with the latter's implementation.<sup>123</sup> While the agreement did not refer directly to natural resources, the SC connected the peace process and the implementation of the peace agreements directly with the legal exploitation of natural resources and the exercise of control by the state authorities, as established by the agreement.<sup>124</sup> Continuously referring to these measures, the SC later enhanced the mandate of the UNOCI.<sup>125</sup> Resolution 1765 invited all signatories of the Ouagadougou Agreement to take the necessary steps to fulfill in this regard their commitments in accordance with the Agreement.<sup>126</sup> With Resolutions 1795 and 1826, the SC, acting under Chapter VII, endorsed supplementary agreements concluded to support the implementation of the Ouagadougou Agreement and pointed out the need for all signatory parties to redouble their efforts to implement the

<sup>121</sup> The SC furthermore states that it "Looks forward to the implementation of GEMAP by the NTGL and succeeding governments of Liberia in collaboration with their international partners, and requests the Secretary General to include information on the progress of this implementation in his regular reports [...]", see SC Res. 1626, 19 September 2005, para. 4 (operative part).

<sup>122</sup> SC Res. 1689, 20 June 2006; and also indirectly SC Res. 1731, 29 September 2006.

<sup>123</sup> SC Res. 1765, 16 July 2007; SC Res. 1782, 29 October 2007; SC Res. 1795, 15 January 2008; SC Res. 1826, 29 July 2008; SC Res. 1842, 29 October 2008; SC Res. 1865, 27 January 2009; SC Res. 1880, 30 July 2009; SC Res. 1893, 29 October 2009.

<sup>124</sup> SC Res. 1572, 15 November 2004; SC Res. 1643, 15 December 2005.

<sup>125</sup> SC Res.1739, 10 January 2007. The Security Council "[...] requests UNOCI, within its existing resources, to support the full implementation of the Ouagadougou political Agreement, including by supporting the integrated command centre, the restoration of State administration throughout the country, the identification and voter registration processes, the electoral process, persons affected by the conflict, efforts to create a positive political environment, protection and promotion of human rights, and the economic recovery process of Côte d'Ivoire;" see SC Res. 1765, 17 July 2007.

<sup>126</sup> SC Res. 1765, 17 July 2007, paras 4 and 10; repeated by SC Res. 1826, 29 July 2008, para. 16.

agreements and to strengthen UNOCI's role in the implementation process.<sup>127</sup>

In Resolution 1865, the SC put its Chapter VII measures under the headline "Supporting the Ouagadougou political process".<sup>128</sup> In 2009, the SC also renewed its arms and financial embargos as well as travel bans imposed by Resolution 1572, as well as measures preventing the import by any state of all rough diamonds from Côte d'Ivoire as imposed by Resolution 1643 until 31 October 2010.<sup>129</sup> In 2010, in the light of the presidential elections, the SC decided to renew with Resolution 1946 its arms, financial and travel sanctions as imposed by Resolution 1572<sup>130</sup> and the measures preventing the import of all rough diamonds from Côte d'Ivoire as imposed by Resolution 1643<sup>131</sup>. The SC also utilized the Kimberley Process to communicate through the Sanctions Committee supporting information, reviewed by the Group of Experts when possible, concerning the production and illicit export of diamonds from Côte d'Ivoire.<sup>132</sup> The political and economic stability, including the overall peace process, remain fragile.

### III. Substance and Form of the Redistribution of Resources by Internationalized Comprehensive Peace Agreements and Security Council Resolutions

It is remarkable that the ownership,<sup>133</sup> allocation<sup>134</sup> and treatment<sup>135</sup> of resources, including the access to and the structure of institutions which

<sup>127</sup> SC Res. 1795, 15 January 2008, paras 1-5; SC Res. 1826, 29 July 2008, paras 3, 5 and 8. *Comment:* Resolution 1826 addressed the Defence and Security Force of Côte d'Ivoire and the FN to implement the election plan and *invited* again all parties to the agreements to fulfill their commitments, see also SC Res. 1842, 29 October 2008.

<sup>128</sup> SC Res. 1865, 27 January 2009, para. 9.

<sup>129</sup> SC Res. 1839, 29 October 2009, para. 1; SC Res. 1842, 29 October 2008; SC Res. 1865, 27 January 2009.

<sup>130</sup> SC Res. 1572, 15 November 2004.

<sup>131</sup> SC Res. 1643, 15 December 2005.

<sup>132</sup> SC Res. 1946, 15 October 2010.

<sup>133</sup> *Ownership* is understood as the regime governing the property ownership of natural resources, which means the rights to usage and benefits of resources. There are more abstract, idealistic or cultural-focused concepts of ownership but in this context ownership covers different notions from private ownership, communal/local and state ownership as well as customary ownership, see N. Haysom & S. Kane, 'Negotiating natural resources for peace: Ownership, control and wealth-sharing', Humanitarian Dialogue Briefing Paper (October 2009) available at <http://www.hdcentre.org/files/Ne>

regulate and distribute resources and the benefits derived thereof, have been barely addressed in ICPAs.<sup>136</sup>

However, since the end of the 1990s, some peace agreements have tended to deal with natural resources and forms of power- and wealth-sharing mechanisms in a more comprehensive and detailed manner.<sup>137</sup> All three agreements under consideration in this study were drafted in a very precise manner. They all contained detailed regulations, they used strong obligatory language, and they also invariably provided for the delegation of interpretation, monitoring and dispute-settlement functions.<sup>138</sup> Delegation in

gotiating%20natural%20resources%20for%20peace.pdf (last visited 28 April 2011), 6-8.

<sup>134</sup> The ownership of natural resources is interconnected with the *allocation* of power or the access to state institutions to manage and develop natural resources. Allocation encompasses the establishment of central or de-centralized bodies, which enact or supervise the redistribution of resources. The allocation of legislative and executive power in a peace process could answer the questions of who has the authority to pass laws regulating natural resources, who administers the laws and which monitoring and dispute settlement mechanisms are envisaged, see N. Haysom & S. Kane, *id.*, 12-13.

<sup>135</sup> The *treatment* of natural-resource revenues – this means the fair generation, collection and sharing of natural resource-revenues – is considered to be a determining factor of the viability of a peace agreement and its outline of the future structure of the post-conflict society and state, N. Haysom & S. Kane, *id.*, 6; Table concerning the treatment of natural resource-revenue sharing in selected countries as well as technical aspects like revenue-collection mechanisms and formula-based revenue-sharing, see N. Haysom & S. Kane, *id.*, 22-24.

<sup>136</sup> *Comment*: Agreements such as the Lusaka Protocol, *supra* note 6, which sought to end the Angolan civil war, and Cambodia's 1991 Paris Peace Accords, see 'Final Act of the Paris Conference on Cambodia', Paris/France, 23 October 1991, UN Doc A/46/608 and S/23/177, 30 October 1991 [Cambodia Agreement] failed to dislodge fully the main insurgent groups from the resource-rich areas they controlled. When these accords broke down, UNITA was quick to harness diamonds to its war effort once more, and the Khmer Rouge began tapping the reserves of timber, rubies and sapphires under its control, see also Davis, *supra* note 69, 8.

<sup>137</sup> UNEP, *supra* note 2.

<sup>138</sup> The author makes use of the categories developed in the context of the *Concept of Legalization*. The Concept of Legalization categorizes legal (looking) institutional arrangements alongside the criteria precision, obligation and delegation into a continuum form *high to low legalization*. One leading assumption of the concept is that *highly legalized* arrangements/institutions will bind states through law. The actors' behavior is subject to scrutiny under the general rules, procedures, and discourse of international law and, often, domestic law. The Concept of Legalization is a variation of a neo-institutional regime-theory in International Relations. Legalization is a form of institutionalization, characterized by three dimensions: the degree to which rules are obligatory, the precision of those rules and the delegation of some functions. *Institutions* are enduring sets of rules, norms and decision-making

all cases meant a strong involvement of the UN during the negotiation and implementation process and led to an internationalization of the drafting and implementation process of the concluded peace agreement.

On the substantive level, there are important differences, though. The most recent agreement, the Ouagadougou Agreement, did not even cover the redistribution of resources or wealth-sharing mechanisms at all, although the resource question was as much of relevance to the conflict as in the cases of Sierra Leone and Liberia. The Lomé and Accra Agreements dealt with the ownership of natural resources rather briefly by determining the sovereignty of the state concerning the exploitation of natural resources and/or the formal ownership of the people. In both cases, the emphasis was placed on the allocation of resources, in particular through access to state institutions managing and developing natural resources. While the Lomé Agreement entailed the strongest redistribution mechanism, the Accra Agreement addressed the allocation of resources and treatment of resource revenues at least indirectly through a strong focus on good governance, socio-economic development and wealth-sharing mechanisms. In both agreements, the allocation and treatment of resource revenues were connected with (socio) economic development and wealth-sharing mechanisms and with criteria, like participation, transparency, accountability and responsibility or good governance as an umbrella standard to create the conditions for a sustainable peace process.<sup>139</sup>

processes that shape the expectations, interests, and behavior of actors and which can vary in many dimensions. *Precision* in its strongest form means that the rules are definite and ambiguously defining the conduct they require, authorize, or proscribe. *Obligation* means that states are legally bound by rules and procedures of international or domestic law. And a strong form of *delegation* grants authority to third parties for the implementation of rules and interpretation, application, dispute settlement, and (possible) future law making. See: J. Goldstein *et al.*, 'Preface', 54 *International Organization* (2000) 3, 1-13; J. Goldstein *et al.*, 'Introduction: Legalization and World Politics', 54 *International Organization* (2000) 3, 385-399; K. W. Abbott *et al.*, 'The Concept of Legalization', 54 *International Organization* (2000) 3, 401-419; K. W. Abbott *et al.*, 'Hard and Soft Law in International Governance', 54 *International Organization* (2000) 3, 421-456; the application of the Concept of Legalization by Bell, 'Lex Pacificatoria', *supra* note 5; Bell, 'Peace Agreements', *supra* note 5, and the critique and application by Daase, *supra* note 5; *Comment*: The reader will find A strong example of delegation in Freya Baetens' and Rumiana Yotova's contribution about the Abyei Arbitration, see F. Baetens & R. Yotova, 'The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?', 3 *Goettingen Journal of International Law* (2011) 1, 417.

<sup>139</sup> Lomé Agreement, *supra* note 6; Accra Agreement, *supra* note 1.

In sum, there is a clear tension between the search for *clarity* and the actual *ambiguity* of the provisions addressing the redistribution of resources in ICPAs. This particular ambiguity reflects the inherent tension between the need for a political compromise between the parties, which also leaves some flexibility, and creating clear and binding obligations for the parties during the peace process.

Power- and wealth-sharing arrangements in ICPAs, which are *de facto* negotiated to accommodate the conflicting parties' interests, are of a highly delicate nature, especially when it comes to the distribution of resources. Even though, in theory, it might seem desirable that ICPAs address the redistribution of resources as comprehensively as possible by referring to international standards and adapting them to the local situation, it is questionable whether the legal-political ambiguity of those arrangements is avoidable at all if the mediators and the negotiating parties to the conflict want to avoid zero-sum ownership, allocation and treatment debates during the negotiation and implementation process. Even against the background of a strong involvement and monitoring by third parties, a certain level of ambiguity and wider scope of interpretation seems to be required in order to reach a consensus and later compliance by the former conflict parties with the arrangements outlined in an agreement.<sup>140</sup> These processes also have to be considered against the background of traditionally established local and regional forms of leadership and patrimonial wealth-sharing mechanisms, which significantly influence the agenda-setting of the negotiating parties, the implementation of a peace agreement and a successful transitional peace process.<sup>141</sup> In the end, some power- and resource-sharing arrangement will appear as if, so to speak, the foxes were put in charge of the henhouse.<sup>142</sup>

<sup>140</sup> For further reading concerning the negotiation, drafting and implementation dilemma of agreements in general and peace agreements in particular see: C. Lipson, 'Why are some international agreements informal?', 45 *International Organization* (1991) 4, 495-538; J. Arnault, 'Good Agreement? Bad Agreement? An Implementation Perspective' (n.d.) available at <http://www.stanford.edu/class/psych165/Arnault.doc> (last visited 28 April 2011).

<sup>141</sup> G. Anders, 'Denial and Recognition of Difference: Representation of African Culture in International War Crimes Trials', in W. Gephart (ed.), *Recht als Kultur. Eröffnungssymposium* (forthcoming 2011); as examples for the structure of RUF, see The Truth and Reconciliation Commission Report, *supra* note 10, 47, paras 170-172.

<sup>142</sup> Examples for strong criticism on power-sharing and wealth-sharing mechanisms: M. Goldmann, 'Sierra Leone: African Solutions to African Problems?', in A. v. Bogdandy *et al.* (eds), 9 *Max Planck Yearbook of United Nations Law* (2005),

The dilemma boils down to the question: Who else could be put in charge of the henhouse than the foxes? And how can the foxes be effectively controlled?

Furthermore, all three peace agreements under consideration differ concerning their substance, but the drafting and implementation of the peace agreements and the peace processes were accompanied and pushed forward by a developing common practice of SC Resolutions that address resources, peace agreements and non-state entities in the course of the peace process and that create far-reaching regulations concerning the redistribution of resources and resource treatment on the international, regional and domestic level.

#### D. The Legal Nature of the Example Peace Agreements and the Specific Obligations as Concerns the Redistribution of Resources of Conflict

After all, do these agreements and provisions create any kind of (legal) obligations for their parties? This section will address (1) the legal nature of the ICPA between state and non-state parties, (2) the nature of the obligations which are created by provisions which redistribute resources in the framework of the ICPA and (3) the implications of the relevant SC Resolutions.

##### I. The *Lack of Fit* of Peace Agreements between State and Non-State Parties

In the post-colonial context, peace agreements or self-determination agreements have had the function of *transitional constitutions*, proclaiming sovereignty of the state and its people and their sovereignty over resources.<sup>143</sup> Thus, in this particular context, the permanent sovereignty over resources could be understood as a form of self-determination and as an

475-476, 479, 480; Khan, *supra* note 4, 574-575, 577, M. Kaldor, *New and Old Wars, Organized Violence in a Global Era*, 2nd ed. (2007), 64, 122-130; J. I. Levitt, 'Illegal Peace: An Inquiry into the Legality of Power-Sharing with Warlords and Rebels in Africa', 27 *Michigan Journal of International Law* (2005) 2, 495-577.

<sup>143</sup> See Bell, 'Lex Pacificatoria', *supra* note 5, 97-104.

expression of the homogeneity of the new state and its people.<sup>144</sup> In recent decades, the permanent sovereignty of the state over its natural resources has acquired the status of a rule of customary international law,<sup>145</sup> which, as some authors claim, not only entails rights of the state but also obligations

<sup>144</sup> Many treaties, legal instruments and other international documents refer to the permanent sovereignty of states over natural resources. Some of them entail disclaimer clauses such as: “Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.”, *Vienna Convention on Succession of States*, 23 August 1978, Art. 13, U.N.T.S. 1946, 3. Others include limiting conditions to the exercise of this sovereign right: “[...] states have, in accordance with the Charter of the United Nations and the principles of international law, a sovereign right to exploit their own resources pursuant to their environmental and developmental policies [...]”, see ‘The African Convention on the Conservation of Nature and Natural Resources’ (11 July 2003) (revised version) available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/nature%20and%20natural%20resource.pdf> (last visited 7 September 2010), preamble; for the global level: *International Covenant on Civil and Political Rights*, 16 December 1966, Art.1, 999 U.N.T.S. 171; as a non-binding instruments referring to the concept: GA Res. 1515 (XV), 15 December 1960, para. 5, Charter of Economic Rights and Duties of States, GA Res. 3281 (XXIX), 12 December 1974, Art. 2; Rio Declaration on Environment and Development, UN Doc A/CONF.151/26, 14 June 1992, Principle 2. The African Banjul Charta states that: “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. / 2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. / 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. [...] 5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.”, *African (Banjul) Charter on Human and Peoples’ Rights*, 27 June 1981, Art. 21, OAU Doc CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); Also referring to the permanent sovereignty over natural resources: GA Res. 1803 (XVII), 14 December 1962; Declaration on the Right to Development, GA Res. 41/128, 4 December 1986, preambular paragraph; similar: *International Covenant of Economic, Social and Cultural Rights*, 16 December 1966, Art. 1, para. 2, Art. 11, para. 2 (a), 993 U.N.T.S. 3.

<sup>145</sup> *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Jurisdiction of the Court, Judgement, ICJ Reports 2005, 168, 252, para. 244; Okowa, ‘The Legal Framework for the Protection of Natural Resources’, *supra* note 2, 252-255; Okowa, ‘Natural Resources in Situations of Armed Conflict’, *supra* note 2, 251-260.

vis-à-vis its own people.<sup>146</sup> However, the principle works badly in the given context of resource-driven and fuelled intra-state conflicts in which the legitimacy of the state, or of the government as the embodiment of the state, is questioned and actors other than the state have *de facto* power over the exploitation and distribution of resources. Additionally, in the given cases, the non-state actors do not even seek self-determination as representatives of a people or as a secessionist movement seeking to acquire effective statehood.<sup>147</sup> Furthermore, international documents may refer to the permanent sovereignty of people over natural resources, but in fact they address the state that is supposed to be the mediator of the right. They do not cover regulations concerning the redistribution of resources and benefits in the case of intra-state conflicts between the government of a state and intra-state armed groups challenging the government and how to reach a sustainable peace process and power-sharing arrangement.<sup>148</sup>

After all, the ICPAs under consideration addressed intra-state conflicts that required the state, as well as international organizations, to accept the diversity and heterogeneity of relevant actors and participants in the legal framework laid out in peace agreements. These arrangements were supposed to create a sustainable peace process and to trigger compliance with the peace process by the parties to the former violent conflict. They were drafted with a strong involvement of the AU, ECOWAS and the UN to resolve political and economic claims of competing internal groups in an internationalized political and legal setting. The agreements affected the legal and even constitutional order of the state, but at the same time they

<sup>146</sup> For example: Okowa, 'The Legal Framework for the Protection of Natural Resources', *supra* note 2, 245-48, 256-260; Okowa, 'Natural Resources in Situations of Armed Conflict', *supra* note 2, 240-247; 260-262; N. Schrijver, 'Natural Resource Management and Sustainable Development', in T.G. Weiss *et al.* (eds), *The Oxford Handbook on the United Nations* (2007), 592-610; N. Schrijver, 'Unravelling State Sovereignty? The Controversy on the Right of Indigenous Peoples to Permanent Sovereignty over their Natural Wealth and Resources', in I. Boerefijn & J. Goldschmidt (eds), *Changing Perceptions of Sovereignty and Human Rights: Essay in Honour of Cees Flinterman* (2008), 85-98.

<sup>147</sup> Okowa, 'Natural Resources in Situations of Armed Conflict', *supra* note 2, 240.

<sup>148</sup> *Comment*: In the chosen cases the concluded agreements as well as SC-Resolutions referring to the agreements and to resources, guaranteed the sovereignty of the state and/or the people over their resources but they did not refer explicitly to these international instruments when regulating the allocation of resources and treatment of resource-revenues.

were concluded in a grey zone both between conflict and peace and between domestic and international law.<sup>149</sup>

One could claim that those agreements, even if they refer to international law and international standards, and although they are created through internationalized mediation processes, are of a purely domestic nature. They are concluded between state and non-state parties and could be comparable to coalition agreements between political parties seeking to jointly govern a country or agreements between the government and a private entity within the same state.<sup>150</sup> In both examples, the purely domestic nature of the agreement is unquestionable and the agreement is usually concluded within a stable state. But, as opposed to ICPAs, they are neither aiming to end an armed intra-state conflict nor are the parties questioning the constitutional basis of the state, its social contract, as little as they are seeking to redesign the fundamental structures of the state or even to change and/or temporarily replace the constitution.

Although, at the same time, they are apparently not purely domestic agreements, ICPAs can also not be treated as international treaties as this would clearly run counter to Arts 2, 3 of the Vienna Convention on the Law of Treaties.<sup>151</sup> After all, ICPAs seem to be encapsulated in the grey zone

<sup>149</sup> *Comment:* The dilemma is particular salient in post-conflict environments where there is a deficit of trust in the ability and capability of the state party to guarantee the development and fair revenue-sharing in the framework of a purely domestic agreement, see Haysom & Kane, *supra* note 133; and more general about the particularities of the (legal) nature of peace agreements between state and non-state parties: Bell, 'Lex Pacificatoria', *supra* note 5; Bell, 'Peace Agreements', *supra* note 5; Daase, *supra* note 5; comment: for further reading on new perspectives on the division between national and international law: J. Nijman & A. Nollkaemper (eds), *New Perspectives on the Divide Between Nation and International Law* (2007).

<sup>150</sup> *Comment:* Although it could be argued whether these agreements could be adjudicated in case of disputes amongst the parties. Additionally, an illustrative example of an agreement between the government and a non-state party without the approval of the parliament is the currently discussed agreement between the German Government and the Atom-Lobby; see 'Eckpunktevereinbarung mit den Energieversorgungsunternehmen' (6 September 2010) available at [http://www.bundesregierung.de/Content/DE/\\_\\_\\_Anlagen/2010/2010-09-09-foerderfondsvertrag,property=publicationFile.pdf](http://www.bundesregierung.de/Content/DE/___Anlagen/2010/2010-09-09-foerderfondsvertrag,property=publicationFile.pdf) (last visited 28 April 2011).

<sup>151</sup> And even taken the loophole of Art. 3 VCLT, a non-state party cannot conclude an international treaty unless it has at least a partial legal subjectivity and also a treaty-making capacity – a complicated construction as the state party as well as the UN and other organizations will usually avoid to explicitly accept a general international legal status and general treaty-making capacity of non-state parties to peace agreements;

between conflict and peace, as well as between national and international law.

Still, it has to be pointed out that in the present examples, the conflict parties appear to meet and sign the agreement as *equals*, which resembles more the situation with respect to a peace agreement between two state parties. Considering also the intensive involvement of the UN during the drafting and implementation process, and the endorsement of the agreements by SC Resolutions referring to key issues, one wonders how this affects the nature of the agreements and obligations concerning the redistribution of natural and intangible resources in the overall peace process, especially in the context of the Lomé and Accra Agreements.

## II. The *de facto* Internationalization of the Redistribution of Resources in Internationalized Peace Processes

To include non-state parties in internationalized mediation and negotiation processes creates – in an ideal setting – the possibility to transform belligerent groups into political parties within a stabilizing context and to end an intra-state conflict.<sup>152</sup>

Nevertheless, the conferral of respectability on rebel groups through their inclusion in agreements with the state is a dilemma during the negotiation and implementation of peace agreements.<sup>153</sup> In this context, non-state entities could even develop an interest to further escalate intra-state conflicts to be invited to the negotiation table as a stakeholder and to use the international mediation-framework to gain a degree of recognition at the international level as well as direct access to resources.<sup>154</sup> But one should

*Vienna Convention on the Law of Treaties*, 23 May 1969, Arts 2-3, U.N.T.S. 1155, 331; also the *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 21 March 1986, Arts 2-3, UN Doc A/CONF.129/15 offers no other perspective; see also Bell, 'Lex Pacificatoria', *supra* note 5, 128-129; Bell, 'Peace Agreements', *supra* note 5, 379-384; Daase, *supra* note 5, 159-160.

<sup>152</sup> D. Petrusek, 'Armed groups and peace processes – Pondering and planning engagement' (21 November 2005) available at <http://www.hdcentre.org/files/Armedgroupsandpeaceprocessponderingandplanningengagement.pdf> (last visited 28 April 2011), 4.

<sup>153</sup> Petrusek, *id.*, 6.

<sup>154</sup> One tactic to enter into this framework is to provoke government forces to use strong-arm and repressive measures precisely to attract international attention, and thereby set the scene for international mediation; see ICG Report Liberia, *supra* note 1; Petrusek, *id.*, 6.

also not forget that, more often than not, the state and the government themselves are *de facto* of a dubious democratic legitimacy in such situations despite their *de iure* status.<sup>155</sup> In these situations, ones terrorist or illegal force is another's liberation movement, and ones democratic government is another's oppressor.<sup>156</sup> The UN has to address and to operate within this political and legal dilemma and is apparently taking on the challenge as, for instance, the World Summit in 2005 agreed to strengthen the Secretary General's *capacity* to mediate disputes and to strengthen his ability to offer *good offices*.<sup>157</sup> Additionally, in most cases, a Special Envoy or Special Representatives were sent out to broker an agreement between the conflicting parties.<sup>158</sup>

By addressing the non-state parties to an agreement directly and by holding them responsible for their non-compliance with the terms of the peace agreement, and by fostering the implementation of sanctions, the SC seems to acknowledge an internationalized status of the ICPA under consideration and of the non-state parties to the agreements for the purpose of the implementation of the agreement and the advancement of the ongoing peace process.<sup>159</sup>

It is widely discussed that the UN Charter, and especially Chapter VII, initially was intended to cover inter-state relations and the prevention of

<sup>155</sup> Clapham, *supra* note 14, 15-27; Okowa, 'Natural Resources in Situations of Armed Conflict', *supra* note 2, 240-242.

<sup>156</sup> C. Bell, *Peace Agreements and Human Rights* (2000), 16 [Bell, *Peace Agreements and Human Rights*].

<sup>157</sup> United Nations, 2005 World Summit Outcome, UN Doc A/RES/60/1, 25 October 2005; T. Whitfield, 'Good offices and "groups of friends"', in S. Chesterman (ed.), *Secretary or General, The UN Secretary-General in World Politics* (2007), 86-101.

<sup>158</sup> T. Myint-U, 'The UN as Conflict Mediator: First Amongst Equals or the Last Resort?' (26 June 2006) available at <http://www.hdcentre.org/files/TheUNasConflictMediator.pdf> (last visited 28 April 2011), 90.

<sup>159</sup> P. H. Kooijmans, 'The Security Council and Non-State Entities as Parties to Conflicts', in K. Wellens (ed.), *International Law: Theory and Practice, Essays in Honour of Eric Suy* (1998), 333. *Comment*: In this context it would lead to far to reflect or try to present the development of the treatment of non-state entities as parties to a conflict especially by the Security Council; the focus here will be explicitly limited to the treatment of non-state entities as a party to the examples peace agreements between a state and a non-state party regulating the redistribution of resources or addressing a resource-focused conflict which was addressed as such by the Security Council.

inter-state wars.<sup>160</sup> Consequently, intra-state conflicts as well as key-issues underlying these conflicts, as for instance the exploitation of resources of a country, would be generally considered to remain within the *domaine réservé* of that state and thus outside the scope of application of the Charter.<sup>161</sup>

As seen above, in the context of the intra-state conflicts in Sierra Leone, Liberia and Côte d'Ivoire, the SC expressed on numerous occasions that the conflict in question constituted a threat to (regional) peace. In doing so, the SC *inter alia* pointed to the connection between the exploitation and management of resources and the peace process. It also referred repeatedly to the peace agreements concluded, and previously described, and insisted on their implementation by all parties. In the latter context, the SC directly addressed the non-state parties' responsibility to follow their commitment and to fulfill their obligations. The non-state parties were also the addressees of sanctions like arms embargos, travel bans and bank account freezes and were indirectly affected by embargos or export restrictions on diamonds or timber in case of non-implementation or violation of a peace agreement or of a relapse into a violent conflict.<sup>162</sup> The SC Resolutions furthermore laid out detailed mechanisms for the legal exploitation of resources by the government and/or transitional institutions established for the transitional period by the peace agreement, having been endorsed by the *Kimberley Process* or a regional cooperation framework.<sup>163</sup>

Therefore, there is no doubt that the SC is able to deal with the effects of intra-state conflicts by determining a threat to peace based on Art. 39 of the UN Charter and by taking measures based on Chapter VII. But addressing a situation constituting a threat to peace and security is different from addressing and dealing directly with non-state entities, which are

<sup>160</sup> Similar: Kooijmans, *id.*, 333; Additional indicators are the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UN Doc GA/RES/2625 (XXV), 24 October 1970, and Resolution on the Definition of Aggression, UN Doc GA/RES/3324 (XXIX), 14 December 1974.

<sup>161</sup> See Kooijmans, *supra* note 159, 333. *Remark:* Nowadays examples for Chapter VII measures in intra-state conflict situations without additional criteria, see A. Frowein & N. Krisch, Article 39, in B. Simma *et al.* (eds), *The Charter of the United Nations, A Commentary, Volume 1*, 2nd ed. (2002), 720-721, paras 6-8, 723-724, para. 18; see also E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (2004), 133-177.

<sup>162</sup> See Part C.

<sup>163</sup> See Part C.

parties to ICPAs, in situations that involve the substantial issues underlying those disputes as well as with the exploitation of resources and with institution building during the entire peace process. The measures taken by the SC in the context of the implementation of all three ICPAs went beyond traditional sanction mechanisms to hinder the illegal exploitation of resources to fuel an intra-state conflict.<sup>164</sup>

The imposition of sanctions, influencing the intra-state mechanisms dealing with resources and resource revenues are based on the repeated finding that one of the parties – mostly the non-state entity – did not implement the agreement or had violated their obligations under the agreement, and that this non-implementation or violation and/or the overall situation constituted a threat to peace and security.<sup>165</sup> *De facto*, the SC enforced the implementation of peace agreements, holding equally responsible the state and non-state parties for their implementation. In that sense, it did not only address and influence the immediate situation constituting a threat to peace and security.<sup>166</sup> The measures the SC took to endorse and secure the effective implementation of these peace agreements outlined structures for the political and economic transformation of the post-conflict states beyond this period. Additionally, the three examples have shown that the SC Resolutions addressed conflict resources in an even more

<sup>164</sup> Kooijmans, *supra* note 159, 333-334, 339; See Part C.

<sup>165</sup> *Comment*: The limitation of the paper does not allow a general discussion of the spectrum of questions which could be raised in this context as: What makes a SC-Resolution binding and who can be bound by a SC-Resolution? And directly connected to that: How can SC-Resolutions be interpreted? And also whether the SC can exercise quasi-judicial functions? The line of argumentation in this paper follows concerning the first two questions the findings of the Security Council Report, Special Research Report, Security Council Action Under Chapter VII, *supra* note 73, 28-29 and M. C. Wood, 'The UN Security Council and International Law', Hersch Lauterpacht Memorial Lectures, Held at the Lauterpacht Centre for International Law, University of Cambridge (7-9 November 2006) available at [http://www.lcil.cam.ac.uk/lectures/2006\\_sir\\_michael\\_wood.php](http://www.lcil.cam.ac.uk/lectures/2006_sir_michael_wood.php) (last visited 28 April 2011), concerning the last two questions the paper refers to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, 16, 53, para. 114; recently confirmed and referred to in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, General List No. 141, 1, 34, para. 94; M.C. Wood, 'The Interpretation of Security Council Resolutions', in A. v. Bogdandy *et al.* (eds), 9 *The Max Planck Yearbook of United Nation Law* (2005), 73-95; de Wet, *supra* note 161, 133-177, 338-368.

<sup>166</sup> Frowein & Krisch, *supra* note 161, para. 18.

comprehensive manner than the agreements. Hence, the SC acted as a rule proliferator during the implementation of the agreements with a view to push the overall peace process forward. At the same time, it protected or respectively reaffirmed the sovereignty of the state over natural resources by referring to the establishment of authority of the government to control the exploitation of natural resources; a government, which usually was established in the course of the implementation of an ICPA.

Furthermore, from a general perspective on these agreements, especially in the context of the conclusion and implementation of the Lomé and Accra Agreements, one can assume that all parties to the agreement in question must have agreed to not only commit themselves towards their counterparts in the conflict but also towards the UN, in particular the SC, as a mediator and *de facto* guarantor for the implementation of the agreement and the peace process.<sup>167</sup> This provides an argument for recognizing the binding nature of the agreement and by way of a preliminary conclusion, it could be said that the agreements under consideration have created legal obligations governed by international law.<sup>168</sup> This alleged legal nature of obligations created by peace agreements could be a possible trigger for a sustainable peace process. It could have the function of a fixed point in an otherwise very dynamic process.<sup>169</sup> If the obligations created by such an

<sup>167</sup> Kooijmans, *supra* note 159, 338

<sup>168</sup> Kooijmans goes even further and states: “I can see no supportable reason why clearly recognizable entities who have been involved in a dispute which was a matter of [international] concern, cannot enter into binding agreements in which they have obligations not only to the opposite party in the conflict, but also towards the international community as such, if that international community has formally approved such an agreement or even co-signed it. By their very nature such commitments are commitments under international law. It would be completely artificial and it would serve no purpose whatsoever to deny such commitments that character for the simple reason that the entity has no legal personality in the traditional sense.”, see Kooijmans, *supra* note 159, 338.

<sup>169</sup> *Bell* notes that “[...] literature has paid little attention to the role of the peace agreement as a binding document. Social scientists and conflict resolution analysts have examined what makes peace agreements succeed or fail. [...] They have tried to isolate the different elements of settlements, so as to test empirically and through case studies the extent to which they reduce conflict. This research, in its design and results, treats peace agreements as a group but tends to accord a limited role to the related questions of how an agreement is worded and whether or not it is a legal document. [...] Legal literature, in contrast, has produced detailed appraisals of the terms, structure, and legal nature of specific agreements but little sustained analysis of peace agreements per se. Each position is worth challenging. As regards legal

internationalized peace agreement between state and non-state parties are considered to be governed by international law, and to have created obligations governed by international law, the non-state party to the agreement must possess partial international legal personality.<sup>170</sup>

The question is whether this partial legal subjectivity can be equated with concepts which have been applied in the past to non-state entities, such as liberation movements, secessionist movements or *de facto regimes*.<sup>171</sup> This is less problematic in the case of entities which control a certain territory *de facto* while not being recognized. Those entities can be regarded as being subject to international legal obligations and rights. But the entities considered here are often not in control of a given territory. Frowein and Krisch point out that those entities can be granted a certain legal personality *inter alia* by the conclusion of internationalized peace agreements and through SC measures.<sup>172</sup> Without pushing this line of argument further, one may say that the non-state entities in question could have acquired a partial and temporary international legal personality that would remain confined to

literature, the scale of the phenomenon of peace agreements; the emerging body of standards dealing with them as a group; and a range of common practices relating to their negotiation, design, content, and implementation - all point to a set of documents with common legal features. As regards social science literature, the sidelining of the legal attributes of peace agreements with respect to compliance or implementation flies in the face of even the most nuanced accounts of why law might matter." Bell, 'Peace Agreements', *supra* note 5, 374-375; see also Bell, 'Lex Pacificatoria', *supra* note 5, 28 *et seq.*; and Fortna assumes that "Peace tends to last longer after formal agreements than after tacit or unilaterally declared cease-fires, all else being equal, but the difference is not significant statistically." She concludes: "Peace is hard to maintain among deadly enemies, but mechanisms implemented in the context of cease-fire agreements can help reduce the risk of another war. Peace is precarious, but it is possible. Agreements are not merely scraps of paper, their content affects whether peace lasts or war resumes.", V. P. Fortna, 'Scraps of Paper? Agreements and the Durability of Peace', in B. A. Simmons & R. H. Steinberg (eds), *International Law and International Relations* (2006), 538, 541.

<sup>170</sup> Daase, *supra* note 5, 163-166; Kooijmans, *supra* note 159, 338.

<sup>171</sup> Bell, 'Lex Pacificatoria', *supra* note 5, 127-143; Cassese, *supra* note 46, 1130-1140; A. Cassese, 'The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts', 30 *The International and Comparative Law Quarterly* (1981) 2, 416-439, Daase, *supra* note 5, 160-162; J. A. Frowein, *Das de facto-Regime im Völkerrecht, Eine Untersuchung zu Rechtsstellung „nicht anerkannter Staaten“ und ähnlicher Gebilde* (1968); R. Hoffmann & N. Geissler, *Non-State Actors as New Subjects of International Law, Proceedings of an International Symposium on the Kiel Walther-Schücking-Institut of International Law, 25-28 March 1998* (1999); M. Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized de Facto Regimes in International Law: The Case of 'Somaliland'* (2004).

<sup>172</sup> Frowein & Krisch, *supra* note 161, 715-716, paras 43-44.

that peace agreement and the respective peace process.<sup>173</sup> During the implementation period, the non-state parties have rights and obligations under international law in instances of non-compliance and violation of the agreement, facilitated by internationalized dispute settlement mechanisms and most prominently by SC measures.<sup>174</sup>

This paper does not suggest, however, that the non-state entities generally obtain some sort of international legal personality because they are the target of SC enforcement measures.<sup>175</sup> In carrying out its primary responsibility for the maintenance of international peace and security, the SC is free to take measures against any entity which it considers to be an obstructive factor in the restoration of peace. Nevertheless, it has to be emphasized that the SC, in the given context of the implementation of ICPAs and the redistribution of resources, explicitly addresses these entities as responsible for the implementation of a peace agreement and the creation of a sustainable peace process,<sup>176</sup> whereas during ongoing internal armed conflicts the SC usually refrains from addressing the parties by name and appeals to all parties to the conflict or uses similar terms. Once a peace agreement has been concluded, it refers to both parties by name and as direct addressees.

Hence, the framework in which these three agreements were concluded and implemented gave birth to a temporary, limited internationalization of these peace agreements and a partial temporary legal personality of the non-state parties. Therefore, ICPAs and the SC involvement contribute to the creation of international (legal) binding

<sup>173</sup> See also Kooijmans, *supra* note 159, 339. *Comment:* This approach to the status of non-state parties of an ICPA between state and non-state parties pays tribute to the fact that these agreements usually aim to change the overall structures of the state and to accommodate the conflicting non-state party into these new and agreed structures at the same time. Once the ICPA would have been implemented and/or the transformation period was terminated, the non-state party would have acquired the status of a political party and thereby lost their international legal personality with the progress of the implementation of the peace process.

<sup>174</sup> See also Kooijmans, *supra* note 159, 339; for another strong example see Baetens & Yotova, *supra* note 138.

<sup>175</sup> Kooijmans, *supra* note 159, 339.

<sup>176</sup> Similar for the Lusaka Agreement (*supra* note 6) in Angola: R. Khan, *supra* note 4, 570.

obligations for the parties to the agreement concerning the redistribution of resources to the benefit of the people.

## E. Summary and Outlook

On a global level, the United Nations Environment Programme found that less than a quarter of peace negotiations aiming for the resolution of intra-state conflicts over resources in fact addressed the redistribution of natural resources and resource management mechanisms.<sup>177</sup> Given the complexity of the initial situation in intra-state conflicts, it has to be acknowledged that there is neither a political nor legal one-size-fits-all pattern to address these sensitive issues in ICPAs and to create compliance through the creation of legal obligations. This paper has demonstrated how differently the example agreements addressed the redistribution of resources, even though the conflicts were inter-connected. Additionally, the implementation of all three peace agreements was often threatened by a lack of adherence of the parties, especially the non-state parties, and a lack of institutions which could guarantee the effective implementation of the power- and wealth sharing arrangements. This drew the focus of the SC, which continuously addressed their implementation and sanctioned the non-implementation by both the state and non-state parties. The legal exploitation and effective redistribution of resources and resource revenues played a key role in its measures during this process. Nevertheless, the SC addressed the state as well as non-state parties to the agreements as responsible for the implementation of their obligations entered into through the agreements. Taken together, this leads to a temporary internationalization of the obligations created concerning the redistribution of conflict resources during the peace process and the peace agreements themselves. When it comes to the allocation of resources, the measures of the SC, in all three cases, went even beyond the framework outlined in the agreement. The SC took up the function of a negotiator and is about to develop a new and particular practice when it comes to the redistribution of resources as one key to the creation of a sustainable peace process after intra-state conflicts. This would seem to be in line with the 2004 Report of the UN Secretary General's High-Level Panel on Threats, Challenges and

<sup>177</sup> Based on this finding, the UNEP asked the UN Peacebuilding Commission to address natural resources as part of the peacemaking and peacekeeping process as well as to integrate natural resource issues into the peacebuilding strategies and to harness natural resources for economic recovery, see UNEP, *supra* note 2, 5.

Change, which highlighted the fundamental relationship between the environment, security, and social and economic development in the pursuit of global peace in the 21<sup>st</sup> century. It stated that “[m]ore legal mechanisms are necessary in the area of natural resources [...]” and that a new challenge for the UN was to provide support to weak states, especially to those recovering from war in the management of their natural resources to avoid future conflicts.<sup>178</sup> It concludes, “[t]he United Nations should work with national authorities, international financial institutions, civil society organizations and the private sector to develop norms governing the management of natural resources for countries emerging from or at risk of conflict”<sup>179</sup>. The realization and future implications of these statements remain unclear. In the examples of Sierra Leone, Liberia and Côte d’Ivoire, the UN provided its support first and foremost via Chapter VII measures of the SC. A broader strategy and conceptual framework was not evident. The Peacebuilding Commission and the Peacebuilding Fund could become such a framework for further conceptualization; all three countries receive assistance from the Peacebuilding Fund.<sup>180</sup>

An open question remains as to whether international principles, like the permanent sovereignty over resources, and mechanisms, like ownership, allocation, and treatment, as well as international standards, like good governance (as an umbrella term for transparency, accountability and participation), are suitable alone to address the roots of resource-intensive intra-state conflicts. During the mediation and implementation process, these internationalized concepts, advocated by the UN, the SC and other international actors, are confronted with the dilemma of creating simultaneously legitimate and effective power-sharing mechanisms between the conflicting parties and their particular concepts of leadership and ownership.

Does the current form of internationalized peace processes, peace agreements and the redistribution of resources reveal the helplessness of the

<sup>178</sup> UN Secretary-General’s High-Level Panel on Threats, ‘Challenges and Change’, *supra* note 14, para. 92; K. Ban, ‘Secretary-General’s message on the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict’ (6 November 2009) available at [http://www.un.org/en/events/environmentconflictday/sg\\_message\\_2009.shtml](http://www.un.org/en/events/environmentconflictday/sg_message_2009.shtml) (last visited 28 April 2011).

<sup>179</sup> UN Secretary-General’s High-Level Panel on Threats, ‘Challenges and Change’, *supra* note 14, para. 92.

<sup>180</sup> Sierra Leone since 2006; Liberia since 2007; and Côte d’Ivoire since 2008; more information available at <http://www.unpbf.org/index.shtml> (last visited 28 April 2011).

international community, mainly the UN and the SC, to address the roots of these conflicts and to deal with the interests of the conflicting parties, as well as the interests of external actors? In absolute terms, one has to answer with *yes*; in differentiated terms one could say *not necessarily* as the SC utilizes already a very broad margin of its political and legal powers to address these conflicts.

After all, peace agreements between state and non-state parties should reflect not only the result of local horse-trading, while SC Resolutions frame the wider legal and political context for the transformation of resource-intensive conflicts. It may sound like common sense, but when focusing on the influence and high degree of international involvement in the three presented cases, one should not forget that these countries are subjects and not merely objects of international law. These states and their people should still own the peace process and be responsible for it, even if the prevailing state authority is a relatively weak government with a limited capacity to exert its sovereignty. This should find its expression in a peace agreement between the direct parties to the violent conflict and other stakeholders. In the end, the agreement reached between these actors is the best possible agreement that could be reached at that particular point in time. But there is further need to reflect upon the local, regional and global dimensions of resource-centered conflicts to clarify which fact factors can be actually addressed and dealt with by an ICPA and SC Resolutions.<sup>181</sup>

<sup>181</sup> Similar Whitfield, *supra* note 157, 94-95.