

Keynote Speech

Resources of Conflict – Conflicts over Resources

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Opening

I am honored, esteemed colleagues and scholars, to assist you in opening this conference. We are gathered here to consider a crucial and timely problem, the linkages between two impossible challenges facing over a billion people in our world today. Conflicts over resources have been responsible for disputes and even wars both among, and within, many countries. They cause suffering for millions today, and continue to hold back important progress for many, many more. This conference doesn't just accept these terrible facts. It actively considers how the law can help to break the vicious cycle, bringing resolution and sustainable development to those who most need it. I congratulate the organizers, and also all of you as speakers and participants, for your foresight and your intellectual courage.

As has been mentioned, I am the Director of the Centre for International Sustainable Development Law (CISDL). My Centre, a fellowship of over 120 lawyers and legal scholars from 54 countries, leads legal research and capacity building, convenes expert and scholarly dialogues, and publishes legal analysis and scholarship in the area of sustainable development law and policy.

I also direct a new Program on Environment and Sustainable Development Law for the International Development Law Organization (IDLO), an international, inter-governmental institution that partners with the UN in providing rule of law training and technical assistance in the world's most vulnerable and post-conflict countries.

As an author and lawyer, a treaty negotiator and scholar, I have spent the last twenty years, on the invitation of the UN and its member countries, working to help nations in Africa, Latin America and Asia to develop new laws and institutions to steward, manage and equitably share vital natural resources. In some countries, we have seen success. In others, the peace that has been constructed is fragile, even desperate, but we have hope. And in others still, we are failing – much, much more is still needed.

My messages for you today are simple, and based on three important lessons that all the 'barefoot lawyers' and scholars in my Centre, and among IDLO and our local partners, continue to learn and re-learn every day, in our work on the ground.

First – we face incredible challenges today. Key resources – water, lands, even our very climate, are being degraded and lost at terrible rates in many parts of the world. There is no alternative to action. We **MUST** stop conflicts over resources, and prevent the use of resources to fuel conflicts.

This is a vital precondition to any kind of development, especially sustainable development.

Second – We are not powerless, nor are we starting from zero. There is a real role for law. And as legal scholars and practitioners, we have both a solemn responsibility, and also many tools to help us achieve this seemingly impossible task. We have treaty regimes and regulations, we have customary principles and rules, we have dispute settlement and joint resource management mechanisms. We need to activate existing laws, and where necessary, create new ones. We need to strengthen, through respect and use, *these fragile paths and bridges of binding words that are the law*.

Third – we must pay careful, careful attention to process. There is so much to be gained, or lost. Participatory assessment, transparency, consultation and engagement of all actors, willingness to listen respectfully, to learn from those most affected, to consider new solutions that combine law with policy and practice, these are crucial. Many conflicts are either resolved, or exacerbated, by how people are treated. The solution isn't just in what we do, but how we do it... and whether it works.

In essence, I bear a warning, a reminder and a challenge.

First, the warning... On natural resources & conflicts today

The links between natural resources and conflicts have been established in theory, and on the ground, for some time now. And a great deal has been done.

But more effort is needed. Overall, global and regional resources problems are getting worse, not better. And despite intense global media attention, and many efforts for prevention, many societies bear the burdens of conflicts. There are 35 million survivors of conflict across the globe. The lives of millions more, the large, large majority of whom are innocent and vulnerable civilians, continue to be affected by conflict every day. Currently, there are well over 20 domestic and international conflicts raging, especially in Sudan¹ and Somalia,² while others hover on a knife-edge of war, or peace.

¹ In the Sudan, militias and government forces have been engaged in fighting with rebel groups in Darfur that are angered at what they see as the oppression of black Sudanese in favor of Arab Sudanese. There have been attempts to draw connections between the

Conflicts do not spring from nowhere. They often occur when people have no choices left, when basic freedoms from need, and from fear, are denied. As noted by Professor Amartya Sen in his Nobel-winning book, *Development as Freedom*, we must have opportunities. But as Professor Paul Collier has observed, in his book, *The Bottom Billion*, natural resources form a crucial part of the conflict equation. And current trends, in this respect, are far from encouraging.

I will give three examples – water, land, and air (our climate).

With regards to water, which is a basic human need, and also a human right, scarcity is becoming worse. According to the United Nations Development Programme (UNDP), over 1 billion people worldwide lack access to water, with over 2.4 billion people worldwide lacking access to simple forms of sanitation. It is perhaps not surprising, given these staggering numbers, that over 5000 children die every day from water-related illnesses. International scientific panels have predicted that water availability may decrease by 10-30% over some dry regions of the world by 2050. In Africa alone, it is estimated that up to 600 million people will experience water stress and will be at risk for hunger by 2050. Most countries in the Middle East and northern Africa are already considered water scarce, and by 2025 large parts of China, India, and other countries are predicted to face deficiencies as well. Water shortages, lack of access to water, and inequitable distribution of water can both cause and enhance conflict at the local, national, and international level, such as in Kenya and Ethiopia in 2006.

With regards to lands, both farms and forests, which are vital for food security, we are similarly heading for trouble. According to the Center for International Forestry Research (CIFOR), deforestation takes nearly 12 million hectares of tropical land every year, destroying the livelihoods – and

conflict and the lack of plentiful water access in the region, however this has yet to be verified beyond reproach. Natural resources play into the victimization of those in Darfur in that those venturing out of refugee camps to seek natural resources such as timber or wood have been targeted for rape and/or killing by all sides involved.

² In Somalia, conflict has raged for years, displacing the internationally recognized government and resulting in a fragmentation of the state into smaller areas of allegiance to a particular group. As a result, food security – among many other forms of security – is in constant peril, and recent drought has only exacerbated the inability of many Somalis to access sufficient natural resources, in the form of food stuffs, to survive.

causing subsequent food shortages – for those who depend upon forests for survival. Threatened forests are home to an estimated 50 million indigenous people, and provide for informal economies related to hunting, gathering and fuel wood. Commercial logging, often illegally, competes for access to the resource with those that live in forests, sometimes resulting in violence. And according to the Food and Agriculture Organization of the United Nations (FAO), the global land area without major soil fertility constraints is only about 31.8 million square kilometers, and total potential arable land is only about 41.4 million square kilometers total. As one of the panels in this conference will discuss tomorrow, in some countries, the leasing of massive tracts of agricultural land might well exclude important populations from access to resources, sowing the seeds of future conflicts, and making present conflicts more severe. When loss of arable land, degradation of soils, and desertification and drought occurs, people cannot grow staple food crops famine can cause, or contribute to internal conflicts, as we have seen in the Darfur region of Sudan. As another of our panels will discuss, the global picture for fisheries, another important resource for food security, is similarly grim, and may be leading to conflicts.

With regards to our climate, as the Intergovernmental Panel on Climate Change (IPCC) has observed, even a 2% rise in temperatures may cause natural disasters, extreme climate variability leading to droughts and flashfloods, to sea level rise and coastal erosion, to broader vectors for infectious diseases such as malaria and cholera, and inexorably, to conflicts. As noted by the Pew Foundation, coastal and low-lying areas all over the world are expected to be exposed to increasingly high risks such as sea-level rise and coastal erosion. The IPCC estimates that with a temperature rise of just 2°C, millions more people will experience coastal flooding each year. Densely-populated and low-lying deltas, as well as small islands, are especially vulnerable to these risks. A recent analysis found that 300 million people inhabit 40 deltas around the world, and by 2050, one million people in just three major deltas (the Ganges-Brahmaputra delta in Bangladesh, the Mekong delta in Vietnam and the Nile delta in Egypt) will be directly impacted by land loss and coastal erosion.

Climate change is expected to create issues of housing, security, and exposure to disease worldwide, particularly among vulnerable populations. The World Health Organization (WHO) has found that disasters such as floods can increase the transmission of both water-borne and vector-borne diseases like typhoid fever, leptospirosis, hepatitis A, malaria, yellow fever, and West Nile Fever. Additionally, as noted by the Pew Foundation,

mosquitoes carrying malaria and dengue fever have been found increasingly at higher altitudes and latitudes, jeopardizing communities that have had little experience with tropical disease and that lack adaptive capabilities. Large-scale health emergencies or disease epidemics can quickly escalate to regional or global security threats. They cause deep suffering for those afflicted, and also have the potential to create internally displaced persons or refugees or, in the case of medical calamities, communities that are decimated by disease, leaving those who survive barely able to care for themselves or their families.

According to Pew, in 1995, there were 25 million environmental refugees, a number almost equivalent to conventional refugees at the same time. Under unmitigated climate change, this number has the potential to increase rapidly; some estimate there could be as many as 50 million environmental refugees by 2010.

Is the exploitation of natural resources, the degradation and scarcity of which can certainly lead to conflict, also a way to secure development and prevent conflict?

Not necessarily. Not automatically. And certainly not without law. As Professor Paul Collier has observed, natural resources *alone* cannot secure economic stability or prosperity for a country. Indeed, the discovery and exploitation of mineral, fossil fuel or other resources can destabilize, even destroy, a country's economy and peace. Extractive industries have an important relationship with conflicts. In some instances, extraction is used to fund and fuel conflicts, with combatant groups using natural resources such as precious metals and stones to finance the purchase of weapons and other supplies of warfare. For instance, "blood" diamonds were used to finance conflicts in Sierra Leone³ and Liberia.⁴ If mining and extraction of

³ The conflict in Sierra Leone began in 1991 and ended in 1999. The rebel group which challenged the government, the Revolutionary United Front, was heavily supported by the Liberian government, particularly Charles Taylor. One of the contributing factors to the civil war was control over diamond mines located in Sierra Leone, and the accumulation of wealth from these natural resources in the hands of a very small elite group. Ultimately, the fighting in Sierra Leone was of the utmost brutality, resulting in an international court for the prosecution of those involved.

⁴ In Liberia, conflict began in the late 1980s and, with the exception of a brief interlude, lasted until 2003. Political disruption and unrest was the primary cause of the conflict, which was notoriously funded by the use of conflict diamonds, particularly by then-president Charles Taylor. As with Sierra Leone, the violence and depravity displayed in this conflict was horrific, and has resulted in Charles Taylor being brought before the International Criminal Court.

natural resources is done in a way that damages the environment and peoples, it destroys livelihoods, and can exacerbate conditions for conflicts.

Further, as took place in Nigeria, oil and natural gas extraction may even create or fuel conflicts. Indeed, conflicts over oil, and the territories in which oil is located, are not limited to the developing world, as evidenced by the ongoing dispute between the Nordic countries, Russia, Canada and the United States regarding rights to Arctic natural resources and exploration. This dispute, largely a diplomatic issue at present, will become more pressing as the effects of climate change become increasingly apparent and felt around the world.

But perhaps *sustainable* development of natural resources, backed by the strengthening of laws and institutions, of governance systems, and supported by equitable and open engagement in international society, can be part of a solution.

This brings me to my second point – the reminder.

Domestic and international law have a role to play. We are not flying blind, here. We have much to learn from existing experiences, including some successes, and also the failures.

The continued – and indeed growing – connection between natural resources and conflicts is well established. Domestic and international law may offer methods of generating knowledge of, and solutions to the perils of the relationship between natural resources and conflicts. Indeed, the CISDL is dedicated to supporting and sharing cutting edge legal research on exactly these important priorities. And my IDLO colleagues act on it, with and for developing countries, including through 46 alumni associations in Africa, Asia and the Americas. The legal aspects of the connections between natural resources must be investigated, acknowledged and incorporated into legal policies and systems. Your own careful analysis, inspired critiques and new proposals are a crucial part of this endeavor.

International treaty regimes and instruments such as the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, the United Nations Convention to Combat Desertification (UNCCD), the United Nations Convention on Biological Diversity (UNCBD) and its Protocols, the International Tribunal for the Law of the Sea (ITLOS) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) have made real contributions to combating conflicts over natural resources. Each of these instruments

advances global standards, dialogue and cooperation for more sustainable development of important resources, including renewable energy, forests and land, biodiverse species, fisheries, and seeds. In so doing, the treaties may be helping to combat threats to, and stresses on, crucial natural resources. Without them, we might have many, many more conflicts based on access and survival. Such instruments, together with bi-lateral and other management regimes, are essential weapons for those working to prevent conflicts over natural resources.

The Kimberly Process – and associated legal documents – has made an important contribution to ending the use of natural resources to fund conflicts. This is important on its own, and is also important because the actions of the diamond industry and interested States (in part to limit potential damage to their reputations) have served as a model to other extractive and natural-resource based industries. While the bulk of these industries have chosen to self-regulate through internal rules, this is still an important step. Regulation (even voluntary) begets standard-setting and potential for oversight, which beget public and private criticism, which begets better behavior, which begets (eventually) internalization – corporate and governmental.

In the fight to sever the connection between natural resources and conflict principles of sustainable development law are vital. The New Delhi Declaration of the International Law Association (ILA), drafted based on a decade of study of existing treaties and laws by international experts, offers key ideas.

Perhaps the most relevant of these principles is the sustainable use of natural resources, as this principle, when applied correctly, ensures the perpetuation of natural resources in the immediate term and for future generations, alleviating a reduction in access to these resources which can be a motivating source for conflict.

The principle of equity is also crucial. Equitable access to, and sharing of the benefits of, important natural resources, have the potential to decrease the likelihood of conflict over resources in the short term. This may be discussed with regards water, for instance, in your panels tomorrow. It is also very true for genetic resources and biodiversity, as we may shortly witness in Conference of the Parties (COP 10) of the UNCBD in Nagoya, Japan. Sustainable management and equitable benefit sharing creates incentives to reduce fighting over natural resources and these principles can help communities share equally in the many benefits offered by natural resources.

A further relevant principle of sustainable development law involves committing to good governance. This was recognized in the 2002 ILA New Delhi Declaration which emphasized that States must (a) adopt democratic and transparent decision-making procedures and financial accountability; (b) take effective measures to combat official or other corruption; (c) to respect the principle of due process in their procedures and to observe the rule of law. Many international organizations and states, in particular the World Bank, adopt 'good governance' to encompass all procedures and processes for sustainable development. Good governance in this sense is closely related to the principles of transparency, participation, impact assessment and access to justice.

Conflicts over natural resources present a different form of result than traditional warfare – there is no winner, especially when these resources have been exploited or plundered during the conflict. Thus, when we think of methods to resolve such disputes, we must look beyond standard options and embrace both formal dispute settlement mechanisms and informal dispute settlement mechanisms. Consultations between the parties are essential as soon as a threat or potential threat has been found to exist. This is particularly important so that the parties can understand the role of natural resources in the threat of conflict. If consultations are not effective, negotiations are another vital tool, and represent an opening for the international community to openly assist in the resolution of the dispute. The use of international tribunals is another option, be the tribunal the International Court of Justice or even the WTO Dispute Settlement Mechanism if the conflict presents appropriate subject matter. What is important to remember is that there is a profound place for formal and alternative dispute settlement mechanisms within conflicts over natural resources, and that these mechanisms offer a beneficial path for the parties involved and the global community as a whole.

Law, and lawyers, occupy a unique place in the prevention of conflicts over natural resources. At the most obvious level, lawyers promulgate the laws and policies which can be used to protect natural resources and to prevent conflict by building more responsive governmental systems. Yet, this tells only half the story. As recent research on Legal Empowerment of the Poor has highlighted, lawyers need to ensure that the law is understood by all, and that justice can be accessed by all. Further, it is not enough to simply transfer knowledge or research; lawyers can become voices for the poor in the creation and enforcement of the law, and can ensure that the poor and marginalized – who, in many instances, depend directly on natural resources – are able to assert their own voices, views and needs within legal

systems. Thus, legal research needs to focus on all levels of society and deliver on the inclusion of all aspects of society within the law. This is essential not only because it is fair, or it is just. It is also essential because, in being fair and just, it is the best way to prevent conflicts over natural resources.

We need only to look at the interventions planned for this conference to see the importance of conflicts over resources and the many ways in which these conflicts can be manifested.

As the expert speakers in this conference will discuss on Panel, resources are important before, during and after conflicts.

Further, as will be illuminated in Panel 2, State and non-State actors can play important roles in using resources to fuel or resolve conflicts.

In the discussions surrounding access to resources, the sharing of resources, and their regulation, we see how further research into these issues can be used to analyze instances where law was unable to be used as a tool to stop a potential conflict from occurring. We further are able to study effective uses of law in the conflict over resources; in the contrasts we learn valuable case study lessons with regards to lands, fisheries, water and metals as they link to trade law. These experiences provide, in my view lessons for law and policy as a whole.

Finally, you will be able to carefully consider experiences with a range of legal dispute resolution or post-conflict reaction techniques, critiquing but also creating analysis for alternatives.

This brings me to my third point – the challenge.

It matters what we do. But it also matters *how* we do it, and whether it works.

There is now a whole host of procedural innovations that can help us to advance sustainable development. The first example I would like to highlight is impact assessment. Since the first environmental impact assessment was legislated in NEPA 1970, this tool has seen multiple incarnations and the most modern version also takes social impacts, for example on health, into account. EIA has arguably been recognized as a customary norm in projects with an international dimension, such as in the ICJ in *Uruguay River Case*. Lawyers have a crucial role to play in impact assessment in that they can ensure that due process is actually observed and can point to deficiencies in the procedure (a right often not granted for the outcome of the project plan itself). There are a couple of examples where a

proper impact assessment could have avoided greater conflict (also over natural resources). If we leave an example like oil drilling in Alaska aside (the US having been forced to re-do the assessment several times, also because the impact on native people was not properly considered), the case of French nuclear tests in the Pacific comes to mind. There is an argument to say that a proper impact assessment could have avoided an international conflict which also played out before the ICJ.

A second very important procedural element involves transparency and participation. Engagement of those most affected, of all interests, is essential to create ownership over a decision as important as natural resource exploitation. Transparency is now required for most projects that receive international financing, either through the World Bank or through regional development banks. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also contains a treaty obligation for all contracting parties to share public environmental information. Lawyers working to ensure sustainability of a process need access to information and ideally participation in the decision-making process. Information has been crucial to avoid natural resources conflicts occurring and spiraling out of control. The EITI process creates better information as to where oil exploitation funds that are paid by oil companies go in the host government.

Access to justice is also crucial. Even if the justice system in question is not perfect, it greatly enhances the possibility that an independent or semi-independent institution evaluates the situation.

And finally, we need to take on the challenge of securing better implementation. Much more research and debate is needed to mobilize legal knowledge on the way we apply international obligations, and comply with domestic laws. Compliance can also help to avoid international conflict. There is a growing body of literature concerning the rule of law and better law-making. It is easy to tell a conference of lawyers that the rule of law is able to prevent conflict over natural resources, it is more challenging to prove it on the ground with people whose livelihoods are threatened by more than corrupt government officials and judges. The basic commitment to the rule of law which is now often required to receive enhanced development assistance, for example under the New Partnership for Africa's Development (NEPAD) or the EU GSP Plus system, can help communities

to insist on their rights. And peer review makes more of a difference than we know.

Conclusion

I have warned of the scale of the problem and highlighted existing legal tools. You, the future generation of courageous legal scholars, are well-placed to embrace the challenges posed by these connections and opportunities. In meeting these challenges, I have one other word of advice – where we are going, we all need each other. In your debates and future research, build networks, create coalition of legal scholars from the developed and developing worlds, and engage in partnerships. Keep your promises, to each other and to the communities where research is done. Return results to those most affected, and be ready to help test your ideas and solutions in legal practice. Engage, inform or even join the “barefoot lawyers,” who work not only in the realm of scholarship but also in the very important – if often overlooked – trenches of legal practice among the communities that are suffering the most. Let's forge a generation of lawyers that is well-versed in the theoretical and practical needs and realities of law as it relates to conflicts over resources.

While the realities of conflicts over resources – particularly the human rights and environmental realities – might at time seem insurmountable, we can and must work together, activating a collective dedication. The threats posed by conflicts over resources, particularly those related to climate change, are massive. So too is our ability to overcome them.