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RESEARCH ARTICLE

Housing, Land and Property Rights as War-Financing Commodities: A Typology with Lessons from Darfur, Colombia and Syria

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The ongoing use of landscape-based conflict commodities — diamonds and other minerals, timber, wildlife, etc. — to finance wars continues to evolve. The success with which such commodities can be transacted to support militaries, militias and insurgencies has led belligerents to innovate with additional commodities. Housing, land and property (HLP) rights within war zones have belatedly joined the list of conflict commodities that are subject to transaction, and to such an extent as to warrant significant concern. However, the use of 'conflict HLP rights' has not yet been operationally described in the way that other conflict commodities have been. This is a necessary first step towards deriving and designing countermeasures. This article makes a preliminary attempt to delineate the exploitation of conflict HLP rights by examining how they are transacted to support belligerent groups in three conflicts: Darfur, Colombia and Syria.

Introduction

The use of high-value commodities to finance armed conflict continues to feature prominently in contemporary wars. Beginning with 'conflict diamonds' and other easily extractable minerals (Smillie 2013; Mitchell 2012; Wright 2012), belligerents' success in using high-value landscape-based resources in funding their war efforts has led to their innovative use of other commodities, including timber (Smillie 2013); oil and natural gas (Lujala and Rustad 2012; Brisard and Martinez 2013); wildlife and fisheries (Christy 2015; UNSC 2011); and crops such as opium, coca, rubber, palm oil and cocoa (Grajales 2013; CAT 2016; Le Billon 2012). This use has also expanded to include other elements of war-affected landscapes such as archaeological artifacts (Tokmajyan 2016); phosphate and cement (CAT 2016); and construction equipment, generators and electrical cables (Johnston et al 2016). As innovation continues, it has now come to include landscape-based commodities that are not themselves extractable, although the rights to them are.

The notable increase, in recent years, in the use of housing, land and property (HLP) rights to finance and support armed conflict should now be cause for significant concern, and warrant efforts at curtailment along with other conflict commodities. By contrast to movable conflict commodities, HLP are immovable assets where the operational focus is on transacting the rights to them, as opposed to extracting and transacting the physical commodities themselves. Such rights may be captured by force, law, threat,

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deception, coercion or duress in their transfer, or combinations therefore, and then they are transacted in various ways. This is what generates the revenue stream that is usable in financing armed conflict.

While it is difficult to estimate the financing gained by trafficking in conflict HLP rights due to the lack of direct assessments, indications can be found. Jones and Solomon (2015) estimated that ISIS revenues from the rental of 8,000 public buildings confiscated in Mosul alone amounted to US$15 million annually. And while this sum is second only to the amount stolen from the central bank in Mosul in 2014, it is not a 'one off' gain in financing as stolen money is, because the rent accrues annually. In Ninewa governorate, Iraq, ISIS incomes comprised four primary categories: real estate, oil, contracting work, and spoils (Johnston et al 2016). Twenty-six ledgers taken by ISIS in the governorate contained deeds to approximately US$90 million worth of HLP, with ISIS reselling at least some of this (ibid.). In the Governorate of Idlib in Syria, the confiscation of just the Christian houses by the Islamist group HTS produced US$70,000 in annual revenue in 2019 (STJ 2020).

There are several conditions that can actually favour the trafficking of conflict HLP rights over other forms of conflict commodities. The literature on strategies pursued by some belligerents in financing their activities holds that dependency on foreign financing (including that associated with the sale of movable conflict commodities to foreign buyers) significantly limited their freedom of operation. One jihadi war theoretician advises that it is better to occupy land with economic importance so as to engage a multi-sector economy (Tokmajyan 2016; also Lia 2006). For ISIS this was a priority as it sought to evade counter-terrorism financing mechanisms (including those designed to thwart trafficking in conflict commodities), and free itself from the demands of donors and sponsors (Brisard and Martinez 2013). The Center for the Analysis of Terrorism in Paris analyzed how ISIS in Iraq and Syria focused on a self-sustaining financing model based on territorial control that is particularly suited to trafficking in conflict HLP rights (CAT 2016). It notes that the objective of self-sufficiency is an 'unprecedented political challenge with regard to combating the financing of terrorism' (ibid. p. 4). And, as Brisard and Martinez (2013: p. 5) note, 'the most effective method of financing a terrorist group is the practice of terror against the local people...,' which includes violently forced HLP dislocations and expropriations.

In response to the use of conflict commodities to finance wars, efforts by the international community to control their exploitation have progressed impressively in recent years. The Kimberly process for conflict diamonds (Smillie 2013; Mitchell 2012) was the first and provided a model for other resource certification schemes, tracking systems and sanctions that intend to slow, disrupt, or stop trafficking (Lujala and Rustad 2012). There is the Extractive Industries Transparency Initiative (EITI) for oil, gas and minerals (Rich and Warner 2012); the Forest Law Enforcement Governance and Trade (FLEGT) initiative of the EU for timber (ibid.); the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Rustad et al 2012); the Tin Supply Chain Initiative of the International Tin Research Institute specifically for tin originating in the Democratic Republic of Congo (ibid.); and the US Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requiring the auditing of supply chains by manufacturers (Miller 2019). In addition, embargoes can be imposed against certain belligerent groups or the use of commodities from certain locations (CAT 2016). The UN Global Compact supports awareness-raising among corporate entities operating in conflict zones; and UN Missions have used troop and monitoring deployments along with assistance for resource management reform as countermeasures (Le Billon 2012). In addition, specific resource sanctions have been applied to governments such as Iraq, Liberia, Cambodia, and Libya among others (ibid.).

However, to date no such scheme exists for trafficking in conflict HLP rights, even though it is becoming more prevalent, the money generated is significant, and innovations in trafficking HLP are developing quickly, particularly in countries with more developed statutory tenure systems. Most treatments of HLP in war-affected scenarios focus on: postwar recovery (Leckie 2009; Unruh and Williams 2013); the problems of dislocation from, return to, and restitution of HLP (Van Houtte et al 2008; FAO 2007); disputes and secondary occupation (IOM 2016; NRC 2016); damage and destruction (FES 2019; Zainedin and Fakhani 2018); and land as a contributory factor in, or cause of, war (Abdul-Jalil 2007; Keels and Mason 2019). Yet, there has been little systematic conceptualization of the use of HLP rights in financing war efforts by different belligerent sides in armed conflicts. How does the trafficking of conflict HLP rights operate? How is it similar to, and different from, other transactable commodities available in wartime landscapes? What types of transactions should be included in the definition? What are the prospects for thwarting the use of HLP in this way? And what are the repercussions for postwar recovery from exploiting HLP as a conflict commodity?

This article begins the process of delineating conflict HLP rights so as to contribute to better understanding of the phenomenon and to eventual efforts to disrupt their use in financing wars. I propose a working definition of 'conflict HLP rights' as *those forcibly or coercively acquired and transacted in a war zone in order to provide financial or in-kind support for the conduct of the war.* Such a definition would apply to HLP acquisition and transaction by states, rebel groups, insurgencies, militias, or intermediaries acting for these groups.

While it might be tempting to include all nefarious wartime use of HLP within the definition of 'conflict HLP rights', this would complicate, confuse and diffuse the definition, and therefore also responses to their use as conflict commodities, which need to be realistic and implementable. Although other abuses of HLP rights in wartime are deserving of attention, it is argued here that they are best dealt with as separate phenomena, warranting distinct policy responses. Thus, the definition of conflict HLP rights proposed here would not include the capture of HLP rights as pure spoils of war or for personal gain. It would also not include the use of HLP or its artifacts — registries, deeds, titles, cadasters, lists of names of occupants — as weapons of war, for example to locate persons or places that are then targeted in armed engagements as a strategy of ethnic cleansing or demographic manipulation. That said, it is recognized that the different uses of HLP rights during war — as a wartime commodity, as a weapon, for political ends, for the military control of an area — can be inter-related. Therefore, thwarting their use as a revenue stream may also have an impact on these other uses. Also excluded from the definition is the takeover of specific infrastructure for the purpose of generating funds through taxing individuals and goods in transit through ports, airports, roadways and checkpoints (Jackson 2005).

Following a description of its information-gathering methods, this article delineates conflict HLP rights by examining: the difference between conflict HLP rights and other conflict commodities; the use of conflict HLP rights in three cases, Darfur, Colombia and Syria; and the emergent patterns underlying the strategies of using conflict HLP rights. It concludes by examining the prospects for deriving countermeasures. An in-depth examination of possible countermeasures is beyond the scope of the present paper but is the topic of ongoing study.

Methods

This article draws on fieldwork conducted by the author on HLP rights in Darfur in 2009; Colombia in 2007, 2011 and 2018; and Syria in 2019 along with fieldwork with Syrian refugees in Jordan (2014), Turkey (2015) and Lebanon (2019). Fieldwork included site visits, and extensive individual and group

interviews with local community members, refugees and IDPs (internally displaced persons), government, NGOs, international organizations, and interaction with the different sides in the conflicts. An extensive literature review (academic, government, NGO, and bilateral and multilateral organizations) was conducted on the country-specific HLP rights issues that were present prior to and during the conflicts, along with a review of the conflict commodity literature. Additional information and insights were drawn from the author's experience of working in 15 additional countries on war-affected HLP rights.

The Distinction Between 'Conflict HLP Rights' and Other Conflict Commodities

While there are similarities between conflict HLP rights and other conflict commodities, there are also important differences that can make HLP rights easier or more lucrative to exploit in wartime. Conflict commodities are extracted as physical entities and sold, thereby depleting the available supply. For example, in the sale of diamonds or timber, the cash value per unit of commodity can be realized only once by belligerents because the commodity usually departs the theatre of conflict with the purchaser. However, HLP can continue producing financing via ongoing and numerous revenue streams. The production of legal and illegal crops, renting, speculation, resale, and simultaneous sale to multiple buyers allow conflict HLP rights, as commodities, to continue generating money in diverse ways to be used in wartime financing. For example, while HLP rights can be captured by the state to then transact and gain financing for its war effort, there is nothing preventing an opposing militia or rebel group from using the same HLP to generate revenue if they take over the area. With multiple sides to a conflict moving back and forth across a national landscape this can occur a number of times over the course of a war, as the Syrian case examined here illustrates. It is also much easier to sell a single HLP to multiple buyers at the same time than would be the case with movable conflict commodities, which depend on a buyer taking physical possession of the commodity at the time it is exchanged for money and then departing with it. Additionally, other conflict commodities generally cannot be immediately used themselves as in-kind support for a war effort, and must be transacted into cash to be useful. But conflict HLP rights can be immediately used apart from their value in a cash transaction, as in-kind payment for reward, recruitment, incentives and punishment. And, in a further distinction, the Colombia and Syria cases examined below include examples where conflict HLP were actually invested in (upgraded and created) by belligerent groups so as to generate greater income.

While those using conflict commodities seek means of quick and easy access, transfer of possession, and extraction and transport, this is accomplished more easily with some commodities than others (Lujala and Rustad 2011). A number of conflict commodities are geographically remote, limited in quantity, or difficult to locate; and can depend on arduous or costly extraction methods or require specific forms of transportation (timber, oil) and complicated payment methods by outside actors (ibid.). National or international troops find some resources easier to secure and control and hence these may provide for fewer opportunities for exploitation as conflict commodities, for example in the case of oil and gas production facilities and pipelines, and certain mineral deposits (ibid.). With conflict HLP rights, the targeted HLP are easily located, usually not remote, are widespread, and more evenly distributed across a national landscape. In wartime they are very easily accessed, especially if abandoned. Such a widespread spatial distribution also makes controlling or stopping the trafficking in conflict HLP rights different than spatially concentrated conflict commodities.

Securing access to conflict HLP often occurs via force of arms as with other conflict commodities, but is also accomplished

through coercion, threats, taking advantage of or inducing duress, or manipulations of the law. Moreover, as funding from outside sources (including from the sale of other conflict commodities) declines through sanctions, certification schemes or other reasons, exploitation of locally accessed HLP for war financing can rise (ibid; Le Billon 2001, 2012). Lunde and Taylor (2005) elaborate on the 'switching' from certain conflict commodities to others when constraints have been established on the original commodities, and in particular switching to ways of predating on civilians. Past work has found that the commodities most suitable for wartime financing tend to have extremely high value-to-weight ratios and so can be easily extracted, transported and sold (Lujala and Rustad 2011; Ross 2004). In this regard conflict HLP rights have arguably the greatest value-to-weight ratio, in that the rights that are transferred are physically weightless, while the value of the asset can be quite high.

The national regulatory institutions that normally govern how rights to commodities are organized usually collapse or become greatly weakened or corrupted during wartime, and the institutions for HLP rights are no exception. However, what is different is that evidence for the prior ownership of HLP can be more widespread and decentralized than is the case for other conflict commodities. Existing in the form of titles, deeds, and other documents (electronic or paper), these can be in the possession of former owners or occupants as well as stored in government repositories, archives, or registries. While such documentation may be an opportunity to reclaim HLP after a war, it also offers a very large opportunity for fraud, falsification, confiscation, and sales that are coerced or under duress. The existence of such documentary evidence can be a reason that state archives and HLP offices are often one of the first targets in wars (Unruh 2016). For customary tenure, a 'memory cadaster' is held by members of the local community, lineage or tribe who retain knowledge of who lived where prior to a war (Batson 2008; Unruh et al 2017). Again, the problematic functioning of customary institutions during armed conflict can also make such HLP vulnerable to wartime transaction. Some insurgencies (ISIS, the Syrian Defence Forces) have been able to take advantage of compromised state and customary HLP institutions to establish their own institutions that support the trafficking of conflict HLP rights (Hansen-Lewis and Shapiro 2015). Another difference is that, while the extraction and sale of minerals or timber can have post-conflict repercussions in terms of resources no longer available for recovery or development, their sale does not usually generate ongoing population dislocation, grievances and disputes among civil society the same way, or at the magnitude that use of HLP rights for wartime efforts does; in some cases this becomes responsible for re-igniting a war (Nilsson and Taylor 2017).

The Contours of Conflict HLP Rights: Darfur, Colombia, Syria

This section examines some of the specific ways in which conflict HLP rights are trafficked, by looking at three cases — Darfur, Colombia and Syria. For these three countries the primary belligerent groups are very briefly described. However, the cause of the conflicts, their histories and outcomes are beyond the scope of the paper, these being readily available elsewhere.

Darfur

Land rights were a central feature in the Darfur conflict. The different belligerent groups included: 1) the Sudanese government, 2) the pro-government militias, particularly the Janjaweed, and 3) the opposition rebel militias. Darfur is a case where the state, acting through local militias (whose constituents are nomadic pastoralists), was able to effectively use conflict HLP rights in the conduct of the war. In contrast, the rebel side of the war (with an agriculturalist constituency) was not in a position to use land rights as a financing or conflict support mechanism because the agriculturalist constituency was

in possession of the HLP rights in question at the outset of the conflict.

The government was explicit in its use of land rights as both a recruitment and payment incentive for the Janjaweed and other pro-government militias to join the conflict and operate against rebel groups. The understanding between these pro-government militias and the government was that the militias could keep the land that they were able to expropriate from the rebels and their agriculturalist constituents in exchange for engaging the rebels militarily (Abdul-Jalil and Unruh 2013; Flint 2009; Olsson 2010). The recruitment aspect of this use of conflict HLP rights was particularly effective, such that even foreigners from Chad, Niger, Burkina Faso and elsewhere were drawn into the conflict and militarized, so as pursue the prospect that they could keep the lands they were able to forcibly seize (Abdul-Jalil and Unruh 2013). Olsson (2010) notes, in a sample of 512 villages in the southwest of Darfur, that this was a primary pattern in the conflict. In an unexpected pursuit of conflict HLP rights, a Janjaweed leader of the Maharishi tribe in south Darfur threatened the government with the defection of his 1,500 fighters unless the government officially provided the tribe with a 'Nazirate' — a sizeable territory (Flint 2009). There was, however, no real possibility for the militias or their constituencies to legally register land or gain titles or deeds to land acquired in this way during the war, primarily due to the illegal nature of their occupation, and the rudimentary nature of the Sudanese statutory tenure system.

Repeated gains were made from the same HLP in the Darfur conflict. Militia members in areas such as Kabkabiya and east of Jebel Marra did not just expropriate lands but also engaged in a form of protection racket. This occurred when displaced agriculturalists who wanted to return to their lands, or those moving back and forth between displacement camps and their land, were forced to pay rent to cultivate their own land or to pay a secondary occupant or warlord in order to be left in peace on their own land. Repeated gains also took place when expropriating militia members sold the land on to others (Abdul-Jalil and Unruh 2013). Of course, there was also a dual purpose in the way the government used land rights as a weapon and as a means to empty areas sympathetic to the rebels and repopulate them with government supporters.

As the war wound down and there was national and international pressure for IDPs to return to their original HLP, the Sudanese government and certain donors made efforts instead to have IDPs go to 'model villages' or 'village centres', or have them settle in urban or peri-urban areas. This was seen by IDPs and some international actors as a way to solidify and make permanent the conflict HLP rights expropriations conducted by government-allied militias (Abdul-Jalil and Unruh 2013).

Colombia

Land was also at the root of the 50-year-long war in Colombia. The primary belligerent groups comprised: 1) the government, 2) rightwing paramilitaries with ties to government and narco-trafficking groups, and 3) the rebels and their ties to narco-trafficking groups. Those that engaged most in the trafficking of conflict HLP rights were the paramilitaries, with the rebels (Fuerzas Armadas Revolucionarias de Colombia – FARC, and Ejército de Liberación Nacional – ELN) involved belatedly and to a lesser degree. The government did not use HLP rights to fund its participation in the war, having access to other revenue streams and being averse to the large-scale dislocations that occurred due to HLP trafficking. A great deal of the financing of the paramilitaries and their backers was based on the acquisition of land through violence, or duress sales with the threat of violence, resulting in the appropriation of between four and six million hectares of land from primarily small-scale farmers (AI 2008). The trafficking in HLP rights took place largely in order to: a) launder money and land so as to fuel the war (Cook 2011), b) reward combatants of certain belligerent groups (the FARC and the ELN, but especially

the paramilitaries), and c) acquire land for the cultivation of cocaine and palm oil so as to fund belligerent activities. In western Colombia all three purposes took place on the same lands. For example, land expropriated by paramilitaries was planted with oil palm to generate revenue, and then populated with demobilized militiamen, while also being used for money laundering operations (Grajales 2013).

The Colombian case illustrates the utility of statutory institutions and law for lending legitimacy to holdings that came about through HLP rights trafficking. The long-term success of the money-making and laundering operations in the country have depended on intersections with the legal market, so as to gain permanence of transfer (ibid.). As Grajales (2013: p. 223) indicates, 'the profitability of land grabbing requires the institutional recognition of property rights'. The right-wing paramilitaries used existing statutory institutions and laws, and the ambiguities and contradictions in how these operate and interrelate (ibid.), along with their weakness and corruption in conflict zones to facilitate trafficking in conflict HLP rights. There are ambiguous boundaries in Colombia between the categories of legal and illegal, and public versus private with regard to rural lands, which were used in innovative practices by paramilitary groups. The use of brokers to navigate between the legal and illegal became an established method of HLP rights trafficking (ibid.). Also common was the combination of raw violence with the strategic use of private and agrarian law, especially in relation to the corrupt production of property titles through judicial and administrative channels (Buchely 2020).

These strategies were pursued in a couple of ways. The first was through the falsification of title deeds, which occurred with the collusion of notaries and public officials. The second took place through the purchase of land from those who claimed to be the real owner, but were not, with this approach having a couple of variations. One variant saw the purchase of lands from individuals whose lands were registered as 'individually owned' prior to the lands being part of a 'collective lands entitlement' programme, with the two forms of claim not having been effectively and legally reconciled. In essence this approach allowed lands to be purchased from someone who was (with some ambiguity) no longer the owner, thereby also expropriating them from those who had access under the collective lands programme. A different variant occurred through the use of strategic alliances between paramilitary actors (or their commercial colleagues) and individuals within local communities who occupied positions on 'community councils'. Such individuals were used to influence the community councils through bribery, threats, or murders, in order to facilitate the transaction of community land. This approach relied on divisions within community councils, with some members desiring to profit from the arrangement, and others too intimidated by the prospect of fighting for their land, so they preferred to sell and depart (Grajales 2013). Borras and Franco (2012) elaborate on the way that paramilitaries and their accomplices exploited divisions among local people to take advantage of situations that facilitate HLP expropriation.

Colombia is also an example of the innovative use of conflict HLP rights in 'land laundering' in support of armed conflict (Ballve 2013). Such laundering involved both moving drug money through land transactions so as to launder the cash, and the laundering of land itself so as to engage in money-making transactions involving the land. For the latter, paramilitaries joined with large landholding interests to engage in forced and duress sales of land, as well as forced dislocation and then confiscation of lands. Such lands were then parcelled or subdivided in order to break the documented chain of transaction and establish new chains, thus hiding how the original lands had been acquired (ibid.; Buchely 2020). The parcelled lands were then sold to large landholder interests, with the funds from the sales then supporting paramilitary activities. This form of trafficking operated

through an innovative mix of law, peasant associations, NGOs, private companies, and public officials (Ballve 2013). The innovation took various forms. In one form, the name of a deceased peasant was used to file paperwork for a 5,000-hectare extension of land that had supposedly become available through a change in the course of a river, but in reality had been emptied of small-scale landholders. The name of the deceased was then used to quickly sell on the land to an association of small-scale oil palm growers, which was in fact a paramilitary group (ibid.). The 'association' then immediately parcelled up the land, establishing a new parcel number for each new piece of subdivided land. The parcels were then subdivided twice more, further obscuring the trail of transaction. Ultimately the lands were sold to large-scale palm oil companies with the proceeds of the sales going to the paramilitary groups. In another variation that was common, smallholders who had been forcibly displaced due to war were contacted by paramilitary groups and their land was transacted through intimidation and duress sales. However, along with the 'sale' the paramilitary representative also forced the sellers into transferring power of attorney, which was then used to sell on the land (in the name of the original owner) to a large-scale ranching organization with ties to the paramilitaries (Ballve 2013). The use of statutory laws and procedures to facilitate the transaction of conflict HLP rights helped the belligerent actors maintain anonymity, given that the land was legally sold in the original owner's name.

Other forms of fraud were also used. Maher and Thomson (2018) describe the use of fraudulent peasant associations set up by paramilitary groups to traffic in land. Amnesty International (2008: 23) notes the use of 'testaferros': peasants connected to paramilitaries who stand in as the owner of confiscated lands in order to shield it from close inspection. As an added revenue source, paramilitary groups offered the large landholders who ended up with the land their protection from attacks by rebel groups and/or those wanting their land back (Maher and Thomson 2018).

Trafficking in conflict HLP rights also took the form of participation in certain state-run development programmes. The 2003 National Development Plan involved the reallocation of 'abandoned land' without regard to the reasons for abandonment. The beneficiaries of the reallocations were in many cases connected to the paramilitary groups that had caused the forced displacement and land abandonment in the first place. In addition, laws were submitted to parliament that sought to legalize irregular title deeds in order to support peasant agriculture, but without any mechanism to avoid the law being used in land grabs (Grajales 2013).

Syria

Syria is a case where all sides in the conflict — the regime and allied militias, the political opposition and allied militias, and ISIS and other extremist groups — participate in trafficking HLP rights. This occurs through a combination of expropriations by force and implied force together with political, statutory, customary, extremist, tribal and foreign manoeuvres. The legal environment in wartime Syria is highly developed and diverse, yet chaotic. Non-state groups have also invented institutions, bureaucracy and legalities suited to HLP trafficking. Extra attention is given to the Syria case here, given that the conflict is ongoing and that the innovations and pervasiveness of the trafficking are arguably the most robust of any conflict to date.

The regime and allied militias

A distinction is usefully drawn between the methods for trafficking in HLP rights used by the Syrian regime and those used by its allied militias. While both acquire HLP by force and threats, the regime is able to use the instruments of the state to assist in trafficking, while the militias are not. The distinction is important as this ability allows the regime to use HLP for different purposes in support of its side in the war. After it has targeted HLP

located in opposition areas or belonging to members of the opposition or those who have fled, the cash-deprived regime then pursues trafficking in HLP rights in four primary ways, all depending on an initial confiscation supported by law and pretext. The first approach is to rent, lease or auction off seized HLP (STJ 2017b). Multi-residential buildings belonging to those who support the opposition, such as in Latakia, are confiscated and the residents are compelled to sign new contracts obliging them to pay rent to the government (MEM 2015). After regime forces took control of southern Aleppo, displacing virtually the entire population, the Security and Military Committee then auctioned leasing and purchase options, targeting HLP owned by displaced pro-opposition individuals (TSR 2020c). The Committee employed a number of local pro-regime residents to identify these HLP. Confiscated olive and pistachio orchards were also auctioned off in rural areas of northern Hama and southern Idlib governorates, targeting lands belonging to those who were presumed to support the opposition because they had fled the area and were thought to reside in opposition-controlled areas of Idlib. This occurs even when the action is unconstitutional (TSR 2020b).

The second approach seeks to obtain funding based on the prospects for reconstruction projects covering large areas of confiscated HLP. Areas that were informal settlements prior to the war and were then emptied of their inhabitants were offered to companies from the Gulf States, Europe and elsewhere for reconstruction investments: the payments made by the construction companies to secure these contracts went to government. These involved areas in and around cities such as Damascus and Homs, but also in fertile and well-watered agricultural areas (Chakrani 2013; HIC-HLRN 2015). This approach is focused on the trafficking not of individual HLP rights, but rather of whole areas containing the HLP to which displaced populations have rights.

The third approach is to use HLP rights as an in-kind compensation or reward to loyalists and fighters (see, TSR 2020c; STJ 2017b). This is one of the easiest uses of conflict HLP rights, as no monetary transactions or contracts are needed. HLP rights are simply reallocated to those whom the regime decides to compensate in this way for their military service, or are used to incentivize loyalty from militias, clans, and religious or ethnic groups (see, TSR 2021b; TSR 2021f). A 2021 law in Syria made this easier by allowing foreign fighters to legally retain HLP, with some indications that the new law will make it easier for foreign fighters to use HLP in Syria as a way to launder money gained through the smuggling of fuel, food, weapons and drugs (TSR 2021d).

The fourth way is to charge displaced owners fees for them to return and rehabilitate their lands. In the southern Damascus suburbs returning refugees and IDPs need to pay fees of up to 500,000 SYP to the local Military Security branch in order to access their own HLP for rehabilitation (TSR 2021c). In East Ghouta, military and security officials imposed 'taxes' on local farmers in exchange for 'security approvals' to rehabilitate their own land (TSR 2021f). In the olive and pistachio orchards example noted above, farmers who were able to prove that they do not support the opposition and have submitted official requests to access their lands, can do so upon paying a tax to the Martyrs Fund (TSR 2020e).[1]

Pro-regime militias traffic in conflict HLP rights somewhat differently than the regime, being more constrained in scale and purpose, but distinct in their innovations. In one arrangement, militias engaged in coerced purchasing of HLP from displaced residents in pro-opposition areas in East Aleppo so as to pass them on to real estate and development companies (TSR 2021a). The companies pay the militias to acquire the HLP from the displaced residents, with the militias using the money to fund their military activities. Control over the areas in question is split between Iranian militias, Hezbollah and other pro-regime groups as well as the National Defence Forces. The presence of

the militias in the area is the primary reason why displaced HLP owners do not return. The militias reportedly use a number of methods to coerce displaced residents to sell their HLP cheaply, including threatening them with arrest, accusing them of terrorism and supporting the opposition, paying hostile visits to the displaced, or asserting that their HLP has been slated for destruction because their properties are illegal and so need to be sold before the city's new zoning plan is implemented (TSR 2021a).

Pro-regime international militias also actively pursue transacting HLP. When areas of southern Aleppo fell to Iranian militias, the latter took over and transacted large numbers of HLP belonging to displaced persons in order to finance their groups, which are deployed in significant numbers in the area (TSR 2020c). Iranian militias have also reportedly offered to return HLP to their original owners if the owners join the ranks of the militias (TSR 2021e). The Syrian government similarly pressured young men displaced from Al-Lajat into joining the army in exchange for permitting their families to return to their HLP (TSR 2021g). Iraqi and Afghan militias allied with Iran's Quds Force have taken over several areas in the rural eastern part of Deir-ez-Zor governorate and have used HLP for their own military headquarters and to compensate their fighters (TSR 2021c).

The opposition and allied militias

The trafficking of HLP rights by the political opposition and its allied militias is significantly different than how the regime, pro-regime militias, and extremist groups engage in trafficking. Primarily, the opposition is more invested in maintaining good relationships with pro-opposition populations, including those who have fled. The opposition Syrian Defence Forces (SDF) have their own real estate office, the 'People's Municipality Real Estate Committee of the Autonomous Administration of North and East Syria'. The office has a variety of functions, including being the place where victims of confiscation by pro-opposition groups can pursue claims, albeit reportedly with little result (STJ 2019b). Nevertheless, the SDF often engages in its own trafficking in conflict HLP rights, pursuing confiscations in a fairly bureaucratic way by issuing summonses and eviction notices, establishing a 'court,' and using certain legal-like pretexts. In an attempt to both make money from abandoned HLP and not disaffect the original local population, the SDF drew up the 'Protection and Management of the Absentee Property Act'. This was used to rent out vacant HLP, but not buy or sell them, presumably so that they could be given back to their original owners when they returned. However, the Act was quickly changed when the population accused the SDF of attempts at HLP seizure (STJ 2019b). In another innovation designed to avoid disaffecting those who fled their HLP in the city of Afrin in Aleppo Governorate, the SDF demanded monthly rent from IDPs who took up residence in the HLP of those who fled (TSR 2020d). Also in Afrin, all of the factions in the opposition have 'economic offices' to manage the HLP of residents displaced from the city, with such management including money-making opportunities (ibid.).

However, many confiscations by the opposition have also taken place without notices, bureaucracy or pretext; the HLP (presumably of pro-government supporters) is merely seized and transacted into money for compensation to fighters, or as a form of incentive for recruitment (Khraiche and Syeed 2015). The Kurdish People's Protection Units (YPG) have confiscated hundreds of HLP to use as payment to their members; The Northern Democratic Brigade confiscates HLP for its own gain and to provide both money and in-kind compensation to its fighters (STJ 2019b); and the opposition Syrian National Army (SNA) has had difficulties in prohibiting militias under its control from trafficking in conflict HLP rights. At times the different factions and militias allied with the opposition have fought amongst themselves over control of conflict HLP rights (TSR 2020d).

Rural Aleppo provides an example of conflict HLP rights being used repeatedly by different sides in the war: in 2013 rebel factions initially took over numerous HLP in the area of Al-Rai in order to financially support and arm their fighters. Subsequently, in 2014, ISIS took over the area and controlled the HLP in the area for two years, profiting from agricultural produce and using HLP as payment and reward to the group's leaders. In 2016 opposition forces then retook the area and again used HLP under their control, this time to generate revenues for local services so as to gain support from the local population (TSR 2020a).

ISIS and jihadist groups

At its height ISIS controlled approximately 70,000 square kilometres in Syria and Iraq, encompassing a population of about eight million. While ISIS gained revenues from trafficking in a variety of minerals, oil, and agricultural products, most of its financing came from extortion of the population over which it prevailed. This included confiscation, transaction and taxes on HLP, which helped provide for significant financial self-sufficiency (CAT 2016). Its financing strategy explicitly relies on territorial control, making the use of conflict HLP rights a particularly effective approach. To facilitate this, ISIS set up its own institutions and a tenure system of sorts in order to provide legitimacy and legal, administrative and enforcement backing for the exploitation of HLP rights (CAT 2016). This included the creation of new religious institutions to manage HLP in occupied areas, issuing HLP documentation, and engaging in document falsification. There is also some evidence that ISIS actually built shops that it could then sell in order to raise money (Shareef 2021). ISIS also engaged in the purposeful dissemination of bad information and rumours, in forced sales, and in the destruction of existing property records and personal identification records in order to promote its own tenure system. In a further attempt at legitimacy ISIS also used various pretexts as justification for confiscations. These included alleging that the owner or a relative of confiscated HLP was a current or former soldier with the Syrian military or an employee with the government (Allawi 2015; TNH 2015), or that that the owners had fled the war (STJ 2018a), or that confiscation was punishment for various transgressions including religious offences (TNH 2015).

In both Syria and Iraq ISIS confiscated HLP for redistribution to its own fighters and loyalists, and for sale to gain revenue. Buyers were plentiful, with opportunists purchasing HLP confiscated by ISIS and then selling them on, all with ISIS generated documentation. Agricultural lands were seized either to extract taxes, fees and fines, or for resale, or to take advantage of agricultural production (CAT 2016). In addition, public buildings were seized and rented out, generating millions of US dollars (ibid.). ISIS and other extremist groups also confiscated HLP for sale to foreign buyers or fighters including those from Iran, Tunisia and Uzbekistan (TNH 2015).

The group Hayat Tahrir al-Sham (HTS), formerly the Al Nusra Front, is a Sunni Islamist militia most active in north-west Syria. HTS has confiscated and transacted thousands of houses and businesses, public and private, including those of pro-government officials, of individuals with an affiliation with the regime or with ISIS, of Christians who fled the war (STJ 2020), and buildings used by neutral groups such as the White Helmets in rural Hama governorate (STJ 2018b). HTS has also seized public facility properties, including markets, grain silos, churches, shops, stores, businesses and warehouses; these were then rented or sold to fund HTS's military activities (STJ 2017a; STJ 2020). Agricultural lands were confiscated from religious endowments and private owners, then leased to tenants who were already cultivating them. These areas were often quite large, such as the plantation area in Selquin in Idlib governorate containing 300,000 olive trees. When the group was known as Al-Nusra Front, it confiscated entire villages and apartment buildings to house its own people (STJ

2017a). Extortion of HLP rights also took place, with the owners needing to pay HTS in order to avoid having their house seized (STJ 2018a). In 2020 HTS moved to broadly regularize real estate in areas under its control in Idlib, with the outcome being the generation of significant revenue streams to support its military activities (STJ 2020).

Similar to ISIS, HTS has used the trappings of bureaucracy, law and institutions in trafficking HLP rights, enacting rules regarding summonses, contracts, and pretexts to seize and then sell or lease out properties. The pretexts include: the rationale that, until a Christian owner returns to Idlib to verify they are the actual owner, rents must go to HTS (STJ 2020); the allegation that HLP owners are absent and residing in regime-held areas of nearby governorates; and accusations of apostasy. HTS's Department of Services of the Salvation Government issues laws seeking to legitimize confiscations, reworked rental contracts are processed through the Salvation Government's Real Estate Office (STJ 2020) and proceeds go to the Spoils Office. The actual confiscations take place through a bureaucracy involving 'judges', a court, and the real estate office (STJ 2018b). Confiscation is enabled by members of the Sharia Court and the judiciary writing the word '*attached*' or '*at the disposal of the Sharia court*' on the HLP itself (STJ 2018b). One 'judge' of HTS indicated that there is only temporary use of seized HLP, that this is not transfer of ownership, and that considerations are made if the family in question has only one house. However, these appear to be lofty ideals, with little evidence that they are adhered to (STJ 2018b). In addition, regulations were enacted that requires licensing of HLP owned by non-regime and non-ISIS affiliated inhabitants, along with taxes, permits and fees tied to HLP under HTS control. These include fees to obtain HTS documentation such as a deed and security approval (STJ 2020). The HTS Syrian Salvation Government has, as well, passed legislation giving itself ownership of HLP originally owned by regime employees, soldiers or administrative personel (STJ 2020). Other extremist groups, such as including Ahrar al-Sham al-Islamiyya and the Turkistan Islamic Party, have also participated in the use of conflict HLP rights (STJ 2017a). These confiscations usually focused on privately owned agricultural land and commons land (STJ 2019a).

Emergent Patterns

While the three cases examined here are different in a variety of ways, in aggregate they reveal certain patterns that appear to influence strategies of HLP rights exploitation. This section very briefly describes a few of these patterns in order to further delineate the contours of conflict HLP rights.

Permanence of transaction

The desired permanence of transactions in trafficking HLP rights can influence how a particular innovation works: the transactions are embedded within statutory law in the case of Colombia; in Syria the law is used to confiscate; and in Darfur subsequent claiming is prevented by the Janjaweed's scorched earth campaign, together with relocating IDPs elsewhere. However, if permanence is not needed or possible in certain circumstances, then the innovations will be different: in Darfur and Syria returning IDPs and refugees are charged fees for accessing their own land, or abandoned HLP are used for short-term or temporary income generation by renting out temporarily controlled HLP.

Multiple use

Multiple uses of trafficked HLP occurred in all three cases examined, highlighting the utility of this form of conflict commodity. This includes simultaneous and sequential revenue generation from the same HLP in various ways. HLP are used to pursue multiple wartime objectives, deploying as a weapon, reward or punishment, or for demographic change. HLP with high potential for multiple use are likely to be more sought after as the use of conflict HLP rights continues to mature. As a result, they could also

become the first to be targeted in international efforts to disrupt trafficking.

Scale

The scale of the trafficking endeavour can influence the form or techniques that trafficking takes. Larger-scale efforts that seek to hold contiguous territory appear to establish their own laws and institutions to facilitate HLP trafficking, whereas smaller-scale trafficking efforts (by localized militias) tend to take advantage of laws and institutions that already exist, or to rely more heavily on violence. The Colombian paramilitary militias and the Janjaweed militias are examples of the latter, while the Syrian government, ISIS, HTS and the opposition Syrian Defence Forces are examples of the former.

Exploitation favours certain sides in a conflict

Some sides in a war, such as the rebel side in the Darfur war, the Colombian government, or the official Syrian opposition, will find themselves less able to use conflict HLP rights to support their side. This can be due to the way tenure rights are structured at the outset of the war, together with the political alignment of the different sides and their relationships with civilian constituencies that were in possession of HLP at the start of the conflict. Some groups can put considerable effort into targeting the HLP of constituencies supporting the opposing side within areas they control. This can be difficult, however, when areas of control contain primarily sympathetic constituencies, or change hands frequently. The Syrian opposition innovated ways to gain financing from HLP belonging to their own constituency members who fled the war without disaffecting them. The role of HLP grievances prior to the war appears to have limited influence on the robustness of HLP trafficking during the war. While land rights grievances were a central cause of the Darfur and Colombia conflicts, they were not in Syria, yet the latter pursued the most widespread, varied and explicit trafficking of conflict HLP rights.

Intersections with statutory law

The manner in which the exploitation of conflict HLP rights intersected with statutory law for the three cases seemed to have significant influence over approaches to trafficking. Three variables appeared to be most important, 1) the accessibility of statutory law, 2) how developed and operable statutory law was, and 3) the relative strength of customary law. In Colombia the statutory legal system was quite accessible to trafficking efforts generally, and so was engaged with quite robustly by paramilitary groups. At the same time Colombian statutory law regarding land rights is also quite developed and operable, albeit with exploitable points of corruption, confusion and ambiguity. This allowed considerable use of statutory law in the trafficking of conflict HLP rights. Customary tenure, while widespread among dislocated small-scale agriculturalists, was not strong enough to mitigate the effects of using statutory law.

In the Darfur case, statutory law was much less accessible, developed, and operable for use by the Janjaweed militias. But this was apparently also the case for the government, which relied on subterfuge in encouraging the Janjaweed to expropriate, while being unable or unwilling to use state law or provide state documentation regarding expropriations. Equally, customary tenure is quite strong in Darfur, likely making for a reduced operability of statutory law.

In Syria, while the highly developed and operable statutory legal system was available to government efforts at HLP rights trafficking, it was largely inaccessible to other belligerents in the war. This inaccessibility, together with the desire of both the opposition and extremist groups to hold territory, likely stimulated them to create parallel sets of laws and institutions favourable to HLP rights trafficking. Customary tenure was only pervasive and strong enough among the Bedouin tribes in eastern Syria (also much less populated) to mitigate the use of statutory (and other) laws.

Legitimacy

All sides in the three conflicts sought legitimacy in their transaction of HLP rights and this influenced approaches to trafficking. Legitimacy can contribute to the permanence of transactions but can also lend a certain official character or justification to transactions thereby potentially attracting buyers. The Colombian paramilitaries and the Syrian government used statutory law in pursuit of legitimacy; the Syrian opposition and extremist groups used their own invented laws and institutions; and the Janjaweed and Syrian militias used a variety of legal and moral pretexts. The use of pretext to justify expropriations and HLP trafficking warrants elaboration. The apparent need to provide a form of moral and/or legal reasoning for expropriations and transaction of HLP appeared to be very important in Syria, somewhat important in Darfur, and not important in Colombia. In Syria the pretexts were many, varied, quite pervasive and used by all sides in the war. In Darfur they seemed to centre on one key pretext used by the Janjaweed only, namely that the pastoralists from the north never received a 'Dar' or homeland in the precolonial, colonial or postcolonial periods and so were justified in taking lands. While analysis of such pretext use may have explanatory value, further research may also provide insight into its utility in thwarting trafficking.

Conclusions

This article has attempted an initial delineation of conflict HLP rights and how they are used to finance and support armed conflict. While the sections above have described some of the ways in which conflict HLP rights have actually been used in armed conflicts, this section provides broad findings and then initial reflections on possible approaches to thwarting the exploitation of HLP rights in wartime.

Seven broad findings can be surmised. First, there is significant variation in the ways that HLP rights can be exploited to finance and support armed conflict. And while this may appear daunting when thinking about how to counter such use, a second finding is that we are gaining a better idea about what to look for. In this regard the ways of exploiting HLP rights can be categorized, and information as to the occurrence of exploitation can be obtained in a variety of ways. To date the lack of awareness in the international community as to the existence of conflict HLP rights has benefited the traffickers. However, with greater awareness of such exploitation, and the patterns it takes, attention and effort can be brought to bear to thwart such use. Third, the threat to peace is significant. While in a certain sense this threat is similar to that posed by exploitation of other conflict commodities, there are additional concerns about the self-sustaining nature of the financing model that conflict HLP rights represent for certain belligerent groups. There is, as well, the negative impact on postwar recovery, which is greater than that posed by use of other conflict commodities, including the risk that contested HLP rights can serve as flashpoints for a return to armed conflict as they have in previous wars. Fourth, the emergent patterns noted above are, in aggregate, an important finding that can contribute to developing certain thwarting mechanisms. Fifth, the exploitation of conflict HLP rights is lucrative, not only because the value-to-weight ratio is so high, but also because the same HLP can be used repeatedly to generate funds both over time and simultaneously. In addition, conflict HLP is something that belligerent groups can themselves upgrade and even create on the landscapes they control in order to derive funds, as the Syria case has shown. Sixth, current conflict commodity countermeasures do not appear to be able to cover conflict HLP rights, although they can provide important models. As a result, specific mechanisms are needed. And seventh, the definition proposed here seeks to be precise, and narrower than a definition that would include other nefarious uses of HLP rights in armed conflict. This is so that specific, technical mechanisms can subsequently focus on the

financing aspect of HLP rights exploitation, as opposed to a broader, widely inclusive, conceptual definition, which may be more useful symbolically, but less so technically.

While a thorough examination of possible approaches to disrupting the exploitation of conflict HLP rights is beyond the scope of this paper, it is the subject of ongoing analysis, with some approaches holding promise. However, initial reflections are briefly presented here so as to provide an idea as to the type of mechanisms that may be of use.

Preemptive approaches that intend to prevent or discourage trafficking in conflict HLP rights may be possible. This would include efforts to quickly attach people to their HLP in areas that a war seems to be approaching, so that in the event of dislocation the true owners are known to the government. Broad dissemination of such efforts could then discourage traffickers and buyers from thinking that any transaction would be permanent, thereby discouraging transactions. Local techniques employed by dislocated persons already exist in a variety of circumstances, aimed at discouraging purchasers or removing their HLP from a category of people thought to support the opposition to whomever controls an area. The targeting of larger-scale interests such as companies that facilitate, or encourage, and then benefit from HLP rights exploitation may prove effective. Sanctions, freezing of assets, naming and shaming, etc., occurs with other conflict commodities and appear to have considerable utility. And in the case of HLP, such companies may be relatively easily revealed. Lastly, public messaging, whereby the widespread dissemination of the details of HLP confiscations and trafficking that depend on clandestine steps in the trafficking process to make them permanent or legitimate, could have a positive effect, as they have for other conflict commodities.

Conflict HLP rights have now joined the ranks of other conflict commodities as war-financing and in-kind support for military efforts by a variety of belligerent actors. Additional work is clearly needed to further delineate how the trafficking of conflict HLP rights works, its role in financing and supporting wartime activities, its role in prolonging conflict, which sides in which wars are most able to exploit conflict HLP rights, approaches to thwart such exploitation, and postwar repercussions. Innovation will continue among belligerent actors in the exploitation of conflict HLP rights and conflict commodities more generally, such that efforts to define and counter their use needs to keep pace as part of broader efforts to bring wars to a close in effective ways.

Note

[1] The Martyrs' Families Support Fund is affiliated with the Ba'ath Party and provides for families of deceased government fighters.

Competing Interests

The author has no competing interests to declare.

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