

RESEARCH ARTICLE

Deriving Countermeasures to the Use of Housing, Land and Property Rights as a War-Financing Commodity

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Efforts to thwart the trafficking of conflict commodities to finance wars constitute an ongoing endeavour. As specific approaches become effective for certain commodities, belligerent actors pursue new forms of exploitation. The trafficking of housing, land and property (HLP) rights in war zones has now reached a pervasiveness, lucrativeness and severity to warrant significant attention on the derivation of countermeasures. This article proposes a set of potential countermeasures to trafficking in HLP rights in war zones by examining five sets of possible mechanisms and how they would work: detection, transnational governance, local-level countermeasures, public messaging, and targeting non-state armed groups.

Introduction

Approaches to counter the use of high-value commodities that finance armed conflict have grown in number and effectiveness in recent years, following efforts at thwarting the use of conflict diamonds. As new forms of conflict commodities emerge to finance wars – timber, oil, wildlife, various crops and minerals etc. – additional countermeasures are devised to obstruct their use. For example, following the Kimberly process for diamonds (e.g., Smillie 2013), the Extractive Industries Transparency Initiative (EITI) was established for oil, gas and minerals (Rich and Warner 2012); the Responsible Minerals Assurance Process (RMAP) was derived for minerals generally (RMI 2021); the EU Forest Law Enforcement Governance and Trade (FLEGT) initiative was established for

high value timber (Lujala and Rustad 2012); and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (Rustad et al 2012) was derived to broadly apply to minerals. In response to these countermeasures, innovations by belligerent actors have found ways to exploit other landscape-based commodities to finance wars.

The emergence of housing, land and property (HLP) rights as a conflict commodity has now reached a maturity as to warrant significant concern. The ways in which trafficking in ‘conflict HLP rights’ takes place in different contexts has recently been delineated (Unruh 2022), including what sets conflict HLP rights apart from other conflict commodities:

- Unlike movable conflict commodities, HLP are immovable assets where the objective is to traffic in the rights to them, as opposed to extracting,

- transacting and transporting the physical objects themselves;
- Trafficking in HLP rights has longer-term and more volatile repercussions in a postwar period. While trafficking in minerals, timber or oil can have negative postwar implications in terms of valuable resources being unavailable for recovery and development, this does not generate the enduring forced displacement, grievances and conflict within society that trafficking in HLP rights does;
 - The same HLP can be used repeatedly to finance opposing sides in a war, as different sides gain and lose territory;
 - Monetary value in conflict HLP rights can be created or increased within war zones, for example, as has occurred in Colombia and Syria by armed groups building and upgrading shops and houses to then sell;
 - HLP are not remotely located, are not difficult to extract, and do not require equipment or a labour force, or need to be transported;
 - They do not need to be transacted into cash to fund wartime activities, because they have high in-kind value as payment and incentives to combatants for recruitment and service, and to the leadership of tribes, lineages and sects for their loyalty;
 - Certain types of HLP can be used to generate multiple revenue streams, including simultaneous and sequential revenue generation from the same HLP;
 - Conflict HLP rights can be used to pursue multiple wartime objectives, such as using HLP as a weapon, reward and punishment, and in ethnic or other forms of cleansing.

The present paper seeks to build on this initial work by proposing a set of potential countermeasures whereby trafficking could be thwarted by international, national, and local efforts. The academic, policy and practitioner literature on conflict commodities is large and growing. However, to date, no set of countermeasures has been described

for trafficking in conflict HLP rights, even though the money involved is comparable to other conflict commodities and trafficking innovations are evolving and spreading quickly, particularly in countries with more developed statutory tenure systems (eg., Grajales 2013; Unruh 2022; TSR 2021).

The initial work delineating the trafficking of conflict HLP rights proposed a working definition, *'conflict HLP rights are 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'* (Unruh 2022). The definition is intended to apply to HLP acquisition and transaction by rebel groups, governments, insurgencies, militias and extremist groups, along with their backers and intermediaries. This article discusses five sets of countermeasures that may be useful in disrupting different kinds of HLP rights trafficking, in order to contribute to an eventual assembling of a countermeasures framework similar to those developed for other conflict commodities. The paper draws on the author's academic, policy and practitioner work on HLP rights in 24 war-affected countries in Latin America, Africa, the Middle East, Southeast Asia and Eastern Europe. A review of the academic, donor, policy and practitioner literature was also conducted, including a review of countermeasures relevant to other conflict commodities. Subsequent to a description of two operational objectives that drive HLP rights trafficking methods, the paper examines the proposed countermeasures and how they could work. A conclusion then briefly describes the advantage of coordinating the use of countermeasures within broader strategy options.

Operational Objectives in Trafficking Conflict HLP Rights

Previous work has brought to light two operational objectives that drive different forms of HLP trafficking: permanence of transaction and legitimacy. These objectives are the functional intention, or logic, of trafficking methods that result in revenue generation. Different trafficking methods pursue these

objectives in different ways and some methods pursue both objectives, particularly when they are mutually reinforcing. Understanding how these operational objectives work can provide insight into countermeasures.

An assumed 'permanence of transaction' is important to revenue generation or in-kind use of HLP and can determine how a particular trafficking technique works. Essentially the buyer of the expropriated HLP needs to *believe* that the transaction will be permanent in order for money and HLP to change hands. Thus the buyer needs to believe that the prospect of the transacted HLP being returned to its rightful owner is essentially nonexistent, because certainly the likelihood of the buyer getting their money back will be. For the Colombian paramilitaries and Syrian government forces and pro-government militias, trafficking methods relied heavily on being embedded within statutory law in order to attain the desired permanence of transaction. In Darfur, the Janjaweed's scorched earth campaign was used to attain permanence in trafficking outcomes. Knowing if permanence of transaction is an operational objective or not for a specific trafficking technique can guide the design of countermeasures.

Legitimacy of transaction (including initial confiscations) as an operational objective has to do with the perceived 'rightfulness' or 'justness' (legal, ideological, moral) of trafficking endeavours, and is present in a variety of HLP trafficking techniques. Legitimacy is usually needed in HLP rights trafficking because it takes place to the detriment of local populations, so it must be rationalized as a 'just ordering of society' (Kennedy 2016). Legitimacy facilitates revenue generation in that it brings an officialness and/or justification to transactions thereby attracting buyers. The Colombian paramilitaries and the Syrian government used the reasoning provided by statutory law in pursuit of legitimacy in their HLP rights trafficking endeavours; the Syrian opposition and extremist groups used their own invented laws and institutions, as did the Colombian FARC and the Sri Lankan Tamil rebels (Provost 2021);

and the Darfur Janjaweed and Syrian militias used a variety of legal and moral pretexts that sought to justify HLP trafficking.

Potential Countermeasures

Unlike other conflict commodities where countermeasures can be few because variations in trafficking are few, conflict HLP rights are trafficked in a variety of ways and so must be attended to by a range of countermeasures, ideally coordinated into an overall strategy. Any effective strategy would need to combine a number of mechanisms by a diversity of actors at the local, national and international level. This section describes sets of countermeasures that could be brought together to form such strategies. What these strategies could comprise is briefly discussed in the Conclusions.

Mechanisms to facilitate detection

Detecting the actors and methods engaged in HLP trafficking is important to all countermeasures described here. Thus tracking the financial transactions of companies suspected of participating in HLP trafficking holds significant potential (eg., Winer 2005). In Colombia, the extensive efforts on the part of certain companies and their militia allies to use statutory tenure and financial systems to confuse, launder and obfuscate HLP transactions attests to the real possibilities of employing the international financial system to track transactions in conflict HLP rights (Grajales 2013), as is the case for other conflict commodities. The Financial Action Task Force (FATF) is the global body for setting standards for tracking financial activities connected to money laundering and terrorism financing, with over 200 countries agreeing to FATF recommendations (OMCTP 2021). And certain individual countries have followed with their own mechanisms and laws (eg., FINTRAC 2021).

Existing techniques for detecting human trafficking could be useful given the strong connections between certain types of real estate transactions and human trafficking (eg., Deliverfund 2021), especially the role of real estate agents (eg., Nelen 2008). Likewise

approaches that address the growing global problem of money laundering in real estate (FTRAC 2021) can be of utility. And the contemporary tracking, linking, networking, and monitoring techniques used widely by law enforcement against even modest-level drug traffickers, terrorists, and their supporters can be of utility. Porteous (2000) describes how such techniques can be used to detect individuals engaged in trafficking other conflict commodities.

A detection technique of considerable potential is the determination of what is known as the 'ultimate beneficial owner' (UBO) of a company. UBO is a legal concept with a robust technical application, which, while differing from country to country, is broadly defined as the natural person(s) that controls a transactional activity, in our case HLP in war zones. Determining UBO is a significant concern in the business world, in order to comply with sanctions regimes, verify who actually owns a company, who engages in transactions involving a company, and who is connected to forms of legal liability (eg., Moiseienko 2020). Such information is readily available in public records in legitimate business settings. However, in opaque, dysfunctional, and purposefully obfuscating jurisdictions of the world, determining UBO can be difficult. Yet, recent advances in accessing and analyzing a wide variety of global data in the latter contexts have been able to map connections between people, transactions, ownership and a variety of other activities in order to determine who ultimately controls specific transactions. The high demand for this kind of information in business relationships has led to the emergence of firms able to investigate and determine UBO for business clients and international organizations (eg., Sayari 2021a). Some of these firms are particularly adept at investigating and determining UBO in opaque and problematic national environments where hiding transactions (including real estate) is a priority. Such efforts have proven useful in combating financial crime, penetrating illicit networks, and gaining insight into the business operations of difficult-to-penetrate socio-political

environments (ibid.). Examples range from successfully penetrating illicit shipping networks; family networks involved in money laundering schemes for HLP; sanctions evasion efforts by individuals, networks, and companies; and terrorist financing networks (eg., Sayari 2021b; 2020a; 2020b).

Another digital detection technique is the now extensive ability for refugees and IDPs (internally displaced persons) to monitor their HLP from exile using mobile phones and social media. The displaced are now able to contact friends, neighbours and relatives back home (stayees) to check on the status of their HLP. This, combined with local knowledge about traffickers and locally powerful actors means that refugees/IDPs/stayees are well placed (and often quite motivated) to provide such information to outside actors seeking to deploy countermeasures. Past work has found that refugees/IDPs/stayees know how local trafficking takes place, who the backers and enablers of traffickers are, and what and where the targeted HLP are (often their own). This knowledge comes about because the number of people who become aware of any single expropriation can be large (owners, renters, neighbours, relatives, local leaders, service providers, etc.), particularly in urban areas and among the poor who can comprise very tightly knit communities (Berman et al 2018). Also, most brokers and enablers need to be locally connected individuals with in-depth knowledge about how HLP systems work in specific areas, including which segments of the population have sympathies with the different sides in the war so as to engage in targeted expropriations. This 'communicating local knowledge' approach has been used in both Colombia and Syria to identify those involved in HLP trafficking.

Forms of investigative journalism produce a useful detection technique. The ease with which those affected by HLP trafficking in war zones can now contact and, be contacted by, journalists and anonymously describe trafficking methods, actors and locations is already apparent, as the many reports about HLP trafficking in 'The Syria Report',

'Human Rights Watch – Syria', and 'The New Humanitarian – Syria Deeply' among others attest. Investigative journalism groups such as Bellingcat (2021) and ProPublica (2022) are particularly adept at combining open source investigations with citizen journalism to penetrate and report on a wide variety of issues in war zones. In addition, the sale of HLP intended to be trafficked can at times be quite open, such as the widely reported calls for 'public auction' of expropriated HLP in Syria (TSR 2020a). In addition, laws and policies created, or used by, government and rebel bureaucracies to expropriate HLP to be trafficked can be quite well reported on, as are the justifications and pretexts used for confiscations. Part of the openness, and hence ease, of reporting on such activities appears to be connected to the assumption by belligerent groups that they will remain permanently in control of areas where they are engaged in trafficking.

An additional tool comprises what the Syria Resource Group calls 'uncompromised channels' (SRG 2021). Such channels are defined by the local interests they represent, and an advanced capacity to effectively navigate local security, technical and socio-political obstacles in order to achieve their objectives. The channels are accountable to their communities and thus are less vulnerable to manipulation by de facto authorities, more immune to diversion of aid, less likely to exacerbate divisions, and more interested in the long-term wellbeing of their constituencies (ibid.). In contrast to NGOs or CSOs, which are usually heavily regulated by government, these channels can include elements of local governance, the private sector, religious organizations, journalism and civil society associations (ibid.). These channels know intimately the local socio-political and tenorial domain, the actors involved, the targeted HLP, and confiscation and trafficking methods. However, unlike individual refugees/IDPs/stayees, they operate at a larger scale and with greater capacity, and thus are aware of wider dimensions of the trafficking effort and the details of trafficking methods beyond immediate confiscation and

transaction. Such awareness extends into the domain of expropriation of whole areas, multiple transactions, trafficking networks, the role of non-local actors, the market for trafficked HLP, some money flows, and the forms of legality used or invoked. This level of detection is particularly useful in spotting points of opportunity for disrupting trafficking at this scale. Additionally, uncompromised channels can have more direct and formalized relationships with certain sectors of the international community interested in such detection (ibid.), including humanitarian organizations that operate in war zones and can themselves report on HLP trafficking.

Transnational governance mechanisms

Transnational governance efforts focus on the coordination of policy decisions and enforcement on a given issue that crosses national borders (eg., Bevir 2006). A few examples of transnational governance addressing conflict commodities were provided above (eg., the Kimberly process, EITI, RMAP, FLEGT), and could serve as models for conflict HLP rights. Some of these could also simply be expanded to include HLP rights, particularly given the robust discussion regarding the need to broaden and strengthen them to include different forms of conflict commodity trafficking (e.g., Lunde and Taylor 2005; Schabas 2005). However, unlike other conflict commodities where the legal foundations for transnational governance countermeasures needed to be derived prior to implementation, for conflict HLP rights the legal foundation is already well established. Leckie (2007) describes 240 international and national laws, materials and cases that have been adopted over the past century that are relevant to forced HLP dislocation and their subsequent transaction. While this foundation was established without attention to financing wars, it nonetheless positions HLP rights in war-affected settings in the 'global legal domain' (ibid.). This legal foundation encompasses international humanitarian and human rights laws and treaties; international criminal, refugee and state responsibility

law; peace agreements; United Nations (UN) Security Council and General Assembly resolutions for both multi-country and individual country cases; and standards at the regional (Africa, Americas, Europe, Middle East) and national levels (Leckie 2007).

Of particular importance with regard to this legal foundation is that certain forms of HLP rights trafficking are also war crimes and human rights violations to which transnational governance countermeasures already apply (eg., UNHCR 2021; Schabas 2005). Thus 'seizing the property of an adversary', 'seizing of the enemy's property', and 'extensive destruction and appropriation of property' are designated as war crimes (UNOGP 2021) with existing countermeasures. The problem, however, is that these countermeasures are not technically derived or pursued, but rather juridically and politically applied, focusing only on the most egregious or highly visible cases. Technically targeting with precision such war crimes as they facilitate HLP rights trafficking has not yet occurred. Separately from war crimes, UNHCR (2021) notes that the human right to one's HLP is recognized in: The Universal Declaration of Human Rights (Article 17); the 1951 Convention Relating to the Status of Refugees (Article 13); regional human rights treaties in the Americas, Africa and Europe; and the Guiding Principles on Internal Displacement (Principle 21), among others.

Transnational governance approaches are most effectively applied to two categories of conflict commodity actors – national governments and companies – where transnational interests exist. For governments that engage in HLP trafficking to support wartime activities (Sudan, Syria), targeted international financial conditionalities and sanctions can be useful. Lunde and Taylor (2005) describe how this has been done for other conflict commodities using UN sanctions, monitoring by UN expert panels, and the UN Convention against Transnational Organized Crime, among other legal instruments. This includes using the status of World Bank and International Monetary Fund (IMF) financial

arrangements in existence at the onset of a conflict to which the government in question may still be bound. The World Bank used such conditionality to effectively thwart the illegal timber trade in Indonesia, and the IMF employed conditions to frustrate the illegal trafficking of oil in Angola (*ibid.*). Porteous (2000) describes how targeted financial sanctions on individuals, governments, and regimes can be used to address trafficking for an array of conflict commodities. In addition, conditionalities connected to international relationships comprising aid, investments and trade that a government will need subsequent to a war for recovery can influence government behaviour. Finally, Hildyard (2005) describes the role of export credit agencies in providing the needed financial backing to governments with business interests operating overseas, and the potential to influence such governments in cases of trafficking in conflict commodities. All of these devices could arguably also be used to disrupt trafficking in HLP.

National and international companies can also be subject to transnational governance countermeasures when they engage in trafficking HLP, or when they facilitate or pay groups or individuals to engage in trafficking, similar to other conflict commodities (Feeney and Kenny 2005). Just as conflict diamonds, timber and minerals trafficking in wartime can involve specific companies that back, facilitate or benefit from the trafficking, the same is true for some forms of HLP trafficking. Examples include oil palm and fruit companies in Colombia (Grajales 2013; Alsema 2017), and real estate and development companies in Syria (TSR 2021), all of which paid local militias to acquire HLP. Also for Syria, international companies paid the Syrian government for access to reconstruction contracts for expropriated areas containing numerous HLP holdings, which drove dislocations and prevention of returns (Chakrani 2013). Feeney and Kenny (2005) describe the utility of the 'OECD Guidelines for Multinational Enterprises' as a type of joint international action thwarting the

extraction and transaction of a variety of conflict commodities. For this mechanism there can be legal repercussions for governments that have in their jurisdiction companies (or their local entities) that engage in conflict commodity trafficking. While initially written with a focus on the extraction of natural resources, the Guidelines could be expanded to include HLP rights given that such rights are also forcibly extracted. The Guidelines have been modified in the recent past, and there are ongoing recommendations for strengthening them. The Guidelines are one of the most geographically wide sets of corporate conduct codes in the world, and have been adopted by all 30 OECD countries and eight non-members (*ibid.*).

A separate approach is the growing interest in the use of private financial institutions to create leverage (incentives and disincentives) regarding the actions of certain businesses in the private sector (Mansley 2005). There are increasing motivations and engagement by investors, shareholders, governments, banks and industry associations to influence the activities of specific companies and thus obstruct the trafficking of certain conflict commodities (*ibid.*). And Le Billon (2012) and Porteous (2000) describe how sanctions applied by private institutions on individual actors within both governments and companies that participate in forms of conflict commodity trafficking can work. This includes sanctions on actors who engage in financial arrangements with targeted governments, companies, and individuals. Such sanctions can comprise freezes and confiscations of foreign assets and companies, travel bans, and international charges for crimes (Hale and Held 2011; Chayes and Chayes 1995).

Other companies not engaged in HLP trafficking but operating in war zones can also be useful in countermeasures. Such companies operate by using economic relationships with state and non-state armed groups, and some of these companies can be complicit in war crimes and human rights transgressions as a result of this involvement (eg., Lopez and Ost 2019; Alsema 2017). UN-OHCHR (2020)

and Tripathi (2010) describe how leverage can be built with such companies in order to coerce and incentivize them to influence armed groups (including the state) toward or away from certain behaviours by bringing these economic relationships into question.

Local-level countermeasures

There are a number of local community-level approaches that have proven useful at disrupting HLP trafficking. For these the questions are, how can they be identified and scaled up, introduced to other areas, and supported? Those with the most knowledge of these approaches and best placed to innovate along these lines are the locally affected communities themselves, including those in exile. Such communities are best positioned to know how the local tenure system connects to other tenure, financial, legal, and socio-political systems (formal and informal), and how these are used in trafficking. Iraq provides an effective example. In this case the countermeasure is pursued primarily by the original HLP owners or those acting on their behalf, either subsequent to HLP expropriation or pre-emptively. It begins surreptitiously, and often at night, by writing large graffiti-style messages on the door or outside walls of the HLP, to the effect that the property has a claim problem. Even if the graffiti is removed by those who expropriated the HLP (ISIS in Iraq's case), it usually will have already been observed by passersby and so it quickly becomes known that there exists a claim problem for the property. This diminishes the prospect that a buyer will be interested, because, as an Iraqi MP noted in describing how this is common practice throughout the country, 'no one wants to buy a problem'. The effectiveness of such an approach is connected to the 'visibility' of the HLP in question, that is, not the physical visibility of the HLP, but rather the visibility of its claim problem.

The prospect exists that variations of this technique could be developed, including pre-emptively. For example, other local signage, radio from outside the country, social

media posts, etc., focusing on specific HLP could be used to similar effect. Some Syrian refugees/IDPs use technology to digitally make visible their claims or claims problems for HLP they have had to abandon during the war. Wikimapia, an open content mapping platform that uses Google maps overlain with a geographically referenced interactive web-based map wiki system (Ballatore and Arsanjani 2019) is used, among other platforms, by a growing number of refugees/IDPs. The platform allows boundaries to be drawn around specific HLP, and for other forms of evidence, such as photographs and documents, to be uploaded so as to publicly assert claims. A look at rural Syrian locations on Wikimapia reveals how popular this technology is for making local HLP claims visible. Similarly, the Global Shelter Cluster – an Inter-Agency Standing Committee – employs an ‘eviction tracker’ in Libya whereby expropriations are referred to the tracker by those with knowledge of them, for collation and presentation (visibility) (GSC 2022). These are examples of what Gilliland (2017) refers to as ‘participative archiving’ for forcibly dislocated populations.

Utilizing a different form of visibility, Unruh (2021) describes for Syria how the provision of certain types of international humanitarian assistance in the form of agricultural inputs or activities has the effect of establishing important forms of tenurial visibility and hence protection for local small-scale landowners. This occurs as the inputs and activities (seed distribution, irrigation water provision, land mine clearing, etc.) necessarily attach people to their lands by way of locally derived beneficiary lists. Such lists are very carefully made at the behest of a humanitarian organization by assembling a committee comprised of local leaders, long-standing farmer associations, and members of local government (all of whom know who belongs on which land). Such an activity brings local, national, and international attention to specific HLP over large areas as it becomes widely known that farms in certain areas are supported by the international

community with national and local participation and record keeping, and that all parties are attentive to who owns what. This pre-emptive approach could be further developed by purposefully attaching a countermeasure to certain forms of humanitarian assistance that necessitates visible attachment to HLP. A significant advantage of doing this is that humanitarian assistance is not burdened by wartime conditionalities in the way that development assistance is, and so can legally, and with international support, operate in war zones held by all sides in a conflict. This can then lead to the practice of rebranding forms of assistance as ‘humanitarian’ rather than ‘development’ so as to broaden options.

In other scenarios, local countermeasures can effectively change what is visible about one’s HLP in order to pre-empt confiscation and trafficking. This highlights that there is important situational variation in applying countermeasures and the need for a menu of options. In an example from Syria, some local HLP owners transfer official ownership to relatives or friends who are outside the country, or who are of a different political affiliation, ethnicity, sect or other non-targeted group. This is intended to avoid the practice by all sides in the Syrian war (and common in other wars) of targeting HLP expropriations and trafficking against those owners who are seen to be affiliated with the opposing side (e.g., TSR 2020b). Similarly, local communities in Syria have developed a ‘caretaker’ countermeasure for HLP vacated by owners who fled the war. This arrangement uses a person different from the owner to physically occupy HLP in the absence of the owner. Such a caretaker can be of an identity that is not the target of HLP confiscations and trafficking. Also for Syria, the nonpayment of rent for state lands because the renter has fled the area has served as a signal to government that renters were supporters of the opposition, thus facilitating the targeting of their HLP for confiscation and sale. In this context some displaced renters have found ways to continue to pay their

rent from outside the country, thus avoiding being targeted (Gonzalez 2019).

Such efforts at selecting or changing what is visible about one's HLP are a form of what Gilliland (2017) describes as the use of 'irregular records' in the enhanced agency of the forcibly displaced. This is the use of borrowed, fabricated, and altered records and personal situations so as to increase the ability of forcibly displaced persons to thwart even state-level actions. This extends to assuming the identities of other people, including the deceased, along with different ethnicity, religious, military, or geographic memberships (ibid.). There is likely significant potential in such approaches to thwart the targeting efforts of HLP confiscations and trafficking, facilitated by a mini-industry of document falsification, which always emerges during wartime, together with the corrupt nature of war-affected state institutions. Such local efforts highlight the value of local inhabitants' understanding of the inner workings of tenure systems, including their points of corruption, ambiguity, and dysfunction, in order to counter HLP confiscation and trafficking.

The question of international support for local-level countermeasures is worth elaborating. While some local countermeasures do not need outside support to function effectively, it may be worthwhile to transfer these to other areas within a war zone or introduce them to other wars. At the same time some countermeasure innovations at the local level may be able to function more effectively or take on new configurations, with certain forms of outside support (eg., participative archiving). While it can be difficult to access local communities in war zones at sufficient scale in order to provide such support, some options hold promise. Outside assistance in regard to Wikimapia and other digital mapping and claims platforms for local populations would be fairly straightforward. And the Syrian war has demonstrated the utility of certain 'cross-border' assistance efforts that link outside actors with local populations directly (eg., UNOCHA 2022). There are also advantages in outside actors working

with the 'uncompromised channels' noted earlier to attend to local populations in situations that are highly politicized, divided and manipulated. SRG (2021) elaborates ways to facilitate the establishment and scaling-up of uncompromised channels by international actors. An example of this would be the local committees assembled for deriving the beneficiary lists for receiving humanitarian assistance noted earlier.

Public messaging countermeasures

Public messaging efforts have proven quite useful in managing other conflict commodities (eg., Rich and Warner 2012; Le Billon 2012). Specific forms of public messaging combined with (1) law and (2) evidence of claim have the potential to be developed into countermeasures for conflict HLP rights.

Messaging and law

Already used in a number of conflicts is an approach where a government legally decrees and publicly announces early in a conflict that all (or unapproved) HLP transactions will be considered invalid and not respected by government after the end of the war (e.g., Le Billon 2012; Williams 2009). While not yet used explicitly to thwart HLP rights trafficking in support of armed conflict, the approach holds some potential. For decrees where government approval is needed for transactions to be valid, buyers and sellers are required to verify that the transaction is desired by both parties. There are cases where such decrees were applied to an entire national territory, or only for certain areas, or retroactively covering certain periods of time. Their effectiveness depends, of course, on government enforcement capacity. A variation existed in Iraq, where forced, fraudulent, and illegal land and property transfers, or transfers suspected of being so, were frozen en masse and not allowed to proceed by the Property Registration Department in the Ministry of Justice (Isser and Van der Auweraert, 2009). The Syrian government has also engaged in such a verification process, with the Prime Ministry

issuing Circular No. 463 in 2015 stipulating that security approval is required prior to any HLP transfer.

Strengthening this approach could occur by separating the targeting of the decrees and messaging into two types, for HLP generally, and for specific HLP. For generalized targeting, the international community can message that whichever government emerges from a war, financial assistance for recovery will be conditional on government non-recognition of the outcomes of HLP trafficking. If this takes the form of international and national public messaging combined with a government decree, and is announced early and often to all belligerent groups and civil society during the war, it could act as a deterrent. During the Bosnian war Williams (personal communication, 2009) found that if the international community 'speaks with one voice' so as to communicate that after the war there will be restitution of HLP, this introduces doubt in the minds of those who would illicitly purchase HLP as to their ability to actually keep them. This attends to the permanence of transfer operational objective. In my own work in Sudan and Yemen, I observed additional examples. The public indictment by the International Criminal Court (ICC) of President Bashir for war crimes committed in Darfur gave significant pause to government aligned militias and their leadership. While most of these actors did not think they too would be indicted by the ICC, it did change the narrative on the ground with regard to the calculation of the Janjaweed as to whether they were actually going to be able to keep the HLP they had seized during the war as payment for their participation. This example suggests that, while the application of international criminal law might not target the actual perpetrators of HLP trafficking, with sufficient messaging there can be an effect. Similarly, in Yemen the UN Security Council used the UN Charter's Chapter VII to adopt a resolution regarding 'spoilers' during the country's Arab Spring (UN 2015).¹ The resolution became widely known, had repercussions on HLP trafficking, and was

welcomed by the Southern Yemen Land Restitution Commission in the context of obstructing the actions of certain powerful actors. Thus, being labelled a spoiler in this context (one engaged in expropriations, secondary occupation or trafficking in HLP) can have utility as a deterrent (eg., Naharnet 2015).

For specific HLP a number of options exist for law and public messaging. Schabas (2005) and Farer (2000) describe, in the context of international criminal law, the utility of publicly naming certain primary actors, accomplices, and others who are complicit in trafficking conflict commodities, regardless of the likelihood that they may actually be brought to court. Instead, the intended effect is one of deterring not only the actors named but also their colleagues and others who engage in, or might consider engaging in, trafficking. Such 'naming' in an international criminal law context is also useful in depriving traffickers of their market. In the case of Syria, Hansen-Lewis and Shapiro (2015) emphasize that this form of public messaging would have had significant impact had it focused on specific legal violations of property rights by ISIS in order to thwart their transactions. In other cases, certain land restitution commissions have found it worthwhile to make public announcements regarding the illegality of transacting specifically named HLP (FAO 2007). While a focus on individual properties may require time, often the same actors are involved in multiple cases of trafficking.

In a different example borrowed from HLP restitution remedies applied in postwar Bosnia, an official, public announcement by the Land Commission confirming the original ownership of specific HLP that had been confiscated during the war had the effect of deterring continued trafficking in the HLP. The announcement included the fact that the original owner had the option of pursuing legal action against the current occupant when the situation allows, or legally selling the HLP to a third party who may have the ability to evict the current occupant

(van Houte 1999). A similar arrangement existed for postwar Kosovo (Holtzmann and Kristjánsdóttir 2007). While such measures were intended to be postwar HLP restitution/compensation remedies and not a war-time countermeasure against HLP rights trafficking, they do contain useful ingredients such as public legal declarations of the true owner able to exercise options, and a targeting of potential good faith purchasers and risk-averse bad faith purchasers.

Messaging and establishing evidence

Efforts to combine public messaging with evidence attesting to ownership holds potential as a countermeasure, even when such evidence is not directly legal. The Colombian government pursued such an approach to thwart HLP rights trafficking in some areas of the country during the long FARC war. In this case the government sought to engage in a process of 'registration of occupation' that would act to oppose trafficking attempts, or reduce the pervasiveness, effectiveness, and money made from trafficking. This was done by pre-emptively engaging in a very quick and simple specialized HLP registration programme among rural populations who did not have formal documentation, but who occupied areas that the war appeared to be moving toward (Zuluaga et al 2009; AS 2010). The existence of the programme was then widely publicized (subsequent to registrations) among the entire national population, with the real targets of the messaging being those who would expropriate and traffic HLP rights, and those in a position to purchase expropriated HLP. Once it was widely known that HLP in certain areas of the country were already registered, and that the government intended to pursue restitution of these lands after the war (MOA 2010), this had the effect of decreasing the prospect that any buyers would believe they would be able to permanently retain HLP in these areas. This dissuaded them from purchasing in the first place. It also increased the prospect that those who sought to seize and then sell HLP would be dissuaded from doing

so due to lack of a market. The two elements acting together (quick registration prior to displacement and public messaging) were both seen as important to the endeavour (MOA 2010).

In a similar approach, PCWG (2009) and Williams (2009) describe the potential value of recording the HLP information (evidence) of displaced persons very quickly and early on in a war through existing refugee/IDP camp intake registration processes, and as humanitarian organizations encounter dislocatees in the field. The widely known existence of such information (as opposed to the information itself) pertaining to areas of displacement can then be involved in public messaging campaigns regarding the intention of the international community to pursue HLP restitution when conditions permit. This could then discourage the notion among possible buyers that transactions via trafficking would be permanent.

A comparable effect could be attained through the pre-emptive protection of statutory HLP records. HLP records offices are frequently one of the first targets of civil war activities, as different sides in a conflict, along with opportunists, seek to traffic in, or destroy, the records (eg., Bruce 2009; Unruh and Abdul-Jalil 2012). A number of sources have noted the significant potential of pre-emptively removing, copying, storing, and protecting such records held in government offices as the prospect of armed conflict grows or moves to new areas (eg., Williams 2009; PCWG 2009). While such a manoeuvre would assist a post-war HLP restitution programme, as a countermeasure it would need to be connected with forms of public messaging (that the records are secured) during the war in order to discourage expropriations and subsequent assumptions of permanence of transaction. Along similar lines, there is significant potential for refugees/IDPs to use cell phone technology to pre-emptively upload onto secure out-of-country servers a variety of informal and formal evidence and proof of claims to HLP, even after people become dislocated (Unruh et al 2017).

Different than the Wikimapia example noted earlier, with which individuals engage in an uncoordinated manner, an organized, formalized programmatic archiving process conducted by an international actor, and widely publicized through public messaging, holds the potential to contribute to weakening the market for HLP transactions.

Targeting non-state armed groups

Influencing the actions of non-state armed groups (NSAGs) presents a particular challenge for deriving and implementing countermeasures. While governments, companies and individuals could be dealt with directly by internationally imposed or supported countermeasures, direct interaction with NSAGs by most international actors can be problematic. Options can be constrained by issues of neutrality, sovereignty, wider political calculations, incompatible politics or ideologies, human rights abuses, and an unwillingness to become involved directly in a war. In such situations outside actors can believe they have little influence, particularly when self-sustaining commodity trafficking is a priority. This section examines a set of countermeasures whereby influence could be exercised by outside actors on NSAGs, while managing the challenges noted above.

Three sets of actors operating within war zones are relevant here: the uncompromised channels described earlier, humanitarian groups, and forms of NSAG governance comprising certain institutions and actions relevant to countermeasure efforts. These actors operate within the relationship that exists between local populations and occupying NSAGs. Emerging work regarding the realities of this relationship reveals that such populations can exercise considerable agency with regard to the types of activities carried out by NSAGs (eg., Provost 2021; Arjona 2015; Krieger 2018). The view that civilian populations are universally abused, repressed and without agency when under NSAG governance is being revised to become much more nuanced and thoroughly understood (eg., Berman et al 2018; Provost 2021). An example of this is the emergence of 'rebel

governance' as a subfield of law with a focus on NSAGs' administration and institutions of justice and the many ways in which civilian populations interact with NSAGs to pursue agency. This includes a significant ability to negotiate, protest, pursue grievances, coerce, threaten, and cajole. The agency emerges because NSAGs rely to a significant degree on civilian populations for material and political support (Huang and Sullivan 2021), and at least minimal compliance (Provost 2021; Krieger 2018). As Berman et al (2018) note, asymmetric warfare is, 'fought for the support and cooperation of the local population'. Many NSAGs need local populations for legitimacy in order to strengthen claims to power, particularly NSAGs with longer-term political goals. In pursuit of this legitimacy Provost (2021) notes that, 'each armed insurgency produces its own justificatory narrative which is, more often than not, couched in terms that evoke social justice'. Such a narrative and need for legitimacy is then often used by the civilian population in order to pursue certain priorities with regard to a NSAG. In response, NSAGs can provide forms of governance in order to manage their interaction with local population priorities (Krieger 2018). These can take the form of ad hoc responses or more formalized grievance institutions and courts (Provost 2021). ISIS in Iraq and Syria set up the Bureau of Justice and Grievances, which handled a variety of complaints, including those against ISIS' own combatants and officials (SJAC 2020). In response to such complaints, forms of NSAG governance can act to prohibit combatants and militias under their control from engaging in HLP rights trafficking. This was the case in Syria's Afrin governorate where the opposition Syrian National Army issued a public decree stipulating that its armed factions should stop imposing taxes on HLP in areas under its control. This was in response to many complaints from local HLP owners via 'grievance response committees' (TSR 2020b).

With the above in mind, the ability of outside actors to influence forms of NSAG governance via uncompromised channels and

humanitarian groups holds some potential. Willms (2015) describes how courts of NSAGs can be used by outside actors as a tool for inducing compliance with international humanitarian law. And Heffers' (2017) study concludes that the more organized a NSAG is, the more outside influence is possible, including influences from international law. Given the relationship between uncompromised channels, local communities, and NSAG governance, outside interaction with uncompromised channels can take various forms. This can include providing training/awareness about detecting HLP trafficking, and the forms of NSAG governance that can be used to strengthen a local population's agency. It can also include facilitating information flow about trafficking from an affected population to an uncompromised channel then to an outside entity which can provide forms of 'visibility'. This can then influence a NSAG seeking legitimacy. Another case from Syria demonstrates some of these ingredients. After an opposition militia took control of an area of Afrin governorate, multiple forms of trafficking in HLP rights emerged involving rents, fees, and taxes. Due to the high numbers of complaints from the affected population, two factions of the militia agreed to form a committee (NSAG governance) to examine the complaints. The committee did stop some of the trafficking and returned some rental payments extracted from the population. However, there was discord with the factions' security office. In a subsequent move, the committee called for complaints to be lodged with them through local mosques (uncompromised channel). The broader controlling militia then announced (in a bid for greater legitimacy) that HLP taxes were to be targeted only at YPG Kurdish loyalists and were intended for public service provision. The committee meanwhile communicated to a journalism outlet (outside actor – The Syria Report) the full details of the trafficking occurrences and problems, which they subsequently made very visible (TSR 2022). It is unknown at the time of writing what effect this visibility may have on the trafficking problem.

The role of humanitarian and human rights organizations can be elaborated further in a NSAG context given that they commonly interact with such groups directly in order to negotiate humanitarian aid delivery and pressure them to respect human rights. In this context international actors can support humanitarian and human rights groups to detect HLP trafficking and negotiate with, coerce, or incentivize NSAGs so as to decrease trafficking activities, as they already do on a variety of other topics (eg., Willms 2015; Provost 2021). Provost (2021) articulates how humanitarian organization engagement with NSAGs can be transformative, particularly for insurgent groups that are concerned with promoting their legitimacy, legality, and social justice in areas under their control (also Krieger 2018). Willms (2015) and Provost (2021) describe how international humanitarian law and human rights law (derived to regulate the actions of belligerents in wars) are very useful in leveraging the administration of justice by NSAGs in many conflict situations. This approach could be applied to HLP rights trafficking given that, as noted earlier, certain forms of trafficking are war crimes and human rights violations.

There is a growing trend toward outside engagement directly with NSAGs. Some militaries interact directly with NSAG courts and legal systems, such as the French and American support to the opposition Syrian Democratic Forces (Savage 2018). There is also increasing interest on the part of the UN and certain European states for direct engagement (eg., Feltman 2021). Concurrently there is growing attention to what the political science literature calls 'rebel diplomacy', 'a rebel group's conduct of foreign affairs during civil war for the purpose of advancing its military and political objectives' (Huang 2016). One international NGO capitalizes on this need for legitimacy pursued through rebel diplomacy as a means of improving civilian protection and strengthening alignment with humanitarian norms and principles. Geneva Call (GC 2022) engages directly with NSAGs (170 to date) in the establishment of 'Deeds of Commitment'

on specific topics, 'Unilateral Declarations' on humanitarian norms, 'Internal Rules and Regulations' controlling combatants, and 'Agreements' between parties to a conflict regarding humanitarian norms. An important aspect of Geneva Call's approach is the explicit separation of the recognition of legitimacy versus political recognition. As Geneva Call demonstrates, international legitimacy does not necessarily mean that provided by states. Such cases of direct outside engagement with NSAGs present an opportunity for pursuing countermeasures, with Krieger (2018) noting the direct relationship between unsuccessful NSAG efforts at international legitimacy and increased depredations on civilian populations.

Conclusion

As noted earlier, effective use of the countermeasures described here would involve combining them into broad strategies to be deployed by different actors in different situations. One strategy would be to combine countermeasures that attend to the nature of a specific trafficking problem – how transactions occur, who the actors are, who benefits and what HLP is targeted. Another strategy could embrace the reality that different international actors seeking to use countermeasures will be positioned differently in socio-political and financial terms with regard to a specific conflict, such that the countermeasures used can be tailored to the various positions. A variant of this strategy would be to coordinate between international actors employing different sets of countermeasures for a greater combined effectiveness. Another strategy would be to select specific combinations of countermeasures for use in a coordinated and complementary manner in pursuit of a specific goal. Such combinations could be deployed simultaneously, sequentially, across scales, or by targeting different or the same actors and sectors. A separate strategy can be to focus on the quickness, ease, or political fit with which certain countermeasures can be employed in certain situations by different

actors. Still another would be to engage in activities that have broad impact, such as minor changes to forms of transnational governance derived for other conflict commodities or forms of trafficking, the latter being relevant to human trafficking and the global problem of money laundering through real estate transactions.

Yet another strategy could focus on the understanding that, as a transacted commodity, conflict HLP rights can be subject to certain economic pressures such as supply and demand. In this context countermeasures can be grouped into two categories: those that seek to decrease the supply of HLP being trafficked, and those that seek to decrease the number of buyers. Countermeasures selected for these two categories, applied simultaneously, could prove more effective at a larger scale than individually applied countermeasures.

Awareness raising can play a large role in countermeasure strategies. Distinct from public messaging, forms of awareness raising can involve purposefully informing certain sectors of the relevant local, national and international communities as to the nature of the trafficking problem in specific areas, how to go about detection, and what countermeasures could work in particular circumstances and locales. This can be accomplished through the use of a variety of digital and other public means, but also by specific private targeting of certain local, national and international groups, organizations and offices.

Countermeasure frameworks for other conflict commodities have demonstrated significant success. As a result, belligerent actors seek other commodities to finance their activities, and HLP rights trafficking has become lucrative and important to their self-sufficiency. The countermeasures described here are intended as an initial proposal, with further work needed in both techniques and strategy innovation, and in constructing a useful framework so as to contribute to reducing the volume of transactions and money that finance armed conflict.

Note

¹ UN Chapter VII allows the Security Council to 'determine the existence of any threat to the peace, breach of peace, or act of aggression' and to engage in non-military and military action to, 'restore international peace and security' (UN 1945).

Competing Interests

The author has no competing interests to declare.

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