Diamonds are forever: law, conflict theories, and natural resource governance in Africa

By:

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November 20, 2020

Over the past few decades, the term ‘resource curse’ has entered the policy domain and has been used to describe how countries in Africa, and the Global South more generally, which are endowed with natural wealth, are unable to develop and cannot avoid declining into violent conflict. In the collective imaginary, wars in different African countries, such as Angola, Sierra Leone, Ivory Coast, and Liberia have been associated with brutal conflict waged by rebels driven by the lust for ‘blood diamonds’. Its simplistic and generalizing appeal resulted in widespread and often uncritical acceptance of the resource curse thesis by international organisations, civil society, and scholars across disciplines. Although some of the initial claims have been challenged for weaknesses in the methodology and revisited by subsequent studies, the hidden discourses underlying the framework have remained largely unquestioned. The idea that violent conflict in the Global South can be explained by ‘an internal resource-conflict nexus that is subversive of

development, democratic governance, national, regional and global security' is still dominant and its relevance has transcended the field of political/economic sciences to enter the international legal domain.

In a recent article, I explore the influence of the resource curse (or paradox of plenty) upon relevant international legal debates and practices. Since the 1990s there has been a proliferation of regulatory initiatives aimed at ending wars fuelled through the exploitation of 'conflict resources, improve resource management in conflict and post-conflict countries, and address human rights violations committed in these contexts. Examples of such developments include the use of commodity sanctions by the United Nations Security Council to restrict trade in certain commodities (e.g. oil, minerals, timber) and multi-stakeholder initiatives, such as the Extractive Industry Transparency Initiative or the Kimberley Process Certification Scheme for Diamonds. International courts have also dealt with resource exploitation in conflict situations (e.g. the International Court of Justice in the Armed Activities Case) expanding the scope of international provisions, such as prohibition of pillage.

Whereas the consensus in the field is that these interventions have improved natural resource governance in 'fragile' and conflict-affected countries (although enforcement remains a key concern), the capacity of the law to engage with questions of resource access and distribution, which may be at the root of these conflicts, is rarely discussed. Yet, as the critique of the 'liberal' peace tells us, a failure to address socio-economic grievances may weaken the chances of positive peace and reproduce inequalities important to conflict causation. In other words, although the declared objective of such normative/institutional arrangements is to create more stable and peaceful societies, they seem to ignore a crucial part of the picture. This is the puzzle at the core of the article.

So far, international legal scholarship has focused on ways to improve the protection of natural resources and curb 'illegal' exploitation and related abuses, especially human rights violations committed by brutal rebel groups (and occasionally their business partners). Thus, limited, if any, attention has been paid to the political economic assumptions underpinning international instruments and how these assumptions shape current responses to

violence/conflict in the Global South. The aim of this article is to fill this gap. In a nutshell, the argument is that the uncritical acceptance of the explanation offered by supporters of the resource curse thesis led to a marginalisation of fundamental distributive concerns at the root of conflict. To demonstrate the pervasiveness of the discourse in legal practices and the problems with its hidden propositions, I use the Sierra Leonean and Liberian Truth Commissions (TCs) as a case study. As known, TCs are institutions established in countries emerging from conflict or authoritarian rule to address the legacies of human rights violations, although their specific mandates reflect the particular socio-political context in which they operate.

Through a close reading of the reports authored by the two TCs, the article calls attention to their simplified understanding of the dynamics of resource-driven wars, as started by voracious rebel groups or caused by corrupt/failed/weak African states. I contend that framing the problem in these terms has three major normative impacts. First, the responsibility of external actors (former colonial powers and transnational corporations) and economic processes of production and consumption are left at the margins of the picture. Second, structural and slow violence resulting from unequal access to natural resources and ecological degradation are silenced. Third, by identifying internationally-sponsored ‘good governance’ reforms as the way forward, the values underpinning the liberal peace agenda (e.g. privatisation, protection of foreign investment, marketisation of natural resources) are reinforced through legal arrangements, with the risk of recreating the same patterns of dispossession that paved the way for conflict.

One way to read the story told by the TCs under examination is, following Anne Orford, as a narrative of the ‘new interventionism’, characterised by a focus on local origins of crises (or civil wars) and on the fault of the targeted state, portrayed as corrupt and authoritarian, while the peoples are described as being engaged in savage conflict. Such narrative obscures the structural (and external) conditions that led to the conflict and become the justification for international interventions into the political economic life and architecture of the ‘failed state’. Rather than being transformative, these interventions, which in our case take the forms of commodity sanctions, regulatory reforms, or efforts to establish accountability, aim to ‘reaffirm the order, position and ideals

that were threatened at the start of the narrative’.

Another, more general, insight to be drawn from the analysis concerns the importance of transcending sub-disciplinary specialisations when examining problems of global resource governance. Questions of violence and inequality in resource access and distribution cannot be fully tackled unless one embraces a broader view of the discipline and praxis of international law, by considering economy and ecology as interrelated concerns. This is certainly a lesson I have learned, although further research is needed to better understand the mechanisms of private and public international law in creating the conditions for the appropriation of ‘nature’ and dispossession of communities in the Global South. That said, international economic law scholars from different critical traditions may find in this article further arguments to support their claims for a radically different global economic order.

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