International law, the paradox of plenty, and the making of resource-driven conflict

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Abstract

Access to and distribution of natural resources have been since immemorable time at the root of violent conflict. Over the last few decades, international institutions, legal scholars and civil society started to pay attention to the dangerous liaison between resource commodities and wars. Current debates emphasise how through sanctions, global regulatory initiatives, and legal accountability the governance of natural resources in conflict and post-conflict countries has improved, although international law should play a greater role to support the transition to a durable peace. The aim of this article is to illuminate the biases and limitations of dominant accounts by exploring the influence of the resource curse thesis, and its hidden propositions, upon legal developments. Using the Sierra Leonean and Liberian Truth Commissions as a case-study, it shows how legal practices and discourses have contributed to a narrow understanding of resource-driven wars as started by voracious rebel groups or caused by weak/authoritarian/corrupt governments. What is obscured by the current focus on greed and ineffective resource governance? What responsibilities and forms of violence are displaced? Engaging with these questions allows to see the dynamics through which structural injustices and distributive concerns are marginalised in existing responses to these conflicts, how the *status quo* is perpetuated, and the more subtle ways in which external interventions in the political economy of the Global South take place.

Key words

Natural resource exploitation, war, international law, truth commissions, good governance

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1. Introduction

Access to and distribution of traded natural resources have been, since immemorable time, at the root of violent conflict. One may think of how the high demand for spices in Europe (pepper, cinnamon, nutmeg, cloves) paved the way not only for exploration and trade-related globalisation but also for conquest, wars, and colonial empires.[1] Yet, it is only over the last few decades that international institutions and legal scholars started to pay attention to the dangerous liaison between resource commodities and wars. To date, debates have largely focused on the possibilities and limitations of legal regimes and institutional arrangements to break that linkage and ensure that natural resources are 'managed' in ways that foster peace, sustainable development, and stability.[2] This article intervenes in existing legal discussions, but it pursues a different objective. It aims to understand the emergence of legal practices addressing the resource-conflict nexus by making visible the theories that shape international law's engagement with the issue, their assumptions and hidden discourses.[3] My specific interest lies in exploring the influence of the resource curse theory, which I contend has become a powerful framework to explain wars in resource-rich countries, on legal and institutional developments in this field.[4]

At risk of oversimplifying, the resource curse thesis (also known as the 'paradox of plenty') describes the interaction between resource commodities and armed conflict in the following

[1] See S. Zweig, *Magellan* (tr. Alzir Hella, *Le Livre de Poche* 2012).

[2] See e.g. D. Dam-de Jong, *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations* (2015); D. Dam-de Jong, 'The Role of Informal Normative Processes in Improving Governance over Natural Resources in Conflict-Torn States', *Hague Journal of the Rule of Law* (2015) 219; C. Anderson, 'Sanctions, Transparency, and Accountability: The Missing Link in Natural Resource Anti-Corruption Efforts', 48 *Georgetown Journal of International Law* (2017) 779; S.C. Wisner, 'Criminalizing Corporate Actors for Exploitation of Natural Resources in Armed Conflict: UN Natural Resources Sanctions Committees and the International Criminal Court', *Journal of International Criminal Justice* (2018); C. Bruch and A. Fishman, 'Institutionalizing Peacebuilding. The UNCC, Conflict Resources, and the Future of Natural Resources in Transitional Justice', in C. Payne and P. Sand (eds.), *Gulf War Reparations and the UN Compensation Commission: Environmental Liability* (2011); M.B. Taylor and M. Davis, 'Taking the Gun Out of Extraction: UN Responses to the Role of Natural Resources in Conflicts', in C. Bruch, C. Muffett, and S. Nichols (eds.), *Governance, Natural Resources and Post-Conflict Peacebuilding* (2016) 249; O. Radics and C. Bruch, 'The Law of Pillage, Conflict Resources, and Jus Post Bellum', in C. Stahn, J. Iverson and J. Easterday (eds.) *Environmental Protection and Transitions from Conflict to Peace* (2017).

[3] International law is understood here in broad terms, as including hard and soft law, international treaties and global/transnational regimes regulating both public and private conduct.

[4] For references to the rich literature on the resource curse see *infra* Section 2.

terms. First, its proponents maintain that resource-rich countries often feature a combination of authoritarian governments, a high poverty rate, and weak governance structures that increases the risk of civil wars. In those contexts, natural resource revenues can be more easily diverted for personal benefit or purposes alien to the wellbeing of the population, which in turn generates grievances that — combined with other factors — may escalate to the level of violent conflict. Second, when conflict breaks out, governments' failure to exercise effective control over extraction areas and borders, because of widespread corruption or patronage systems, facilitates the unregulated exploitation of natural resources by rebel groups, the prolongation of war, and associated human rights abuses. Third, a correlation is established between a transparent system of resource governance and peacebuilding, which results in the support for internationally sponsored interventions to restore state control over resource rich areas and promote a set of liberal values, such as good governance and accountability.

The three broad claims associated with the resource curse thesis have been extremely influential on the international plane and resulted in the adoption of a variety of legal/regulatory measures to end wars fuelled through the exploitation of 'conflict resources'[5] and improve natural resource management in 'fragile', conflict and post-conflict countries. The most notable examples include commodity and targeted sanctions adopted by the United Nations Security Council (UNSC)[6] and multi-stakeholders initiatives, such as the Kimberley Process Certification Scheme

[5] The term 'conflict resources' indicates resource commodities, such as oil, timber, minerals, and diamonds extracted in conflict zones and traded to sustain the fighting. However, different international actors and legal regimes put an emphasis on different aspects of conflict-related resource exploitation. The NGO Global Witness focuses on the humanitarian impact of exploitation practices: 'conflict resources are natural resources whose systemic exploitation and trade in a context of conflict contribute to, benefit from, or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law'. The Kimberley Process Certification Scheme defines 'conflict diamonds' also quite narrowly, focusing on their exploitation by non-state armed groups: 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments'. See Dam-de Jong, International Law and Governance, supra note at 26-27.

[6] See e.g. UNSC Res. 1173, 1998 and UNSC Res. 1176, 1998 (Angola); UNSC Res. 1306, 2000 (Sierra Leone); UNSC Res. 1493, 2001 (Democratic Republic of the Congo); UNSC Res. 1343, 2001 and UNSC Res. 1408, 2002 (Liberia); UNSC Res. 2134, 2014 (Central African Republic).

for Diamonds,[7] the Extractive Industry Transparency Initiative,[8] and the OECD Due Diligence Guidance on Responsible Supply Chain of Minerals.[9]

The consensus in the field is that, through economic sanctions, industry-self regulation, and legal reforms, the governance of natural resources in countries emerging from or at risk of conflict has improved, although international law should play a greater role in establishing the conditions for a durable peace.[10] While recognising that questions of access to natural resources may be at the root of these wars, legal and institutional engagements with the structural dimension of resource distribution, which paved the way for the conflict, are rarely discussed in the scholarship.[11] Yet, as the critique of the 'liberal peace' project tells us,[12] a failure to address socio-economic grievances underpinning violent conflict weakens the chances of real, positive peace.[13] Further, the focus on marketisation of natural resources, promotion of foreign investments and economic growth in post-conflict countries (although under the reformed legal framework) may reproduce inequalities and dispossessions important to conflict causation.[14]

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[7] https://www.kimberleyprocess.com/
[8] https://eiti.org/
[9] https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf
Other soft law instruments regulating the exploitation of natural resources in conflict zones (or 'high-risk areas') are the International Conference on the Great Lakes Region Regional Certification Mechanism; the Voluntary Principles on Security and Human Rights for Extractive Industry Companies; the Equator Principles.
[10] See generally the references cited supra note 2.
[11] One notable exception is P. Okowa, 'Sovereignty Contests and the Protection of Natural Resources', 66 *Current Legal Problems* (2013) 33, calling attention to the deeply-rooted problems raised by the existing regulation of natural resources in conflict and post-conflict settings, notably international law's focus on the state as the main agent, inequality and subordination within the international legal order, and the preference for market-driven solutions which often reflect the interests of a limited number of states and industry representatives.
[12] The concept of 'liberal peace' or 'liberal peacebuilding' denotes all activities implemented by international organisations (UN, international financial institutions, and NGOs) to promote stability, democracy and development in countries emerging from violent conflict. Criticisms have been raised with regard to the two dominant features of liberal peacebuilding: the promotion of free market economy and liberal democracy. For a review of critical literature on liberal peacebuilding, see e.g. C.L. Sriram, 'Liberal Peacebuilding and Transitional Justice: What Place for Socioeconomic Concerns?', in D. Sharp (ed.), *Justice and Economic Violence in Transition* (2014), at 31-34; P. McAuliffe and C. Schwobel-Pattel, 'Disciplinary Matchmaking: Critics of International Criminal Law Meet Critics of Liberal Peacebuilding', 16 *Journal of International Criminal Justice* (2018) 985.
[13] See generally J. Ahearne, 'Neoliberal Economic Policies and Post-Conflict Peace-Building: A Help or Hindrance to Durable Peace?', 2 *POLIS Journal* (2009) 1.
[14] See e.g. M. Beevers, 'Governing Natural Resources for Peace: Lessons from Liberia and Sierra Leone', 21 *Global Governance* (2015) 227; M. Beevers, 'Peace Resources? Governing Liberia's Forests in the Aftermath of Conflict', 22(1) *International Peacekeeping* (2015) 26.

This article builds upon these critical insights to examine the tensions, silences and contradictions within the international legal field. What are the effects of upholding through legal practices the explanation offered by the resource curse theory over alternative ones? How can representations implicit in the resource curse thesis delimit responsibility in the context of resource-driven wars? What forms of violence are made visible and what marginalised? To shed light on these questions, I will use the Sierra Leonean and Liberian Truth Commissions (TCs) as a case study. The decision to focus on these institutions is informed by different considerations. First, accountability mechanisms (such as TCs) are often presented as the vehicle to reconcile the liberal goals implicit in resource governance interventions with local demands for justice.[15] Second, the two TCs under scrutiny have dealt with the resource-conflict nexus from multiple angles, relying on a variety of international legal frameworks (international human rights law, laws of war, transnational/international criminal law, global regulatory regimes).[16] Third, TCs are mechanisms created to recover the 'truth' about severe and widespread acts of violence committed in the context of armed conflict or repressive regimes.[17] Examining their approach to resource-related conflict enables us to reflect on the normative impact of the narrative(s) produced by these institutions.[18] My argument is that the Sierra Leonean and Liberian TCs endorsed through their

[15] See e.g. E. Harwell, 'Building Momentum and Constituencies for Peace: The Role of Natural Resources in Transitional Justice and Peacebuilding', in C. Bruch, C. Muffett, and S. Nichols (eds.), *Governance, Natural Resources, and Post-Conflict Peacebuilding* (2016) 633; S. Nichols, 'Reimagining Transitional Justice for an Enduring Peace: Accounting for Natural Resources in Conflict', in Sharp (ed.) supra note 12, 203.

[16] While TCs are complex institutions, which perform different functions, this article focuses on their role as accountability mechanisms operating within a globalised field of transitional justice. The two TCs under examination addressed legal questions of responsibility of a variety of actors. International law provides legitimacy to these investigative bodies and the vocabulary through which they are called to assess and redress the violence associated with armed conflict. In Sierra Leone and Liberia, the UN played a substantial role in the negotiation of the peace agreements that established the two truth-seeking mechanisms and in the implementation of said agreements. The UN High Commissioner for Human Rights selected three international members of the Sierra Leonean TC and it was decided that the TC would be administratively managed as a project of the UN Office of the High Commissioner for Human Rights. Also emblematic is the fact that the final report of the Sierra Leonean TC was presented to the UNSC.

[17] See e.g. Report of the UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 2004; Report of the UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2011/634, 2011. P. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (2011).

[18] Critical literature warns against the partial view of the past that is developed by TCs and other accountability institutions and the consequences in terms of reinforcing a certain understanding of violence, victimhood, and responsibility. See e.g. V. Nesiah, 'Theories of Transitional Justice: Cashing in the Blue

practice the values/assumptions underpinning the resource curse thesis in three ways: first, by attributing to local actors' weakness, failure or desire for exploitation of natural resources as the primary causes for conflict; second, by exhibiting individual and physical atrocities as the main consequences of war-related resource extraction; third, by focusing on the reconstruction of state authority and good governance reforms as the way forward.

One way to read the story told by the TCs under examination is, following Anne Orford, as a narrative of the 'new interventionism'.[19] Elements of the latter which are relevant for the present analysis are the 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. As observed by Orford, these narratives obscure the structural (and external) conditions that led to the conflict and become the justification for international interventions into the political economic life and institutional architecture of the 'failed state'. These interventions, instead of being transformative, aim to 'reaffirm the order, position and ideals that were threatened at the start of the narrative'.[20] By showing how the TCs in Sierra Leone and Liberia supported the 'liberal peace' agenda and marginalised structural injustices pertaining to the distribution of natural resources, this article illustrates another, more subtle way in which 'the international' intervenes in the Global South.[21]

Chips', in A. Orford and F. Hoffmann (eds.) *The Oxford Handbook of the Theory of International Law* (2016), at 790; A. Orford, 'Commissioning the Truth', 15(3) *Columbia Journal of Gender and Law* (2006) 851, at 859-863; R. Nyger, 'Transitional Justice as a Global Project: Critical Reflections', in R. Buchanan and P. Zumbansen (eds.) *Law in Transition: Human Rights, Development and Transitional Justice* (2014), at 217.

[19] See A. Orford, 'Muscular Humanitarianism: Reading the Narratives of New Interventionism', 10(4) *EJIL* (1999) 679; see also A. Orford, 'Locating the International: Military and Monetary Interventions after the Cold War' 38 *Harvard International Law Journal* (1997) 443; A. Orford, 'The Politics of Collective Security', 17 *Michigan Journal of International Law* (1996) 373.

[20] Orford, Muscular Humanitarianism, ibid. at 699-700.

[21] Not all forms of political, economic and legal interventions determining how natural resources are to be 'managed' in the Global South take place after armed conflict. One can think of how the internationalisation of the development project resulted in interventions of the World Bank and the International Monetary Fund in the daily life of developing countries. Through conditionality, states are often required to implement policies/reforms aimed at fully exploiting natural resources located within their territory and privatising their extraction. On this point, see S. Pahuja, 'Conserving the World's Resources?, in J. Crawford, M. Koskenniemi and S. Ranganathan (eds.), *The Cambridge Companion to International Law* (2012), at 407.

Section 2 provides an overview of the resource curse thesis and its core propositions as developed by political economists over the last few decades. Borrowing from critical perspectives within and across disciplinary borders, it draws attention to the limitations of the theory in explaining the causes and dynamics of resource wars in the Global South and how international law is relevant to these debates. Section 3 delves into the practice of the TCs in Sierra Leone and Liberia and explores to what extent the resource curse thesis shaped their approaches vis-à-vis the resource-conflict link. By illuminating blind spots in the reports authored by the TCs, this section discusses the effects of their selectivity on the diagnosis of the problem and recommendations to correct it. These should be seen as related concerns. If the diagnosis is inadequate, then prescriptions inevitably fall short of their expectations. Section 4 concludes by suggesting that we need to pay more attention to the power of frames in shaping legal practices in this area. Frames limit our understanding of the problem and the possibilities to achieve emancipatory ends, including through the law. What may happen if we change the lens through which we view the linkages between natural resources and violent conflict?

2. The resource curse theory and violent conflict: an overview and a critique

One central theme within the resource curse literature is the connection between the 'paradox of plenty', poor economic growth, and the likelihood of armed conflict.[22] Within this context, resource commodities are defined in terms of their role in increasing the risk of civil conflict or acting as an obstacle to peace. At its core lies the idea of resource wealth as underpinning the motives for starting and prolonging armed conflict, or as a causal factor leading to corruption,

[22] The canonical text is P. Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done* (2008). Specifically on the resource curse theory and armed conflict, see e.g. M. Berdal and D. Malone (eds.), *Greed and Grievance: Economic Agenda in Civil Wars* (2000); P. Le Billon, 'The Political Ecology of War: Natural Resources and Armed Conflicts', 20 *Political Geography* (2001) 561; I. Bannon and P. Collier (eds.), *Natural Resources and Violent Conflicts: Options and Actions* (2003); M. Ross, 'How Do Natural Resources Influence Civil Wars? Evidence from Thirteen Cases', 58(1) *International Organization* (2004) 35; M. Ross, 'What Do We Know About Natural Resources and Civil Wars?', 41(3) *Journal of Peace Research* (2004) 337; P. Le Billon, *Fuelling War: Natural Resources and Armed Conflict* (2005).

authoritarianism, abuses, and insecurity. While acknowledging the diversity and richness of this scholarship, for the purposes of this article, it is useful to identify three main strands in resource curse thought, which correspond roughly to the role of natural resources before, during and after an armed conflict.

The first is the 'greed versus grievances' debate, which emerged in the mid-1990s to explain the causal relation between natural resource abundance and conflict outbreak. Collier, a proponent of the greed thesis, argues that economic interests are a key driving force behind rebellion and civil war, more than social or political grievances. According to him, 'some societies are more prone to conflict than others because they offer more inviting economic prospects for rebellion',[23] such as large deposits of high-value natural resources and other 'lootable' assets. Collier's work has proved quite popular in international policy circles and has had an important impact on initiatives by the World Bank and the UNSC.[24] Yet, the greed literature has been challenged by other political scientists questioning the nature of the link between resource wealth and conflict.[25] Steward, Brown and Langer, for instance, observe that 'the conflict-inducing potential of natural resources is often mediated through their impact on HIs [horizontal inequalities]'.[26] According to the grievance theory, unequal distribution of natural resource wealth, coupled with dysfunctional resource governance by unaccountable political elites, are factors potentially leading to the outbreak of armed conflict.[27] A complementary and equally successful explanation of the nexus between resource commodities and war onset focuses on the weak state mechanism. Some

[23] P. Collier, 'Doing Well Out of War: An Economic Perspective', in Berdal and Malone (eds.), supra note, at 91-111; P. Collier and A. Hoeffler, 'On Economic Causes of Civil Wars', 50 *Oxford Economic Papers* (1998) 563.
[24] For a critical account of the reasons for Collier's success among the political elites, see D. Keen, 'Greed and Grievance in Civil War', 88(4) *International Affairs* (2012) 757.
[25] For instance, subsequent studies found that the nexus between natural resource wealth and armed conflict is influenced by a multitude of variables, including the resource type and the characteristic of a specific conflict. See e.g. M. Ross, 'How Do Natural Resources Influence Civil War? Evidence from Thirteen Cases', 58(1) *International Organizations* (2004) 35; P. Le Billon, 'Natural Resource Types and Conflict Termination Initiatives', *Colombia Internacional* (2009) 9, at 12.
[26] F. Steward, G. Brown and A. Langer, 'Major Findings and Conclusion of the Relationship Between Horizontal Inequalities and Conflict', in F. Stewart (ed.), *Horizontal Inequalities and Conflict* (2008), at 294.
[27] M. Klare, 'Resource Predation, Contemporary Conflict, and the Prevention of Genocide and Mass Atrocities' in Rosenberg, Galis, and Zucker (eds.) *Reconstructing Atrocity Prevention* (2016), at 256-257.

theorists argue that resource-rich countries are often characterised by political and economic misrule, poorly functioning administrative structures, and endemic corruption, which make them less able to provide public goods and resolve social conflict.[28]

Second, resource curse scholars have sought to explain how the availability of resource commodities is associated with the prolongation of hostilities.[29] Through reference to the 'political economy of armed conflict',[30] this literature maintains that resource extraction provides rebel groups and governments with the revenues to sustain their military campaign (i.e. the feasibility mechanism) and represents an economic incentive to prolong the fighting (i.e. the conflict premium mechanism).[31] The outbreak of an armed conflict, in other words, would generate a new political economy of war, where belligerent parties benefit from the situation of armed conflict and accumulate wealth through the exploitation of valuable commodities.[32] Building upon these explanations, reports by Human Rights Watch and Global Witness have documented the role of armed groups in the illicit trade of natural resources originating from conflict-affected countries and the linkages between local production sites and global markets.[33]

Third, in addition of triggering and prolonging violent conflict, a relative recent theme is the role of natural resources in reinforcing the peace process and preventing conflict relapse. A growing literature is emerging to deal with the risks associated with environmental degradation, natural resource scarcity and maldistribution in countries recovering from armed conflict.[34] The

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[28] See e.g. M. Ross, 'The Politics of Resource Curse: A Review', in C. Lancaster and N. van de Walle (eds.) *The Oxford Handbook of the Politics of Development* (2018) 201, at 212.
[29] P. Collier and A. Hoeffler, 'Greed and Grievance in Civil Wars', 56(4) *Oxford Economic Papers* (2004) 563; P. Collier, A. Hoeffler, D. Rohner, 'Beyond Greed and Grievance, Feasibility and Civil War', 61(1) *Oxford Economic Papers* (2009) 1.
[30] See e.g. K. Ballentine and J. Sherman (eds.), *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (2003).
[31] Le Billion, supra note 25, at 13.
[32] D. Keen, 'Incentives and Disincentives for Violence', in Berdal and Malone (eds.), supra note, at 26-27.
[33] See e.g. Human Rights Watch, *The Curse of Gold* (2005); Global Witness, *Faced with a Gun, What Can You Do? War and the Militarisation of Mining in Eastern Congo* (2009).
[34] See e.g. C. Bruch, C. Muffett, S. Nichols (eds.), *Governance, Natural Resources, and Post-conflict Peacebuilding* (2016); P. Lujala, S.A. Rustad, and S. Kettenmann, 'Engines for Peace? Extractive Industries, Host Countries, and the International Community in Post-Conflict Peacebuilding', 7 *Natural Resources* (2016) 239; P. Lujala and S.A. Rustad, *High-Value Natural Resources and Post-Conflict Peacebuilding* (2012); K. Brown, 'War Economies and Post-Conflict Peacebuilding: Identifying a Weak Link', 3(1) *Journal of Peacebuilding and Development* (2012) 6; K. Conca, J. Wallace, 'Environment and

assumption is that a failure to integrate environmental concerns (broadly understood) in post-conflict strategies and policies may endanger the chances of a long-lasting peace. This interdisciplinary field of research and practice covers a variety of topics and its agenda is continuing to be refined.[35] However, a fundamental area of concern is the reform of natural resource governance in post-conflict countries to improve transparency and accountability, kick-start the economy, and generate peace dividends.[36] As observed above, the idea that post-conflict countries need to correct institutional flaws in resource management as part of the peacebuilding process is high on the policy agenda and has received the support of international organisations.[37] Several global regulatory initiatives have been devised to assist governments in reforming the natural resource sector and ensure that extractive activities are conducive to peace (e.g. the Kimberley Process Certification Scheme and the EITI mentioned before).[38]

Over the last couple of decades, the term 'resource curse' has entered the popular domain and has been used to describe how countries in the Global South, which are endowed with natural

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Peacebuilding in War-torn Societies: Lessons from the UN Environment Programme's Experience With Post-conflict Assessment', in D. Jensen and S. Lonergan (eds.) *Assessing and Restoring Natural Resources In Post-Conflict Peacebuilding* (2012) 63.

[35] See e.g. C. Bruch, 'The Changing Nature of Conflict, Peacebuilding and Environmental Cooperation', 49 *Environmental Law Report* (2019) 10134. The key areas of concerns for environmental peacebuilding are described as follows: (i) re-establishing states' control over natural resources by curbing illegal exploitation activities; (ii) reforming natural resource sector to 'jump start' the economy; (iii) addressing land distribution issues as part of governance reforms; (iv) rebuilding basic infrastructures, including water and sanitation; (v) employing environmental remediation projects to foster cooperation, dialogue, and reconciliation. On this point, see C. Bruch, 'Considerations in Framing the Environmental Dimensions of Jus Post Bellum', in Stahn, Iverson, and Easterday (eds.), supra note 2, at 32-33.

[36] See e.g. L. Whittemore, 'Intervention and Post-Conflict Natural Resource Governance: Lessons from Liberia', 17 *Minn. J. Int'l L.* (2008) 387. While recognising the diversity of perspectives associated with the environmental peacebuilding literature, my critique here pertains to how the concept of environmental peacebuilding can be used to support neoliberal peace approaches and political economic interventions in post-conflict countries.

[37] See e.g. Statement by the President of the Security Council, UN Doc. S/PRST/2007/22, 25 June 2007; Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict, UN Doc. A/64/866–S/2010/386, 11 June 2009; UNEP, *Addressing the Role of Natural Resources in Conflict and Peacebuilding* (2015). It is important to note that states have different views concerning the nexus between resource exploitation and war. See the discussion at the 8372nd Meeting of the UN Security Council, Maintenance of International Peace and Security: Root Causes of Conflict – The Role of Natural Resources, 16 October 2018, UN Doc. S/PV 8372, https://undocs.org/en/S/PV.8372

[38] Another example is the Liberia Forest Initiative (LFI), a programme established by the United States, the World Bank, the EU Commission, the International Union for the Conservation of Nature, the FAO and NGOs to assist the Liberian government in the implementation of legal reforms in the forestry sector, with a view to ensuring transparent forest management.

wealth, are unable to develop and cannot avoid declining into violent conflict. In the collective imaginary, wars in Angola, Sierra Leone, the Democratic Republic of the Congo, to name a few, have been associated with brutal wars waged by rebels driven by the lust for 'blood diamonds'.[39] The 'simplistic and generalizing appeal' of some of its propositions,[40] resulted in widespread and uncritical acceptance of the theory 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,[41] the hidden discourses underlying the framework have remained largely unquestioned. My primary concern here relates to the idea that violent conflicts 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'.[42] This idea is still dominant in the scholarship canvassed above and its relevance has transcended the field of political/economic sciences to enter the international legal domain through the development of soft law, regulatory regimes and accountability mechanisms.

Yet, the resource curse, 'when invoked as free-floating cultural explanation bereft of history', can be misleading.[43] Critics of the resource curse theory argue that its description of the causes and dynamics of modern wars is superficial, at least. To begin with, the theory appears based upon a 'commodity determinism', which ignores the historical and structural dimensions of inequality and poverty in the Global South, as well as the role of external actors, notably former colonial powers and transnational corporations, in producing such evils.[44] As noted by Obi, who

[39] See e.g. 'Campbell Testimony Shines Light on Blood Diamond and the Importance of International Justice', Global Witness Press Release, 4 August 2010, https://www.globalwitness.org/en/archive/campbell-testimony-shines-light-blood-diamonds-and-importance-international-justice/

[40] K. Lahiri-Dutt, "May God Give Us Chaos, so that We Can Plunder": A Critique of Resource Curse and Conflict Theories', 49 *Development* (2006) 14, at 14.

[41] See e.g. J. Cuvelier, K. Vlassenroot, N. Olin, 'Resources, Conflict and Governance: A Critical Review of the Evidence', Justice and Security Research Programme Paper 9 (2013), http://eprints.lse.ac.uk/56351/1/JSRP_Paper9_Resources_conflict_and_governance_Cuvelier_Vlassenroot_Olin_2013.pdf

[42] C. Obi, 'Oil as the "Curse" of Conflict in Africa: Peering Through the Smoke and Mirrors' (2010), 37 *Review of African Political Economy* (2010), at 484.

[43] R. Nixon, *Slow Violence and the Environmentalism of the Poor* (2011), at 70.

[44] See e.g. M. Watts, 'Oil, Development, and the Politics of the Bottom Billion', 24 *Macalester International* (2009); L. Wengraf, 'The Pillage Continues: Debunking the Resource Curse', *Review of*

writes about oil, 'blind spots in hegemonic discussions of the oil curse in Africa include the place of Africa's oil in the global political economy, and how transnational actors and structures are deeply implicated in the corruption and armed conflicts in oil-rich states'.[45] In other words, 'poverty is a not just a condition, but a relationship', in which prosperity and deprivation are two sides of the same coin.[46] As such, the theory does not answer a number of essential questions: 'what forces turn belongings – those goods, in a material and an ethical sense—into evil powers that alienate people from the very elements that have sustained them, environmentally and culturally […]?'[47] Or, more essentially, 'who owns the mineral resources and since when?'[48]

Further, critical scholars highlight that the resource curse thesis is predicated upon on a view of the Global South as a place of 'complete lack of control and disorder (…) whose inhabitants – by some irrational logic of nature – have found themselves endowed with resources that cannot or do not know how to deal with an orderly manner'.[49] To put it differently, the theory is built upon a colonial fantasy, which imagines those who live in resource-endowed, developing countries as lacking 'power, agency and authority'.[50] Such analysis not only tells a partial story of the complexity of these conflicts, but has been invoked as the basis for neoliberal interventions that consolidate the control over natural resources by political elites and corporate actors, without challenging the transnational structures that generate inequality and grievances in the Global South.[51]

These arguments raise the question of the relationship between international legal discourses and the political economic processes described above. The interrelation of norms of international

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African Political Economy, 2017, http://roape.net/2017/01/24/pillage-continues-debunking-resource-curse/#_edn14

[45] Obi, supra note 42 at 485.

[46] S. Marks, 'Human Rights and the Bottom Billion', 1 *European Human Rights Law Review* (2009) 37, at 49. In this piece, Susan Marks critically reviews Paul Collier's book, The Bottom Billion, supra note 22.

[47] Nixon, supra note 43 at 69.

[48] Lahiri-Dutt, supra note 40 at 16.

[49] Lahiri-Dutt, ibid. at 15.

[50] A. Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (2003), at 176. See also Chapter 5 for a discussion on how colonial stereotypes and heroic narratives underpin humanitarian and post-conflict interventions.

[51] Lahiri-Dutt, supra note 40 at 19. See also C. Obi, 'Oil Extraction, Dispossession, Resistance, and Conflict in the Niger Delta', 30 *Canadian Journal of Development Studies* (2010) 219.

law and the continuation of colonial practices of dispossession is amply discussed in the literature. Scholars have shown how the development of legal doctrines has limited decolonising states' sovereignty over their natural wealth. Anghie[52] and Pahuja,[53] in particular, explain how international law has been complicit in the exploitation, by foreign capitals, of natural resources located in developing countries, notwithstanding efforts to reassert control over them by the newly independent states.

Next section illustrates the pervasiveness of the resource curse theory in legal practices and the problems generated by the support for its hidden propositions by the Sierra Leonean and Liberian TCs. My critique of the two TCs should be understood as a critique of the broader legal discourse surrounding resource-driven conflict and is not intended to diminish the significance of their work or to offer generalised conclusions about their impact on victims. Rather, my purpose is to explore what understandings of responsibility, victimhood, and violence emerge from the approach taken by these TCs and how certain distributive consequences may be legitimised through legal practices.

3. The political economy of TCs in Sierra Leone and Liberia

3.1 Localising conflict causes and responsibility

As seen above, one of the problems (which is, arguably, also one of the strengths) of the resource curse thesis is that it thrives on a simplistic, determinate relationship between natural resource

[52] Antony Anghie maintains that, while the doctrine of Permanent Sovereignty over Natural Resources (PSNR) was relied upon by developing states to justify the legality of nationalisations that accompanied decolonisation, such claims were opposed by the developed world. The latter argued that nationalisation 'incurred state responsibility by violating the doctrine of acquired rights, which mandates that a new state must respect the obligations undertaken by a predecessor state'. Accordingly, the 'newly independent countries were legally bound to hono[u]r the concessionary rights to their natural resources that private enterprises had acquired prior to independence' or they had to provide compensation according to international (i.e. Western) standards. See A. Anghie, 'The Heart of My Home: Colonialism, Environmental Damage, and the Nauru Case', 34 *Harv. Int'l. L. J.* 445 (1993), at 474; see also A. Anghie, 'Legal Aspects of the New International Economic Order', 6(1) *Humanity* (2015) 145.

[53] S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011), especially Chapter 4 'From Permanent Sovereignty to Investor's Protection'.

endowment and negative outcome, a proposition which conceals the much more complex nexus between resource commodities and violent conflict. Critical voices observe that this nexus is made by national-global linkages and involves a plurality of actors, such as transnational corporations, local and global elites, international financial institutions, benefitting from resource exploitation, trade, and accumulation.[54] On the contrary, through the emphasis on either greed or institutional failures, proponents of the resource curse tend to focus on local drivers of armed conflict, which, from a legal perspective, translates into local solutions. A close reading of the reports authored by the Sierra Leonean and Liberian TCs shows how these institutions only marginally engaged with the responsibility of external actors and global market processes. Even when they did so, the recommendations put forward were narrowly designed, identifying actions to be taken by the government and on measures to improve the position of victims.

Since Sierra Leone was a country with a massive diamond reserve, the competition for seizing control of diamond-producing regions by voracious African rebel groups and leaders (the Revolutionary United Front and Charles Taylor) is conventionally regarded as a main cause of the conflict.[55] This belief has been questioned by political scholars exploring the broader political and societal context before the war. According to them, some of the problems caused by the abundant diamond reserve are more useful to explain the structural inequality in Sierra Leonean society, which later fed into the war. This economic inequality led to frustration among the sectors of the population who were excluded from the benefits.[56] Several authors also argue that the conflict cannot properly be understood without reference to the marginalisation of the country's

[54] Obi, supra note 42 at 489 et passim.
[55] See e.g. Partnership Africa Canada (Ian Smillie, Lansana Gberie and Ralph Hazleton eds.), *The Heart of The Matter: Sierra Leone, Diamonds and Human Security* (2000), claiming that '[o]nly the economic opportunity presented by a breakdown in law and order could sustain violence at the levels that have plagued Sierra Leone since 1991. Traditional economics, political science and military history are of little assistance in explaining Sierra Leone's conflict. The point of the war may not actually have been to win it, but to engage in profitable crime under the cover of warfare. Diamonds, in fact, have fuelled Sierra Leone's conflict, destabilizing the country for the better part of three decades, stealing its patrimony and robbing an entire generation of children, putting the country dead last on the UNDP Human Development Index'.
[56] Se Young Jang, 'The Causes of the Sierra Leone Civil War: Underlying Grievances and the Role of the Revolutionary United Front', https://www.e-ir.info/2012/10/25/the-causes-of-the-sierra-leone-civil-war-underlying-grievances-and-the-role-of-the-revolutionary-united-front/

youth following decades of economic stagnation.[57] Beevers explains that for international actors the central problem that needed to be addressed was the ability of rebel groups or corrupt government officials to loot resources and prolong the conflict. This explanation leaves out the more complex roots of each conflict, which are also linked to natural resources. He claims that, in Liberia and Sierra Leone, conflict was enabled by resentment toward exploitative land relationships and the decision to make illegal the alluvial diamond mining that people relied on for their livelihoods.[58] Struggles between local communities, extractive companies, and security forces are also part of the story of these conflicts.[59]

The TC sought to contrast the mainstream account of the war in Sierra Leone, by showing the more complex interaction between mineral resources and armed violence.[60] Yet, while refusing the simplistic idea of a greed-driven conflict, the TC focused its attention on the state and its failure to regulate the diamond sector before, during, and after the war. In the words of Schabas, who served as a TC commissioner, 'the conflict was brought on by *internal contradictions*, not greedy outsiders'.[61] He maintained that its origins were to be traced to domestic factors, namely widespread corruption, bad governance and the legacies of colonialism.[62]

The TC went back in time and surveyed the operation of the diamond industry in the colonial period until the first years of the conflict.[63] What emerges from this historical excursus is that,

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[57] See e.g. M. Boas, 'Marginalised Youth' in M. Boas, M. and K. Dunn, *African Guerillas: Raging Against the Machine* (2007); A.B Zack-Williams, 'Sierra Leone: The Political Economy of Civil War, 1991-98', 20(1) *Third World Quarterly* (1999) 143, arguing that the series of structural adjustment programmes deployed by successive governments in the 1980s and 1990s to receive loans from the IMF had a destructive effect upon vulnerable groups and reduced the employment prospects of the Sierra Leonean people.
[58] M. Beevers, *Peacebuilding and Natural Resource Governance after Armed Conflict: Sierra Leone and Liberia* (2019), especially Chapter 4 (Liberia) and Chapter 6 (Sierra Leone).
[59] M. Beevers, 'Governing Natural Resources for Peace: Lessons from Liberia and Sierra Leone', 21 *Global Governance* (2015) 227, at 230.
[60] Report of the Sierra Leonean Truth and Reconciliation Commission, Volume Three B, Chapter One, 'Mineral Resources, their Use and their Impact on the Conflict and the Country' (2004), paras. 7 and 8 [Report Sierra Leonean Commission].
[61] W. Schabas, 'Conjoined Twins of Transitional Justice? The Sierra Leone Truth and Reconciliation Commission and the Special Court', 2 *J. Int'l Crim. Just.* (2004) 1082, at 1086 [emphasis added].
[62] Ibid. at 1085.
[63] Report Sierra Leonean Commission, supra note 60 para. 11.

since diamonds became a major source of export in the 1950s, the profits from the trade went into the hands of a privileged minority.[64] This aspect created 'huge disparities in the socio-economic conditions. While the elite and their business associates in the diamond industry have lived in grandeur, the poor have invariably been left to rue the misappropriation of the collective wealth'.[65] The elites the TC refers to, however, are those in Sierra Leone and neighbouring African countries.

The 'international' is not totally absent from the story told by the TC. With the boom in diamond exports, illegal mining and smuggling started as well.[66] The Commission revealed the existence and persistence of transnational networks established by rebel groups, high-ranking government officials, and their business partners to manage the illicit trade and launder 'blood diamonds'.[67] While recognising the involvement of external actors and processes in the plunder of Sierra Leone's wealth,[68] the blame ultimately is put on the local government and its weak governance system. According to the TC, 'the lack of total state control over the diamond industry and other mineral resources had major repercussions for the conduct of the war in Sierra Leone'.[69] The state's inability to govern its territory allowed both the RUF and Charles Taylor, when he became Liberia's President, to 'benefit[ed] enormously from the diamonds that passed through Liberia'.[70]

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[64] Ibid., paras. 58-63.
[65] Ibid., para 4.
[66] Ibid., paras. 21-23. Interestingly, the TC mentions that, as a result of illicit mining, the Sierra Leone Selection Trust (the company created by the colonial power, which was granted exclusive mining rights throughout the country) started to employ private security forces to police the mines. The TC acknowledges that '[t]his was the first instance of the hiring of mercenaries in Sierra Leone, but many others would follow, especially during the conflict'.
[67] Ibid., para. 50.
[68] The Commission recognises that '[i]nadequate monitoring of the origin of diamonds is one of the major problems in the industry. The Belgian Diamond High Council (HRD), on whose trading floors a large proportion of the international diamond trade takes place, records the origin of diamonds as the country from which they were last exported. Such recording tells nothing about where the diamonds were actually mined. For instance, a diamond can be smuggled from Sierra Leone into Liberia, then shipped to London, and be recorded as being of British origin, even if Britain does not produce diamonds'. Ibid., para. 40.
[69] Ibid., para. 72.
[70] Ibid., para. 52.

TC recommendations on mineral resources are informed the resource curse's emphasis on 'the local'. The Commission held that high-value natural resources 'can fuel internal strife', but the risk is reduced when people are aware of what the state earns from the business and how the profits are spent.[71] This led to the recommendation for the Sierra Leonean government to regularly publish reports detailing how the proceeds from diamond exports are spent and how revenues are redistributed.[72] I shall return later to the TC's focus on transparency and 'good governance'. It is important to note that, under the title of 'Community Empowerment', few recommendations were aimed at redistributing wealth from diamond exports for the benefit of communities in mining areas. The TC recommended that a higher percentage of export tax on diamonds be made available to communities through the Community Development Programme.[73] While the primary significance of the tax would be symbolic, it tells a more accurate story of the conflict's causes and remains the only (timid) effort to redress inequality as a factor leading to violent conflict.

The Liberian TC opened up the Chapter on 'Economic Crimes' reaffirming the link between resource wealth and underdevelopment (i.e. the paradox of plenty). In the Commission's words, 'despite its abundant natural resources, including tropical timber, rubber trees and minerals, Liberia has remained one of the poorest countries in the world'.[74] It then maintained that, 'economic actors and economic activities played a crucial role in contributing to, and benefiting from, armed conflict in Liberia'.[75] But who are those actors and activities? The TC's focus is on how 'economic crimes' and revenues from illegal logging and mining were used by the Liberian political elites for personal interests and to finance the conflict.[76] Relying on evidence produced by the Forest Concession Review Committee, the TC held that the Taylor's government permitted timber companies to engage in illegal logging in exchange for loyalty, money and military

[71] Report of the Sierra Leone Truth and Reconciliation Commission, Vol. Two, Chapter Three, Recommendations [Report Sierra Leonean Commission, Recommendations], paras. 439.
[72] Ibid., para. 440.
[73] Ibid., paras. 470-473.
[74] Republic of Liberia Truth and Reconciliation Commission, Vol. 3 Appendices, Title III, 'Economic Crimes and the Conflict: Exploitation and Abuse', 2009, para. 2 [Report Liberian Commission].
[75] Ibid. para. 3.
[76] Ibid. para. 81.

support.[77] In return for privileged treatment, logging companies (for instance, the notorious Oriental Timber Company) facilitated the shipment to Liberia of weapons to be used in the ongoing armed conflict in violation of UNSC sanctions.[78]

The findings above resulted in two orders of recommendations. First, the Liberian government was called to reform its legal architecture and 'establish laws that will strengthen good governance' over natural resources.[79] I shall return to these recommendations in Section 3.3. Second, the TC recommended the prosecution and vetting of perpetrators of 'economic crimes', which I discuss in the next section.

In sum, while the Sierra Leonean TC sought to complement (but did not reject) the predominant greed-focused narrative of the conflict by drawing attention to the institutional dimension of resource extraction in Sierra Leone, according to the Liberian TC access to high-valued natural resources was the main driving force behind the prolongation of the armed conflict. Yet, even when the Sierra Leonean TC turned to the colonial past and discussed the role of transnational networks in helping smuggle diamonds out of the country, the blame is on African corrupt elites and the 'weak state'.[80] Likewise, although recognising that foreign corporations benefited from the absence of rule of law associated with the conflict in Liberia, the Liberian TC pointed the finger primarily at the Taylor' regime and its 'massive patronage system', as responsible for the complete lack of control and disorder that enabled the perpetration of 'economic crimes'. In both cases, the dysfunction is understood to be local, so it needs to be corrected locally at the state level.

[77] Ibid., para. 26. The TC found that from 1979 to 2003 no timber company had the legal right to log in Liberia.
[78] Ibid., para. 19 and 74.
[79] Ibid. paras. 140 and 168.
[80] Report Sierra Leonean Commission, supra note 60 para. 208, maintaining that: '[s]uccessive post-colonial governments in Sierra Leone have mismanaged the diamond industry and placed its effective control in the hands of non-Sierra Leoneans in a way that has not benefited the majority of the people. The state never had effective control of the diamond industry prior to or during the conflict period'.

3.2 Marginalising structural and slow violence

As discussed in previous sections, the linkage between the 'paradox of plenty' and violence is addressed by resource curse theorists and their supporters primarily through reference to the conduct of authoritarian/corrupt regimes or 'greedy' military groups involved in the illegal exploitation of natural resources (and, occasionally, their unscrupulous business partners). This has ramifications on how the human suffering associated with resource-driven wars has been framed and addressed by international and civil society organizations. Unlawful killing, torture, rape, displacement and forced labor in extraction areas controlled by military groups and security forces are considered the main manifestations of violence.[81] In the same way, the most accepted definition of 'conflict resources' puts an emphasis on 'serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law'.[82]

The relevance of the human rights discourse appears thus limited to highly-visible atrocities perpetrated by local actors – the weak state or ruthless rebel groups – against the 'bodies' of victims. One way to explain this narrow focus, both in terms of responsible subjects and conducts, it to refer to the liberal conceptualisation of human rights, which has dominated (and to some extent still dominates) the international legal and political agenda.[83] Critical scholars have pointed out how the emphasis of rights-based approaches on the State (as the duty bearer) fails to account for the interconnected character of the political and economic order, the power of non-state actors, and the different capacity of States to give effect to human rights – especially socio-economic

[81] See e.g. Global Witness, *The Truth about Diamonds* (2006), https://www.globalwitness.org/en/archive/truth-about-diamonds/.
[82] See e.g. UNEP, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (2009), at 7. As noted above, this is the definition put forward by Global Witness.
[83] See e.g. M. Mutua, 'The Transformation of Africa: A Critique of Rights in Transitional Justice' in R. Buchanan and P. Zumbansen (eds.), *Law in Transition* (2014) 91; R Kapur, 'Human Rights in the 21st Century: Take a Walk on the Dark Side' 28 *Sydney Law Review* (2006) 665; D. Kennedy, T*he Dark Sides of Virtue: Reassessing International Humanitarianism* (2004); B.S. Chimni, 'International Institutions Today: An Imperial Global State in the Making', 15 *EJIL* (2004) 1, at 11; M. Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights', 42 *Harvard International Law Journal* (2001) 201.

rights.[84] Further, putting the liberal individual at the center of right discourses may come at the expenses of collective demands for more radical changes over the way wealth is managed and distributed at the domestic and global level.[85]

As observed before, unequal access to natural resources and to the revenues linked to their exploitation leads to poverty and socio-economic injustices, which were at the root of armed conflict in Sierra Leone and Liberia. These injustices can be better understood as concerning the 'unequal relationship between collective entities or social groups', rather than between individuals.[86] Johan Galtung's concept of 'structural violence' is to be recalled here as the scholar was concerned with foregrounding the structures that can give rise to acts of personal/individual violence and constitute forms of violence in and of themselves. Galtung directed attention to the distinction between the violence produced by a known subject, terming it 'direct violence', and that which occurs at the structural level when no distinct subject perpetrator can be established, calling this 'structural violence':

> There may not be any person who directly harms another person in the structure. The violence is built into the structure and shows up as unequal power and consequently as unequal life chances. Resources are unevenly distributed, as when income distributions are heavily skewed, literacy/education unevenly distributed, medical services existent in some districts and for some groups only, and so on. Above all the power to decide over the distribution of resources is unevenly distributed.[87]

Another useful concept to understand what gets elided in mainstream accounts of the suffering associated with resource-driven wars is that of 'slow violence'. Following Rob Nixon, 'slow violence' means 'violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not

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[84] For an excellent overview of the different critiques levelled against the existing conceptualisation of human rights, see A. Chadwick, *Law and The Political Economy of Hunger* (2019), at 176-185.
[85] Ibid. See also A. Anghie, 'Whose Utopia? Human Rights, Development, and the Third World', 22 *Qui Parle* (2013) 63, at 75, observing how the effort of linking the Third World's vision of development to human rights failed, as the 'language of rights is constructed in a way that that is inadequate for purposes of bringing any claims of global redistribution […]'.
[86] A. Mukherjee-Reed, 'Rights and Development: A Social Power Perspective', in Buchanan and Zumbansen (eds.) supra note at 73.
[87] J. Galtung, 'Violence, Peace, and Peace Research', 6(3) *Journal of Peace Research* (1969), at 170-171. For a discussion on the limitations and potentials of Galtung's conceptualisation of structural violence, see Y. Winter, 'Violence and Visibility', 34(2) *New Political Science* (2012) 195.

viewed as violence at all'.[88] One can think of how aggressive patterns of resource extraction before and during conflicts result in land contamination, pollution, and environmental degradation, depriving local communities of livelihoods and other resources indispensable for survival.[89] Structural and slow violence do not feature in the TCs' discussion of the humanitarian impact of resource extraction associated with the conflict.

In Sierra Leone, the TC was primarily concerned with abuses committed by military/rebel groups involved in the conflict to get control over or exploit the country's natural resources. For instance, the Commission referred to two RUF attacks against mines owned by foreign companies in January 1995, during which the nearby communities suffered pillaging, burning of villages, forced displacement, and abduction of girls and children.[90] The TC also described the inhuman labour conditions in diamond mines where RUF forcibly recruited workers that did not receive any remuneration and were subjected to torture,[91] and children.[92] Only in a short passage the TC took a broader perspective on the impact of mining and found that

> [t]he use and destruction of the land renders it unsuitable for agriculture. Even if the pits were refilled, the top soil is removed in the process of digging and therefore lost. This has a huge economic impact as it contributes to food shortages by disrupting agricultural production.[93]

However, the slow violence associated with aggressive exploitation practices (food shortages, lack of employment opportunities) is not condemned under existing legal frameworks, rather it is acknowledged as part of the background. It is also absent from the prescriptions put forward by the Commission.

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[88] Nixon, supra note 43 at 2.
[89] The adverse environmental impact of logging was highlighted in the Report of the Panel of Experts Pursuant to Paragraph 25 of Security Council Resolution 1478 (2003) Concerning Liberia, UN Doc. S/2003/779, para. 14, maintaining that '[t]he overexploitation of Liberia's forests threaten[ed] (…) the lives, livelihoods and culture of Liberians who depend on the forest'. See also paras. 66-68.
[90] Report Sierra Leonean Commission, supra note 60, paras. 125-127.
[91] Ibid., paras. 189-192.
[92] Ibid., paras. 199-206.
[93] Ibid., para. 197.

TC recommendations in response to findings concerning human rights violations associated with resource exploitation focused on selected issues. One is child labour in mines, for which the TC recommended the ratification of the International Labour Organization Convention 138 on the Minimum Age of Employment; harsher penalties for those who employed children in mines; and the enactment of further regulations to prevent the employment of children in mining.[94] As for the protection of the rights of miners, the Commission held that labour laws need to be 'strictly enforced', in particular provisions establishing limits on working hours.[95] The TC also recommended that resources generated by exploitation activities, taxes imposed on local and foreign corporations, and assets illegally transferred abroad during the conflict (once recovered) should serve to fund victim reparation programmes, including in the areas of health and education.[96]

A different route was taken by the Liberian TC to address abuses resulting from conflict-related extractive activities. The TC relied on the notion of 'economic crimes' as denoting '[a]ny prohibited activity committed for the purpose of generating economic gains or that in fact generates economic gains'.[97] Such approach to the question of accountability resulted in the recommendation of more efforts by the government to fight impunity for 'economic crimes' through civil, criminal and administrative actions grounded in domestic and international law.[98] In addition to the prosecution of individuals that had committed criminal offences under Liberian law (e.g. bribery, money laundering), the TC recommended to introduce more severe penalties for violations of the law governing non-diamond mineral resources.[99] In case the Liberian government decided to prosecute international crimes, 'grave economic crimes' should be included in the mandate of an 'Extraordinary Criminal Court of Liberia', and perpetrators should

[94] Report Sierra Leonean Commission, Recommendations, supra note71 paras. 462-468.
[95] Ibid. para. 469.
[96] Ibid., para. 506.
[97] Report Liberian Commission, supra note 74 para. 8.
[98] Ibid., para. 140.
[99] Ibid., paras. 142-157.

be charged with the war crime of pillage.[100] Further, the Commission recommended the creation of a reparation fund to compensate victims of 'economic crimes' to be financed through confiscation of illicit profits and repatriation of Liberian assets located abroad.[101]

The 'economic crime' perspective and the support for the creation of an ad hoc international criminal tribunal can be explained, *inter alia*, by the recent turn to criminal law in human rights discourses.[102] In the past couple of decades, complex questions of armed violence, identity politics and wealth distribution have been redefined in the 'expert vocabulary of international criminal law'.[103] Yet, using criminal law to respond to embedded social injustices and collective responsibilities, such as those of transnational extractive companies and processes, has several limitations. While the TC recognised that economic dynamics of exploitation are related to patterns of abuses, it is telling that most (if not all) cases discussed concern physical atrocities perpetrated by security forces hired by logging companies to patrol their concessions or by military groups.[104] The TC collected testimonies on human rights violations committed by these local actors against workers and communities living near timber concessions and mining areas, notably the forcible recruitment of child soldiers and killing of civilians.[105] The localization of pathology, discussed above, distracts from the 'culpability of those who benefitted from the system, even though they may not have the dirty hands in the more proximate sense'.[106] Framing the responsibility of economic actors in criminal terms raises also questions on the remedies to redress and prevent further harms, beyond the punishment of perpetrators. The latter being an individualized response, it leaves structural violence (e.g. issues of access to natural resource wealth) outside of the radar.

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[100] Ibid., para. 164.
[101] Ibid., para. 158.
[102] For a critique of the use of criminal law to address human rights issues and of the progress narrative associated with the turn to criminal law, see e.g. K. Engle, 'Anti-Impunity and the Turn to Criminal Law in Human Rights', 100 *Cornell Law Review* (2015) 1069; V. Nesiah, 'Doing History with Impunity', in K. Engle, Z. Miller, and D. Davis (eds.) *Anti-Impunity and the Human Rights Agenda* (2016).
[103] S. Nouwen and W.G. Werner, 'Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity', 13(1) *Journal of International Criminal Justice* (2015) 157, at 161.
[104] Report Liberian Commission, supra note 74 para. 50.
[105] Ibid., para. 53. See also paras. 105-111.
[106] Nesiah, supra note18 at 795.

The stories narrated by these institutions remain centred around episodes of extraordinary violence and individual responsibility.[107] When structural and slow violence enter the picture, it is largely in the background. In other words, structural and slow violence remain the 'context' for the 'real' violence, on which the accountability institutions under study focus their attention and remedies.[108] Justice, in this context, is defined in retrospective terms, as reparation for past abuses or punishment of individual perpetrators. Given the little attention paid to the beneficiaries of resource extraction, distributive questions and demands for social justice are pushed at the margins.[109].

3.3 Reforming the post-conflict state: internationally sponsored resource governance interventions

One proposition of the resource curse theory is that armed conflicts break out because of the local government's failure to exercise effective control over its natural resources due to widespread corruption, patronage systems, and absence of the rule of law.[110] The 'weakness' of the state facilitates also the unregulated exploitation of natural resources by rebel groups to sustain their armed struggle and associated human rights abuses.[111] These assumptions provide the ground for

[107] H. Charlesworth has compellingly argued that, by focusing on crises, the discipline of international law fails to meaningfully engage with 'longer-term trends and structural problems'. The fundamental implication is that '[t]hrough regarding 'crises' as its bread and butter and the engine of progressive development of international law, international law becomes simply a source of justification for the status quo'. See H. Charlesworth, 'International Law: A Discipline of Crises', 65 *The Modern Law Review* (2002) 377.

[108] See S. Nouwen, 'As You Set Out for Ithaka: Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict', 27 *Leiden Journal of International Law* (2014) 227, at 254 et passim, levelling this critique against international criminal trials. See also Nagy, supra note 18 at 223.

[109] For arguments in support of placing the beneficiaries at the centre of international legal practices, see S. Marks, 'Exploitation as an International Legal Concept', in S. Marks (ed.), *International Law on the Left* (2008) referring to the 'beneficiary thesis' developed by Mahmood Mamdani in his work on the South African Truth and Reconciliation Commission.

[110] See e.g. A. Vines, 'Dousing the Flames of Resource Wars', 13 *South African Journal of International Affairs* (2006) 85.

[111] See e.g. Whittemore supra note emphasising the role of the international community and its institutions in promoting effective resource governance in post-conflict countries. See the other references canvassed in Section 2.

international interventions in the form of commodity sanctions, peacekeeping missions, and legal reforms in the post-conflict country to restore the state's control over resource rich areas and promote 'good governance'.[112] A correlation between transparent/accountable/participatory resource management, on the one side, and peacebuilding, on the other, is thus established as the way forward.[113]

The Sierra Leonean and Liberian TCs dealt with the link between a corrupt and/or poorly managed natural resource sector and conflict. The Liberian TC maintained that successive governments were 'either unwilling or unable' to govern natural resources; therefore, armed groups could exercise effective control over extraction areas and corporate actors could generate profits in 'an *unregulated* environment'.[114] Likewise, the Sierra Leonean TC held that governments never succeeded in establishing complete control over the diamond industry because of widespread corruption and collusion between business actors and local politicians.[115] Whereas efforts were made to improve the regulatory system, notably following Sierra Leone's accession to the Kimberley Process, diamond smuggling continued to be significant because of flaws in the governance frameworks and ineffective law enforcement.[116]

The solution to the problem is thus more transparency and better resource governance. In Liberia, the TC recommended that the government 'must continue to *reform* its legal architecture', and '*revisit all policies* of the past relating to the environment, natural resources, and the equitable

[112] For a critique of the concept of 'good governance', although broader and not specific to post-conflict contexts, see A. Anghie*, Imperialism, Sovereignty, and the Making of International Law* (2005), especially Chapter 5. Anghie argues that the concept of 'good governance', while formulated as an abstract and universal ideal, 'provides the moral and intellectual foundation for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors, to manage, specifically, the Third World state and Third World peoples'. Ibid, at 249.

[113] See Statement by the President of the Security Council, supra note 37: '[t]he Security Council emphasizes that, in countries emerging from conflict, lawful, transparent and sustainable management, -at local, national and international level-, and exploitation of natural resources is a critical factor in maintaining stability and in preventing a relapse into conflict. The Council recalls in this respect that it has welcomed country specific initiatives such as the Governance and Economic Assistance Management Program (GEMAP) in Liberia (S/RES/1626 (2005)) and related efforts such as the Liberia Forest Initiative.'

[114] Report Liberian Commission, supra note 74, para. 135.

[115] Report Sierra Leonean Commission, supra note 60, para. 156 (emphasis added).

[116] Ibid., paras. 174-187.

and sustainable use and management of these resources including land'.[117] Some general principles were formulated to guide the government in such reforms, notably the need that resource exploitation be linked to national development programmes; that the Liberian people be involved in the decision-making process; that any damage to the environment caused by extraction activities be mitigated; and that institutions act in a transparent way.[118] The Sierra Leonean TC also expressed the need for legal reforms of the mining sector. Among the recommendations qualified as 'imperative', it is worth citing the regular publication of a report on governmental expenditures of diamond revenues and the establishment of a fair and transparent system of mineral exploitation licenses.[119] Other recommendations addressed diamond smuggling, for instance by enhancing border controls and eliminating intermediary dealers between miners and authorised exporters.[120] Fairly enough, the TC also suggested reforming the Kimberley Process through the establishment of an external monitoring system.[121] Lastly, to address corruption in the diamond sector, the Commission 'imperatively' recommended conducting an investigation of the actual beneficiaries of licenses held by relatives of public officials, as well as the publication of all mining license holders.[122]

Except for the Liberian TC's reference to more equitable resource governance and environmental mitigation, in both cases recommendations focused on reinforcing the state's control over extraction areas and borders, increasing transparency in the management of natural resources, and addressing corruption of the local governmental apparatus. These measures seek to correct what are perceived as the major shortcomings of war-torn countries and are in line with parallel initiatives by the UNSC and other global governance bodies.[123] While well-intended,

[117] Report Liberian Commission, Consolidated Final Report, Section 20.7, at 403-404 (emphasis added).
[118] Ibid.
[119] Report Sierra Leonean Commission, Recommendations, supra note 71, paras. 439-442.
[120] Ibid., paras. 443-450.
[121] Ibid., paras. 451-458.
[122] Ibid., paras. 459-461.
[123] The Sierra Leonean and Liberia TCs' focus on these measures cannot be understood without reference to the complementary practice of the UN Security Council. The Security Council has stressed several times 'the important role, in the context of Security Sector Reform in post-conflict environment, of transparent and effective national security and customs structures for the *effective control and management of natural resources* by preventing the illegal access to and the trade and exploitation of those resources. The Security

however, they fail to go at the root of the problem. To being with, as scholars have observed in other contexts, they put an emphasis on the post-conflict state as the 'primary agent of change'[124] and on technical/legal reforms at the national level.[125] By doing so, they leave outside the picture the systemic changes that are needed to ensure that extraction of natural resources does not contribute to further violent conflict and abuses. One can see the limitations of this approach with regard to corruption. The idea that corruption can be localised in Sierra Leone and Liberia and that it can be fought by changing the legal landscape in these countries is reinforced by the practice of the two TCs. Yet, as commentators have pointed out, focusing on the moment of the encounter between the public official and the private actor is insufficient and can actually distract from more effective strategies.[126]

The TCs' support for good governance, accountability, and transparency is better understood as part of the liberal peace project, which has dominated the international agenda since the end of the Cold War.[127] In our case, it is assumed that a liberal democratic government, which effectively controls and manages the natural resource sector in a way that supports economic development, will ensure peace and security. Law reforms are thus to be undertaken in order to create a climate of stability conducive of domestic and foreign private investment in extractive activities. International rules and practices, such as the EITI, Kimberley Process and UNSC resolutions, are the standards against which the post-conflict state's capacity to manage its natural resources is

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Council [has] emphasize[d]s that, in countries emerging from conflict, lawful, transparent and sustainable management - at local, national and international level - and exploitation of natural resources is a critical factor in maintaining stability and in preventing a relapse into conflict'. See e.g. Statement by the President of the Security Council (2007), supra note 37, at 2-3 (emphasis added).

[124] S. Marks, 'Human Rights and Root Causes', 74 *The Modern Law Review* (2011) 57, at 71.

[125] See e.g. N. Tzouvala, A False Promise: Regulating Land Grabbing and the Post-Colonial State, 32 *Leiden Journal of International Law* (2019) 235.

[126] L. Kulamadayil, 'When International Law Distracts: Reconsidering Anti-Corruption Law', 7(3) *ESIL Reflection* (2018), arguing that international anti-corruption instruments focus on the moment that a public official unlawfully accepts economic advantages from a private citizen in exchange for favours. This encounter is governed primarily by the domestic laws of the country where corruption occurs. In practice, however, most fiscal transactions associated with corruption take place in the jurisdiction of countries from the Global North. Kulamandayil refers to the work of J.C. Sharman, who points out that 'dirty' money passes through clean channels and is mostly spent on goods and services sold in the jurisdictions of powerful states that actively support international anti-corruption efforts. See J.C. Sharman, *The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption* (2017).

[127] See references canvassed supra note.

assessed. The political and economic values underpinning the liberal peace agenda, such as the promotion of free market and foreign investments and the protection of property rights are thus indirectly championed by the two TCs.[128] It remains debated, however, whether the speed resumption of natural resource extraction both in Liberia and Sierra Leone has reinforced or undermined the peace process.[129]

Perhaps even more problematic is that, by focusing on stabilising the country and spurring economic growth, both perceived as prerequisite of post-conflict transition, the measures sponsored by the two TCs have failed to address factors understood to have led to the conflict, including resentment over resource ownership and benefit sharing. Admittedly, TCs recommendations did not seek to correct inequalities and tensions created by the past governance of natural resources and only marginally challenged the transfer of wealth and decision-making power from local communities. In other words, they dealt only the symptoms (lack of security and corruption) rather than the structural dimensions of resource exploitation and its relationship with armed conflict.[130] As argued by the critique of liberal peacebuilding, the dangers inherent in such approaches is that promoting economic development without dealing with past grievances over resource distribution and structural violence may lead to the revival of old grievances or create new ones.[131]

[128] See H. Franzki and M.C. Olarte, 'Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective' in Susanne Buckley-Zistel et al (eds.) *Transitional Justice Theories* (2014) 201, at 214-216, discussing the complex relationship between the liberal peace project and post-conflict justice. They argue that political and economic liberalisation, which are the pillars of contemporary peacebuilding practices, do not constitute separate agendas but are linked to transitional justice initiatives through the concept of the 'rule of law'. The promotion of the rule of law in the context of the liberal peacebuilding and transitional justice contributes to legitimise the neoliberal restructuring of states emerging from conflict. As such, although transitional justice presents itself as a neutral/apolitical project, it favours certain political/economic assumptions (liberal democratic values and free markets) and marginalises others.
[129] Beevers, Governing Natural Resources, supra note 14, at 235-237.
[130] Beevers, Peace Resources, supra note 14, at 37.
[131] R. Paris, *At War's End: Building Peace After Conflict* (2004), at 112-134.

4. Conclusion: re-establishing the status quo

Se vogliamo che tutto rimanga come è, bisogna che tutto cambi.[132]

This article has questioned the existing, dominant discourse surrounding resource extraction in conflict and post-conflict settings and how such discourse has shaped the development and circulation of legal practices, including the work of TCs. While the resource curse theory is never explicitly invoked as the basis for international normative and institutional interventions in this area, its core propositions have been endorsed by UN bodies and NGOs and entered academic debates. Using the armed conflict in Sierra Leone and Liberia as a case study, I have called attention to the problems inherent in the hidden propositions within the resource curse thesis and its simplified understanding of resource-driven wars as started by voracious rebel groups or caused by corrupt/failed/weak states. Framing resource-related conflict in these terms has three impacts on the development of international norms. 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 and distribution of 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 are reinforced through legal arrangements, with the risk of recreating the same dynamics of dispossession that paved the way for conflict.

The paradox at the hearth of Tomasi di Lampedusa's *The Leopard* is thus perhaps a paradox at the hearth of the field. If questions of redistribution are central to these conflicts, can 'justice' be achieved when these concerns are discounted? Or to put it in other words '[t]o what extent does a process that ignores the aspirations of the vast majority of victims risk turning

[132] G. Tomasi di Lampedusa, *Il Gattopardo*, tr. 'if we want everything to remain as it is, everything must change'.

disappointment into frustration and outrage'?[133] In Sierra Leone, international efforts to revive industrial mining (albeit under the reformed legal framework) have helped re-create previous arrangements and tensions between communities and mining corporations. Despite the rhetoric of inclusion, the ability of people on the ground to be involved in decision-making remains insignificant. Promises by extractive industry are not kept, land is seized, the environment is degraded, and police continue to use disproportionate force in mining disputes.[134] Illuminating the influence of the resource curse thesis on the work of the two TCs helps understand why 'post-conflict' countries seem trapped in a spiral of violence and how legal practices may (more or less inadvertently) support interventions in the political economy of the Global South, which re-establish previous patterns of exploitation.

Ultimately, this article is a reminder of the risks of accepting a certain vision of the world as a given and using it to develop policies and normative solutions without questioning the structures and values upon which that vision is premised. It is an attempt 'to defamiliarize these ways of imagining the world and is a first step in addressing the argument that understanding the world in that way is somehow normal'.[135] The hope is that, once exposed, these structures and values can be contested and the law be engaged to counter the 'injustices of everyday life'.[136]

[133] M. Mamdani 'Reconciliation without Justice' in V. De Vries and S. Weber (eds.) *Religion and Media* (2001), at 385, as cited by Marks, supra note 109, at 281.
[134] Beevers, Governing Natural Resources, supra note 14, at 237.
[135] Orford, supra note 19, at 705.
[136] Charlesworth, supra note 107, at 392.