

African Resources and *Might Makes Right*

Leif Wenar

In today's international order, coercive control over a country vests a legal right to sell off that country's natural resources. The international rule for resource sales is 'effectiveness,' or more simply, *might makes right*.

This international rule generates systematic incentives toward authoritarianism and coups in resource-rich states, especially in Africa. The right to sell a country's resources can be extremely valuable. Authoritarians who gain the resource right use the money from resource sales to free themselves from public accountability through coercion and clientelism. Coup plotters will look for ways to grab power and become authoritarians in their turn. When repression will be rewarded with great wealth, the repressive will rise toward the top.

In today's international system militias also sell off the resources they capture (e.g., 'blood diamonds'), and those resources flow through international markets to become legally owned by consumers. Consumers' dollars flow back to them. This effectiveness-based system incites civil conflict: when rebellion is rewarded with large revenues, one expects more and more violent rebels.

Effectiveness sets a test that resource-rich countries can always pass. There will always be someone in the capital of an exporting country who has the most coercive power. Effectiveness makes it legal to buy resources from him. If the capital does not control the countryside, there will still always be some group in the countryside that controls the mines and forests. Effectiveness drains the countryside's resources out through them. However good or bad shape a resource-rich country is in—even if it is groaning under dictatorship or torn by civil war—effectiveness always allows its resources to flow onto world markets, where one's nationals can buy those resources under color of law.

The practice that pairs violence with entitlements makes a nonsense of the people's ownership of the nation's resources. Might violates property rights: it should not vest them. This part of the international system is a holdover from the imperial era of international relations when effectiveness was the primary norm in international law. Much of this Westphalian system has been reformed: international law no longer accepts a coercive regime conquering territory, or enforcing colonial rule, or imposing apartheid, or violating what we now call human rights.

Yet effectiveness for natural resources remains unreformed, hidden in liminal spaces in the international system. The persistence of this norm has real consequences, as shown in the cases of Equatorial Guinea, Sierra Leone, Sudan and more. Citizens of these resource-exporting countries have become the victims of those using their national wealth against them. So long as the international order remains unreformed the future will lengthen this long history of political disruption and resource theft. As Nkrumah wrote, 'Colonialism is crude, essentially overt, and apt to be overcome by a purposeful concert of national effort,' yet 'any oblique attempt of a foreign power to thwart, balk, corrupt and otherwise pervert the

true independence of a sovereign people is neo-colonialist. It is neo-colonialist because it seeks, notwithstanding the acknowledged sovereignty of a people, to subordinate their interests to those of a foreign power.’¹

The Armpit of Africa

In 1995 Exxon found oil off the coast of Equatorial Guinea, a small country on the bending coast of central Africa. This discovery, at a time when Western powers were searching for safe sources of oil outside of the Middle East, drew Equatorial Guinea to the attention of global markets. Within ten years Equatorial Guinea had become the third-largest energy exporter in sub-Saharan Africa, selling more oil per capita than Saudi Arabia.² For years Equatorial Guinea’s oil has been tankered from offshore platforms to the US, Canada and western Europe through the placid waters of the Atlantic—though much of it now goes to Asia and to China in particular.

Because of the huge influx of petroleum revenues Equatorial Guinea’s average income grew faster than any other country’s in this century’s first decade, surpassing the average income of Britain, Germany and Japan in 2008.³ Yet this average income is deceptive—almost all of the money from oil exports (valued at \$16 billion per year in 2012) goes to the top.⁴ As the World Bank reports:⁵

The oil boom has not yet been translated into positive human development outcomes, which remain poor... Despite abundant oil revenues, the standard of living of the majority of the population has not been significantly affected and poverty is widespread. Indications are that about three out of four people live with less than two dollars per day; about half the population does not have access to drinking water or sewage facilities.

Equatorial Guinea has been dominated since 1979 by the strongman Teodoro Obiang. Obiang is the kind of ruler who has not shied from having himself proclaimed ‘the country’s God’ on state-controlled radio, or from having his guards urinate on political prisoners, slice their ears,

¹ Nkrumah, *Consciencism*, p. 102.

² Energy Information Administration, *International Energy Statistics*, 2004. www.eia.gov/cfapps/ipdbproject/iedindex3.cfm?tid=5&pid=57&aid=4&cid=r6,&syid=2004&eyid=2004&unit=TBD

³ U.S. State Department, ‘Background Note: Equatorial Guinea,’ Jan 1, 2012 (www.state.gov/r/pa/ei/bgn/7221.htm); *Economist*, ‘Hares and Tortoises,’ June 13, 2011; CIA, *World Factbook 2008*, ‘Rank Order – GDP – per capita (PPP).’

⁴ World Bank, ‘Equatorial Guinea Overview: Context,’ Feb. 2013, www.worldbank.org/en/country/equatorialguinea/overview estimates the value of hydrocarbon exports at \$15-17 billion in 2012. The government shares export revenues (according to formulae in secret contracts) with the international oil companies that produce the hydrocarbons.

⁵ World Bank, ‘Equatorial Guinea Overview: Results’ Feb. 2013, <http://www.worldbank.org/en/country/equatorialguinea/overview>.

and smear their bodies with grease to attract stinging ants.⁶ The most recent US State Department human rights report details: ‘unlawful killings, including summary executions; abductions by security forces; torture of detainees and prisoners by security forces; life-threatening conditions in prisons and detention facilities; official impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; constraints on judicial independence; official corruption at all levels of government; restrictions on the right to privacy; restrictions on freedoms of speech, press, assembly, association, and movement; official corruption and impunity; violence and discrimination against women; suspected trafficking in persons; discrimination against ethnic minorities; and restrictions on labor rights.’⁷

A Freedom House report gives a fuller idea of what life has been like in Equatorial Guinea:⁸

Equatorial Guinea is not an electoral democracy and has never held credible elections. The 2009 presidential election reportedly featured intimidation and harassment of the opposition by security forces and restrictions on foreign observers, among other irregularities... The 100 members of the unicameral House of People’s Representatives are elected to five-year terms but wield little power; all but one of the chamber’s seats are held by the pro-presidential coalition...

Although the constitution guarantees press freedom, the 1992 press law authorizes government censorship. A few private newspapers and underground pamphlets are published irregularly, but they face financial and political pressure. Libel remains a criminal offense, and all journalists are required to register with the government. The state holds a monopoly on broadcast media, with the exception of RTV-Asonga, a private radio and television outlet owned by the president’s son...

Freedoms of assembly and association are severely restricted, and political gatherings must have official authorization to proceed. The few international nongovernmental organizations in the country promote social and economic improvements rather than political and civil rights... The judiciary is not independent, and security forces generally act with impunity. Civil cases rarely go to trial, and military tribunals handle national security cases. Prison conditions are deplorable. Equatorial Guinea has been criticized internationally for holding detainees in secret, denying them access to lawyers, and jailing them for long periods without charge.

The British Foreign Office estimates that up to one third of Equatoguineans are living in exile because of ‘fierce political repression’ over two decades.⁹ The U.N. Special Rapporteur on torture said after a visit to the country, ‘They don’t even hide the torture instruments... I’m

⁶ ‘Equatorial Guinea’s ‘God’,’ BBC News, 26 July 2003; U.S. State Department, ‘Equatorial Guinea Country Report on Human Rights Practices (1998).’

⁷ U.S. State Department, *2010 Country Reports on Human Rights Practices: Equatorial Guinea*, p. 1.

⁸ Freedom House, *Freedom in the World 2011*, Equatorial Guinea. [update]

⁹ UK Foreign and Commonwealth Office, ‘Country Profile: Equatorial Guinea’ (2009).

convinced it is a governmental policy.’¹⁰ Former US Ambassador John Bennett called Equatorial Guinea, ‘the world’s finest example of a country privatized by a kleptomaniac without a scintilla of social consciousness.’¹¹

In 2006, *Forbes* judged Obiang to be richer than Queen Elizabeth II, with an estimated personal wealth of \$600 million.¹² (This was after Obiang had spent 55 million of his petrodollars adding a sixth private jet to his fleet—a Boeing 737 with gold-plated bathroom fixtures.¹³) Transparency International’s latest Corruptions Perceptions Index ranks the country as 172nd out of the 182 countries surveyed.¹⁴ The last available estimates from the WHO and World Bank showed the country’s spending on health and education at 1.6 and 0.6 % of GDP, respectively—two of the lowest rates in the world.¹⁵ According to recent figures, life expectancy in Equatorial Guinea lagged the world average by 18 years.¹⁶ A study in *The Lancet* found that neonatal, post-neonatal and childhood death rates all increased between 1990 and 2010—that is, since the oil revenues began to accrue.¹⁷ Obiang does not need to worry

¹⁰ *New York Times*, ‘U.S Engaged with an Iron Leader in Equatorial Guinea,’ May 30 2011; see the report of the UN Human Rights Council, ‘Mission to Equatorial Guinea’ 18 February 2008.

¹¹ Peter Maas, *Crude World* (New York: Penguin, 2009), p. 30.

¹² ‘The Fortunes of Kings, Queens, and Dictators,’ *Forbes*, May 5, 2006. Even at the time the \$600 million figure may have been an understatement: a 2004 Senate investigation found that Obiang personally controlled up to \$700 million in one bank, as well as owning two mansions in the Washington DC area.

¹³ Adam Roberts, *The Wonga Coup* (London: Profile Books, 2006), p. 51.

¹⁴ Transparency International, *Corruption Perceptions Index 2011*. api.transparency.org/cpi2011/results/. [update] In a 2009 interview, Obiang said, ‘I ask myself, where is this corruption, how is it found, where is it discovered? I don’t have any knowledge of that. There is none whatsoever.’ Associated Press, ‘Eq. Guinea Vote to Reinstall Leader Denying Graft,’ Nov. 29, 2009.

¹⁵ World Health Organization, ‘Equatorial Guinea: National Expenditure on Health’ (2007); World Bank, ‘Education at a Glance: Equatorial Guinea’ (2007).

¹⁶ Equatorial Guinea life expectancy figure from Word Bank, ‘World Development Indicators,’ April 2009; world average life expectancy from CIA Factbook 2009. [update]

¹⁷ Julie Knoll Rajaratnam et. al., ‘Neonatal, Postneonatal, Childhood, and Under-5 Mortality for 187 Countries, 1970-2010,’ *The Lancet* 375.9730 (2010): 1988 – 2008, Table 2. China’s *Global Observer* reports: ‘The infant mortality rate was 124 per 1000 in 2007, much higher than the figure of 103 per 1000 in 1990. Similarly, the under-five mortality rate increased from 170 per 1000 in 1990 to 206 in 2007. The increase in these mortality rates may be due – at least in part – to reduced coverage of immunization of children against measles, a leading cause of death among children. The immunization rate for measles dropped from 88% in 1990 to 51% in 2007. The maternal mortality rate was 680 per 100 000 in 2007, one of the highest in the world. The incidence of tuberculosis has increased from 108 per 100 000 to 256. Also, the incidence of HIV/AIDS has increased from 1% in 1990 to 3.4% in 2007. The proportion of the population with access to improved sanitation has stagnated at 51% since 1990 and the proportion with access to improved water sources has also stagnated at 43%. Indicators suggest that some education elements also appear to have deteriorated or stagnated over the years. Notably, total primary school enrolment dropped from 91% in 2000

about the health or education of the people, as he gets all the money he needs to sustain his rule from allowing companies such as Exxon and Hess to set up oil platforms offshore.

Obiang's tempestuous playboy son and likely heir (who formerly earned \$6,799 a month as agriculture minister yet spent over \$30 million each on a mansion in Malibu and a private jet) is by all accounts at least as determined as his father to control the country's oil revenues for his personal use.¹⁸ Equatorial Guinea is a nation, as a local economist put it, where, 'An opulent minority sails in a sea of misery.'¹⁹ Given their situation, the people of Equatorial Guinea may well feel cursed by their country's resource wealth.

Foreigners Connection to the Resource Disorders

The repression of the citizens of Equatorial Guinea, and the denial to them of the revenues from the country's oil deposits, may strike outsiders as a cause for sympathy. The situation in Equatorial Guinea appears grim, the oppression of the people seems unjust, and something should be done about it. One might think of an aid program to help the Equatorial Guineans, or of asking Western leaders to put pressure on Obiang to share more of the oil money with his people. These kinds of proposals may not spark much optimism: repressive governments often capture aid money, and rich dictators can resist a good deal of foreign pressure. However, the sense remains that something should be done to help these Africans in their dire conditions.

to 69% in 2007.' Global Observer, *Equatorial Guinea Economy Profile 2012*, www.globserver.cn/en/equatorial-guinea/economy.

¹⁸ Human Rights Watch claims that Teodorín Obiang spent almost \$44 million on mansions and high-end cars in the USA and South Africa between 2004 and 2006, while the total educational budget of Equatorial Guinea in 2005 was \$43 million. Part of Teodorín's wealth appears to come from a 'revolutionary tax' that he imposed as minister and insisted not be paid into the country's treasury, but rather directly to him. In 2010 a Senate Permanent Subcommittee determined that he had used shell companies illegally to shift more than \$100 million into the United States; he owned 'owned at least three dozen luxury cars, including seven Ferraris, five Bentleys, four Rolls-Royces, two Lamborghinis, two Mercedes-Benzes, two Porsches, two Maybachs, and an Aston Martin, with a collective insured value of around \$10 million.' 2011 was a bad year for Teodorín: he commissioned but then cancelled a \$380 million yacht, he lost a briefcase with \$40,000 inside, and the US and French governments seized tens of millions of dollars of his assets. A US intelligence official called him 'an unstable, reckless idiot.' 'Playboy Waits for his African Throne,' *Sunday Times*, September 3, 2006, www.timesonline.co.uk/tol/news/world/article626511.ece; Human Rights Watch, 'Equatorial Guinea: Account for Oil Wealth' (2009) www.hrw.org/en/news/2009/07/09/equatorial-guinea-account-oil-wealth; *New York Times*, 'Taint of Corruption Is No Barrier to U.S. Visa for Millionaire,' November 16, 2009; Ken Silverstein, 'Teodorín's World,' *Foreign Policy*, March/April 2011; Associated Press, 'African Dictator's Son Orders Luxury Superyacht,' Feb. 27, 2011; 'The Strange and Evil World of Equatorial Guinea,' *The Observer*, 23 October 2011. In 2012 the French issued an arrest warrant for Teodorín; anticipating such a move, his father appointed him to high enough office to give him diplomatic immunity.

¹⁹ *Earth Island Journal*, Winter 1999, p. 2. findarticles.com/p/articles/mi_hb6393/is_4_14/ai_n28742318/pg_2/.

This natural course of thinking about the situation in Equatorial Guinea overlooks a morally significant fact. Outsiders to Equatorial Guinea are already connected to its citizens' plight. Resource disorders like authoritarianism are only half about resources. Obiang could not after all subdue his political opponents by dousing them in crude oil. The other half of the equation is the foreign money that flows into Obiang's bank accounts when he transfers the country's oil abroad. It is this money that increases Obiang's ability to buy weapons and pay security forces, to control the channels of patronage, and to disrupt possible challenges to his rule. The money that outsiders pay for the resources of Equatorial Guinea funds the subjection of its people.

The contribution of external funds to internal repression is clear enough when pointed out, and reflecting on it may cause more discomfort. Outsiders do not like to think of themselves as contributing to severe political repression, even if only indirectly. The thought that what they pay to fuel our cars might end up being spent on Obiang's torture chambers or private jets is not at all welcome. Yet, one might think, this is the way it often is in our world. In a globalized market economy consumers pay for all sorts of goods. They do not know—indeed they often cannot know—where these goods originate or where the money used to purchase them goes. Some of the money paid at the pump may go to support tyrants, but that seems just a part of modern life. If the Equatorial Guineans have a political problem in their country that is very unfortunate. But it is in the end their problem, and foreigners should try to help them (if at all) through private charity or through the political influence of our government.

This way of looking at the contribution that outsiders make to the situation in Equatorial Guinea is also incomplete, and it is particularly inadequate from a market perspective. Resources do not disorder poor countries because of their abundance, or because the inhabitants are simply not bright enough to handle the money. Authoritarianism in Equatorial Guinea is also enabled by a feature of the international trade regime that has quietly persisted since the days of European empires. A flaw in the global market order forces consumers to fund violence, coercion and corruption when they make their everyday purchases at the gas station, the pharmacy, and the mall. The literature speaks of a 'resource curse,' yet the phenomena are more resemble diseases and we shall instead call them 'resource disorders.'²⁰

*Ex injuria jus oritur*²¹

Possession and property rights are distinct concepts. Possession is a physical relationship: a dog possesses what it holds in its jaws, until a stronger dog tears possession away. The property relation need not be physical at all; as Bentham says, 'A piece of stuff which is actually in the Indies may belong to me while the dress I wear may not. The aliment which is

²⁰ The metaphor of a 'resource curse' is unhelpful for many reasons. As Martin Ajei has emphasized, the idea of a curse suggests a phenomenon caused by super-human forces, while the disorders that arise from unaccountable natural resource management are all too human.

²¹ *Lat.*: A right may originate from injustice.

incorporated into my very body may belong to another.’²² A burglar who steals your watch takes possession of your watch, and may transfer possession to someone else, yet no legal transfer of your watch occurs. The watch is still your property, and the burglar and his accomplice have merely handled stolen goods.

For natural resources in today’s international order, possession makes property. Whoever can maintain physical control over a country’s territory by any means gains the legal right to sell off that territory’s resources. This feature of the international trade regime violates the most basic rule of the market, as the philosopher Thomas Pogge explains:²³

A group that overpowers the guards and takes control of a warehouse may be able to give some of the merchandise to others, accepting money in exchange. But the fence who pays them becomes merely the possessor, not the owner, of the loot. Contrast this with a group that overpowers an elected government and takes control of a country. Such a group, too, can give away some of the country’s natural resources, accepting money in exchange. In this case, however, the purchaser acquires not merely possession, but all the rights and liberties of ownership, which are supposed to be — and actually are — protected and enforced by all other states’ courts and police forces.

For natural resources, might makes right. For Obiang, might vests the legal right to transfer a country’s oil. Obiang gains the right to sell Equatorial Guinea’s oil because he keeps the country’s impoverished population living in fear through police surveillance and brutality, imprisonment and torture. Obiang does not become a legal vendor of the country’s oil to foreigners in virtue of being the political leader of an independent country—a fact that cannot get a full proof here. Here it is enough to notice that the might of foreign militias, like that of foreign leaders, can also start a chain of sales that end in consumers holding legal rights.

‘Blood diamonds’ were harvested in the civil war that consumed Sierra Leone from 1991 to 2002. The rebels who took over the diamond mines (many of them illiterate teenagers hyped up on drugs) called themselves the Revolutionary United Front. The RUF’s soldiers gave themselves names like General Baby Killer, Wicked to Women, and Queen Chop Hands. This last name refers to the signature RUF tactic, which was to round up villagers (including children and infants) and hack off their limbs with machetes:²⁴

Sometimes, after capturing a village, RUF fighters would gather civilian prisoners in the town square and make them choose small strips of paper from the ground that described different forms of torture and death, such as ‘chop off hands,’ ‘chop off head,’ or simply ‘be killed’. Soldiers would bet with one another about the sex of pregnant women’s unborn children. Winners were determined after the baby had been removed from the womb with a bayonet. In one instance, a young boy was beaten and roasted nearly to death on a spit in front of his mother for refusing to kill her. The RUF’s depravity

²² Jeremy Bentham, *Theory of Legislation*, vol. 2 (Boston: Weeks, Jordan & Co., 1840), pp. 137-38.

²³ Thomas Pogge, *World Poverty and Human Rights* (London: Polity, 2008), p. 119.

²⁴ Greg Campbell, *Blood Diamonds* (Boulder: Westview Press, 2002), p. 71.

served the military strategy: It induced tectonic population shifts away from the diamond areas.

The RUF would scare most of the locals away from the diamond areas, and force others to work in the mines. The rebels would sell the diamonds harvested to foreign traders who sold them in turn to jewelry stores in North America, Europe and Asia. With the cash bonanza they received from selling diamonds, the RUF militias bought enough weapons to seize the capital city Freetown. The government was only able to fight back by twice trading diamond mining futures for the services of foreign mercenaries. The civil war in Sierra Leone blasted the country's infrastructure, ended up to 50,000 lives, and displaced one third of the population. Half of Sierra Leone's women were estimated to have suffered sexual violence, including rape, torture, and sexual slavery. Even five years after its civil war Sierra Leone ranked 177th out of 177 countries on the UN Human Development Index.²⁵

The diamonds of Sierra Leone harvested at gun- and machete-point by the RUF militias flowed through international markets until they were bought legally by consumers in North America, Europe and Australasia. The property titles to the wedding rings and earrings made with those blood diamonds remain legally valid today. Those legal titles trace back to the decisions of actors who, like Obiang, have no better claim to territory than their coercive control over it.²⁶

What we are detecting here is a fragment of pre-modern law, the law of *might makes right*, which went under the name of the rule of 'effectiveness.' Effectiveness (*might makes right*) was in past ages the primary rule not only for resources, but for all of international affairs. In this pre-modern era to conquer territory—to gain military possession of it—was to gain the internationally recognized legal right to rule that territory. Might made right. International law also gave any ruler the right to decide to sell off the territory he controlled. Might made right. In this pre-modern 'Westphalian' era, any regime strong enough to stay in power also gained the internationally recognized legal right to abuse or neglect its population nearly without limit—to install an apartheid system, for instance, or a colonial authority. International law did not recognize what we now call human rights.²⁷

²⁵ United Nations Development Program, *Human Development Report 2007/2008*, p. 232. (hdr.undp.org/en/media/hdr_20072008_en_indicator_tables.pdf).

²⁶ The Kimberley Process (KP), discussed further below, has had some success in reducing the flow of conflict diamonds onto world markets. At this writing militia-controlled conflict diamonds are still entering global supply chains from Ivory Coast and the DRC; and the KP has been much criticized for its handling of Zimbabwe's regime-controlled diamond exports. The scheme does not aim to control gems beyond diamonds; it has had no effect, for example, on the emerald trade controlled by Colombian paramilitaries.

²⁷ Here the Westphalian system is identified with classic system of state sovereignty that lasted from the mid-seventeenth to the mid-twentieth centuries, with its high point in the nineteenth century. As the text argues, several significant Westphalian rules persist within today's modern state system. (There is a different usage of 'Westphalian' in which the term refers to the state system as a whole, encompassing both its classic and modern phases.) See David Held, 'The Changing Structure of International Law: Sovereignty Transformed?' in David Held, ed. *The Global Transformations Reader*, 2nd ed. (London, Polity Press, 2003): pp. 162-76.

The human rights revolution that began with the *Universal Declaration of Human Rights* in 1948 displaced the Westphalian rule that coercive control over a people vested near-absolute control over their fates. The thrust of human rights law is to insist that there are certain things that regimes must not do to citizens (e.g., kill or arrest them arbitrarily, enforce their enslavement), and other things that rulers must do for them (protect their property, provide them with fair trials). No one claiming authority in a territory can now assert that their abuse or neglect of the people is only a question of 'internal affairs'. Rather, human rights are a matter for international concern.²⁸ Every nation on earth has ratified a major human rights treaty, signaling the legal death of that aspect of the Westphalian settlement.

The rule of effectiveness for natural resources is a remnant of the old Westphalian world. The contrast between this anachronism and modern principles is vivid. It makes just as little sense that a capacity for violent domination should give a regime authority over citizens' resources than that a capacity for violent domination should give a regime legitimate authority over citizens' persons. Once the old idea of unlimited state authority is undermined, both ideas should have fallen together. Yet the Westphalian rule of effectiveness for resources remains unreformed, and in fact hardly noticed.

Might makes right for natural resources exists in the subconscious of the modern international trade regime. It is an article of no treaty; judges rarely mention it, and politicians never. Working lawyers know that this rule was part of the pre-modern Westphalian order, yet have little occasion to focus on its persistence. Laymen do not notice the policy at all. Partly this is because public attention naturally goes to trans-border flows of those goods that (unlike resources) are illegal to sell in the country of destination (counterfeit designer goods, narcotics, endangered species, humans). And partly this is because of an optical illusion that makes the international trade regime appear to have more legal depth than it does.

Norway's government, for example, has many laudable features, such as its democratic accountability and its respect for the rule of law. Those features may appear to qualify it as the proper vendor of Norway's petroleum, but they do not. Even the Norwegian government is accorded the legal right to sell Norway's petroleum only because of its effective control of Norwegian territory. The operative international policy has almost no legal structure: physical possession of territory is sufficient, for any actor, to vend the resources of that territory. For natural resources that cross borders, territorial possession is 99/100 of the law.

Pol Pot and the Khmer Rouge army supported themselves in the late 1980's and early 1990's by capturing a strip of Cambodia and selling off its rubies and timber. Every one of the millions of barrels of the oil stolen and exported by militias in the Niger Delta since commercial production began in 1956 has been owned free and clear in its country of destination. Every

²⁸ See Jack Donnelly, *International Human Rights* (Boulder, Colorado: Westview Press), pp. 26-28; Charles Beitz, *The Idea of Human Rights* (*).

gallon of Equatorial Guinea's oil that arrives in a foreign country comes with unquestioned legal title, the chain of title anchored in the fact of Obiang's coercive success.²⁹

Augustine asked, *Remota itaque iustitia quid sunt regna nisi magna latrocinia*: What, absent justice, is the difference between rulers and plundering gangs?³⁰ Cynics commonly group rulers and robbers together—what is unexpected about the international trade regime is that it places both above the legal line. Because effectiveness persists in the international trade regime, anyone powerful enough to control a territory is allowed to sell off that territory's resources. Because of effectiveness, international trade pulls the products of resource theft into filling stations and malls in importing countries, and channels consumers' dollars back to pay for more soldiers, spies and helicopter gunships in exporting countries. This international rule of *might makes right* puts consumers into business with some of the world's most violent and coercive actors. It drives the resource disorders of authoritarianism, corruption, conflict and more.

Effectiveness Drives the Resource Disorders

Imagine that a soldier named Bashir has overthrown the United States government. Bashir's militias have left everyone in Pittsburgh dead, and forced everyone in Nevada to flee their homes. Bashir has put Alaska under military rule, and is trading its oil to China for weapons and money that he will use to launch military campaigns into the oil fields on the Mexican border.

What actually happened is that General Omar al-Bashir took power after overthrowing the government of Sudan. When his militias attacked in Darfur, Sudanese in numbers equal to the population of Pittsburgh were left dead, and Nevada-sized numbers fled their homes.³¹ For years Bashir traded Sudan's oil to China in what a human rights group called 'a toxic oil-for-arms relationship.'³² ('Kaltam Abakar Mohammed, a mother of seven, watched three of

²⁹ Energy Information Agency, 'US Net Imports by Country 2011,' www.eia.gov/dnav/pet/pet_move_net/a_ep00_IMN_mbbldpd_a.htm. [update]

³⁰ Augustine, *De Civitate Dei Contra Paganos*, 4.4, *Corpus Christianorum*, Series Latina, vol. 47 (Turnhout, Belgium: Brepols, 1955), p. 101.

³¹ Olivier Degomme and Debarati Gwa-Sapir, 'Patterns of Mortality Rates in Darfur Conflict,' *The Lancet*, Volume 375, Issue 9711, Pages 294 - 300, 23 January 2010 estimates the number of excess deaths in Darfur from 2004-2008 at 298,271. UN Office of UN Deputy Special Representative of the UN Secretary-General for Sudan, *Darfur Humanitarian Profile No. 34* (2009), p. 3 estimates that there were 2,667,682 internally displaced persons in Darfur in 2009.

³² *Business Week*, 'Oil for China, Guns for Darfur,' Mar. 2008. 'The Swiss-based Small Arms Survey says that up to 80% of Sudan's share of its early oil revenues was spent on weapons for the war in the south - with the close assistance of China, which had previously sold it fighter jets and military helicopters. By the beginning of the separate Darfur conflict in 2003, China had overtaken Iran as the country's main arms supplier and helped build weapons factories in Sudan.' *The Guardian*, 'Oil, Arms and a Marriage of Convenience,' Feb. 16, 2008.

her children being blown to pieces as they were attacked by a fighter jet on 19 February in the town of Beybey in Darfur. The BBC has established that Chinese Fantan fighter jets were flying on missions out of Nyala airport in south Darfur in February.’³³) With those arms Bashir has also launched military incursions into the oil fields on the border with South Sudan.

After Bashir’s militias attacked Darfur, the US declared a genocide and tightened economic sanctions on Sudan. *New York Times* columnist Nicholas Kristof along with many others pushed for divestment. (‘Is your pension fund helping to finance the Janjaweed militias that throw babies into bonfires in Darfur and Chad?’³⁴) And the International Criminal Court issued arrest warrants for Bashir, charging him with war crimes, crimes against humanity and genocide.³⁵ Bashir’s response to the first announcement of these international warrants was to call a rally in the capital at which he danced onstage in defiance.³⁶

The international rule of effectiveness generates systematic incentives toward the resource disorders of authoritarianism, corruption and civil conflict, with their sequelae of human development failures and more. Authoritarians who gain the resource right use the money from resource sales to buy weapons and spies to keep the population living in fear. Coup plotters look for ways to grab power from the current regime and then become authoritarians in their turn. Rebels who can seize control of resource-rich territory receive the funds they need to start or escalate a civil war. Effectiveness incentivizes violent contests to control resource-rich territory while neutralizing popular resistance. The people in these territories become the victims of those who use their territories’ resource wealth against them.

Gaining the resource right by controlling territory is in fact so ingrained in the international trade regime that the right has even been monetized, yielding what Michael Ross calls ‘booty futures.’ For example, in 1960 the armed rebellion in Katanga was funded by a Belgian mining firm in exchange for future mining rights. In the same period the Italian oil company ENI reportedly bankrolled the Algerian resistance to French rule on promises of future access to the country’s oil. In 1997 the French oil company Elf reportedly funded the overthrow of President Pascal Lissouba by the former (and current) President of Congo-Brazzaville, Denis Sassou-Nguesso, in exchange for rights for future oil exploration. That same year Laurent Kabila’s forces, the ADFL, won military control of the Eastern DRC away from the president, Mobutu Sese Seko. Yet:³⁷

Bashir has continued military harassment of southerners along the border since South Sudan became independent in 2011.

³³ BBC News, ‘China ‘is Fuelling War in Darfur,’ 13 July 2008.

³⁴ Nicholas Kristof, ‘Death By Dollars,’ *New York Times* Feb. 11, 2007.

³⁵ International Criminal Court, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09.

³⁶ BBC News, ‘Dancing Bashir Scoffs at Darfur Warrant,’ 5 March 2009.

³⁷ Michael Ross, ‘Booty Futures,’ UCLA Dept. of Political Science Working Papers (2005), pp. 21-22.

Kabila and the ADFL were still thousands of miles from the capital, Kinshasa, which is in the western part of the country. To raise the money he needed to take Kinshasa, Kabila and the ADFL sold booty futures to American Mineral Fields (AMF), a small US-based mining firm. In exchange for an undisclosed sum of cash (and apparently, the use of AMF's chartered Lear jet), AMF received a diamond-purchasing monopoly, and after the war, exploration rights to huge reserves of Congolese cobalt, zinc, and copper. When the deal was announced, the price of AMF stock on the Toronto Stock Exchange rose from \$3 to \$7; when Kabila entered Kinshasa and took over the country several weeks later, it rose to \$10.

As for Obiang, he has been both strengthened and threatened by the international rule of effectiveness. He seized power in a coup from his uncle during the days when Equatorial Guinea's biggest export was cocoa. Yet Obiang was himself nearly a victim of *might makes right*. In 2005 Margaret Thatcher rushed to South Africa to post \$300,000 bail to get her son, Sir Mark Thatcher, out of jail. Sir Mark later pleaded guilty to bankrolling an elaborate scheme (apparently based on Frederick Forsyth's novel, *The Dogs of War*) to overthrow an African leader and install a puppet ruler who would siphon the country's oil wealth back to the coup's plotters. The coup attempt failed, and instead of being toppled the African leader captured some of the mercenaries and allegedly had them tortured. That African leader, afterwards guarded by a large security detail, was Obiang.³⁸

Finding effectiveness in the international order enriches the explanations of the resource disorders of authoritarianism and civil conflict. Oil-rich countries risk authoritarianism, *given* that authoritarians can obtain substantial funds from abroad to consolidate their power. Minerals far from the capital increase the risk of civil war *given* that militias can gain substantial sums from selling captured resources to foreigners. The international policy of effectiveness is an invisible common premise in the empirical literature on the 'resource curse.' The reminder that the funds flowing into disordered countries ultimately derive from foreigners expands the explanatory circle further. Repression, corruption and armed struggles within resource-exporting countries are enabled by consumer spending in resource-importing countries, as rust and fire are enabled by oxygen. When rebellion is rewarded with large revenues, one expects more and more violent rebels. When the repression will be rewarded with great wealth, the repressive will rise toward the top. As Nkrumah says, effectiveness like a wasting disease works 'from the inside to infest, corrupt, pervert and thwart the aspirations of the people.'³⁹

³⁸ Amnesty International, 'Equatorial Guinea: A Trial with Too Many Flaws' (2005), pp. 14-15. The *Economist* journalist Adam Roberts gives full treatment to the 2004 coup attempt involving a group of international businessmen and mercenaries (including Margaret Thatcher's son Mark Thatcher) in *The Wonga Coup*. A seaborne attack on Obiang's presidential palace in 2008 also failed. Associated Press, 'Eq. Guinea Leader Expected to Win Near 100 Percent,' Nov. 28, 2009.

³⁹ *Consciencism*, p. 101.

Effectiveness between History and Principle

What is striking about the effectiveness for resources in the international trade regime is both its peculiarity and its familiarity. On the one hand, it seems strange that seizing a country's political capital should license selling the country's natural capital. On the other hand, it's a commonplace that drivers fund dictators with the money they pay at the pump. Those who point to effectiveness in international resource trade may be met with the denial that this could possibly be true, and the jibe that this is obvious, even in the same conversation.

One reason for these gyrations in responses is that we now live in a half-way house between our history and our principles. As mentioned, *might makes right* used to be the primary legal norm for nearly all aspects of international affairs. The enlightened and now widespread belief is that effectiveness should be the norm for nothing. In fact, the pre-modern policy of effectiveness lingers, almost subliminally, in several areas of modern international practice (in natural resource trade and also within the rules for armed secession). The world we take for granted does not fit the principles we affirm.

Consider, for example, the Angolan province of Cabinda. Like Alaska, Cabinda is an oil-rich exclave northwest of the mainland. Unlike Alaska, Cabinda has generated a series of secessionist movements (firmly suppressed by Angola's authoritarian ruler, Eduardo dos Santos). Secessionism is perennial because while Cabinda's offshore wells produce around a million barrels a day, Cabindans receive little from the Angolan state besides occupying forces.⁴⁰

If President dos Santos tomorrow attempted to sell Cabinda's territory to the Chinese, he would start a front-page fracas. Powerful states would loudly protest (and perhaps actively resist) any such unilateral sale. Transfer of territory without consent of the population violates a hard-won primary norm of the modern international system. The international rule for transfer of territory is no longer Westphalian: a ruler's might no longer implies the right to transfer territory. Such transfers now require the people's approval.

However, if dos Santos tomorrow sold all of Cabinda's oil to China, that story would be well down on the business page. Dos Santos' coercive control of territory today still wins him the legal right to sell off that territory's resources—even though an oil deposit may be exponentially more valuable than acres of barren territory that dos Santos can no longer legally sell off. This is the half-way house we now inhabit, between the old rule of effectiveness and our new principles like popular control.

The attitude one takes to the persistence of effectiveness in the international system may depend on whether one is looking forward from the past, or forward from the present. One lesson that leaders took from the Second World War was that effectiveness must be replaced in certain domains of international affairs: for example, that military might should no longer gain rights over foreign territory. This lesson was embedded in the UN Charter with a new norm prohibiting territorial conquest, and that new norm has successfully replaced *might makes*

⁴⁰ The money that Dos Santos's forces gained from Cabinda's oil was a major factor in their victory over the diamond-funded UNITA rebels in Angola's long civil war.

right in that part of the international system.⁴¹ From this past-forward perspective on replacing effectiveness in the international system, many victories have been won.

Projecting from the present into the future, however, the persistence of effectiveness for natural resources is a real concern. The international trade regime still issues a license to steal resources to whichever actors are ruthless enough to grasp them. The suffering and injustice engendered by this rule has been significant, and we can expect these wrongs to continue so long as the rule persists. Indeed since foreign funds are the oxygen of authoritarianism and civil conflict, the fires may burn more brightly as global resource demand increases and resource production moves into more weak states.⁴²

Both the past-forward and the present-forward perspectives on effectiveness are valid. Where we are now is how far we have come. It is the prospect of avoidable future suffering and injustice, to which consumers everywhere will contribute, that turns thoughts toward reform. Effectiveness will end, as Nkrumah said of imperialism, ‘under pressure of nationalist awakenings and an alliance of progressive forces which hasten its end and destroy its conditions of existence. It will end when there are no nations and peoples exploiting others; when there are no vested interests exploiting the earth, its fruits and resources for the benefit of a few against the well-being of the many.’⁴³

Conclusion

A flaw in the global market order forces consumers to fund violence, coercion and corruption when they make their everyday purchases at the gas station, the pharmacy, and the mall. In today’s international order, coercive control over a country bring a right to sell off that country’s natural resources. The international rule for resource sales is ‘effectiveness,’ or *might makes right*.

This international rule generates systematic incentives toward authoritarianism and coups in exporting countries. The right to sell a country’s resources can be extremely valuable. Authoritarians who gain the resource right will use the money from resource sales to free themselves from public accountability through coercion and clientelism. Coup plotters will look for ways to grab power and become authoritarians in their turn. When repression will be rewarded with great wealth, the repressive will rise toward the top.

In today’s international system militias sell off the resources they capture (e.g., ‘blood diamonds’), and those resources flow through international markets to become legally owned

⁴¹ UN Charter, Article I.2.4: ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.’

⁴² Larry Diamond linked the worldwide ‘democratic recession’ of the mid-2000’s to the escalating prices for commodities in *The Spirit of Democracy* (New York: Times Books, 2008), pp. 56-87. Countries that may soon become petroleum exporters include Cuba, Ghana, Guinea, Guinea-Bissau, Guyana, Israel, Liberia, Mali, São Tomé and Príncipe, Senegal, Sierra Leone, Tanzania, Togo, and Uganda. Ross, *The Oil Curse*, p. 10.

⁴³ Nkrumah, *Consciencism*, pp. 57-58.

by consumers. Consumers' dollars flow back to them. This system incites civil conflict: when rebellion is rewarded with large revenues, one expects more and more violent rebels.

The practice that pairs violence with entitlements makes a nonsense of ownership. Might violates property rights: it should not vest them. This part of the international system is a holdover from a past era when effectiveness was the primary norm in international law. Much of this Westphalian system has been reformed: international law no longer accepts a coercive regime conquering territory, or enforcing colonial rule, or imposing apartheid, or violating what we now call human rights.

Yet effectiveness for natural resources remains unreformed, hidden in liminal spaces in the international system. The persistence of this norm has real consequences, as shown in the cases of Equatorial Guinea, Sierra Leone, Sudan and more. Citizens of these resource-exporting countries have become the victims of those using their national wealth to torment them. So long as the international order remains unreformed the future will lengthen this long history of disorders. As Nkrumah laments, 'the people are divided from their leaders and, instead of providing true leadership and guidance which is informed at every point by the ideal of the general welfare, leaders come to neglect the very people who put them in power.'⁴⁴

⁴⁴ *Consciencism*, p. 102.