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Leif Wenar on Natural Resources and Clean Trade Policies

Leif Wenar , John Tessitore

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JOHN TESSITORE: Hello, and welcome to another in our series of interviews with leading members of the academic community, sponsored by the Carnegie Council for Ethics in International Affairs. I'm John Tessitore, executive editor of the Carnegie Council and editor of the Council's quarterly journal, *Ethics & International Affairs*, which is now in its 25th year and is published by Cambridge University Press.

With me today is Professor Leif Wenar, whose most recent article, entitled "Clean Trade in Natural Resources," appears in the Spring 2011 issue of *Ethics & International Affairs*.
Welcome, Leif. Good to have you with us.

LEIF WENAR: Thanks, John, and thanks to those listening.

JOHN TESSITORE: Professor Wenar is chair of ethics at the School of Law, King's College London. He holds degrees from Stanford and Harvard. For the years 2010 to 2011, he is a visiting professor at both Stanford and Princeton. I'm pleased to say that he has also been a fellow in the Carnegie Council's program on global justice.

His work on international trade in natural resources is well known and highly regarded, and much of it can be found on the website cleantrade.org.

Now, with all that behind us, let's begin.

Professor, in your recent essay for *Ethics & International Affairs*, you discuss the idea of a "resource curse." Then you offer something of a redefinition or expansion of the term. Before we get into your argument, can you give us a basic definition of the resource curse—specifically, what it is and how it functions. Perhaps you can also give us your definition of clean trade.

LEIF WENAR: Countries that export a lot of natural resources tend to have worse politics. As a group, these countries have more dictators, they have more corruption, and they have more and longer civil wars. Despite the typically large revenues they get from exporting oil or gas or minerals, these countries also have worse economics. Their economies grow more slowly than they should, and they have other strange problems, like difficulties creating jobs for women.

The "resource curse" is the name that social scientists have given to these correlations between exporting natural resources and dysfunctions in political and economic institutions. If you look at Libya—

JOHN TESSITORE: Very timely.

LEIF WENAR:—where Gaddafi is spending the country's oil revenues on weapons and mercenaries to fight a popular uprising, you are seeing the resource curse. You see the resource curse in Burma, where the repressive junta that's sustained by gas exports has kept the Nobel Laureate [Aung San Suu Kyi], who won the last fair elections, under house arrest for most of the last two decades.

If you saw *Blood Diamond*, you were seeing a fictional portrayal of the real resource curse in Sierra Leone, where during the civil war rebels shot or amputated or enslaved local people to gain control of the diamonds that were then sold on to Western consumers, in earrings and in wedding rings.

Clean trade shows how consumers like us contribute to these very bad outcomes in resource-exporting countries, without knowing it and certainly without wanting to do so. Clean trade also offers specific policy solutions that our governments could implement right now to help stop the resource curse.

JOHN TESSITORE: I know your essay in *Ethics & International Affairs* is part of a much larger project containing sophisticated quantitative, as well as qualitative, data, which I believe is being turned into a manuscript for a book. Tell us about the project that you are working on—who is involved, what it seeks to do, and so forth.

LEIF WENAR: First, let me say that resource-cursed countries like Burma or Nigeria or Colombia, they mostly have to find solutions to their own problems. If a country is afflicted with authoritarianism or corruption or civil conflict or slow growth, mostly it's the people there that should work things out for themselves. The governments of the big importing states, like the United States, the UK, France, and Japan, should not be telling these countries what they have to do.

Still, clean trade shows that current trade rules of importing states make the problems in exporting states much worse and much harder for the people there to overcome. Our own policies in importing states, including ones we take entirely for granted, help to drive the resource curse overseas.

For example, there is an extremely cruel dictator in Equatorial Guinea named Obiang, who has become richer than the queen of England by selling off the country's oil while keeping most of the people in the country living in fear and abject poverty. A big oil company, like Exxon or BP, may have sold you some of Equatorial Guinea's oil at the pump, and that company may have given Obiang some of the money you paid in return. How can that big oil company legally buy oil from a dictator and then sell that oil to you? You might think your own government's laws had something to do with those deals being legal.

Here's another example. Over the past dozen years or so, the eastern Congo has suffered millions of deaths and massive sexual violence, as militias have fought for control over minerals that end up in our electronic goods, like cell phones, laptops, and game consoles. It could be that the cell phone in your pocket contains a tiny piece of the Congo that was pillaged by a violent gang, and the money you paid for that cell phone could have bought bullets or torches that this gang will use when it attacks another village.

How is it that you've come to be in business with that violent gang in the Congo? You might think that your own government's laws have something to do with that. And that is, in fact, correct. Our own government's laws help to drive the resource curse in places like Equatorial Guinea and eastern Congo, and our own laws we do control and we should change.

JOHN TESSITORE: Professor, as you noted in your definition of the concept, the resource curse is generally claimed to affect resource-exporting countries, many of which are developing or lower-income states. But your essay points out that the resource curse harms resource-importing countries as well. These are, of course, the major financially well-off nations. What kinds of harms does the curse do to resource-importing countries? And why has this been largely overlooked until now?

LEIF WENAR: Our own government's policies drive the resource curse abroad, and the resource curse ends up biting us back. For example, think of the authoritarian regimes that have been the most antagonistic to the West over the past 40 years—in the Soviet Union, in Iran, Gaddafi of Libya. These regimes have been empowered to a significant extent by Western money that we have paid for petroleum.

And it's not just that we have been propping up hostile authoritarians. Even when the authoritarians we support have stayed friendly, like in Saudi Arabia and in Yemen, the people oppressed by these authoritarians resent us and have turned to terrorism and terrorist financing against our countries. Most of the countries ever on the U.S. watch lists for terrorism, for example, have been oil exporters.

Moreover, the kind of political volatility we are seeing in the Middle East and North Africa right now contributes appreciably to global economic instability, which harms our economies. I'll just mention that four of the last five global recessions, like the one we have just seen, have been preceded by a spike in the price of oil. Moreover, we can expect that authoritarianism and terrorism and economic instability will get worse as the world's increasing demand for resources pushes exploration into lots of new countries that have weak institutions.

Finally, there is even some evidence that bad governance associated with the resource curse is also bad for our environment, since authoritarian and corrupt and failing states just tend to pay less attention to things like gas flaring, which are rather serious sources of carbon emissions.

JOHN TESSITORE: You also say that it is the policies of the resource-importing states that drive the resource curse in resource-exporting states. How does the behavior of resource-importing countries perpetuate this curse? What do they do that actually drives it? Are we at fault for this?

LEIF WENAR: This is the most important point, John. Right now every importing state chooses to put its citizens into business with dictators and corrupt officials and armed groups in exporting states. By doing this, our governments actually encourage more authoritarianism, more corruption, more civil wars.

Go back to that example of Obiang, the dictator that the U.S. State Department has said is responsible for political repression, torture of prisoners, extrajudicial killings, and so on. How does that individual, Obiang, get the legal right to sell Equatorial Guinea's oil to American companies, who then sell it on to American consumers? Why does Obiang, of all people, get to sell the country's oil to Americans? This is only because the U.S. government gives Obiang that legal right.

Each state is sovereign. Every state controls the laws for its own people. The U.S. government decides to put American citizens into business with Obiang when it makes a completely optional decision to vest Obiang with the legal right to sell Equatorial Guinea's oil to Americans, and because of that specific U.S. government decision, millions of dollars that Americans pay at the pump go straight to Obiang and help him to maintain his cruelly oppressive regime.

The U.S. government gives Obiang this legal right essentially because Obiang can control the people of Equatorial Guinea through force and fear. Under the U.S. might-makes-right policy, if someone even more violent and vicious than Obiang were to overthrow him tomorrow, we would then buy oil from that new person. Whoever has enough might to control a country, the U.S. government will give him the right to sell natural resources to Americans.

That's a disastrous rule, and it's one of the main drivers of the resource curse. When our governments reward whoever can be most brutal with huge resource revenues, we should expect that the most brutal will rise toward the top.

It's not just the U.S. government; all importing states declare might-makes-right as their standing policy for other countries' natural resources. The British government says might makes right. So do the governments of Canada and France and Norway and India. Every government uses the same bad rule. All governments use this might-makes-right rule, not only for bad actors who can control a whole country by force, but even for bad actors who can control patches of a country by force.

So if you're a Swedish or an Australian citizen, for example, and you own one of those cell phones that has a bit of Congolese metal in it, then you only own that phone because your government has put you into a legal business relation with the ultraviolent gangs that are plundering Congolese mines at gunpoint.

You can see how this might-makes-right policy incentivizes civil conflict. When rebels can get large revenue streams by pillaging resources, we should expect that there will be more and better-armed rebels.

Our governments should change our own laws so that we buy natural resources in ways that make powerful people in exporting countries more accountable to their people instead of incentivizing them to be less accountable, as our laws do today.

JOHN TESSITORE: You are using the word "accountable," and indeed your article talks about accountability. Tell us more about this. How is it measured? How is it enforced? Maybe even more important, how do you convince nations that it's a good idea in the first place?

LEIF WENAR: In each country those with power should be accountable to the people. That's a principle of good governance. It's also a basic principle of right and of international law. For us, this means that in each country decisions about natural resources should be accountable to the people—which, by the way, is just what it says in Article 1 of the big human-rights covenants, which are treaties that almost every country in the world has signed onto, including all the major importing states.

So what does accountability really mean? In Norway, for example, the government decided to sell off the country's oil and to save most of the revenues to pay for pensions in the future. That decision of the Norwegian government was accountable to the Norwegian people through normal politics.

Take another example. In the United States, the Congress decided a few decades ago to hold periodic auctions for the right to drill for oil in the U.S. coastal waters and to put that money from the auctions into the National Treasury. That's also a decision that the Congress has been accountable for.

Accountability to the people in these countries might not be perfect, but at least some exists. In many resource-exporting countries, though, there is much less accountability to the people. Either the people can't find out what's being done with their country's resources or they are too scared or powerless to protest the decisions of the people in charge. In the very worst authoritarian and failed states, the dictators and the warlords there are not accountable to the people at all when they sell off the resources.

Now, accountability—it's not a matter of on/off. It's a matter of more or less. An importing state that adopts clean trade policies will arrange its own trade rules so that they support greater public accountability in all resource-exporting countries. And for the very worst resource countries, where decisions over resources are entirely unaccountable to the citizens, clean trade policy says that no one in the country should be given the legal right to sell us the resources. We really can't buy oil or gas or minerals from these very worst authoritarians or warlords without buying stolen goods.

JOHN TESSITORE: Let's talk about your idea, then, of a clean trade policy. What would such a policy look like?

LEIF WENAR: A clean trade policy is for resource-importing states, like the U.S. or the UK, to shape their own trade rules to support greater public accountability in exporting countries. That will be better for the exporting countries, since they will be less prone to the resource-curse pathologies, and it will be better for implementing countries, too, because we will have fewer risks of hostile "petrocrats" and global economic instability and terrorism and the rest.

So clean trade policy has three parts:

First, a state implementing clean trade will control its own corporations. For example, an implementing state will prosecute when its corporations bribe foreign officials, since corruption makes those officials less accountable to their people.

An implementing state will also require transparency in the contracts that its corporations sign with foreign governments, so that the people of exporting countries have more information about what's being done with their resources.

There is a lot we can do with our own laws to control our own firms in ways that support the citizens of exporting countries.

Second, an implementing state will put in place a structure of incentives to encourage greater public accountability in exporting states. For example, an implementing state might promote direct foreign investment into countries that score higher on scales of public accountability, or it might close its banks and its stores and its hospitals to foreign officials that steal money from their national treasuries. An implementing state sets up a system of carrots and sticks that announces that it will do more business with exporting countries where there is more public accountability.

Third, there is clean trade policy towards the worst of the worst exporting countries, where the situation in terms of basic rights and political liberties is so dire that public accountability over resources is just zero. These are severely resource-cursed countries, like Burma and Equatorial Guinea, which we have talked about, or like Sudan, where the president is under indictment for genocide and war crimes and crimes against humanity. For these worst of the worst countries, a state implementing clean trade will just prohibit its own firms from buying resources from the authoritarians or from the warlords.

An implementing state will also encourage all of its trade partners to stop buying resources from regimes in these worst of the worst countries, too, so that we can really put an end to the most severe cases of the resource curse.

Now, putting this framework into effect requires that we be able to measure public accountability in exporting countries. There are several independent and well-respected organizations that rate countries on their accountability to citizens. Many national and international organizations already rely on these independent ratings to decide, for example, where to give their development aid.

If you are interested in seeing what options we have for measuring public accountability, I have some spreadsheets on the clean trade web page comparing the different rating scales that are already out there.

JOHN TESSITORE: Under the general framework of promoting clean trade policies, you offer two specific proposals: a clean trade act and what you call a clean hands trust. Both, you say, are needed. Tell us how these work and specifically how they interact. Also, can one exist without the other, or must one have both?

LEIF WENAR: These are the policies in that third part of clean trade that I just described. These are policies towards the worst of the worst exporting countries. A clean trade act is easy to understand. It's just a law that, for example, the UK could pass saying that no British citizen or corporation can do business with anyone wanting to sell off the resources of the very worst resource-cursed countries where public accountability is zero. A clean hands trust is slightly more complex, but it's not hard to get the basic idea.

Think about Obiang of Equatorial Guinea again. If we're going to stop the resource curse in Equatorial Guinea, we need not only to stop buying oil from Obiang ourselves; we also need to give the Chinese and the Malaysians an incentive not to buy oil from Obiang as well. Say the United States implemented clean trade policy. Then, after passing a clean trade act forbidding Americans from dealing with Obiang, it would urge its trade partners to do the same.

The United States would say to the Chinese, for example, "Obiang is essentially stealing oil from Equatorial Guinea's people. For every dollar's worth of oil you buy from Obiang, we're going to put a dollar's worth of tax on Chinese imports as they enter the United States. We'll save that money in a clean hands trust and we'll give the money in the trust to the people of Equatorial Guinea once they have a minimally accountable government in place."

That clean hands trust will give the Chinese an incentive not to buy oil from Obiang. The United States can use the same system with its other trade partners as well. This clean hands trust policy should spur all resource-importing countries to converge on a common policy of not going into business with the world's worst resource-fueled regimes.

JOHN TESSITORE: Let me ask a final question. Are there other legal mechanisms that you think are important, such as international law or the multinational institutions, such as the United Nations or World Bank? Do they have a role to play today?

LEIF WENAR: The clean trade policies I have described are feasible, they will improve the system of global trade, and they are ready to go right now. Any importing country can implement clean trade policies, in whole or in part, by itself or teaming up with other countries. If the United States or the EU adopted clean trade tomorrow, it would be a huge step forward. But countries like Canada or Norway or Australia, or rising powers like Brazil or South Africa can also show leadership by being a first mover with clean trade policies. Multinational institutions can help, too, of course. But to be honest, action by citizens of importing states will likely be more important in bringing about change.

So we are developing shopper power and investor power websites, where you can find out, for example, which companies are doing the most business with the worst regimes in the world and you can use that information when you decide where to buy gasoline or where to invest your savings.

Clean trade is based on fundamental principles of national and international law, so we are also developing legal strategies to take corporations and even governments to court for their commercial connections to the world's worst regimes.

We are looking at clean trade social networking strategies, clean trade offsets, like carbon offsets.

Let me say, if listeners have ideas or expertise, please do get in touch. There is an email address on the website. If you just want to spread the word about clean trade, that in itself can help a lot when it comes to pressuring governments to do the right thing.

JOHN TESSITORE: I'm afraid we need to stop here, but I'm sure that many of our listeners will want to continue this discussion, and we encourage them to do so, as have you. We invite you to access Professor Wenar's article, "Clean Trade in Natural Resources," appearing in the Spring 2011 issue of *Ethics & International Affairs*, and to visit his website.

With that, once again we have been speaking with Professor Leif Wenar of the School of Law, King's College London, and currently a visiting professor at Princeton's Department of Politics.

Thank you, Leif, for joining us, and the best to you in your important work.

LEIF WENAR: Thanks very much.

To learn more about the Clean Trade project or if you wish to contact Dr. Wenar, please visit cleantrade.org.