

Fighting the Resource Curse

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Abstract

The resource curse can strike countries that export high-value natural resources, such as oil, metals and gems. Resource-exporting countries are more prone to authoritarian governance, they are at higher risk of civil wars and they tend to suffer economic dysfunctions such as corruption and slower growth.¹ Associations between resources and these pathologies are seen in the list of the 'Big Five' African oil exporters: Algeria, Angola, Libya, Nigeria and Sudan. The recent histories of mineral exporters support the correlations: for example, 'blood diamonds' fuelled Sierra Leone's decade-long civil war, and the continuing conflict in the metal-rich Democratic Republic of the Congo has cost hundreds of thousands of lives. The phenomenon is not solely African: Syria, Yemen and Turkmenistan, for example, are also resource-cursed. Moreover, poor governance in resource-cursed countries can engender follow-on pathologies, such as a propensity to cause environmental damage both domestically (for example, through the destruction of forests) and globally (through increased greenhouse gas emissions). Most research on the resource curse has focused on the exporting countries. Here I focus instead on major importing countries, especially those in the G8. First I survey how the resource curse endangers the core interests of importing states, and how the laws of importing states drive the resource curse. The second half of the article describes a new policy framework for importing states that will improve international trade in resources for both importing and exporting countries.

The resource curse harms importing states

Importing states that engage commercially with resource-cursed countries risk channeling funds to hostile, repressive and failing regimes in ways that threaten their national interests. For example, some of the regimes that have been most antagonistic to the west in the past 40 years (e.g. the Soviet Union, Iran, Iraq and Libya) have been financed by western oil and gas payments. As we saw most recently in the Arab Spring, resentment of repressive regimes in the Middle East has fuelled radicalization and anger at the western states that have supported those regimes. Taking the US as an example, most of the countries on the US 'State Sponsors of Terrorism' list have been oil exporters, and groups that the US considers threats to peace (such as al-Qa'eda and Hezbollah) have used conflict diamonds to escape US asset freezes. Today terrorists continue to seek havens in areas of resource-fuelled conflicts, such as the Great Lakes region of Africa.

One importing-state strategy for securing resource access has been to support friendly 'rentier' regimes, which sustain their rule by spending resource revenues on patronage and security forces. The long-term results of this strategy have been mixed. Some rentier regimes have been overthrown by resentful populations (for example, the Shah in Iran) or have become hostile themselves (such as Hussein in Iraq and Gaddafi in

Libya). Political uncertainty has increased price volatility, which has contributed to global economic instability. (Four of the last five global recessions have been preceded by an oil price spike.) Moreover, even friendly rentier regimes tend to lose governance capacity over time, and regimes supported as strategic partners have found it harder to maintain order as their people gain greater access to information, adopt antistate and anti-corporate ideologies, and acquire weapons (as in Nigeria, Yemen and Syria). The declining capacity of rentier regimes to govern has forced importing states and their extractive corporations to attempt remedial governance through foreign aid and through 'corporate social responsibility' (for example building schools and hospitals, monitoring environmental impacts). However remedial governance is quite difficult and it opens states and firms that attempt it to escalating demands and protests from local populations.

Importing states and their resource firms face high risks when engaging with resource-cursed countries, yet the costs of withdrawal are also high. Unilateral commercial withdrawal from an exporting country cedes resource access to competitors, and is thus ineffective in reducing the resource curse. This combination of high risk in engagement and high cost of withdrawal creates strong strategic counterpressures on importing states. In this sense, importing states are themselves resource-cursed.

Importing-state policies drive the resource curse

The resource curse threatens when state or nonstate actors gain control over foreign-origin resource revenues through violence or coercion, stealth or fraud, creating the potential for self-reinforcing cycles of revenue capture. Importing-state policies contribute to the resource curse by connecting the demand for resources to these unaccountable actors. Importing states are putting their citizens into business with authoritarians, armed groups and corrupt officials abroad, driving the resource curse in exporting countries.

The central insight here is that while there is an international market, there is no international system of property law. Each sovereign state controls its own system of private law. Each state thus decides which foreign persons have the legal right to sell goods into its jurisdiction. Specifically, each sovereign state determines which foreigners will have the legal right to sell foreign natural resources to its citizens and corporations, and therefore which foreigners will receive the money derived from its consumer demand in return. For example, during the spring of 2011 the US government issued an order making it illegal for Americans to buy Libya's oil from the recognized government of Libya, and legal for Americans to buy Libya's oil from the rebels in the east of the country – even though during this period the rebels had no official standing under American law, or under international law. The US, that is, disconnected its consumer demand for oil from Gadaffi, and connected it instead to another group of its own choosing.

Such decisions on commercial engagement with foreign actors are entirely discretionary for each sovereign state. Every sovereign state decides for itself who has, and who lacks, the legal right to sell foreign natural resources to its citizens and corporations. Moreover, the example of Libya shows that the commercial decisions of importing states are separate from any facts about the diplomatic recognition of other states. The US has recognized Libya as an independent state with Gadaffi as its head at the same time as it legally empowered Americans to buy Libya's oil only from Libya's unrecognized rebels. Diplomatic recognition of a foreign state and commercial engagement with vendors of foreign resources are entirely distinct issues.

How do importing states decide which foreigners have the right to sell resources into their jurisdictions? The default policy of all importing states is to grant the legal right to sell natural resources to whoever can maintain coercive control over the territory where those resources are located. The standing policy of all importing states is 'might makes right'. Under this policy, importing states award the prize of their consumers' demand to whoever

can control a country or a territory by any means, including through force or fear. This policy incentivizes authoritarianism and coups by promising substantial resource revenues to whichever actor can be most effectively coercive. When the standing policy is to reward whoever can be most ruthless, the most ruthless will rise toward the top.

The standing policy of 'might makes right' also incentivizes the resource curse of civil conflict. It is not only those who gain control of an entire country that are granted the legal right to sell resources; it is also those who gain control over some portion of a country's territory. For example, before the US Clean Diamonds Act of 2003, the 'blood diamonds' sold by Sierra Leone's rebels were legally purchased in the US. Today, rebel seizure of a mineral deposit by armed groups in the eastern Congo anchors a chain of title that ends in the lawful sale of those minerals inside the UK, Germany and Norway. When military capture of territory is rewarded with large revenues, we should expect more and better armed militias.

Basing commercial engagement on 'might makes right' drives the resource curse. Imagine New York declared that whoever can seize any property in New Jersey will thereby gain the legal right to sell that property to New Yorkers – that New York courts and police will enforce the 'property rights' of purchasers of New Jersey chattels so long as the New Jersey vendor had physical control over the goods at the time of sale. One can imagine what New Jersey would be like if New York declared that whoever had the *might* in New Jersey would get the *right* to sell the goods legally to New Yorkers. Kingpins, syndicates, turf wars, violent and fraudulent dispossession, secret deals – similar phenomena to what actually occurs in the worst resource-cursed countries.

Importing-state policies beyond 'might makes right' also drive the resource curse by encouraging corruption. Until 2006 The Netherlands allowed tax deductions on bribes to foreign officials, and it was not until 2009 that the UK successfully prosecuted a foreign corruption case. 'Facilitation payments' are still permitted by Australia, Canada, New Zealand, South Korea and the US. Export credit agencies in many importing states fund and insure firms that pay off local officials. The world's leading banks, hospitals, universities and luxury shops legally provide goods and services to corrupt actors from exporting countries who are known to have taken resource revenues fraudulently from national treasuries.

Commercial engagement with a resource-rich country is like plugging a high-voltage line into its political economy. If the country is well wired politically and economically, it will glow brighter. If not, making the connection can cause short circuits, fires and explosions. Importing states' current policies lead them to make commercial

connections everywhere: the default is to engage with whoever can control resources by whatever means. The incentives generated by these policies drive the resource curse.

A better basis for international resource trade: popular resource sovereignty

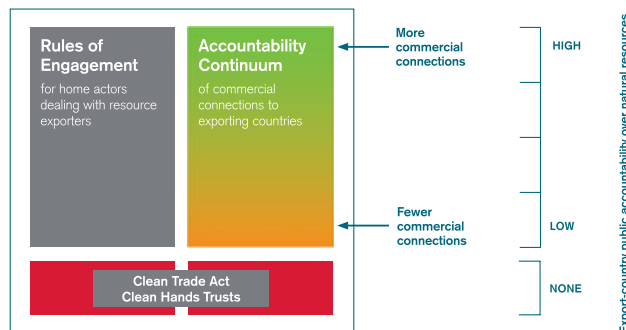
Today's standing trade policies of importing states are a remnant of the premodern (Westphalian) international system established in the 17th century. Premodern states endorsed the principle of 'might makes right' in all areas of their foreign policy: international law did not forbid colonialism, minority rule, apartheid, the acquisition of territory by conquest or violence against the denizens of a state's territory. In contrast, the principles of modern international law define a paradigm of international relations based on popular sovereignty and human rights.

The principles of popular sovereignty and human rights say that it is the people of each country who should control the natural resources of their country. For example, 178 states (including all of the rich democracies) are parties to at least one of the two major human rights treaties: the International Covenant on Civil and Political Rights (United Nations, 1996a) and the International Covenant on Economic, Social and Cultural Rights (United Nations, 1996b). These treaties share an identical Article 1, which declares the principle of popular resource sovereignty: 'all peoples may, for their own ends, freely dispose of their natural wealth and resources'.

Popular resource sovereignty is compatible with state ownership of natural resources, and also with systems of law (such as in the US) under which resources pass into private ownership. The principle of popular resource sovereignty requires only that the citizens of a country, as the ultimate owners of the country's resources, can exercise some control over what is done with their resources – whether those resources will be conserved, nationalized, privatized, sold to foreigners, and so on. The less that citizens can control decisions over natural resources, the less legitimate those decisions are. At the limit, the property rights of a people are violated (as any owner's rights would be) when some actor gains control of their assets by force, threat or extreme manipulation. Where the people lack any power to stop the sale of their assets, the sale of those assets is illegitimate. The transportation of resources out of that country is literally theft.

The importing states' default policy of 'might makes right' undermines the property rights of the citizens of the worst resource-cursed countries by engaging commercially with state and nonstate actors whose decisions are entirely beyond the control of those citizens. This policy approves the theft of resources from exporting

Figure 1. A clean trade policy framework for importing states.



countries, and so breaches the property rules that are essential to any market order. Other importing-state policies, such as those that encourage corruption, also undermine the people's ability to control their resources. With these policies, major importing states are violating their own commitments to primary principles of the modern international order.

A Clean Trade policy framework for importing states

The policy framework described in the following sections allows resource-importing states, and resource-company home states, to align their policies with popular resource sovereignty, leveraging the existing international agreement into a legal architecture that all states can adopt. Importing states should end commercial engagement with resource-exporting countries where public accountability is absent, and support public accountability in countries where it is weak (Figure 1).

Disqualified countries: a Clean Trade Act and Clean Hands Trusts

The ground rules of a free market require all participants to respect property rights. In countries where citizens lack the power to stop the sale of natural resources, the export of those assets is literally theft. The sharp end of a 'Clean Trade' policy framework applies to countries where severe authoritarianism or state failure makes public accountability over resources impossible. Two Clean Trade policies are designed for these 'worst of the worst' resource-cursed countries. These policies will enable implementing states to block the direct importation of stolen resources, and to discourage the violation of property rules by other states.

An implementing state will declare the 'worst of the worst' countries, where there is no public accountability over resources, *disqualified* for resource exports. The political conditions in a disqualified country are so bad

that its citizens could not possibly be exercising any check over the actors selling off their assets, whether they are authoritarians or nonstate actors such as rebels or warlords. Either the country's citizens cannot find out about the sale of the country's resources or they are too intimidated or vulnerable to protest these sales.

In concrete political terms, qualified and disqualified countries can be distinguished by whether citizens lack minimal civil liberties and political rights. There must be at least some absolutely minimal press freedom if citizens are to have access to information about the regime's resource decisions, and about possible gross mismanagement. The regime must not be so deeply opaque that it is nearly impossible for the people to find out who gets the revenues from resource sales and how these are spent. Citizens must be able to pass information about resource sales to each other without fear of arrest, dismissal or worse. The regime must put effective mechanisms in place through which the people can express their dissatisfaction with resource management: at least a free and fairly elected consultative body that advises the regime, and occasions on which individuals or civic groups can present petitions. There must also be a minimally adequate rule of law, ensuring that citizens who wish to protest resource sales publicly and peacefully may do so without fear of serious injury, loss of employment, imprisonment, torture, disappearance or death.

An implementing state can define rule-based criteria for disqualification by reference to 'worst of the worst' ratings on independent metrics. A variety of respected metrics already exist, including the World Bank World-wide Governance Indicators, the Fund for Peace/*Foreign Policy* Failed States Index, the Transparency International Corruption Index, as well as those produced by Polity, Freedom House, *The Economist*, and so on.

At present, disqualified countries will likely be few. For the purposes of illustration, were the US not to import oil from 'worst of the worst' resource-exporting countries such as Equatorial Guinea, Sudan, Syria, Turkmenistan and Uzbekistan it would lose less than 1 per cent of its oil imports. And the potential for disqualification will exert upward pressure on public accountability in many resource-exporting countries.

States implementing a Clean Trade framework will disengage their consumer demand from the most extreme authoritarian regimes and failed states, and encourage their trade partners to join them, with two policies: a Clean Trade Act and Clean Hands Trusts.

A Clean Trade Act

A Clean Trade Act effects full commercial disengagement from all resource vendors in disqualified coun-

tries. This legislation sets out legal penalties for any home citizen or corporation facilitating the import of natural resources from a disqualified country into the enacting jurisdiction. The law also denies all commercial facilities of the enacting jurisdiction (financial, medical, educational, retail and so on) to actors in the exporting country known to be selling off the country's resources.

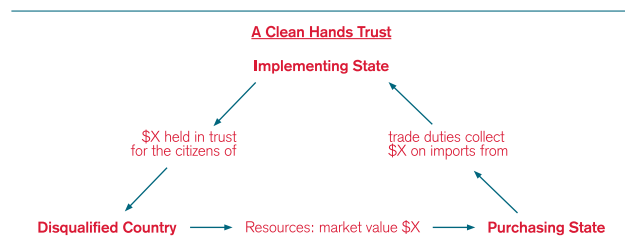
Passing a Clean Trade Act will create a level playing field for all corporations within the domestic jurisdiction of the implementing state. The legislation will require all such firms not to do business in the worst resource-cursed countries, meaning that no such firm will lose business to any other.

Yet by itself a Clean Trade Act will disadvantage firms that are within the jurisdiction of the implementing state relative to those that are not. And by itself a Clean Trade Act will also disadvantage the implementing state relative to other states in the competition to secure natural resource flows. Recent US sanctions on Sudan, for example, have mainly advantaged Asian importers and firms, and the money and arms that the Asian countries have given to Bashir in exchange for Sudan's oil have been more than sufficient to maintain his power in Khartoum. US sanctions impose a commercial disadvantage on the US and its firms, yet the resource curse in Sudan continues. States need new ways to exert pressure on other states to join them in commercially isolating countries where resources are controlled by unaccountable actors.

Clean Hands Trusts

Any state that passes a Clean Trade Act can exert this horizontal pressure on trade partners through the establishment of Clean Hands Trusts. These trusts will penalize trade partners for buying stolen resources from extremely authoritarian or failed states, while protecting the citizens of the implementing state from paying for those stolen resources indirectly. Their operation is illustrated by a scenario: a Clean Hands Trust for Equatorial Guinea (Figure 2).

Equatorial Guinea is a petroleum-rich country in Central Africa dominated since 1979 by its authoritarian president, Teodoro Obiang. Obiang's regime allows no significant political opposition, press freedom or judicial independence. International observers have reported many cases of detention, torture and extrajudicial killing of political opponents. Obiang's sales of Equatorial Guinea's petroleum are entirely beyond the control of the country's citizens, who have no means to 'freely dispose of their natural wealth and resources'. This means that Obiang's regime cannot be a legitimate vendor of the country's resources.

Figure 2. A clean hands trust.

Unilateral commercial detachment will not improve the situation in Equatorial Guinea. Were the US, for example, to sanction Obiang's regime by passing a Clean Trade Act as described earlier, China's national oil companies would likely step in. The resource curse in Equatorial Guinea would continue. Moreover, as the Equatorial Guinean–Chinese sales went through, American consumers would continue to pay for stolen Equatorial Guinean oil because of the US's trade with China. The Equatorial Guinean oil would percolate through the Chinese economy, and so become a factor in producing many of the goods exported from China to the US. Even after the US had blocked direct deals with Obiang's regime, American shoppers would still end up paying for Equatorial Guinea's stolen oil when buying Chinese-made electronics, clothing and toys.

In this scenario, the US government could fight the resource curse by treating Obiang's shipments of oil to China as what they would be: the passing of stolen goods. Say, for example, China buys \$3 billion worth of oil from Obiang. The US government's response should be to establish a Clean Hands Trust for Equatorial Guinea. This trust is a bank account that the US government will fill until it contains \$3 billion, the money coming from duties on Chinese imports as they enter the US. The money in this trust will then be held for the citizens of Equatorial Guinea, the owners of the stolen assets, until a minimally accountable government is in place.

This Clean Hands Trust will protect the American people from becoming tainted with the oil that China buys from Obiang. The duties will extract from Chinese imports the value of the oil taken from Equatorial Guinea, and the trust will hold this money until it can be returned to Equatorial Guinea's citizens. With the duties in place American consumers can buy Chinese imports with clean hands because the duties subtract from the price of those imports the value of the oil sold illegitimately by Obiang's regime. The Equatorial Guinean people, for their part, will know that there is a large sum of money waiting to be turned over to them if they can replace the regime that is stealing their assets. Further, all actors within and outside the country will know that the US duties will be lifted once Obiang's regime is replaced by a legitimate vendor of the country's resources.

A Clean Hands Trust is transferable to other importing states. Any government that passes a Clean Trade Act may set up a Clean Hands Trust once the Chinese buy from Obiang. Each government that creates such a trust will then regularly update its public report of how much money its trust is holding. All governments will stop filling their trusts once the combined global total in all of the trusts equals the value of the Chinese contract (\$3 billion). This gives the 'clean' countries a competitive incentive to announce and fill their trusts as quickly as possible, while limiting the duties on the Chinese to the amount of the original property-rights violation.

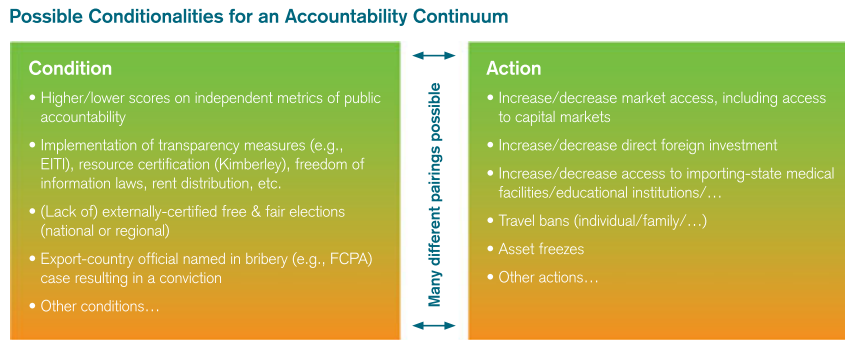
The two Clean Trade policies are designed to be compatible with the General Agreement on Tariffs and Trade (GATT). Lorand Bartels describes how the US could defend the policies described against a Chinese challenge at the WTO, and GATT compatibility more generally, in 'WTO Law Aspects of the Clean Trade Project'.²

These policies are ambitious, yet compared to other foreign policy options they are relatively modest. A state implementing these policies will be changing its own laws, enforced in its own jurisdiction, regarding its own terms of trade. Not a single bomber or dollar need be sent abroad to realize their goals. Moreover, while the framework is designed to encourage public accountability in exporting countries, an implementing state need press no broader international agenda, say concerning a right to democratic governance. Indeed, a state implementing this policy framework need express no judgment on the political legitimacy of any foreign regime, and need make no changes in the lists of states and governments receiving its diplomatic recognition. This is an implication of a result in an earlier discussion: diplomatic recognition does not determine commercial relations. The framework only changes an implementing state's terms of commercial engagement with foreigners. Officials of an implementing state can say that who holds the presidency of a particular exporting country is 'none of our business', while saying that in current conditions that country's resource vendors qualify for 'none of our business'.

Rules of engagement and an accountability continuum

The Clean Trade Act and Clean Hands Trusts set policy toward the 'worst of the worst' resource-cursed countries. Regarding the majority of resource-exporting countries, where there is some degree of public accountability over resources, states implementing the Clean Trade framework should effect a system of trade rules that sustains and encourages this accountability.

To do so, implementing states can draw on any of the specific policies to combat the resource curse that are currently available (regarding anticorruption, transpar-

Figure 3. Possible conditionalities for an accountability continuum.

ency, conflict prevention, and so on). Which policies they incorporate into the framework should be decided in specialized discussions in light of empirical research. This part of the framework is a structure for making existing policy options mutually reinforcing, by integrating these policies into a single trade architecture that supports public accountability in resource-exporting countries.

The framework is divided into two policy spaces into which specific policies can be fit:

1. *Rules of engagement for home actors dealing with resource exporters.* In this part of the framework importing states expand and enforce laws requiring corporations within their own jurisdictions to do business with resource exporters in ways that strengthen public accountability in exporting countries. For example, states extend and enforce existing legislation for home actors regarding bribery, money laundering, corporate transparency, due diligence and/or resource certification for imports (such as the Kimberley Process, which combats conflict diamonds).
2. *An accountability continuum of commercial connections to exporting countries.* In this part of the framework importing states construct a rule-based system of conditionalities, offering more commercial connections to those exporting countries that achieve greater public accountability over resources.

For the past 40 years major importers have structured their commercial engagement (concerning market access, export credits and so on) around conditionalities. The compatibility of such conditionalities with the rules of the GATT is well understood. For example, the US African Growth and Opportunity Act allows special trade privileges to sub-Saharan African countries with higher scores on rule of law, political pluralism and anticorruption indices. A Clean Trade policy framework sets out a continuum of increasing commercial connections to exporting countries contingent on the level of accountability over resources that those countries attain.

Trade conditionalities match conditions in the exporting country to actions by the importing country. Figure 3

sets out a few of the options available for making commercial connections with exporting countries conditional on their public accountability. Many different conditionalities (that is, many different condition–action pairings) are possible.

There are two general models for constructing a system of conditionalities: the schedule model and the club model.

1. *Schedule model:* an importing state sets out a schedule that calibrates positive and negative action to conditions in exporting countries. One current example of conditionality on a schedule model is the US Millennium Challenge mechanism for allocating development aid, which links aid to independent indicators on civil liberties, political rights, voice and accountability, rule of law, and so on. It is worth emphasizing that the most effective schedule will be one that is easily transferred to other importing countries, perhaps with coordination by an international association like the OECD.
2. *Club model:* importing and exporting countries form a cooperative association to combat the resource curse. The club model is more participatory, and more plastic to export-country circumstances, than the schedule model. Commonality in international standards can be increased as more countries join the club.

The continuum of conditionalities should be constructed to offer more commercial connections to exporters achieving greater public accountability. Codifying an accountability continuum will allow states implementing the Clean Trade framework to make their terms of trade transparent and predictable. Implementing the framework will reverse the pressures in trade policy that currently drive the resource curse.

Political support for the Clean Trade policy framework

Any state may implement the Clean Trade policy framework unilaterally, in whole or in part, whenever it is politically feasible to do so. Implementation is within the authority of every sovereign state. All of the policies within

such a framework are internal: they are all implemented within the state's jurisdiction so as to align the state's policies with its own principles. A state can commit to conditional implementation of the framework, leaving the choice of metrics (for example) to later multilateral agreement. A state can also commit to conditional enactment: for example, it can commit to enact the framework when states accounting for a certain percentage of global trade have also committed; or, for example, when a certain number of members of the EU have also committed.

The framework can enjoy broad political support within implementing states. Champions of free markets will support the framework since its mechanisms will enforce property rights within international trade. Protectionists will back the parts of the framework that insulate domestic industries from foreign competition. Those who prioritize national security will see measures that weaken hostile petrocrats, and that strengthen failed states where terrorism can incubate. Environmentalists will approve of reduced environmental damage from resource-cursed countries. Humanitarians will endorse the empowerment of some of the most mistreated people on Earth. A Clean Trade policy framework will appeal across the political spectrum from right to left.

Conclusions

'Resource curse' is a label that social scientists have given to pathologies that afflict resource-exporting countries: authoritarianism, armed conflict, corruption, economic dysfunction and their sequelae of development failures and environmental damage. Both the moral and the strategic situations of the people of resource-importing states are now poor. The resource curse forces importing states and resource corporations to pursue their legitimate interests from untenable positions, where their choices are either: (1) to engage with (and so empower) odious, belligerent and/or incompetent local actors, so becoming jointly responsible for their actions and failures; or (2) to withdraw, and thereby to cede resource access to competitors without changing the outcomes of the system.

Feasible reforms that are grounded in settled international norms, and that will advance national interests, are

available. The most important set of reforms for importing states will be those that calibrate commercial connections so as to improve instead of overload the political economies of exporting states, and to avoid making those connections that are likely to lead to disasters. The framework described here is one set of reforms of this type.

Farsighted national and corporate leaders will want to get out in front of such reforms. Citizens and civil society in both importing and exporting states are heavily invested in the modern principle of popular resource sovereignty. Driving authoritarianism, conflict, corruption and economic dysfunctions in exporting countries will continue to lead to bad outcomes at home. There are strong reasons for states to act together now, to enforce their own principles and to lift their own resource curse.

Notes

1. For recent empirical work on the resource curse, see Ross (2012) and le Billon (2012).
2. See Bartels (2012).

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