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Introduction

Despite the great economic and technological progress the world has achieved as of today and the spread of democracy in a growing number of countries, many people around the world are still living in quite hard conditions. Massive poverty, malnutrition, civil wars and authoritarian rulers are some of the circumstances half of humanity have to face daily. The dramatic happenings afflicting many poor countries are often referred to as the *resource curse* as such countries' wealth of natural resources has been pointed out as one of the main causes of the conditions wherein they lie. The sale of natural resources generates a flow of foreign money into resource exporter countries that provides extra-incentives for all those actors powerful enough to arrange a coup attempt, encouraging events such as civil wars and the establishment of repressive regimes, and providing a fertile ground for corruption and severe poverty.

In many of his recent works, Leif Wenar has discussed the current challenges of the world economic system. Journal articles such as *Property rights and the resource curse* (2008), *Realistic reforms of international trade in natural resources* (2011), and *Clean trade in natural resources* (2011), are all mainly focused on what has been termed the resource curse. According to recent studies such as Ross (2000), Wantchekon (2002) and Lam and Wantchekon (2003), resource exporting countries are often afflicted by coups and civil wars, suffer from endemic corruption and massive poverty, and are prone to be ruled by undemocratic regimes. An explanation of these tendencies can be provided by their richness in natural resources: although we can find this assertion fairly paradoxical, there is an actual negative correlation between countries' wealth in natural resources and their economic performance.

Richness in natural resources appears to correlate with authoritarianism, which can be pointed to as the main resource curse. This correlation is explained by the opportunity to sell off the country's natural wealth for those actors exerting effective authority over the territory where it is originally placed. The opportunity of being entitled to resource sales just in function of the

exercise of effective authority over a territory provides strong incentives to seize power by whatever means, even by the use of force, violence and coercion, or any other undemocratic mean. So, coups and civil wars are likely to occur as a result. Moreover, whoever is in power will try to maintain and reinforce his rule by encouraging corruption, buying more weapons and soldiers, maintaining the population in a state of severe poverty, denying the exercise of basic political rights such as the right to demonstrate, and violating human rights through arbitrary arrest and detention, exile, torture and massive murders. The combination of these events is what we call the resource curse, and each of the events above is a resource curse by itself.

Some authors have attempted to demonstrate that such dramatic conditions whereby poor countries lie are due to domestic factors, such as to incompetent and corrupted élites, a particular political culture, flawed internal economic institutions, or inadequate capacities of the country's population. It might be true that some of these endogenous factors actually play a role in reproducing the dramatic situation daily faced by the people living in these countries, yet we are still missing a fundamental point when conceiving the resource curse just as a result of domestic contingencies. This point is the role played by international community with respect to the perpetuation of the resource curse.

Whoever has sufficient means – namely whoever has enough money and power to buy soldiers and weapons – to arrange a coup attempt and achieve power by undemocratic means will handle the opportunity to sell off a country's natural wealth. Other states are likely to recognize such undemocratic actors as legitimate owners of the country's resources, or, at least, as entitled by the people of the country to resources management. The behaviour of the international community is one of the main causes of the resource curse, since totalitarian dictators, authoritarian élites or military juntas ruling a country by coercion are entitled to the right to sell natural resources just in force of other states' decision to grant this right to them. It is in force of the attitude of the international community that such actors have the opportunity to sell resources and to pocket the revenue, enforcing their rule. Thus, this behaviour is one of the greatest incentives for undemocratic agents to seize power by whatever means as they know that other states will recognize them as legitimate

representatives of the country where they seized power, and thus entitled to the sale of the country's natural wealth.

The behaviour of the international community is a severe infringement of the current international law, since some of its most basic principles are violated when trade in natural resources occurs with countries ruled by authoritarian regimes against the will of the people. More specifically, the principle of self-determination, human rights and property rights are seriously threatened by the behaviour of international community.

There are several international covenants and national constitutions where the principle of self-determination is enshrined. For instance, Article 1 of both the 1966 United Nations covenants on human rights – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – states that <<All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.>> and that <<All peoples may, for their own ends, freely dispose of their natural wealth and resources…>> The same statements may be found within the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the UN Declaration on "Friendly Relations," in the United States constitution and the Indian constitution of 1949, as well as in many other official declarations.

As we can see from Article 1 of the human rights covenants, the right to property of the natural wealth of a country belongs to the people of that land, namely to the citizens of the state having jurisdiction over that territory. Thus, property rights with regard to natural resources directly stem from the principle of self-determination, and its infringement can be considered as a human rights violation. When resource importing countries trade in natural resources with repressive regimes of countries afflicted by the resource curse, they are trading in stolen goods since the resources belong to the people that have no voice over their management and sale and have no access to the revenue from their sale.

Wenar proposes a framework to address the resource curse, the *clean trade approach*. The main aim of this proposal is, in Wenar's words, <<to create trade when now there is theft>> as the main charge Wenar moves to the current global trading system is not simply that it is not fair, but rather that it

encourages the theft of natural resources when it allows authoritarians to sell off their country's natural wealth. Wenar's proposal involves changes in the trade policy of affluent countries that import natural resources from the countries where they are originally extracted. Most of the reforms required by the clean trade approach would take place within five main areas: anti-corruption, transparency, revenue distribution, resource certification and commercial detachment and isolation. There are no impositions on resource exporting countries as most of the reforms would have to take place within importing countries' trade policies.

As we have seen, to trade in natural resources with countries oppressed by authoritarian regimes represents a violation of some of the most basic principles of the existing international law. Thus, resource importing countries should quit this trade because it is quite illegal. But, aside from legal grounds, is there any moral reason to do so? Are we, citizens of affluent countries, related in some way with the massive poverty many people in the world have to face? And, if we are, do we have any moral obligation to help those people escaping from their dramatic situation?

Half of humanity today have to face starvation, child malnutrition, and death from easily curable diseases. Moreover, people living in quite hard conditions are often governed by an authoritarian regime ready to kill them as they attempt to demonstrate against it. It is just in force of the infringement of international law that affluent countries should stop trade in natural resources with this kind of regimes, or is there any moral reason to do so? Thomas Pogge has argued that affluent countries and their citizens should find the eradication of massive poverty morally compelling because of their contribution to the establishment of the current global economic system. According to Pogge, it is the global system itself that plays a large role in reproducing massive poverty around the world, thus affluent countries have a serious responsibility since they have shaped the current world economic system in accordance with their national economic and political interests. Thus, affluent countries should assist the world's poor and oppressed people not only because property and human rights are not enforced within their countries, as in Wenar's view, but also because of some historical and moral reasons.

Other authors have tried to explain the poor countries' dramatic economic

and political situation by endogenous factors, thus, in their view, affluent countries have no responsibility and are not morally obliged to help. This position has been assumed by influential authors such as John Rawls and Thomas Nagel. In *The law of peoples,* Rawls argues that our duty towards what he calls “burdened societies” is just a duty of assistance, since in Rawls' view affluent countries and well-ordered societies in general do not have any responsibility towards the current living conditions of such burdened societies. Rawls' view of the global order is shaped by his assumption that no justice is possible outside the single nation-state as the international level lacks an institutional framework, the object to which principles of justice apply. Thus, the only obligation we have towards the poor is just a duty of assistance, up to the point where they will be able to maintain just institutions by themselves. Nagel proceeds on the same way, since in his opinion citizens of a nation-state have a duty of justice towards one another because they are subject to the same sovereign power, they share institutions and are authors of the system and subject to its norms at the same time. Thus, it is the citizens' <<special relation>> itself what ties them together. No justice is possible outside the state, since there are no shared institutions nor a sovereign power at the international level. Examining some theories on what we are our responsibilities towards the poor can help to understand whether it should be morally compelling to assist them or not. We are going to go through different points of view in an attempt to find out whether affluent countries have some kind of moral reason to stop trading with repressive regimes, or if it should come just as a consequence of their current infringement of international law.

Wenar proposes a viable way to face the resource curse, yet there are some flaws in the clean trade approach and several questions the author fails to address. Wenar's proposal will have to face some obstacles external to its mechanism, such as contraband of natural resources and corruption within resource exporting countries. But the main objections we will move to Wenar's proposal are two in particular: the question of leadership and the incentives it should provide to affluent countries for its implementation. We are going to find out that Wenar seems not to consider important issues such as national foreign policy interests, or energy supply problems.

We will conclude that a deeper analysis of the incentives the clean trade

approach should provide to importing countries is required for it to be complete. Moreover, for it to be possible for Wenar's proposal to give the best outcomes a large change in the extent to which people of wealthy countries are concerned about living standards in others is an inevitable requirement. The clean trade approach involves changes that have to pass through the political, economic and social field. Wenar proposes a viable framework to address poverty and oppression in resource cursed countries, but it is a long way to make it work properly.

Chapter 1

The clean trade approach

In order to explain why the current world trade system in natural resources needs to be reformed, Leif Wenar's starts from an empirical assumption: consumers buy stolen goods everyday. This rough statement may initially sound absurd to us, yet it is deeply rooted in what lies behind our payments for gas, for clothes produced in China or high-tech products imported from Japan. Every single product we buy has been produced using a certain amount of capital – machineries, economic capital, natural capital and human work. Wenar's statement is based on an infringement of the norms governing one of the above factors of production – an infringement of property rights with regard to natural resources.

At first glance, it can be hard to find this assertion persuasive. We would naturally tend to reply that if the goods we are going to purchase directly come from producers who had observed all the norms governing production within domestic and international law, there is no reason to declare that those goods are stolen. And, in fact, such producers have presumably respected all the norms on the production and the exchange of goods – they have paid for rough materials, they assure average wages to workers, they pay taxes and so on – but still there is something escaping from our view of the issue. When Wenar claims that we buy stolen goods everyday he refers to the fact that such goods have been produced by means of rough material – natural resources such as oil, gas or copper – looted from the territories where they were originally placed.

Wenar's assumption originates in the conditions afflicting the countries where those rough materials are originally placed, and thus extracted and exported. These extracting countries suffer from a series of events that are a direct consequence of their richness in natural resources. It may sound paradoxical to us, but such countries are far less wealthy than their richness in natural resources intensely requested by the rest of the world would allow us to believe, and besides they are often – in most of cases – torn by civil wars, corruption, authoritarian

governments and economic breakdowns.[1]

These dramatic happenings striking countries rich in natural resources are known as the *resource curse*. We are going to find out that the resource curse is mainly caused by the behaviour of international community. This behaviour breaches the norms in force under current international law, according to which the natural resources placed on a particular territory belong to the people living on that territory. The people are the ultimate owners of such resources, and they are entitled to the right to decide what to do with their property. Every appropriation by external or internal agents without the consent of their legitimate owners is illicit and should be punished by law, as usually happens for the common thefts we are used to see in our cities. An original infringement of property rights is the basis on which Leif Wenar declares that we buy stolen goods every day. We are going to find out that he is actually right.

1.1 The resource curse

Many resource-dependent economies are torn by civil wars, constantly threaten by coup attempts, governed by authoritarian élites and have to address great economic dysfunctions.[2] The combination of these events is what we call the resource curse, and each of them is a resource curse by itself. Countries rich in natural resources are <<more prone to authoritarian governance, they are at higher risk for civil wars and coup attempts, and they exhibit a greater economic dysfunction. >>[3]

Wealth in natural resources correlates with authoritarianism, civil conflict and economic dysfunction.[4] Wenar explains this unfortunate correlation by a

1 Ricky Lam and Leonard Wantchekon affirm that <<There is much evidence that, somewhat counter-intuitively, the discovery of a natural resource can lead to a decrease in the rate of economic growth,>> in *Political Dutch disease*, New York University Press, 2003. This phenomenon is in fact known as the *Dutch disease*, term first formulated by *The Economist* in 1977 to describe the particular situation addressed by the Netherlands after the discovery of a new gas field within the country. The Dutch disease entails different phenomena from the resource curse: it mostly refers to a decrease in the country's export competitiveness.

2 Wenar makes a list of some resource-cursed countries in *Clean trade*, 5-6. Among them, Nigeria, Burma, Sierra Leone and Equatorial Guinea. All of these countries have been afflicted for several years by civil wars or oppressed by dictatorships.

3 Wenar, *Clean trade*, 4.

4 Thomas Pogge notices that <<there is a significant *negative* correlation between a developing country's resource endowment and its rate of economic growth>> in *World poverty*

system of "wrong" incentives towards such kind of events actually provided by international community, mainly because of a customary rule still in force under current international law.[5] For instance, the tendency of resource dependent countries to be governed by authoritarian regimes can be explained by the possibility for such actors to sell the natural resources of the country and collect the revenue.[6] Of course, this correlates also with civil war and coup attempts, since many different actors are tempted by the chance of selling natural resources with all its consequences – flow of foreign money into their bank accounts, increased power and authority within the country and at the international level. Considering that in such poor countries the rule of law is almost entirely absent, whoever is powerful enough to seize power – even by violent means – will not be accountable to the people of that nation: who has seized power usually impose his rule by coercion, and have easy access to the country's richness in terms of natural resources to fill his private bank accounts and to enforce its rule buying arms and soldiers. This is where the resource curse originates.

Affluent countries and their energy corporations buy natural resources from exporting countries with no regard to their internal situation, that is they do not care if the country in question is governed by a democratic government or an authoritarian regime. Oil and gas payments generate a flow of foreign money into the resource exporting country that gives authoritarians the ability to strengthen their armies and to enforce their rule. Usually, we tend to give the fault of dramatic events such as massive poverty or civil wars afflicting poor countries to local features. We tend to blame internal factors such as the country's political culture or the inadequate capability of its citizens and local élites to encourage development. This might be true on occasion, yet there is a point we are still missing when conceiving the resource curse just as the result of local

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and human rights, Cambridge (UK): Polity Press, 2008, second ed., 169. We find the same statement in Pogge's essay *The role of international law in reproducing massive poverty*, included in Samantha Besson and John Tasioulas, *The philosophy of international law*, New York: Oxford University Press, 2010, 429.

5 The resource curse and the behaviour of international community are briefly presented in Charles Beitz, *Political theory and international relations*, Princeton: Princeton University Press, 1979, Part Three, "International Distributive Justice," 147-149.

6 About the tendency of resource exporting countries of being governed by authoritarian regimes, see Leonard Wantchekon, *Why do resource dependent countries have authoritarian governments?*, Yale University, 1999.

contingencies.

Wenar notices that the resource curse stems from some flaws in the international market system. In particular, a failure of market institutions in enforcing property rights. Wenar claims that <<the fault is not in nature, but in human institutions, here specifically markets. >>[7]

1.1.1 *Customary rules of international law*

According to the existing international law, the property of the natural resources placed over a particular territory is legally entitled to the people living on that territory.[8] Thus, the people should control resources management and sale by virtue of their right to control the laws governing their lives. These rights derive from the principle of *self-determination*, enshrined in human rights covenants as well as in many national constitutions. To take an example, the right to self-determination is stated in Article 1 of both the United Nations human rights covenants adopted by General Assembly in 1966 – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 1 of both covenants states:

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources…*

Article 1 of these covenants provides the normative basis for the claim that the natural resources of a particular country belong to the people of that country, and any actor controlling such resources without the consent of their ultimate owners is acting illegitimately. Once aware of these norms, which are currently in force under international law, our rational conclusion would be that no trade in

7 Wenar, *Clean trade*, 9.

8 That is, the property belongs to all the citizens of the state having jurisdiction over that territory. Wenar addresses the question of whom is entitled to the natural wealth of a territory in s. A2 "Defining the people and their rights," *Clean trade*, 47-48.

natural resources should be allowed when the country where they are placed is ruled by an authoritarian élite or by a repressive dictator, since those agents have seized power undemocratically, for instance by a *coup d'état*. Moreover, we could rationally conclude that the answer we expect from international community, which is made of states committed to international law, would be not to accept nor pay for any asset coming from such oppressed country, since its governors are breaching one of the basic principles of international law – the people's right to self-determination. Yet things do not actually work this way.

The main tendency of resource importing states is to recognize whoever exerts effective authority over a territory as legitimately empowered to effect legally valid transfers of ownership rights in natural resources to foreigners. Wenar links this attitude of international community to the persistence of a customary rule of the pre-modern era of international law, a remnant of the Westphalian era. This norm is what Wenar calls *might makes right*.

According to such customary rule, that we shall further examine in chapter 2, whoever had enough force – that means whoever had enough money, weapons and soldiers on its side – to seize power by whatever means was legally recognized as legitimate governor of the land under his control. Of course, this norm is completely in contrast with current international law, which comprehends human rights and the right to self-determination within its fundamental principles. But still this is what actually happens, and no states conceding repressive governors who took power undemocratically the legal right to sell the natural resources of their country is actually punished or blamed.

The might makes right rule encourages corruption, gives incentives to seize power by violence, and fosters civil wars and coup attempts, since revolutionary forces or military leaders know that once in power they will be recognized by other sovereign states as legitimate governors of the country where they took the power, no matter how ruthless they are. In a few words, the might make right rule is one of the main causes of the resource curse. Wenar describes the importance of affluent countries' decision to engage commercial relations with unaccountable agents of resource exporting countries in these words: <<Commercial connection is like plugging a high-voltage line into the political economy of an exporting state. If the exporting state is well wired politically and economically, it will glow brighter. If not, making the connection can cause short-circuits, fires,

explosions.>>[9]

Another current problem international trade in natural resources has to face is that while there is an international market, there is no international system of property law.[10] Each sovereign state decides by itself which foreign persons have the legal right to sell resources into its jurisdictions. Each sovereign state decides with whom to engage commercial relations at its own discretion. For instance, the US has banned Sudanese oil from their jurisdictions since 1997 because Sudan is governed by a repressive regime led by president al-Bashir, whereas the same has not happened with regard to oil coming from Equatorial Guinea, governed by a repressive élite led by president Theodor Obiang.[11] We can notice how decisions on commercial engagement with foreign actors are entirely discretionary for each sovereign state.

President Obiang gains the right to sell valid legal titles on Equatorial Guinea's oil only at the time that the US – or any other importing country – entitles him to such right. It is only in force of the decision of foreign states to allocate this right in his hands that Obiang become legally authorized to sell natural resources on international markets. If the US decides not to grant the right to Obiang anymore, but to grant it only to a democratically elected president, then Obiang will no longer be the legitimate vendor of the country's natural resources, and only when the people of Equatorial Guinea will hold elections to choose their president, he will be entitled to the right to sell the country's natural resources.

The example above gives us the awareness of how important affluent countries' choice about engaging commercial relations with the wrong agents may be. Wenar also notices that the decision whether to allow or not to a single person or to a list of persons the right to sell natural resources has no link with the political recognition of a sovereign state: Sudan is recognized by the US as an independent state, while al-Bashir appears on the list of those foreign agents with whom is illicit to trade in natural resources into the US jurisdictions.

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9 Wenar, *Clean trade*, 78.

10 Leif Wenar, *Clean trade in natural resources*, Ethics and International Affairs, vol. 25, 2011, 29.

11 About the restrictions imposed on Sudan, see the US Executive Order 13067, adopted on November 3, 1997, by president Clinton. The document declares in s.1 that <<all property and interests in property of the Government of Sudan that are in the United Stated, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.>>

1.1.2 *How international market treats owners and sellers*

We have already found an answer to the question of whom is the legitimate owner of the natural resources placed on a particular territory. Resources belong to the people of that territory, that is to say that they belong to all citizens of the state having jurisdiction over that territory. This is an intuitive answer and, according to the existing international law, is the right answer. We have noticed that the the people's ownership of natural resources and the right to control their management is a *human right*, as stated in several international covenants.

According to Wenar, the resource curse results from a failure of the market in enforcing property rights. Entitling whoever has effective authority over a territory to the right to sell its natural wealth is a shared attitude among international community, yet it is not only in contrast with international law but also totally wrong from a market perspective. The ultimate right to control the laws governing the management and the sale of natural resources belong to the people of the country where they are placed. Any other agent exerting control over resources without the people's consent is acting illegitimately. The people can decide to entrust some agents to the management of their resources, like shareholders do with their share of stock of a corporation, yet they must be able find out what managers are doing with their property.[12] They should receive part of the revenue of resource sales and have the power to change the norms such agents are subject to, if they want. Any situation where these conditions are not satisfied is outlaw.

But international market institutions actually fail to enforce property rights. This flaw, as we have seen, gives extra-incentives towards civil wars, coup attempts and the establishment of authoritarian governments. Beyond international law and the right to self-determination, there are two principles of the global market system according to which the behaviour of international community is illicit. Such principles are those of ownership and sale. They can provide the legal basis on which a decision to stop trading with authoritarian

12 Wenar makes a comparison between resources and their owners and shareholders: both do not manage their property, yet whom they have entrusted to such management is inevitably accountable for it.

regimes can be justified. According to the principles of ownership and sale, no one can legitimately sell goods unless the vendor proves he has some kind of valid title to the property he is trying to sell, and no one can legitimately buy stolen goods unless the purchaser is in *bona fide.*[13] This principles are deeply entrenched in national laws, and they simply states that any transaction of goods is valid only if the vendor is the legitimate owner, or has been entitled to the sale by the legitimate owner.

It is difficult for authoritarians to prove they have been entrusted by the population to the sale of their property, as well as it is hard that the *good faith* rule is satisfied in international transfers of natural resources. Thanks to the work of Non-governmental Organizations, to surveys led by international organizations such as the United Nations or by national governments, and eventually to modern communication means, we are aware of the conditions in which resource-exporter countries afflicted by the resource curse live. We are aware that, for example, al-Bashir's regime in Sudan is very repressive, that Turkmenistan is oppressed by a repressive dictator, and that the people of Burma have practically no voice over the government's policies. It is very difficult for international resources corporations to portrait themselves as good faith purchasers, today. According to the principles of ownership and sale they can face accusation of buying stolen goods when engaging commercial relations with actors governing a country by coercion, without the people's consent.

As well, vendors cannot portrait themselves as legitimate owners of the goods they are selling. Authoritarians will insist that they have the consent of the people under their rule, but this is difficult to be proven. The poverty afflicting the people of such countries in contrast to the richness of governing élites is, by itself, the proof that such actors are not accountable to the people and have not been chosen by citizens as managers and sellers of their property.

13 The principle of *bona fide* describes the situation when a purchaser cannot possibly know that the good he is going to buy is stolen. For example, when we buy a watch in a common store we are supposed to think that such object is lawfully hold by the seller, which is legitimately entitled to its property. In this case we are good faith purchasers, and if the watch turns out to be stolen we won't be legally liable for it. Otherwise, if we are going to buy a watch in a narrow street from a man who has got plenty of watches hidden in his coat, we cannot be considered as good faith purchasers because the circumstances in which the sale occurs should have arisen by themselves some suspect about the legitimacy of such sale.

1.2 A normative framework

To fight the resource curse and all the dramatic happenings it entails, Wenar proposes a *Clean trade approach.* This approach may be considered as an attempt to alleviate the suffering of those people living in countries torn by wars, oppressed by authoritarian regimes, and afflicted by endemic corruption and massive poverty, but mainly it is a way to enforce the people's right to freely dispose of their resources and to assure them full access to human rights currently denied by repressive governors able to impose their rule just thanks to the revenues of resource sales. In fact, the main aim of the clean trade approach is what Wenar describes with these words: <<the priority in reforming global commerce is not to replace free trade with fair trade. The priority is to create trade where now there is theft.>>[14]

The main goal of the reforms Wenar proposes is to increase the accountability of natural resources exporting country's governors to the people under their rule. The challenge is to turn the current international trade system, where whoever has enough power to seize control of a country can legitimately sell its natural resources because of the might makes right rule, into one in which, in accordance with current international law, resource importing countries make a distinction between regimes lawfully entitled to resource sales by their citizens and regimes that sell out resources illegally. To build a strong legal framework, Wenar notices four problems that have to be addressed:

a) The *grounding value problem*: the search for values to which countries willing to enact reforms should appeal to decide which regimes can lawfully sell resources and which cannot;

b) The *criterial problem*: once found a grounding value or set of values, it should be decided what conditions determine whether a country is above or not the line marked by the standard we have chosen;

c) The *problem of authoritative notice*: the search for a reliable and independent public indication that would decisively help us to understand if the criterion used is or not satisfied;

14 Wenar, *Clean trade*, 4.

d) The *problem of enforcement*: once found a criterion and a public indication to tell us when regimes are above or below the line, what institutions will enforce a judgment that trade in resources with a particular regime should stop?

In order to solve the four problems above, Wenar suggests to begin with a <<theory on two levels.>>[15] First, once chosen the grounding value, we will need an account of the *minimal conditions* that a country must meet for it to be possible for the people to authorize resource sales. Secondly, we will need an account of *authoritative notice* that indicates when these minimal conditions do not obtain.

1.2.1 *Minimal standards*

As we have seen, many poor yet resource rich countries are oppressed by authoritarian élites that have seized power against the will of the people and have established repressive systems to enforce their rule. These élites maintain full control over natural resources and sell them to international corporations, collecting the revenues and enhancing their power buying more weapons for their armies, strengthening police forces and bribing officials. It is intuitive to say that such actors are selling the country's natural resources illegitimately, but still we need a value to which we can appeal in order to decide which of those regimes is acting illicitly and which is not.

The grounding values Wenar suggests to use as basis for us to definitely decide when regimes have the legal right to sell out natural resources placed on their country are property rights. According to Wenar, such rights suit our task better than any other value. Once found the grounding value, the next step is to find out what minimal standards regimes must satisfy to sell natural resources lawfully.

To gain the legal right to sell resources, a regime must have the consent of the people living under its rule. The people may agree to entrust the regime to natural resources management, they may ask it to sell their resources or even signal their acquiescence through their silence. Whatever the way people choose

15 Wenar, *Clean trade*, 17.

to express their consent, Wenar argues that three minimal conditions must be met to claim that they have authorized the regime to sell off their resources: first, the people must be able to find out about the sales. If the people are not aware of what the regime is doing with their resources they cannot possibly have authorized the resource sales, even if they would have agreed. Second, the people must be able to stop the sales without incurring severe costs such as exile, imprisonment, torture or death. If the people do not have any assurance that the regime will not imprison or torture them in case of, for instance, public demonstrations against the resource sales, they will not express their dissent because they would fear the consequences of their actions. Third, the people must not be subject to extreme manipulation by the regime, such as in the case of authoritarians who have brainwashed or subjected the people to extraordinary psychological manipulation.[16]

These three conditions provide the minimal standards regimes must satisfy to have the legal authorization from their people to sell out the country's natural resources. If one of the three cases above occurs, people cannot possibly have authorized the regime to sell their resources, even in presence of their silence as the sale occurs. Of course, the people will remain silent in front of resource transfers if they are not aware of such transfers or if they fear the consequences of manifesting their dissent.

Once we have agreed on what minimal standards a regime must meet in order to have the people's authorization to sell natural resources, we can proceed with the search for a source of authoritative notice that can help us in assessing whether a regime meets or not such standards.

1.2.2 *Sources of authoritative notice*

In order to assess every country's performance in terms of political rights and civil liberties standards, we need an impartial and reliable source authoritative notice. We cannot rely on assessments provided by institutions within the country in question, since they would obviously suffer from the regime influence. Authors such as Thomas Pogge and Jonathan Shafter suggest to establish an international panel composed of independent jurists.[17] Such panel will investigate the minimal

16 Wenar, *Clean trade*, 18.

17 Pogge describes his proposal to address the resource curse in *World poverty*, chap. 6

standards required to allow trade in natural resources with resource exporting countries, and then adopt rulings forbidding trade with countries which are below the line marked by the minimal standards. According to Pogge, the panel would have a natural home within the UN system; according to Shafter, it requires a tailored, self-standing international organization, whose membership would be composed of diplomatic personnel appointed by member states.

Wenar does not proceed on the same line, since according to him it would be hard for states to accept rulings adopted by an independent international panel. Countries such as the United States have historically been very diffident towards all kind of international initiatives beyond their control.[18] Thus, in Wenar's opinion, the more appropriate institution to adopt rulings based on the evaluation of country's performance on political rights and civil liberties are national courts. Rulings forbidding trade with certain countries would be acceptable only when adopted by national courts, whereas those adopted by an international panel would always be charged of manipulation and external influence. Moreover, Wenar suggests that if the panel's members were mostly appointed by rich countries interested in maintaining their source of natural resources supply, the panel would suffer from their influence.

Wenar underlines that, in concrete terms, the three conditions he requires for a regime to have the legitimate authority to sell the natural resources of a country eventually correspond to the enforcement of minimal civil liberties and political rights. He points to a report annually published by an independent American NGO, the *Freedom House*, as a reliable public indicator of the minimal standards regimes must meet.[19] The organization's report, *Freedom in the world*, annually

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"Achieving democracy," 152-173, especially describing his view of an international panel in pp. 161-167. Jonathan Shafter, "The Due Diligence Model: A New Approach to the Problem of Odious Debt," Ethics and International Affairs 21.1, 2007, 49-67.

18 A famous example about the US reluctance to join international initiatives going beyond its control is the refusal to join the League of Nations, the intergovernmental organization originally proposed by president Wilson among its "Fourteen Points." Wenar notices that there are two major exceptions to this US attitude: the WTO dispute resolution panels and the United Nations Security Council (where the US is however a permanent member of the Security Council, with the veto power.) Wenar, *Realistic reform of international trade in resources*, in *Pogge and his critics*, ed. Alison M. Jaggar, Cambridge (UK): Polity Press, 2010, 139.

19 The Freedom House is an independent NGO funded in 1941. Among its main aims are the increase of governments accountability to their people, the enforcement of the rule of law and of the basic human liberties such as freedom of expression, association, belief, and the rights of minorities and women. The organization's work aim at empowering citizens to <<exercise their fundamental rights.>> Its report *Freedom in the world* is often cited by journalists, academics and

published since 1971, provides an assessment to each country's performance in two indices: political rights and civil liberties. Countries are given a rating on a scale from 1 to 7, where 1 is the best possible score and 7 is the worst. Countries rated 7 by FH are countries where political rights and civil liberties are totally absent. According to Wenar, the ratings of FH would be acceptable as source of authoritative notice since their reliability and integrity has been confirmed by the US government itself, which authorized for official use the assessments of the organization's annual report while establishing the Millennium Challenge Corporation (MCC) in 2002.[20]

So, the ratings assigned to countries by Freedom House should be used as criteria to allow or forbid trade in natural resources with countries where the enforcement of political rights and civil liberties is uncertain or proven to lack. According to Wenar, <<we can say with confidence that a Freedom House rating of '7' for either civil liberties or political rights should be conclusive for establishing that the people of that country are not in conditions under which they could possibly authorize resource sales>>.[21]

Wenar himself suggests that using more than one index that rates political conditions around the world could be useful since they would go to reinforce one another. For example, indices on corruption or those provided by the World Bank's surveys.

1.3 Clean trade legislation

Now that we have chosen a reliable and objective source of authoritative notice to decide whether trade with a particular resource exporting countries is licit or not, we can proceed in analysing what empirical changes in trade policies Wenar proposes in order to stop trading with countries rated 7 in both indices by Freedom House.

Most of the reforms proposed by Wenar would take place within resources

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policy-makers, and is broadly recognized as a reliable and authoritative voice on the political and civil conditions of states. Source: freedomhouse.org.

20 The MCC is an agency for distributing development aid to poor countries. The FH rating has been officially selected as criteria concerning civil liberties and political rights, whose respect is required for the MCC to give development aid.

21 Wenar, *Clean trade*, 23.

importing countries, not requiring any change in exporter countries: the US national courts, for instance, will adopt rulings establishing whether trade in natural resources with a certain country is allowed or forbidden.[22] Such rulings will set legal precedents and will regulate the activities of national resource corporations. There are no impositions on resource-exporting countries' policies. All the reforms will take place within the importing country borders.

Wenar points to five main areas where reforms that aim at fighting the resource curse should take place:

- *Anti-corruption*: laws in import-country jurisdictions should be adopted in order to deter and if necessary to punish any attempt to bribe officials in international business transactions.
- *Transparency*: requires the establishment of a mechanism for making information about resource revenue flows publicly available.
- *Revenue distribution*: revenues from resource sales should be distributed among adult citizens of the country. Wenar argues that <<Revenue distribution would require governments to derive their revenues from taxation and so to become more responsive to public concerns.>>[23]
- *Resource certification*: on the model provided by the Kimberley Process for fighting trade in "blood diamonds," resource exports should be certified, and participating countries should trade in natural resources only with other participants.
- *Commercial detachment and isolation*: countries not adopting the reforms above would be sanctioned and become the target of commercial detachment.

The solution to the resource curse partly lies within the enforcement of

22 Andreas Paulus gives an full explanation of the "fragmentation" of international law due to states' attitude to interpret international law by themselves in *International adjudication*, in Besson and Taioulas, *Philosophy*, chap. 9, 207-224. Paulus claims that <<the formal adjudication of a legal dispute by a court or tribunal constitutes the exception to the rule of 'auto-interpretation' of international law by states.>> The author writes with special regard to the International Court of Justice's rulings, but his argument may provide an additional reason to assert that national courts, as suggested by Wenar, would suit the task of implementing decisions on trade policies better than the international panels proposed by Pogge and Shafter.

23 Wenar, *Clean trade*, 65.

public accountability over resources. Who manage and sell natural resources should be accountable to the people of the country for such management. Yet the persistence of the "might makes right" customary rule in the behaviour of international community encourages the avoidance of such accountability for natural resources agents.

Many international treaties and covenants on human rights require public accountability, as stated by Article 1 of the ICCPR and the ICESCR mentioned above. Wenar refers more than once to the importance of such declaration, which leave no excuses to attitudes oriented to the opposite way. When human rights covenants states that <<all people may, for their own ends, freely dispose of their natural wealth and resources…>> they are actually requiring whoever controls natural resources to be accountable to the people to whom the resources belong. Thus, when this rule is not satisfied we are in presence of a severe infringement of human rights treaties and international law. The people are entitled to property rights on their country's natural wealth and resources: this is the reason why Wenar declares that all the reforms he suggests to be implemented in trade policies of resource importing countries actually aim at enforcing public accountability in resource cursed countries, since this is the way to enforce property rights.

For Wenar, enforcing the principle of public accountability should be the primary goal of all reforms in importing countries' trade policies since it combines three basic norms of international law: *self-determination*, which entitles the people to the right not to be prevented by any agent to the exercise of their authority over the law and, thus, to freely dispose of their natural wealth for their own ends; *human rights*, which entitles the people to the right of pursuing a worthwhile life and not to be oppressed by authoritarians; and *property rights*, according to which the resources are property of the people and whoever is entrusted to resources management must be accountable to their owners.[24]

Wenar links the resource curse also to tax rates, arguing that until the élites governing cursed countries will rely on natural resource exports instead that taxes to fund themselves they won't be accountable to the people since, thanks to resource revenues, they can afford to go against the interests of the people. In such

24 Wenar, *Clean trade*, 67.

countries, tax rates are very low. Thus, until governments will not rely on tax payments to survive, they will not be accountable to the people nor respond to the people's needs.

1.3.1 *The clean hands trust*

Of course, if the reforms above were implemented by only one or few resource importing states, the outcome in terms of mitigation of the resource curse and of property rights enforcement would be very weak or maybe completely absent. A unilateral withdrawal from a commercial engagement with a resource cursed country would not only be useless, but would also set a series of disincentives for the country deciding to quit trading with it.

For instance, a unilateral withdrawal of the US from an oil-exporter country would cede resource access to the US competitors, posing a threat to American national companies on international markets. We are going to examine this issue in more details in chapter 2. Moreover, if the US stops resource payments to a cursed country while other states – for example China – continue to buy such country's oil, all efforts risk to be useless and American consumers risk to indirectly contribute to the resource curse, namely by purchasing goods imported from China where they have been produced by means of resources bought from oppressive regimes. Positive effects on the resource curse as a result of the US ban on stolen oil from its jurisdictions would be absent.

In order to resolve the problem above Wenar proposes a system of additional tariffs to be put on – in our example – Chinese imports. He calls this system "trust-and-tariffs mechanism." To set additional tariffs on Chinese goods imported into the American market is just the first step of the mechanism: once tariffs are enacted, the second step is to establish a bank account, what Wenar calls *Clean hands trust*, where the tariffs proceeds would go. The proceeds flows into such bank account until it will reach the same amount of money that of the original payment for natural resources. For example, if China bought oil from Sudan for five million dollars, used that oil to produce clothes, and then exported them into the US market, the US would put tariffs on Chinese imports and fill the clean hands trust until it will reach the amount of five million dollars.

At that point, the money will just wait for the Sudanese people to replace the

authoritarian élite they are oppressed by with a democratic government, or one that meets at a minimum the standards required by Freedom House to assign a lower rating than 7. Once the Sudanese people will have replaced the oppressive regime with such a government, they will be entitled to dispose of the money in the clean hands trust. According to Wenar, the trust-and-tariffs mechanism would set an extra-incentive for oppressed people to fight in the name of their right to self-determination.

The establishment of a clean hands trust should allow American consumers to be clean-handed, and should also set out a series of incentives for many American actors to support the entire clean trade approach. For instance, Wenar suggests that American manufacturers will lobby the government to enact additional tariffs on Chinese imports, because they would fear competition on national market. The banking industry will support the creation of the clean hands trust, since banks will handle the fund until it is turned to the people of the country where the original resources theft took place.

1.3.2 *A policy framework for resource importing countries*

Importing states should be a primary location for reforms within the clean trade approach. Wenar notices that some reforms in the area of anti-corruption, resource certification and commercial detachment and isolation have already been implemented by several importing countries. An example is once again the Kimberley Process with regard to resource certification, or the Council of Europe's anti-corruption conventions. According to Wenar, <<the risk of resource curse in exporting countries increases when foreign demand for natural resources connects to actors insufficiently accountable to the public. The answer to this question pushes the focus for reform towards importing states. >>[25]

Wenar provides a policy framework to fight the resource curse and encourage public accountability in resource-dependent economies: in his view, the approach should be endowed with three characteristics. It should be *ruled-based*: relying on independent measures of export-countries accountability, it will discipline importing states decisions on trade policy. It should be *horizontally*

25 Wenar, *Clean trade*, 70.

transferrable: all importing countries should easily adopt it, in order to avoid competitive pressures that would raise in case some of them rejected its implementation, becoming an obstacle towards the achievement of the approach's goals. Lastly, it should be *vertically compatible*: reforms in trade policies must be compatible with supranational legislation, such as with multilateral and regional agreements (for instance, with the norms established by the World Trade Organization and with European Union law).

This policy framework lies on three main pillars: rules for commercial engagement, a system of trade conditionalities calibrated to export country reforms, and commercial detachment and isolation. With regard to the rules importing countries should adopt to regulate commercial engagement with a resource exporting country, such states should <<enact and enforce laws requiring persons in their own jurisdictions to deal commercially with export-country officials in ways that strengthen accountability, for example through legislation on bribery, corporate transparency and resource certification.>> A system of trade conditionalities calibrated to export country reforms requires <<importing countries to implement a system of conditionalities linked to reforms in exporting countries.>> Many countries today already impose these kind of systems on commercial engagement. For instance, the US President currently has discretion under the Africa Growth and Opportunity Act to grant special trade privileges to Sub-Saharan African countries that show to have achieved some progress on the rule of law, political pluralism and anti-corruption efforts. These kinds of positive conditionalities could be enhanced with further public accountability criteria. Wenar suggests to offer more financial or technical aid, or to allow subsidies to non-resource-cursed industries.[26] On the other side, negative conditionalities could be decreased market access, aid reduction or termination, withholding of export credits, etc.

Wenar also points out two ways to build a system of conditionalities: the *schedule model* and the *club model*. The first one requires importing states to set

26 But the effectiveness of wealthy countries' financial aid to poor ones is a matter of debate among economists and political philosophers. An exhaustive research on the issue is provided by Christopher D. Wright in *The ethics of trade and aid: development, charity or waste?*, London: Continuum, 2011. The author discusses the question whether foreign aid to poor countries is a valid mean to eradicate massive poverty and to help them to achieve development goals, and suggests possible ways to address the issue especially in chap. 4-5, 94-152.

out a schedule that calibrates positive and negative action to conditions in exporting countries. One current example is the US Millennium Challenge mechanism for allocating development aid, which links aid to independent indicators on civil liberties, political rights and so on. The second one, the club model, requires importing states to form a cooperative association to combat the resource curse. So decisions on conditionalities would emerge from discussions among club members. Among its advantages there is horizontal uniformity.

The last pillar, commercial detachment and isolation, should be the standard behaviour towards countries where public control over resources management is absent, on the example provided by the US ban on assets from Sudan.

1.3.3 *Output*

There are two ways through which decisions on trade in natural resources with a country established be means of the assessment of the standards above may be implemented into importing countries' trade policies: the political route and the judicial route.

Shafter suggests the political route. Governments would enforce against their own corporations the panel's negative ruling that a particular regime is not to be dealt with. In Wenar's opinion this proposal is praiseworthy but not feasible, since it would require great courage for domestic judges to implement within the national legal order the decision of some international panel requiring to stop trade with certain countries, since such changes in trade policy would have several dramatic consequences. As we have seen, Wenar finds the judicial route more reliable. The advantage of this solution is that it resolves the problem of the panel's rulings enforcement. It would be quite hard for domestic judicial branches to accept the rulings of international panels as conclusive for their own judgments. These external standings simply would not be considered authoritative enough to justify the loss of income and resource supply for national powerful actors such as energy corporations.

Thus, the only way possible for Wenar is that domestic courts themselves rule that there is public evidence that the minimal conditions within some country are not met, and so that no person within that country can legally sell off its resources. American judges, for instance, will rule that conditions in a particular

country are so bad that its leaders nor any other person can possibly have the people's consent to sell off their resources, so American corporation will be forbidden to buy oil from that country.

1.4 An answer to Pogge

Thomas Pogge has contributed to bring attention to the inequalities of the current global economic order. Many of its works aim at addressing the issue of world massive poverty, underlining the responsibilities of affluent countries towards the severe conditions poor have to face. Some of his arguments about affluent countries' responsibility and duties toward world poor will be discussed in chapter 2, focusing mostly on his work *World poverty and human rights*, 2008. Now we are going to briefly present the mechanism Pogge proposes to fight the resource curse and help resource-dependent economies to get out their situation of underdevelopment.

Thomas Pogge argues that the imposition of the norms currently governing international economic system is harming many people in the world. In Pogge's view of current global order, norms have been imposed on poor by affluent countries, that are responsible for million of death from poverty-related causes. A different global order – a more just global order – would permit to save people from avoidable death. Two norms among those imposed by affluent countries on poor countries seem to give particular incentives to the resource curse: the *borrowing privilege* and the *international resource privilege*. Through the accordance of these two privileges to countries governed by authoritarians, international community contributes to reproducing the resource curse. The international resource privilege is <<the privilege of any person or group of persons exercising effective power within a country to confer internationally valid legal ownership rights in its natural resources,>>[27] while the borrowing privilege is the ability of such actors to borrow money from foreign banks.

In Pogge's view, the solution to the resource curse turns on two mechanisms. The first one is a constitutional amendment to be adopted by resource rich

27 Pogge, *World poverty*, 171.

developing democracies declaring that: only constitutional governments can have access to international loans, and if any future government led by actors who seized power in violation of the democratic constitution of the country will incur in debts, once the constitutional government is restored the debt will be no longer solved at public expense;[28] and that only constitutionally democratic governments can <<effect legally valid transfers of ownership rights in public property.>> The second mechanism of Pogge's proposal is the establishment of an international panel, which he calls "Democracy Panel," to survey standards of democracy in countries that have enacted the constitutional amendments above and signal any situation where agents have seized power by unconstitutional means. In such case, trade with the country in question will be forbidden by a ruling adopted by the panel itself.

The aim of the constitutional amendments Pogge suggests to be adopted by "fledging democracies" is to decrease incentives for violent agents to seize power by whatever means. Of course, once the international community knows that a particular country has adopted such amendments to its national constitution, international banking industry as well as international resources corporations will be much less keen of doing business with an unconstitutional repressive élite that has overthrown the country's former democratic government. The constitutional amendments proposal cuts incentives at the bottom. If there is no "reward" once in power, namely if there are few chances of getting loans from foreign banks or to pocket the revenue of natural resource sales, there will be much less incentives to seek power in a resource exporter country by violent means.

The first criticism Wenar makes about Pogge's argument is that he starts from the vague assumption that affluent countries are responsible for the imposition of an unfair global economic system on poor. Wenar claims that unless Pogge proves that a different global order would have caused less harm to poor countries, and shows how this alternative global order should be shaped, he cannot state that wealthy countries are harming the poor and are, thus, entirely responsible for their suffering. Secondly, in Wenar's opinion the mechanism proposed by Pogge has more than one flaw.

First, Pogge's mechanism of constitutional amendments can only help in

28 Pogge, *World poverty*, 170.

those countries that have already reached at least a minimal democratic government, able – and willing – to adopt such amendments. Countries such as Equatorial Guinea, which has never been democratic since its independence from Spain in 1968, would not benefit at all from the proposal.[29] Second, according to Wenar this system actually provides incentives towards the perpetuation of the resource curse, instead of contributing to its eradication. If the democratic government of a poor country adopts constitutional amendments on international loans and natural resource sales, and a coup succeeds shortly afterwards, wealthy countries will have significant incentives to assure that democratic governance does not return in the country, otherwise their resources corporations will be charged of misappropriation of foreign public property. What Pogge presents as an arm at the people disposal to protect their democracy may turns, in Wenar's view, into an additional resource curse. Wenar also contests the grounding value of Pogge's proposal: democratic governance. According to the former, democracy is too strong a value to ground a feasible proposal for reform of international institutions.

In some cases it will be easy for international community and foreign banks to establish that a government is unconstitutional, while in others the evaluation may be controversial. In order to solve this question, Pogge suggests that a fledging democracy should <<officially empower some external agency to settle such controversies… in the manner of a court.>> [30] Once several fledging democracies choose to empower the same external agency to settle the controversies about the constitutionality of their governments, a "Democracy Panel" may be permanently established, Pogge suggests, within the UN system.

Pogge also proposes the creation of a "Democracy Fund," with the aim of temporarily servicing the debt of democratic resource cursed countries in the event that <<unconstitutional rulers of such countries refuse to do so.>>[31] This system should avoid the problem many fledging democracies would face once the

29 Equatorial Guinea has been governed by only two presidents since independence. President Macias Nguema seized power in 1973 and ruled the country until 1979. In that year Theodor Obiang took power by a coup attempt and condemned the former president to death. Obiang is still in charge.

30 Pogge, *World poverty*, 161-162.

31 Pogge, *World poverty*, 164-165.

constitutional amendments are enacted, since foreign banks will become more reluctant to concede loans once aware that if a coup succeeds within the country the debt will remain unsolved.

According to Wenar, the answers provided by Pogge to the resource curse are not likely to work properly. In his opinion, the mechanism Pogge proposes is not empirically feasible. Wenar suggests to frame the resource curse <<not as a democratic deficit, but rather as a violation of a rights and national self-determination.>>[32] Wenar's grounding values are property rights. His criticism about Pogge's criterion stem from the likely case that even non-democratic but relatively decent governments could not legitimately engage commercial relations with foreigners.

32 Wenar, *Realistic reform*, p. 5.

Chapter 2

Moral duties and what we owe to the poor

As we have seen, Wenar's approach is grounded on firm principles of the existing international law. The current chapter provides a deeper analysis of such principles, along with a discussion on affluent countries responsibilities towards the dramatic situation currently faced by most of poor countries. Our aim is to understand if there is some moral reason that could provide a moral basis for the clean trade approach. Presumably, its implementation would require to a large extent the support of the population of the countries that decide to adopt it. In our opinion, a moral theory on our obligation towards the poor is required for the people to understand and support the clean trade approach. We are going to find out, in chapter 3, that the implementation of the approach entails several costs, to be borne by national actors such as domestic firm and the population itself.

We are going to discuss the positions of some influential authors, such as John Rawls, Thomas Nagel, Thomas Pogge and Peter Singer. The first two tend to deny a role of international factors in reproducing massive poverty within least-developed countries, pointing to endogenous factors to explain the dramatic conditions wherein their people live. According to Pogge, affluent countries are to blame for such poor countries' current conditions, thus they have to shoulder their responsibility and give assistance to all the people in need because of the flawed global economic world they have contributed to shape.

Singer shares Pogge's view on our duty to help the poor, but with an fundamental difference: we ought to help because of our living standards and lifestyle. According to Singer, we can help at a very little cost: then, we should renounce to part of our resources and allocate them for the goal of eradicating world massive poverty. The renounce we would have to make is very little compared to our lifestyle, thus we should feel morally obliged to give part of our incomes for aid to poor countries. Thus, the main difference between Pogge's and Singer's position is that according to the former we are obliged to help the poor because we have contributed to shape the global system that plays a large role in

reproducing the massive poverty they are afflicted by, whereas according to the latter we should help through charity and feel morally obliged to do so just because we would have to pay a very little cost.

Wenar does not provide any moral ground for its proposal, arguing that affluent countries should stop trade in natural resources with oppressed countries because this kind of trade is a serious infringement of international law. This is certainly true, but providing a moral basis for the clean trade approach can help to explain why affluent countries' citizens should care about people living in distant countries since the population itself eventually would have to bear most of the costs entailed in Wenar's proposal. Affluent countries' citizens could not be ready to accept measures aimed at enforcing human and property rights in foreign countries if such measures cause a rise in the cost of living within their states, and the people's dissent would raise hard pressures on governments. A moral ground can increase the strength of Wenar's argument.

2.1 Normative principles

The normative basis of the clean trade approach is provided by three basic principles of international law: self-determination, human rights and property rights. As we have seen, the principle of self-determination is enshrined in the United Nations Charter, in the Universal Declaration of Human Rights as well as in the UN human rights covenants and many other official documents. According to Article 1 of both human rights covenants, all peoples have the right to self-determination and consequently they are entitled to make use of their natural resources, meant as the natural capital placed on the territory where they live, to pursue their economic, social and cultural development.

Countries afflicted by the resource curse are <<more prone to authoritarian governance, they are at higher risk for civil wars and coup attempts, and they exhibit greater economic dysfunction.>>[33] According to Wenar, these countries suffer from a lack of property rights enforcement due to a flaw of the international market system. As we can see from Article 1 of the UN covenants, the property

33 Wenar, *Clean Trade*, 4.

rights on natural wealth directly stem from the principle of self-determination. Authoritarian élites who seized power by violent means in poor yet resource-rich countries should not be allowed by the international community to sell off the country's natural resources as they currently are, since they are not accountable to the legitimate owners of such resources. They are property of the people, thus no one can legitimately sell a country's natural resources without the people's consent.

Wenar traces the origin of the resource curse back to an institutional failure – a market failure – in enforcing property rights as established by international law: they are not protected enough by market rules and constantly threatened by a system of incentives encouraging their violation.

Trade in natural resources is trade in "stolen" resources, at least when they come from territories controlled by oppressive regimes maintaining their power without the people's consent. Then the main goal of the reforms proposed by Wenar's clean trade approach is to replace this theft with legal trade. Natural resources belong to the people, so the people should have the power to control the laws governing their management and sale. Thus we can understand what Wenar means when he claims that <<the priority is to create trade where now there is theft.>>

2.1.2 *Self-determination, human rights and property rights*

Self-determination is a cardinal principle in modern international law, especially enforced after World War II.[34] Enforcing this principle means granting all peoples on earth the exercise of their right to be independent from any foreign or oppressive rule, and to exert their freedom to choose under which organization, norms and institutions they want to live. Self-determination is the premise to the people's right to exploit natural resources placed on their territory.[35]

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34 In 1945 the principle has been enshrined in Article 1 of the UN Charter. The UDHR dates 1948. We can find it again within both the 1966 UN human rights covenants, as well as in many national constitutions adopted after WWII. See Charles Beitz, *Political theory and international relations* (Princeton: Princeton University Press, 1979) 93-94. Andrew Clapham states that <<The establishment of the United Nations signalled the beginning of a period of unprecedented international concern for the protection of human rights,>> in *Human rights, a very short introduction* (New York: Oxford University Press, 2007), 42.

35 Wenar address the question of who are "the people" entitled to freely dispose of natural resources placed on a specific territory by human rights covenants in *Clean trade*, s. A2,

Thus, the right to dispose of natural resources directly stems from the principle of self-determination.[36] An improper appropriation of the country's natural resources by illegitimate actors would set out tough protests in any country where minimal conditions of democracy are satisfied. However, we can observe daily violations of property rights and we are witness of improper appropriation of natural resources by actors who have no right to owe them. This is a severe infringement of international law.

Property rights are also the basic principles of the global market. They are quite observed in several different kinds of political system. Wenar's approach to global trade does not require any specific kind of political system nor ideology for states willing to adopt it. It can be implemented by liberal U.S. or by the Popular Republic of China, by parliamentarian or monarchical systems. States enacting the clean trade approach have no need to be linked by their internal legal systems; what ties them together is their shared endorsement of human rights and self-determination as member parties of the international community. Thus, it is not important which internal arrangement they have chosen, but just that they have agreed – in one way or another – to enforce human rights meant as basic norms of international law.

Self-determination and human rights do not relate to citizenship, they belong equally to the people of the entire planet even though some domestic law may not recognize them explicitly. Those rights, in the form of property rights, provide the basis on which Wenar expands to the global system the concept of justice we usually apply to domestic institutions. Human and property rights might be the common denominator that unifies requests of justice beyond the boundaries of the single nation-state, providing a bridge through which the moral demands people make on their national institutions can reach global institutions.

"Defining the people and their rights," 47-48. His answer is that today those people are identified as all the citizens of an independent country, namely all the people living within its jurisdiction.

36 Citizens of a country have the ultimate right to control the laws governing their territory. This is what we call self-determination. The right to control laws includes the right to control the laws governing the management of natural resources. Wenar explains this issue in details in *Clean Trade*, 10. A denial of the right to freely dispose of natural resources belonging to the people can be considered as a denial of the people's right to pursue their economic, social and cultural development. It is a clear infringement of the principle of self-determination.

2.1.3 *The might-makes-right rule*

As we have seen, international law states that the ultimate right to control the laws governing the management of natural resources belong to the citizens of the country where such resources are placed. Then, the people are entitled to manage them and should have the ultimate voice about their destination. By virtue of their right, citizens can choose to entrust the resources management to national companies or to transfer resources from national to private control, yet they must be able to find out what managers do and, if they want, to change the laws such actors are subject to.

According to Wenar, oppressive regimes and authoritarian élites cannot possibly be entitled to the management of natural resources or to the revenues from their sales when they lack valid consent from the people under their rule. Wenar requires that a minimal standard of political rights and civil liberties is satisfied for the regime to be authorized by the people to resource sales. The people can legally authorize the regime through several means. For instance, the people may ask it to manage and sell their resources, they may have agreed that the regime do so, or they may have signaled their acquiescence just through their silence. But under authoritarian regimes is quite hard that the rule of valid consent is satisfied.

The international community tends to recognize whoever has effective authority over a specific territory as the legitimate vendor of the natural resources placed on that territory. This attitude creates a system of incentives for some actors to seize power by violent means, since they are are aware that once in power they will have the opportunity to sell natural resources and collect the revenues.[37]

Wenar explains the behavior of the international community as a remnant of the Westphalian era of international law. In the pre-modern era of international law, states used to recognize as legitimate governor of any territory whoever had

37 See Pogge, *World poverty*, 169, with reference to Lam and Wantchekon, "Dictatorships as a Political Dutch Disease," 35-6; Michael L. Ross, "Does resources wealth cause authoritarian rule?" (Yale University, April 4, 2000); Paul Collier and Anke Hoeffler, "On economic causes of civil war," *Oxford Economic Papers*, 50, 1998; and Jeffrey D. Sachs and Andrew M. Warner, "Natural resource abundance and economic growth" (Harvard University, November, 1997).

effective control over it. Thus, whoever was powerful enough to seize power, even by force, was entitled to the sale of the resources placed into the territory under its rule in full accordance with international law. This customary rule is what Wenar calls *might makes right.*[38] But this norm is no longer in validity: under current international law, the power to decide who governs a country lies in the hands of the people of that country, its citizens. This shift is due to the affirmation of human rights as fundamental principles of international laws. Any other case in which this rule is not satisfied represents an outlaw situation.

The imposition of the doctrine of self-determination at the highest level of international law has allowed the move of the source of legitimate political power from who had effective control over a territory to the people of that land. This transition from the might makes right rule to the norms currently in force has marked a milestone on the road to the affirmation of human rights as basic principles of international law. This shift constituted the breaking point with the pre-modern Westphalian order, and was eventually expressed in the Universal Declaration of Human Rights in 1948. Thus today power achieved by coercive means or governors acting without the citizens' consent are no longer acceptable circumstances. But still, the old customary rule persists somewhere in the international system.[39]

2.1.4 *Double standards*

The principle of self-determination and human rights are profoundly rooted in developed countries' constitutions and political cultures. The international community would not accept anyone who seized control of a wealthy democratic country by violent means as its legitimate governor. Citizens of wealthy nations would be deeply concerned in front of such an event and would consider it a gross violation of the existing international law. Yet people of such countries have different feelings when the same breach of law occurs into a poor country.

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38 Wenar, *Clean trade*, 12. In the author's own words, <<according to this customary rule, *might makes right*: specifically, might vests the legal right to transfer property.>>

39 Consider, for instance, whom the international community acknowledges as legitimate delegate of countries governed by regimes. In international bargaining forums many resource-cursed countries are represented by military juntas, dictators, authoritarians. To accept their presence in international rounds means according legitimacy to the repressive regime governing the country they are supposed to represent.

Thomas Pogge argues that we, people of affluent nations, use a double standard while assessing the justice of our domestic order and that of the global economic order. In Pogge's terms, Western citizens do not hold massive and avoidable poverty abroad against the global economic order <<as they would hold similar poverty within a national society against its domestic economic order.>>[40] Pogge also states that we are so unconcerned about the issue that is common among affluent states to consider "part of the game" for least-developed countries to be torn by civil wars or oppressed by poverty and repressive regimes. The international community too is likely to accept that poor countries are governed by undemocratic élites without any particular reluctance, simply because it is "part of the game". Can we agree with such a view?

Citizens of wealthy countries do not assess poverty in foreign countries as they do with poverty within their nation.[41] For them, the latter is source of greater concern compared to the former. We are less demanding towards global economic and political institutions than we are towards those of our nation: our standard of justice, on the global field, is weaker. Severe poverty or systematic infringements of human rights would be morally unacceptable and hard-fought within developed countries. Yet the people of those countries do not have the same feelings with regard to the global order, when it allows the persistence of avoidable poverty and provides incentives for oppressors to violate human rights.

The weak criterion of justice we apply to the global order reflects our view of international relations, conceived as a playing field where our national representatives should give their best to safeguard the interests of our country. Pogge argues that we should use the same standard of justice over both fields,

40 Thomas Pogge, *World poverty and human rights: cosmopolitan responsibilities and reforms*, Cambridge: Polity Press, 2nd ed., 2008, 114-118.

41 Or, as Pogge states in *World poverty*, 116-117, our moral judgements of national and global economic orders can reflect just a single standard uniformly applied to massive poverty within the world and our nation-state, a standard sensitive to the regime's causal role in the occurrence of such poverty. Then, our different moral assessment of national and global economic orders is due to the fact that we tend not to blame international institutions for the dramatic conditions poor countries are going through, attributing such conditions to systematic internal factors of the poor countries themselves such as their corrupted and incompetent élites or their national economic regimes. Our assessments do not reflect a double standard concerning <<the significance of extreme poverty and inequality in the moral assessment of global and national regimes.>> Rather, in Pogge's words, <<they reflect a single standard uniformly applied to both kinds of regime, yet a standard that is sensitive not merely to the incidence of avoidable poverty but also to the regime's causal role in its occurrence.>>

national and international, to have a fair judgement over the global order and the institutions we have contributed to shape.[42]

Pogge notices also that the protection of some standard of justice for the poorest people of the world place burdens on the wealthy. This argument could explain why we find more convenient to use a double standard in our assessment of justice at the domestic and global level. Affluent people, countries and corporations, often elaborate strategies to escape those burdens. As Pogge claims, for example, people are likely to seek for some kind of tax avoidance if they have the opportunity to do so, even if they know paying taxes is just. The avoidance of responsibility take place at the international level too. For instance, corporations owning a plant abroad are likely to get rid of it as soon as it becomes source of concerns about labour or environmental standards, because such standards would place burdens on corporations themselves. They will sell the plant to avoid any kind of responsibility, continuing to buy its products just as customers.[43]

This is the reason why Pogge argues that colonialism did not end, but has just been transformed by developing countries into a less visible form of control. Ex-colonies are now independent states, but the heart of the process has never changed. Now affluent countries purchase resources from those states instead of directly extracting them.[44] It is just another kind of imperialism, more acceptable from the point of view of current international law, allowing corporations – and the entire Western world – to feel morally and politically disconnected from third world issues, and not to suffer any particular pressure on this topic from the civil society.

2.2 Do we have any obligation towards the poor?

42 According to Pogge, <<Arguments for a weak criterion of economic justice typically appeal to cultural diversity or to the autonomy of, and special ties within, smaller groups… But all three factors exist within nations as well. And they can then be useful in the defense of a double standard only if one can show them to be significantly less relevant domestically... Showing this is not so easy.>> Pogge points to affluent countries as responsible for the imposition of a global economic order <<in violation of the minimal moral constraints we ourselves place on the imposition of any national economic order.>> Thus, we, affluent countries and their citizens, <<must regard our imposition of the present global order as a grave injustice unless we have a plausible rationale for a suitable double standard. We do not have such a plausible rationale.>> *World poverty*, 115.

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44 Beitz, *Political theory*, Economic dependence, 116

Our discourse ought to start from a question: if we had chosen a different global order, what would have been its effects on the people in terms of oppression, poverty and inequality? Would a different order and path of globalization have led us to a lesser number and incidence of such dramatic happenings? These questions are proposed by Pogge in *World poverty and human rights*, and may provide a good starting point for our reflection on the justice of the current global economic order.

Henry Shue endorses an extremely demanding position about the duties of affluent people with regard to the fulfillment of basic rights, such as the right to subsistence and basic health-care.[45] In *Basic rights*, the author offers some typology of duties such as the duty to avoid depriving, to protect from deprivation, and to aid the deprived of basic rights. In Shue's view, all those people not able to achieve subsistence and enjoy basic rights should be protected and assisted by all duty-bearers, which should renounce to <<all substances of [their] non-basic rights insofar as this is necessary and useful for helping others gain access to substances of their basic rights.>>[46] Such a request is extremely stringent and demanding as we should have to give up most part of our resources, everything except the substances of our own basic rights, to help others fulfilling their basic rights up to the point where doing so would endanger the enjoyment of our own basic rights. Shue claims that all duty-bearers are morally required to help deprived people especially when such people have been deprived of the substance of their basic rights in force of a social failure in the performance of the duty to avoid depriving, or because of a failure in its enforcement.

Shue's is an extreme position on what we owe to others, when their basic rights are not fulfilled. In our discussion on what we owe to others and on the possibility of applying a principle of justice at the international level we shall find authors defending different positions. First, we are going to explore positions against a role of global factors in reproducing world poverty, and thus endorsing a view that applies principles of justice only at the national level. Two famous and influential theorist supporting such a view are John Rawls and Thomas Nagel. On

45 The argument is discussed by Pogge in "Shue on rights and duties," in Beitz and Goodin, *Global basic rights*, 123-130, with reference to Henry Shue, *Basic rights: Subsistence, affluence and U.S. foreign policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), 60.

46 Pogge, ibid., 125.

the other side, we are going to survey a totally opposite opinion, that of Thomas Pogge, according to whom global factors play an important role in the current state of underdevelopment whereby poor states lie unable to improve their situation, and thus developed nations that have strongly contributed to shape the current global economic order ought to shoulder their share of responsibility.

2.2.1 *Rawls and Nagel*

In *The law of peoples*, John Rawls imagines which principles of justice would rational representatives of the peoples of the world choose in the "original position" – a hypothetical arrangement whereby representatives of the parties decide what principles will govern their association, not knowing what are their respective national interests and what place in the society of states they are going to occupy. The parties' ignorance is due to a condition Rawls poses on the original position, the *veil of ignorance*, first presented in *A theory of justice*.[47] According to Rawls, parties in such a situation would choose eight principles, among which – for what concerns us – the respect of human rights and the <<duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime>>.[48]

According to Rawls, five kinds of national societies are part of the international community: liberal societies, in full respect of the people's rights; decent hierarchical societies, where there is at least some kind of mechanism of public consultation, enabling citizens to express their opinion in order to influence political choices; outlaw societies, threatening international peace by attempting to expand their territory; burdened societies, facing harsh social and economic conditions that make difficult to maintain liberal or decent institutions; and benevolent absolutisms, human rights respectful yet lacking any mechanism of consultation for the people to exert their political rights. The first two societies feature as parties to the law of peoples, though the others do not. Liberal societies and decent hierarchical societies are, for Rawls, well-ordered societies to whom the ideal law of peoples applies.[49]

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47 John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971.

48 John Rawls, *Il diritto dei popoli*, Torino: Edizioni di Comunità, 2001, 48.

49 Rawls' ideal theory is an attempt to show how just societies should behave with

For Rawls, and for the representatives of the peoples supposed to decide what principles should govern the global system, the only obligation national societies have towards outsiders is the duty to assist burdened societies. This duty of assistance is meant as limited by the principle of *just savings*, originally proposed by Rawls in *A theory of justice*.[50] The principle of just savings suggests that we shall assist burdened societies until providing such assistance do not entail the risk of compromising a good standard of living our own society, and anyway our duty is no longer valid once burdened societies are able to maintain minimally just institutions. Once we have given our contribution to burdened societies for achieving minimally decent conditions of governance, our duty of assistance is no longer binding. Why does Rawls limit the duty of assistance to the principle of just savings, denying the possibility of a principle of distributive justice to be applied at the global order?

Sebastiano Maffettone provides two arguments to explain Rawls' view. First, according to Rawls the principles regulating international relations differ from the principles of justice in force within a single national society. Rawls' version of international relations entails an ethic double standard:[51] one applies to the domestic level, a different one applies to the global level. Rawls seems willing to accept social or economic injustices at the international level he would not accept at the national one. As noticed by Maffettone,[52] *The law of peoples* misses a theory of distributive justice. The global system miss what Rawls calls *basic structure* of institutions (such as the judiciary, economic, etc.) to which the principles of justice apply. Such fundamental institutions exist only at the national level: thus the only possible distributive justice is established within the state.[53] Secondly, in Rawls' opinion the poverty many peoples are afflicted by is only due to endogenous factors, such as the inadequate ability of the local élite or the

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respect to one another (*Il diritto dei popoli,* chap. I-II) while Non-ideal theory is applied to nations unwilling or unable to comply with the ideal principles (chap. III).

50 The principle of just savings is provided within the discussion about what present generations owe to future generations in *A theory of justice*, s. 44.

51 Sebastiano Maffettone, *Introduzione a Rawls,* Bari: Laterza, 2010,153.

52 Maffettone, *Introduzione*, 153.

53 According to Rawls, a principle of justice can be implemented only when there are institutions to which it can be applied. The global order miss those institutions, since there is no world government. The institutions to which the principle of justice would apply are simply absent on the global stage.

country's political culture. Responsibilities of developed countries are excluded. Only the poor country's population and its leaders can be blamed for the harsh conditions they are subject to.[54]

Maffettone argues that Rawls' position on burdened societies and our duty of assistance may seem not acceptable to us for two main reasons:[55] first, the current socio-economic interdependence and international institutions (such as the International Monetary Fund, the World Bank or the World Trade Organization) have pushed global cooperation to such an extent that states can no longer be the only actors of international relations; second, the legitimation of power depends on the consent of the members of its community of reference, and this consent mainly depends on distributive justice. Without distributive justice, there is no legitimation. Once this argument is extended to the global level, states can no longer be the only subjects of international relations: peoples and individuals become relevant subjects too.

According to Charles Beitz, <<Rawls regards society as a "cooperative venture for mutual advantage.">>[56] Then, principles of justice are necessary for a fair distribution of the benefits produced by social cooperation. It is by virtue of such cooperation that every single member of the society is entitled to demand certain standards of justice to the society's institutions. But if there is no social cooperation between nation-states, then there cannot be any possible justification for a request of just distribution to be made at the international level, because in absence of cooperation between states there would exist no institution to which a principle of distribution would apply. On such basis, Beitz argues that Rawls' remarks on international justice <<make[s] sense only on the empirical assumption that nations-states are self-sufficient.>>[57] Arranging the world in self-

54 The role of endogenous and external factors on the current conditions of poor countries has been addressed by former senior vice president and chief economist of the World Bank Joseph Stiglitz, in *Globalization and its discontents* (Penguin, 2002). Here Stiglitz argues that international economic institutions such as the World Bank and the International Monetary Fund play a large role in the shaping of poor countries development paths, often imposing unfair conditions about loans compared to those of developing countries. Thus, in the author's view, such institutions' policies contribute in reproducing dramatic conditions instead of providing assistance to address them.

55 Maffettone, *Introduzione*, 156-157.

56 Beitz, *Political theory*, 130

57 Beitz, *Political theory*, 128. The author regards Rawls' position on the issue as requiring <<some intermediate assumptions.>> Rawls considers nation-states as <<"more or less"

sufficient national communities makes impossible the existence of a principle of justice regulating the relations of persons situated in different nation-states, since without cooperation there is no occasion for justice.[58] Yet Beitz notices that interdependence should allow the formulation of a principle of justice to be applied on international institutions. He concludes that <<confining principles of social justice to domestic societies has the effect of taxing poor nations so that others my benefit from living in just regimes.>>[59]

Thomas Nagel shares Rawls' position on distributive justice. In Nagel's opinion, the citizens of a nation-state have a duty of justice towards one another because they share the institutions (legal, economic and social) to which the principle of justice applies. Only sovereign power make possible for such institutions to exist, and citizens are linked one another by the institutions governing their lives. Thus citizens have what Nagel calls an *associative* obligation, due to their special relation: <<justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation.>>[60]

Justice is not owed to everyone in the world so our duty of justice is limited, and its limits coincide with those of our nation-state. In Nagel's terms, <<though the obligations of justice arise as a result of a special relation, there is no obligation to enter into that relation with those to whom we do not yet have it, thereby acquiring those obligations towards them.>>[61] Thus, according to Nagel, there is no justice outside the state because justice can be requested only within state laws and obligations of citizens. Elizabeth Ashford points out that in Nagel's view <<only negative rights to non-interference can be universally honored in virtually all circumstances.>>[62] Justice and claims of rights are tied to state's

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[*A theory of justice*, 4] self-sufficient, but not entirely self-contained.>>

58 <<To say that society is a "cooperative venture for mutual advantage" is to add certain elements of a social ideal to a description of the circumstances to which justice applies. These additional elements unnecessarily narrow the description of these circumstances.>> Beitz, *Political theory*, 131. Here, the author refers to what Rawls states in *A theory of justice*, 7-8.

59 Beitz, 149-150.

60 Thomas Nagel, *The problem of global justice*, Philosophy and Public Affairs, 33, 2005, 121.

61 Nagel, ibid., 121.

62 Elizabeth Ashford, "The alleged dichotomy between positive and negative rights and duties," in *Global rights*, 101.

institutions, and the existence of such institutions is due to the presence a sovereign authority that is absent at the international level.[63] The only way to make the request of justice possible at the international level would be to establish a global government, so that there would be institutions to which world citizens could demand justice.

Nagel and Rawls provide different justification but arrive to the same conclusion: no standard of distributive justice is possible outside the state.[64] Affluent countries' obligations of justice towards outsiders facing dramatic events such as massive poverty and large number of avoidable deaths are limited to humanitarian help and assistance to burdened societies.

2.2.2 *Our duties according to Pogge*

Thomas Pogge roughly disagrees with Rawls' position in The law of peoples. In Pogge's opinion, the responsibility of affluent countries towards the current conditions of what Rawls calls burdened societies is unanswerable. Developed countries play a fundamental role in shaping the global economic order, the way global trade is organized, how international institutions work and what they are supposed to do. Thus, the goal of eradicating severe poverty is not just generous charity, but rather a <<required compensation for the harms produced by unjust global institutional arrangements whose past and present imposition by the affluent countries brings great benefits to their citizens.>>[65]

Pogge's reasoning starts from a moral reflection. Everyone is subject to two kind of duties: *negative* duties and *positive* duties.[66] The point of these two kind of duties is to allow right-holders to freely perform their rights. A negative duty is an obligation not to unduly harm others through our own conduct; a positive duty is an act everyone can make in an attempt to assist who has been harmed by third

63 For further reading about the relation between rights and institutions, see Christian Reus-Smith, "On rights and institutions," in *Global basic rights*, ed. Charles Beitz and Robert Goodin (New York: Oxford University Press, 2009).

64 Gianfranco Pellegrino, *Nagel, Rawls e i limiti della giustizia*, Filosofia e Questioni Pubbliche 3, 2007, 159.

65 Pogge, *The role of international law in reproducing massive poverty*, 431.

66 Pogge addresses the issue in "Shue on rights and duties." He points out that several rights imply both negative and positive duties, such as security rights, subsistence rights, liberty rights and political-participation rights (114), as argued by Shue in *Basic rights*, 60.

parties' conduct, to mitigate the suffering or to stop the threat to the victim's integrity.[67] Elizabeth Ashford provides an account of the dichotomy between these different kind of duties. There are three main dichotomies: the first one makes a distinction between positive and negative duties themselves, namely the duty of providing aid and that of refraining from any interference with the victim. The second one regards perfect and imperfect duties, described by Ashford following Kant's account of these terms.[68] Perfect duties are exceptionless duties binding agents' conduct in all circumstances, they <<can and should be completely fulfilled>> at all times. They have a clearly defined content and are owed by specific agents to specific recipients. Imperfect duties, by contrast, are not fully defined and are not to be fulfilled at all times but in particular situations and to a certain extent. The third dichotomy presented by Ashford distinguishes special duties from general duties. Special duties are owed to particular individuals in force of specific acts, events or relationships, whereas general duties are <<owed on some ground independent of specific acts, events, and relationships, such as the mere fact that the parties involved are human beings.>> [69] Duties are usually divided in "perfect duties of justice" and "imperfect duties of virtue." Ashford concludes that <<Negative duties are taken to be perfect duties of justice, whereas positive duties, unless they are special, are taken to be imperfect duties of virtue.>>[70]

Pogge takes negative duties as "perfect duties of justice" too, though he argues that they have a greater weight than positives'.[71] This is the example the author takes to explain the argument:

> Few would mind that, if I come upon a group of children who have been hit by a speeding driver, I attend to my own child first and foremost, even if I could do more towards reducing the harm another child will have suffered. But this judgment changes if we alter the case so that I am the reckless driver. In this case, it would seem wrong to give such priority to my own child.[72]

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67 Pogge, *World poverty*, 136.

68 Ashford, "Alleged dichotomy," 100.

69 Shue, "Mediating duties," 688, cited by Ashford, Ibid., 101.

70 Shue, ibid., 101.

71 Pogge, *World poverty*, 136.

72 Pogge, ibid., 136-137. The author continues: <<The priority for compatriots fails even

We agree with this argument. In this instance, the driver breaches his obligation not to harm others, since he caused suffering for the children. Assuming that we had caused the accident, the potential greater concern for our own child compared to the other children would have been justifiable to a lesser extent than in case of an accident caused by a third party. Yet we can harden Pogge's example. If our child is wounded yet his life is not at risk while other children hit by the car are in danger of permanent injuries or death if not readily rescued, a greater concern for our own child is not justifiable at all. In this instance, it does not matter who caused the accident.

To bring this example into reality, we can make a comparison between the driver's child bad but not mortal injuries and adversities people suffer in affluent countries. Those problems are bad enough to feel sorry for whom they affect, but on the other hands we have something worse: the other children's potential deadly wounds, that we can compare to the dramatic conditions afflicting many least-developed countries. Thus, if we had caused the suffering, our duty of assistance should not be limited by the nationality of the people affected by our conduct. We ought to help first who is suffering most, *anyway*. In this instance, taking care of our own child – compatriots – before others – outsiders – is not just.

Under the more severe condition whereby our child is not going to die while others may be, our duty should be to rescue the most needy among them with no regard to whom caused the accident or to the victims' nationality. We might be justly blamed if we do not act this way. Pogge claims that affluent countries are partly responsible for the dramatic conditions currently suffered by poor countries, yet even assuming that affluent countries had no responsibility we should have cared about what those countries are going through anyway. Our behavior is actually a matter of life and death in the poorest countries of the world, as the driver's choice in Pogge's example might be. Even conceding that affluent states had no role in the establishment of the current global economic order, they can be blamed because they still are reluctant to rescue those whom suffer most.

However, developed countries' role in the establishment of the current

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more clearly in analogous cases, when, for instance, I have made conflicting commitments to a compatriot and to a foreigner. Here it seems clear that, if the foreigner stands to lose more from my breach of commitment, I should break my promise to the compatriot.>>

global economic order is quite clear and very hard to contest. The existing global order is unfair, deeply inclined towards wealthy countries' interests and, eventually, unjust. Pogge's criticism towards who consider the current order the <<best of all possible worlds>> is based on the following empirical – thus scarcely disputable – facts:

> The present rules favour the affluent countries by allowing them to continue protecting their markets through quotas, tariffs, anti-dumping duties, export credits and subsidies to domestic producers in ways that poor countries are not permitted, or cannot afford, to match. Other important examples include the World Trade Organization (WTO) regulations on cross-border investment and intellectual property rights, such as the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Treaty of 1995.[73]

Thus, according to Pogge, affluent states have to shoulder their responsibility. His main criticism to the current global economic order is not just that it is completely failing to prevent massive poverty, but that the rules currently in force within world economy are the main cause of such massive poverty, with all its consequences.

When nation-states set the basis of the existing international system, the most powerful among them knew what position they were going to occupy: in fact, most part of the current economic order has been shaped according to the interests of our wealthy nations. This is a serious responsibility that should have arisen by itself some moral commitment while shaping the system. Our tendency to give different weights and make different demands on domestic and global institutions may be considered as a sort of refusal of the responsibility we have towards those people whom the system affects.

The global economic order influences states' internal affairs by its nature, so it might be argued that the unfairness of the current global order represents a violation of the principle of self-determination not only with regard to the people, but to sovereign states as well. Charles Beitz poses a significant question about economic dependence: <<Can the exercise by foreigners of substantial political and economic influence over the internal affairs of an independent state properly

73 Pogge, *The role of international law in reproducing massive poverty*, 420.

be criticized as infringements of the state's right of self-determination?>>.[74] Beitz answers negatively to this question, since in his view a criticism to economic dependence based on principles of justice is more persuasive than one based on the principle of state autonomy. Whether we criticize economic dependence on the basis of self-determination or on particular principles of justice, we cannot deny its role in reproducing the conditions of underdevelopment whereby some countries lie.[75]

Today, the awareness of developed societies about what problems poor countries have to face has improved thanks to the work of many NGOs committed to human rights enforcement, to international organizations and to modern means of communication, while the affirmation of the doctrine of self-determination and human rights as basic principles of international law contributed to bring attention on such issues. These changes have enabled us to be aware of how often dramatic happenings in poor countries come from flaws in the international system. Pogge concludes that the current global economic order is not optimal in terms of poverty avoidance. Once we know about the dramatic situations people living in poor countries have to face, and once we are aware of our contribution in shaping the rules governing the world economic system, our accountability is no longer avoidable.

2.3 Nationalism and moral duties

Acting to improve world poor's condition is not morally compelling for people of the affluent world, presumably for two main reasons: they believe that it is not their fault if those people live in hard conditions. Not being responsible, they are allowed to put the problem aside; and, secondly, because – apparently – there is no connection between them and the great poverty suffered by people in least-developed countries. Poor people live in far-away countries and are not citizens of their nation. From a nationalist point of view, it seems that people of affluent countries do not have any moral or civil duty towards the poor.

We all agree that states representatives ought to protect the interests of their nation while participating in international negotiations or acting in their country's

74 Beitz, *Political theory*, 116.

75 Beitz, ibid., 118.

name. When parliamentarians act at the domestic level in our democratic states, voters expect them to meet their concrete requests as well to satisfy certain standard of morality. Voter's expectations in terms of morality are due to the fact that our liberal-democratic countries are governed by norms established by the people themselves – through their representatives – and everyone agrees about the importance of these norms, without which there would be anarchy. But we have built our societies to avoid this kind of situation, that is why we are supposed to observe the norms on the way leading to the goals we want to achieve. Representatives acting without any respect of such norms are unacceptable from both a legal and a moral point of view.

This is the reason why we ask our representatives at the domestic level to respect some standard of justice. Can we justify the different – and less demanding – request we make to our representatives at the international level of governance?[76]

Our less demanding request of justice at the international level is likely to harm innocents around the world. People affected by the conduct of our state's representatives at the international level have no norms protecting them, since most of the norms themselves have been established by affluent states in accordance with their economic and political interests. Affluent countries are the only actors actually having the power to change the global order in a safe and stable way, while the poor have no opportunities to change it. In international forums, countries are represented by delegates who are appointed by the citizens: so we can argue that the ultimate responsibility for the unfairness of the current world economic order lies on the people of affluent countries themselves.

About our tendency not to care about outsiders because there is no connection between us and them in terms of citizenship and civil or political duties, it is part of the common doctrine of nationalism. We feel more morally committed to the needs of people living within our same territorial boundaries than foreigners. Our concern about the people surrounding us can be imagined as a series of expanding concentric circles in which, going farther from the center,

76 About the requests we make to our representatives at the international level, Pogge argues that <<There is a serious democracy deficit also in the affluent countries, whose citizens have not approved, and for the most part do not even understand, very important foreign policies and international practices that are conducted and upheld in their name.>> *World poverty*, 172.

the extent to which we feel committed to others declines. The first circle is occupied by our family and close kin. Afterwards, following a hierarchic scale, there are people living in our village, in our town, region, nation-state. Whatever sequence we follow, probably foreigners will occupy the furthest circle from the center.[77]

Aside from our kins that are presumably the people we love most, a first explanation to the priority we give to compatriots' needs stems from the fact that compared to foreigners they are more similar to us in all respects. We can feel sorry for poverty abroad but to a lesser extent than how we fell sorry for our compatriot's, even though poverty is much harder abroad. This attitude is what Pogge calls *lofty nationalism*, and according to him it is the reason why participants in academic and popular discourse usually focus only on the moral assessment of their own national societies, putting aside any moral assessment of the existing global order. The main implication of the lofty nationalism argument is that people of affluent countries find poverty and other dramatic happenings afflicting outsiders of less urgency compared with that of compatriots. As showed by the driver's example above, Pogge argues that in certain situations the priority accorded to the needs of compatriots does not hold at all.[78]

The contribution of affluent countries to the unjustness of the current global order is evident. The need for natural resources make worthless any moral consideration about the internal situation of exporting countries. Yet, we are breaching our ne8gative duty not to harm others when we trade in natural resources with resource cursed countries. Moreover, the current trade system has been mainly established by our representatives acting in the name of our nation. People of affluent countries are violating their negative duty not to harm others in several ways: when they provide support to the current trade system, when they do not protest against its unfairness, or when they do not ask their representatives at the international level of governance to evaluate the effects of their conduct on poor countries while signing international agreements.

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77 But, according to Henry Shue, there are <<insufficient reasons to believe that one's duties to people in the next county, who are in fact strangers, are any greater than one's positive duties to people on the next continent.>> H. Shue, "Mediating duties," *Ethics*, 98 (1988), 692, cited by Christian Reus-Smith, "On rights and institutions," in *Global basic rights*, ed. Charles Beitz and Robert Goodin (New York: Oxford University Press, 2009), 31.

78 Pogge, *World poverty*, 136.

2.3.1 *Charity and justice*

Affluent states use their power to direct international negotiations towards the satisfaction of their own interests. They have more bargaining power, know-how and expertise. Many least developed countries can't even afford the costs of maintaining an office in Geneva, where the World Trade Organization headquarter is settled. [79] Thus, we could blame our governments and representatives for ignoring the poor's needs within a slanted system badly inclined towards the affluent's interests.

What people expect from their representatives at the international level is to protect national interests, one might say; this is certainly true and just to a certain extent, but things change when politicians are aware that agreements signed with least-developed countries may contribute to the survival or to the death of thousands of people. For instance, even the smallest additional gain for a wealthy country within a trade agreement signed with a poor one might mean death for starvation for some people living in the latter, while the smallest loss might mean their survival. [80] Most of the suffering, death and poverty afflicting people of poorest countries could easily be avoided through <<minor modifications in the global order that would entail only slight reductions in the incomes of the affluent,>> as Pogge argues. [81]

The fact is that us, wealthy people, can save the lives of people dying of starvation or any other poverty-related cause such as preventable diseases at a very little cost. Singer clarifies the little cost we would have to pay through his famous and effective *drowning child* example: [82]

> To challenge my students to think about the ethics of what we owe to

79 Singer, *One world*, chap.2

80 For further reading see Raj Patel, *Stuffed and starved: the hidden battle for the world food system*, Melville House Publishing, 2008, chap. 3. Here the author describes the effects of the NAFTA, signed in 1993 between Canada, the US and Mexico. That agreement meant poverty for many Mexican corn producers. Since the date in which the agreement was put in force many farmer have chosen to commit suicide because of their debts.

81 Pogge, *The role of international law in reproducing massive poverty*, in Besson and Tasioulas, *Philosophy*, 418.

82 Peter Singer, *The drowning child and the expanding circle*, New Internationalist, April, 1997.

> people in need, I ask them to imagine that their route to the university takes them past a shallow pond. One morning, I say to them, you notice a child has fallen in and appears to be drowning. To wade in and pull the child out would be easy but it will mean that you get your clothes wet and muddy, and by the time you go home and change you will have missed your first class. I then ask the students: do you have any obligation to rescue the child? Unanimously, the students say they do.

We can easily save million of poor from death acting positively, in Pogge's terms, for instance by charity and aid. But we can give an even larger contribution to the eradication of poverty just acting in accordance with our negative duty not to unduly harm others, in this instance by contributing to the imposition of an unjust institutional order or unfair trade agreements on poor countries.

Thus, once we have seen that a greatest concern for our compatriots is unjustified under certain circumstances, the weaker moral demands we make on our representatives when they act in the name of our state in international bargaining forums or when negotiating agreements with poor countries is totally unjustifiable. Yet there is a difference between Singer's and Pogge's position on the issue of our obligations towards the poor. According to the former, our moral duty stops at charity, to which we should commit ourselves because of the very little cost we would have to pay. In Pogge's view, by contrast, giving assistance to the needy is not something we ought to do because of its little cost compared to our standard of life. It is, instead, an obligation proceeding from affluent countries' responsibility for global poverty. We should not help the poor around the globe by charity, since our donations would not be charity: they are something we *owe* to those peoples.

As we have noticed in chapter 1, Wenar criticizes the concept of harm included in Pogge's view. Moreover, Wenar argues that many people in affluent countries may not agree with the current norms governing the world economic system, yet they are forced to comply with them. Thus, although some people are aware that their conduct and that of their representatives at the international level is actually harming people of poor countries, there is very little they can do since they are forced to obey the laws. In Wenar's words, <<...even if these wealthy people were to agree that they harm by upholding the global order, they may feel that they are being forced to harm. And being forced to harm normally cancels

any moral responsibility to compensate for harms caused.>>[83]

Wenar does not provide any moral ground in support of the clean trade approach. The legal grounds of the proposal are quite reliable and fairly hard to contest. But, in our opinion, a moral theory on what are our duties towards world's poor may be helpful to understand if we should implement the reforms Wenar proposes solely because a different behaviour would reproduce an infringement of international law currently occurring when affluent countries trade in natural resources with cursed countries, or if there is also some moral reason to do so. A moral justification may be helpful for affluent countries' citizens to accept – and support – the implementation of the approach, which entails some costs they would have to bear. Moreover, affluent countries responsibilities towards the dramatic situation currently face by most poor countries are worth being considered by themselves as the main aim of the approach is to help people living in hard conditions. As we have seen, Pogge presents hardly contestable arguments on affluent countries responsibilities for the unjustness of the current global economic order. We cannot put aside such arguments while discussing about what we can do to improve poor countries' situation.

83 Wenar, *Realistic reform of international trade in resources*, in Alison Jaggar, *Pogge and his critics*, Polity, 2009,126.

Chapter 3

Realistic changes of the current global order

Once discussed the moral reasons behind the clean trade approach, proceeding with its analysis from an empirical point of view is the next step. Our goal is to understand the feasibility of some of the changes Wenar proposes in *Clean trade in natural resources.*

We are going to examine the clean trade approach in two related parts: the first one faces the problem of compatibility between the clean trade legislation and the norms established by the World Trade Organization; then, we will go through some circumstances which could become obstacles for the implementation of the approach. The second part discusses what are the internal and external incentives for affluent countries to enact the clean trade legislation. We are going to argue that some kind of supranational coordination is necessary for the approach to be adopted by resource importing states, at least at the beginning. States can be reluctant to implement the reforms proposed by Wenar unilaterally, since they will incur high costs for national firms, population, and may have to face big risks in terms of foreign policy and energy supply. In this instance, some external incentive may be helpful. In this regard, an example of viable framework can be provided by the Kimberley Process that we are going to analyze in greater details below. An international initiative may be taken on a similar basis and with a similar structure, with the aim of combating trade in stolen resources such as oil, gas or copper. This can be resolutive with regard to question whether importing states have actually enough incentives to adopt the clean trade approach or not.

Moreover, at the end of the inquiry we will find out two steps which seem to be necessary for the clean trade approach to give the best possible outcomes, plus a desirable third one. First, the success of the initiative depends on increased information of affluent countries responsibility and contribution to the current

conditions of resource-cursed countries, but also on improved awareness of their ability to change the global system. Increased information and understanding of the way global economy works is an unavoidable step if we want the clean trade approach to be supported by the population. Second, a decrease in wealthy countries consumption of natural resources requiring some – not upsetting – change in our attitudes and lifestyle, could be necessary. Third, all this might encourage the development of sustainable means to get the energy affluent countries need in order to stop relying on resource-rich yet cursed countries for energy supply.

3.1 GATT-WTO compatibility

Countries enacting the clean trade approach should put additional tariffs – called "anti-theft tariffs" by Wenar – on imports from countries which keep on trading natural resources with oppressive regimes. Those natural resources are stolen resources, since their legitimate owners – the people of the country – do not have any voice about their management and sale. The tariff proceeds will go to fill a *Clean hands trust*, a bank account which content will be turned over to the people of the country where the original theft of natural resources took place as soon as the minimal conditions required by the clean trade approach are met.

According to Wenar, the World Trade Organization would accept the tariffs and the consequent restrictions on free trade the clean trade approach involves. Wenar lists three points in support of his statement. First, Article XX of the GATT allows restrictions on free trade in case they are <<necessary to protect public morals>>[84] of citizens. Second, countries enacting the clean trade approach can rely on some firm principles of current international law: human rights, self-determination and property rights. Third, the WTO have already allowed restrictions on free trade justified by the necessity of preventing human rights violations. The Kimberley Process, an initiative aiming at reducing trade in so-called "blood diamonds," sets an important precedent for combating trade in

84 Article XX, 1(*a*), of the GATT.

stolen resources.

We are going to analyze each of the points provided by Wenar to justify the adoption of the clean trade approach on a legal ground. We argues that all three point are reliable, and Wenar's arguments about Article XX of the GATT can be reinforced.

3.1.1 *Relying on the protection of human life and health*

Article XX of the GATT, “General Exceptions,” allows restrictions on free trade when they aim at protecting interests of the society. Unless such measures set <<an arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade,>> Article XX authorizes the adoption of restrictions: necessary to protect public morals; necessary to protect human, animal or plant life or health; relating to the conservation of exhaustible natural resources; and in a few other cases. All three circumstances showed above may provide legal basis for restrictions on trade, yet the first two are the most persuasive.

Wenar suggest to rely on the protection of public morals as legal basis for the economic measures required by the clean trade approach, as stated in Article XX (*a*) of the GATT. However, the second circumstance considered by Article XX seems to be reliable as well. Restrictions ultimately aim at avoiding the flow of foreign money into authoritarian élites' bank accounts, which are likely to use sales revenue to strengthen their power through arbitrary arrests, torture and so on; then, countries enacting such restrictions on trade could legitimately appeal to the protection of human life and health.

It might be objected that what happens in Sudan, for instance, is not something affluent states should be meddling in, in full respect of the principle according to which states should not interfere in other states internal or external affairs; or that there are international organizations and NGOs which are supposed to survey human rights standards in countries where their enforcement is at risk. Though, human rights have more than once provided legal justification for

interfering in sovereign states' internal affairs, although this is a quite recent innovation in international relations[85]. It is the case, for instance, of the 1999 North Atlantic Treaty Organization military intervention in the Kosovo War.

NATO intervened in Kosovo without any explicit authorization from the United Nations Security Council,as required by Article 53 of the Charter of the UN; there was no attack against a third country, as required by Art. 51 for authorizing military intervention; and operated in violation of Art. 2 (4), which forbids the use of force out of a legal mandate.[86] Kosovo is a leading case with regard to the interference in internal affairs of sovereign states not only by pacific means but by military intervention as well.[87] In that circumstance, NATO intervention was due to the brutal repression of rebel forces exerted by military troops of the Federal Republic of Yugoslavia, led by president Slobodan Milosevic.

Non-intervention is a general principle of international law, according to which no state is allowed to intervene, directly or indirectly, in internal or external affairs of sovereign states by any sort of action – military, political or economic.[88] Yet now it seems generally accepted by international community that the principles of state sovereignty and non-interventionism can no more be appealed to cover gross and systematic violations of human rights.[89] The denial of people's

85 A. Clapham, *Human rights,* 57.

86 The UN Security Council is sometimes unable to enact effective intervention because of the Permanent Five members' clashing interests. Relations between the Security Council members can lead to the use of the veto power, paralysing the Council's ability to authorize effective actions. In this instance, Russia and China saw NATO intervention as a clear violation of Article 2(4) of the UN Charter.

87 Silvio Favari, *Sovranità, diritti umani e uso della forza,* Rome: Centro Studi per la Pace, 2002, chap. 2, ¶ 3, accessed January 15, 2012, http://files.studiperlapace.it/spp_zfiles/docs/20041025174152.pdf.

88 Charles Beitz underlines how self-determination and nonintervention are conflicting principles both contained in the ideal of state autonomy. The principle of nonintervention is the negative aspect of state autonomy, protecting the state's right to be independent and forcing other sovereign states not to interfere with its own internal and external affairs. The principle of self-determination represents the positive aspect of state autonomy, entitling people under foreign control to pursue their independence and imposing other states to stop the exercise of control over people claiming independence. Charles Beitz, *Political theory and international relations*, Princeton: Princeton University Press, 1979, 92-93.

89 Kofi Annan, *Two concepts of sovereignty*, The Economist (September 18, 1999): 1-

right to self-determination is one of these systematic violations. Moreover, we can agree with the claim that the principle of state sovereignty is a totally secondary issue in respect to the duty of protecting human rights.[90]

There is no reference to NATO military intervention in the resolution about the future of Kosovo[91] adopted by the UN Security Council at the end of the bombing in June 1999, nor any sort of approval or blame. The instance shows that in case of gross violations of human rights a new customary rule seems to be born, allowing single states or regional organizations to intervene in case of humanitarian crises and paralysis of the UN Security Council.

This is the reason why, if the UN allows interventions involving the use of force to protect basic human rights,[92] then we can trust economic measures with the same aim to be accepted by the WTO without any negative feedback. Thus, we argue that the clean trade approach can rely not only on the protection of public moral but also on the protection of human life and health as stated in Article XX (b) of the GATT.

Of course, we do not wish states to step forward without an official mandate from the UN, which remains the only international authority up to address critical situations. But the reasoning is simple and agreeable: every single state must enforce and protect human rights in accordance with current international law, and *all* states should concern about the issue *together*. Then, when one of them breaches its obligation to enforce human rights, the others may consider themselves injured and thus entitled to set countermeasures.[93] Since a military

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2, accessed January 15, 2012, http://www.kentlaw.edu/faculty/bbrown/classes/HumanrsemFall2008/CourseDocs/12Twoconceptsofsovereignty-Kofi%20Annan.pdf.

90 Danilo Zolo, *L'Intervento umanitario armato fra etica e diritto internazionale*, Jura Gentium, 2007, accessed January 15, 2012, http://www.juragentium.org/topics/wlgo/it/kosovo.htm.

91 See the UN Security Council resolution n. 1244 adopted on June 10, 1999

92 Interventions motivated by humanitarian objectives are called humanitarian interventions. Humanitarian intervention entails an interference in the internal affairs of a state by sending military forces into the territory of a sovereign state that has not committed acts of aggression against another state. A similar case to Kosovo took place in 1991 with the Operation Provide Comfort led by the US, aiming at defending the Kurds in northern Iraq after the Gulf War.

93 Favari, *Sovranità*, s. 2.3. Here, the author cites Bruno Simma, *NATO, the UN and the use of force: legal aspects*, 2, article originally presented at Policy Roundtables organized by the United Nations Association of the U.S.A. in New York and Washington, D.C., on 11 and 12 March

intervention has been tacitly approved by the organization constructed around the necessity of assuring peace around the world and enforcing international law, we see no reason to believe that restrictions on free trade would be rejected by an organization which, amongst other things, refers to the protection of human rights in its fundamental statute. These measures involve no deaths, but just economic disadvantages for some. Besides, restrictions are lawful since countries will put tariffs only on goods produced using resources stolen in violation of the right to self-determination.[94]

3.1.2 *The Kimberley Process and the PTAs provisions on human rights*

The Kimberley Process is an initiative born from the Southern African diamond-producing states round in Kimberley, South Africa, in May 2000. The main aim of the programme is to struggle trade in "conflict" or "blood" diamonds,[95] in order to obstruct the largest channel of incomes for illegal and rebel armies spreading terror and death in countries rich in diamond mines. According to the WTO, member countries of the Kimberley Process are allowed to enact restrictive measures on diamond trade and are exempted from <<GATT provision on most-favoured-nation treatment (Art. I, 1), elimination of quantitative restrictions (Art. XI, 1) and non-discriminatory administration of qualitative restrictions (Art. XIII, 1)>>.[96] Economic measures aimed at protecting human rights can be allowed on the same ground, since one of the Kimberly Process goals is to stop human rights violations in territories stricken by conflicts to seize control of diamond mines.

We know that human rights are enshrined in many international covenants

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1999.

94 As stated in the International Covenant on Civil and Political Rights, Part I, Art. 1(2).

95 Blood diamonds are diamonds mined in war-zones. Revenue from rough diamond sales usually go to finance insurgency. An accurate description of diamond trade before the Kimberley Process is included in Greg Campbell, *Blood diamonds: tracing the deadly path of the world's most precious stones*, Westview Press, 2002, chap. 2-3.

96 "Agreement reached on WTO waiver for conflict diamonds," World Trade Organization (2003), accessed January 16, 2012, http://www.wto.org/english/news_e/news03_e/goods_council_26fev03_e.htm.

and national constitutions.[97] We can state that without any doubt they have acquired the status of *jus cogens*[98] in international law. Moreover, from the Nineties on[99] human rights respect has become an essential provision of preferential trade agreements (PTAs). The first trade agreement including human rights provisions explicitly was the NAFTA, signed by the US, Canada and Mexico in 1993. The agreement includes provisions on labor rights, public participation obligations and transparency. Statistics suggest that today over 75% of nation-states participate in PTAs including provisions on human rights, even though some authors have charged them of being just governments' weapon to impose their values and norms or a form of <<protectionism in disguise>>.[100] Beyond these charges, it is a matter of fact that today human rights are in many cases a binding part of trade agreements.

3.1.3 *Ambiguities of the World Trade Organization*

There is one more thing we should notice about the WTO. In several cases the WTO has been charged of prioritizing free trade over other important global issues. In particular, many charges have been moved to the organization because it seems unconcerned about environmental questions. The *Tuna-dolphin* dispute,[101] brought by Mexico against the US under GATT in 1991, the European Union bans on the import of furs coming from animals caught in steel jaw-traps (1991), cosmetics tested on animals (1993) and beef from cattle treated with growth-promoting hormones (1989), motivated by health concerns and pressures from

97 Leif Wenar makes a more than exhaustive summary of the main steps in history of self-determination and human rights in *Clean Trade*, 54-62.

98 Norms with the status of *jus cogens* are peremptory norms of international law from which no derogation is permitted, such as the prohibition of genocide, slavery, torture, apartheid, maritime piracy. The principle of *jus cogens* is enshrined in the Vienna Convention on the Law of Treaties, 1969, as well as in the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, 1986.

99 Susan Ariel Aaronson and Jean Pierre Chaffour, *The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?*, WTO Publications, 2011, accessed January 16, 2012, https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm.

100 Aaronson and Chaffour, *Wedding*.

101 "Mexico etc versus US: 'Tuna-Dolphin'," World Trade Organization, http://www.wto.org/english/tratop_e/envir_e/edis04_e.htm.

animal welfare organizations, are unfortunate and famous cases where the priority given to trade-values over other issues is evident.

All these prohibitions were declared unacceptable by the GATT dispute settlement panels.[102] The panels justified their rulings by claiming that the final products were exactly the same of others allowed to be sold in the countries whereby the ban was put in force, and differences in the way the goods had been produced should not have determined the permission to their sale. So, the European Union bans were rejected by the GATT because – according to the panels' rulings – they caused a discrimination between domestic and foreign goods with regard to differences in the production process, which was not considered as an important feature of the products. The distinction the GATT-WTO started to make since 1991 between the production process and the final product has generated the so-called *product versus process* issue.

An improvement in the WTO concern about environmental questions can be observed in the years following the Seattle protests of November 1999 against the round held in that city.[103] Before that event, the WTO was often mentioned in the media only with regard to its positive effects on global trade and its contribution to the eradication of poverty from least-developed countries. The Seattle protests brought attention to the WTO and its policies, but also to the widespread opposition to those policies. As a result, the WTO was forced to show deeper concern about environmental issues. This attitude has partly replaced the previously uncontested priority given to free trade over any other issue.

Protesters in Seattle have had a primary role in this switch of attitude, and, as we shall see below, the behavior of the civil society could be decisive for the success of the clean trade approach. Although environmental issues and human rights occupy different fields and are subject to different norms, the GATT-WTO attitudes discussed above show us that it could be not easy to enforce restrictions on free trade. States willing to enact the clean trade legislation could find hard obstacles. The unpredictability of the DSB rulings make the authorization of

102 These cases as well as the Dispute Settlement Body rulings are mentioned by Peter Singer in chap. 3 of *One world: the ethics of globalization*, Yale University Press, 2002, 55-70.

103 Lynn Owens and L. Kendall Palmer, *Making the News: Anarchist Counter Public Relations on the World Wide Web*, University of North Carolina, Chapel Hill, 2003, 12.

additional tariffs on foreign goods uncertain. Some kind of external support might be necessary, such as that of the civil society.

After all, we can legitimately believe an obstruction by the WTO unlikely, not only because of the support public opinion could provide to the changes involved in clean trade approach. Countries enacting restriction on free trade can also rely, as we have seen, on some of the firmest principles of international law. Moreover, as argued by Donald Regan, the priority accorded by the organization to trade values over non-trade values was far more evident in the rulings adopted by GATT panels, whereas <<with the advent of the WTO and the Appellate Body, things have changed dramatically.>>[104]

3.2 Who takes the leadership?

We can reasonably argue that any initiative aimed at stopping trade in stolen resources needs to be adopted by most importing countries simultaneously and effectively, to work properly. If – for instance – the US sets, out of a coordinated action, additional tariffs on goods imported from countries which had bought cursed resources, likely such tariffs would not be of any help to the pursuit of our goal, that is to stop trade in natural resources coming from oppressed countries. If the US, alone, puts a ban on stolen resources, the country would go through several disadvantages. Enacting the clean trade legislation would make a difference just for the US itself, in terms of a decrease in energy supply and a loss of competitiveness to American firms on international markets – and maybe, as we shall see below, of allies. Thus, if not simultaneously adopted, the clean trade initiative would be abandoned because of a lack of incentives. This reasoning is not praiseworthy, yet it is what the US administration would be likely to do.

Suppose – as in Wenar's example – China buys oil from the Sudanese

104 Donal Regan, *International adjudication: a response to Paulus – Courts, custom, treaties, regimes and the WTO*, essay published in Samantha Besson and John Tasioulas, *The philosophy of international law*, New York: Oxford University Press, 2010, 238. The author refers in particular to the *US-Shrimp* and the *US-Gambling* cases, when the DSB upheld the US import bans under the protection of <<public morals>> as stated in Article XX of the GATT.

authoritarian leader al-Bashir. The US has banned Sudanese oil from its jurisdictions so Chinese goods will meet economic barriers on their way to American markets, as the clean trade approach forecast. Yet there are no clues that China would stop or reduce oil purchases from Sudan because of the tariffs increase set by the US on Chinese imports. After all, such tariffs increase is a form of economic sanction, although it differs from traditional economic sanctions. Wenar argues that the current proposal has a different justification and institutionalization from common economic sanctions, and that <<the problem with previous sanctions is that the sanctions have not been universally observed.>>[105] Actually, the justification on which the clean trade approach relies, even though praiseworthy, does not give much help in making the efforts work. About the sanctions institutionalization, the fact that the clean hands trust – where the tariff proceeds go – would be not centrally administered but maintained separately by participating countries is a good point, but does not address the question of which state will be the leader of the initiative. Sanctions risk to remain not universally observed.

Tariff proceeds go to a special fund, the clean trade trust.[106] The Sudanese people will be entitled to the money of the fund as soon as Sudan will reach the minimal human rights standard required by Freedom House, the NGO which ratings on political rights and civil liberties are used to allow or forbid trade with natural-exporter countries. Yet the Sudanese people could never have the chance to replace the repressive al-Bashir's regime with a human rights respectful government. At least, not if only one or few oil importing-states have enacted measures against trade in natural resources coming from resource-cursed countries. A unilateral action won't dry the main source of fund for oppressors. There is no link between the raise of American tariffs on Chinese goods – although the American is the biggest market Chinese goods can reach – and improvements in the internal political situation of Sudan. Actually, the US has banned Sudanese oil from their jurisdiction since 1997 yet no improvement has occurred in Sudan's political situation. So we should be already aware that this kind of unilateral

105 Wenar, *Clean trade*, 32.

106 Wenar calls this mechanism “trust and tariffs.”

actions are almost totally ineffective. President al-Bashir is still in power in Khartoum, and his rule is maintained thanks to oil payments coming from Asian oil companies and Japan.[107] The only way to make the clean trade approach give the best possible outcome is a common and simultaneous action by most affluent states.

We cannot expect a single nation to enact the clean trade legislation and then wait for the others to do the same. Three kinds of disincentive would occur. First, the cost of such changes in trade policy are high. Less resource incomes and increase in costs of production and transport for national firms – due to the increase in oil price occurring as a result of the ban on oil imports from certain countries – would set disadvantages for many citizens. For instance, employed in oil refineries would risk to lose their job and an increase in the cost of living is likely to happen. Second, other affluent states may not follow who has implemented the clean trade approach and keep on trading natural resources with oppressive regimes, making the effort useless. If nothing assures the leading country that others will behave the same way, then governments and national companies would start to fear competition from abroad. Third, until most affluent states will have enacted the clean trade legislation no positive outcome can be expected in terms of human rights standard improvement. Unilateral sanctions or commercial detachment cannot be the proper answer to trade in stolen resources, no matter if they are placed on tough legal and moral basis. The effective gains in terms of human rights enforcement around the world could be very thin or absent. Then, countries having enacted the clean trade legislation will be likely to abandon the initiative. Some kind of supranational coordination is then necessary for the clean trade approach to be implemented without any fear by importing states, at least at the beginning. The Kimberly Process may provide the example of a viable normative framework. A similar international initiative may be taken with respect to other natural resources, such as oil or gas, so that states would be less reluctant to implement the approach because they know that other states will behave likewise. A system of positive and negative trade conditionalities may be

107 Wenar refers to the US ban on Sudanese imports more than once in his articles about the resource curse. Here we are reporting what Wenar claims in *Clean trade in natural resources*, 34.

established to encourage the most reluctant states to join the initiative, since they will incur trade disadvantages as they refuse to be part of such initiative. In our opinion, unless we place it within an international initiative the clean trade approach risks to be hardly acceptable to the states that are supposed to adopt it.

The system of incentives proposed by Wenar could work, and once most affluent nations will have enacted the clean trade legislation positive outcomes are likely to be achieved. Though, considering that governments tend to prioritize national interest over those of outsiders, it is very unlikely for a single nation to start enacting the clean trade legislation out of a larger program, broadly shared among the developed world. Then, who will take the leadership?

3.3 Contraband and black market

Contraband may represent an external source of concern for the clean trade approach and may become an obstacle for it to achieve its goals. Illegal buying and selling of natural resources is likely to increase enormously as soon as resource importing states will have banned goods coming from countries controlled by oppressive governors. We have briefly discussed above how the Kimberley Process is fighting trade in diamonds coming from war-zones. This example can help us introducing the next topic.

Rough diamonds arriving in developed countries need an official certificate deeming them as "free" – so-called "conflict-free" diamonds, in accordance with the norms established by the Kimberley Process. [108] The certificate helps purchasers to avoid buying diamonds coming from territories controlled by rebel armies or any other illegal entity within the state whereby diamonds are mined. This circumstance was especially true in the case of Sierra Leone, a country torn

108 The Kimberley Process Certification Scheme (KPCS) <<means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme>>. Participants must meet minimum requirements and must commit to transparency, export and import internal controls and the exchange of statistical data, in order to be allowed to trade with other participants.

by the civil war[109] between the Sierra Leone Army and the rebel force, the Revolution United Front (RUF). We should not forget that countries where civil and political rights are not at all or barely observed often suffer from endemic corruption.[110] Bribes are always the best way to get hot assets out of the country. Unfortunately, in poor but resource-rich countries custom agents, police and officials are easy to corrupt because of the great poverty and the nearly absolute absence of law.

For several years blood diamonds have found their way to jewelries in the most elegant roads of Antwerp, London and Paris thanks to custom agents who pretended not to see entire cargos of precious stones passing the boundary between Sierra Leone and Liberia or Guinea.[111] Diamonds arriving in Europe were certified as coming from those nations. European merchants who bought the stones were "clean-handed," whereas the conflict in Sierra Leone went on thanks to revenues from diamond sales.

The *Corruption Perception Index,* an index estimating the perception of corruption in the public sector of 176 states around the world, shows how serious is the question of corruption around the world. Annually published by the German NGO Transparency International, the CPI ranks countries on a scale from 0 (highly corrupt) to 100 (very clean). Around two thirds of the examined countries score below 50.[112] Most of the countries exhibiting awful performances are resource-dependent countries. As far as this issue concerns us, it might be useful

109 The Sierra Leone Civil War began in 1991, when the RUF intervened in the country with the aim of overthrowing the legitimate government. The conflict lasted eleven years. In December 1999 the UN intervened with a peacekeeping operation named UNAMSIL (United Nations Mission in Sierra Leone), which aim was providing support to the government of Sierra Leone in the combat against the revolutionary force, the RUF. The rebels had committed gross violations of human rights such as mutilations, torture and mass murder. The RUF could afford the fight against the Sierra Leone National Army thanks to the revenue from rough diamond sales.

110 Widespread corruption is one of the effects of the resource curse, as Wenar suggests in *Clean trade*, 5, while discussing the high tendency of resource-dependent economies to civil wars.

111 Diamonds were transported outside of Sierra Leone in an attempt by merchants to make them appear clean to the eye of buyers. Liberia, Guinea, but also Gambia and Côte d'Ivoire were the most common destinations for blood diamonds then exported to their final markets, as explained by Campbell, *Blood diamonds*, 57-71.

112 Corruption Perception Index 2012, Transparency International, http://www.transparency.org/cpi2012/results.

to our purpose to take account of performances of the countries we are interested in – those rated 7 by FH in either civil liberties or political rights. Saudi Arabia, for instance, scores 44 ranking 66th out of the 176 examined states. Countries surrounding the Arabian state such as Yemen (23) or Iraq (18), score much below 50 and rank among the lowest positions. Even though, those countries are rated below 7 - between 5 and 6 – by the FH annual report. The same as Saudi Arabia occurs for Equatorial Guinea, Sudan and others.[113]

Once the ban on their exports is enacted in developed countries, oppressive regimes could transport natural resources extracted from the country's soil to nearby states where the minimal standard required by FH to accord a decent[114] rating is satisfied, and then sell them lawfully. Moreover, less transparent corporations might accept to run the risk of receiving smuggled resources because their price would decrease, since regimes have no other way to sell them.

The ban on resources extracted in countries stricken by the resource curse can be eluded, although it would make trade in stolen resources much harder than under the current system. Contraband could be fought by monitoring the extraction of rough materials in suspected countries, in order to see if exports exceed the amount of extracted resources officially declared.[115] Though regimes could be able to manipulate the entries in the more convenient way, agreed with nearby states' governments.

As we can see, it would be not easy to avoid contraband in natural resources. A ban on resources coming from oppressed countries would surely improve the enforcement of people's property rights, yet countries enacting the clean trade

113 Equatorial Guinea, rated 7 by Freedom House, borders Cameroon and Gabon and is very close to Nigeria and Congo Republic. Sudan borders Central African Republic (considered "partly free" by *Freedom in the world 2012*), DR Congo, Chad, Ethiopia and Eritrea (both rated 7). Libya borders countries commercially linked with the EU such as Egypt and Tunisia. States mentioned above are rated below 7 by Freedom House, while their CPI scores are very low.

114 According to Wenar, a rating of 6 is sufficient to allow trade in natural resources with the country in question.

115 This is exactly what happened in countries such as Gambia or Côte d'Ivoire. For instance, Côte d'Ivoire produced around 75 thousand carats per year, yet between 1994 and 1995 the country's diamond exports were thirteen times larger than the amount of domestic production. Data mentioned in *Blood diamonds*, 71.

approach ought to put in place effective counter-measures against contraband as well. Some kind of international coordination to combat corruption and contraband may be useful: once again, the Kimberley Process may provide an viable example,

3.4 The clean trade approach incentives and disincentives

Currently, no laws forbid trade with countries where minimal standards on political rights and civil liberties are not met. Countries not enacting the clean trade approach won't be sanctioned or condemned by any state nor by international organizations, although we can reasonably find trade in looted resources morally wrong and damaging from a market perspective. Therefore, we are going to survey what reasons affluent countries have in favor and against the enactment of legislation aimed at fighting trade in natural resources with authoritarian regimes.

3.4.1 *Foreign policy*

As we have noticed, countries with a rating of 7 for either civil liberties or political rights [116] can not possibly have people's authorization to sell natural resources placed on their territory. Thus, corporations should not deal in natural resources with countries rated 7 by FH in both indices. Affluent nations should ban stolen resources from their jurisdictions by courts rulings, forbidding national corporations to trade with authoritarian élites of resource-cursed countries.

According to the FH report *Freedom in the World 2012*, and in accordance with the clean trade approach, at the moment courts in developed countries should prohibit any form of trade in natural resources with Equatorial Guinea, Eritrea, North Korea, Saudi Arabia, Somalia, Sudan, Syria, Turkmenistan and

116 Wenar states that <<in order to build the strongest legal cases we make the least controversial assumptions, focusing on countries where it is certain that the minimal conditions are not met,>> in *Clean Trade*, 23.

Uzbekistan.[117] All these states have the worst rating in both civil liberties and political rights. Quit trading with those countries would set a series of rough problems.

Foreign policy surely plays a large role in the evaluation of the reasons for implementing the clean trade approach in trade policy. We are going to find out that it might be hard for states to put aside their national interests in order to promote and protect the enforcement of human rights around the world. Although recently many national governments have become more concerned about human rights issues and some of them have established human rights units and committees within their foreign offices, still it is hard to state that the enforcement of human rights is a central concern of foreign policy. As Andrew Clapham argues, <<there is a difference between proclaiming that human rights are at the heart of foreign policy, and actually changing the way decisions are taken.>>[118]

3.4.2 *Strategic interests*

The heaviest name among those in the list is that of Saudi Arabia. The Arabian state is one of the most important United States' ally in the Middle East region,[119] and many consider the country the biggest obstacle on the way for Iran to become the most powerful state in the region. We can argue that diplomatic and strategic interests play an important role within the analysis of positive and negative consequences governments would make before implementing the clean trade approach. Our claim is not that foreign policy issues should influence what a common sense of justice requests to every democratic government, if such pursuit of justice goes beyond the boundaries of the single nation-state. In this instance, to be influenced by foreign policy issues is not praiseworthy, yet is what actually happens.

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117 If we add all countries rated 7 by FH in one of the two indices, the list would then include also Belarus, Burma, Chad, China, Cuba, Laos, Swaziland and Vietnam.

118 *Human rights*, 59.

119 See Lucio Caracciolo, *America vs America, perché gli Stati Uniti sono in guerra contro sé stessi*, Bari: Laterza, 2011, 126-142.

Saudi Arabia is the linchpin state for American, European and many Asian states – first of all China – energy supply. Many countries would have to face the loss of a stable channel for oil provision, once the trade is quit. We cannot expect the US administration, for instance, to put aside national security or energy interests to promote the enforcement of human rights in foreign countries. At least, not if doing so would break the *status quo* of the country diplomatic relations with some strategically important allies.

On the one hand, we can trust that quit trading in natural resources with a country oppressed by an authoritarian élite would push it towards a less repressive government. But, on the other hand, we cannot be sure about what the implications will be for resource-importing countries. Enacting the clean trade legislation is a big risk for states, from both an internal and external point of view. Some strategic allies might be lost, and we know to what extent the US is concerned by security issues[120] – and we are also aware that without the US the whole clean trade approach might not meet its objectives.[121] On the internal level, the clean trade legislation requires a large change in the extent to which people of wealthy countries are concerned about living standards in others, since the cost of the changes the clean trade approach involves would partly fall on the population.

3.4.3 *Energy policy: oil supply*

Oil is the <<biggest business>>[122] among trade in natural resources. The world produces around 84,5 million barrels per day of refined petroleum, and

120 But Wenar's position on the issue is quite different: according to him, quit trading with regimes is an opportunity to <<strengthen failed states where terrorism can incubate, and also to lessen the power of potentially hostile "petrocrats,">> as he states in *Clean trade*, 30. Wenar returns on the security issue in s. A8, "The resource curse on importing states and resource corporations," 62-63, discussing about how Western oil and gas payments have empowered some of the most hostile regimes to the West of the past thirty years.

121 History shows us that international initiatives risk to be limited in terms of effectiveness without the US support. Wenar discusses the issue in *Clean trade*, 20, while illustrating why an independent international panel would be likely to have less authority than national courts.

122 Wenar, *Clean trade*, 14.

consumes nearly the same.[123] The US alone consumes around 19 million barrels per day.[124] We are considering these data in an attempt to understand how can the US as well as other affluent nations quit trading with some of the major resource-exporter countries, and at what cost. According to data published by the American Energy Information Administration (EIA), in November 2012[125] the US crude oil imports averaged 8,130 thousand barrels per day. Canada (2,843 thousand bbl/d) ranks first in the US importers list, whereas Saudi Arabia (1,325 thousand bbl/d) ranks second. Among the most important US crude oil importers are also Mexico, Venezuela, Iraq, Kuwait and, at a lower rate, Russia, Algeria, Equatorial Guinea and Libya.

According to the EIA, "Saudi Arabia has one-fifth of the world's proven oil reserves, and maintains the world's largest oil production capacity".[126] Two questions arise.

First, if we take out the US domestic production from American oil consumption we notice Saudi Arabia – rated 7 in both political rights and civil liberties – provides around 14% of total US crude oil and refined products imports[127]. Once enacted the clean trade legislation the US would have to get the oil they need by other means, since Arabian oil would no longer be available. A way to address the problem could be to increase imports from other oil partners such as Canada or Mexico, if possible. Yet Canada or Mexico as well as other oil exporters must respect agreements with their trading partners, and are unlikely to

123 "Country Comparison: Refined Petroleum Products – Production," *The world factbook*, Central Intelligence Agency [US], accessed January 18, 2012, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2245rank.html. "Country Comparison: Refined Petroleum Products – Consumption," https://www.cia.gov/library/publications/the-world-factbook/rankorder/2246rank.html. As indicated in the website, "the discrepancy between the amount of refined petroleum products produced and/or imported and the amount consumed and/or exported is due to the omission of stock changes, refinery gains, and other complicating factors."

124 Country analysis brief, U.S.A., U.S. Energy Information Administration, accessed January 18, 2012, http://www.eia.gov/countries/country-data.cfm?fips=US&trk=mt.

125 "Petroleum and other liquids", Company level lmports, EIA, http://www.eia.gov/petroleum/imports/companylevel/.

126 Country analysis brief, Saudi Arabia, EIA, http://www.eia.gov/countries/country-data.cfm?fips=SA.

127 "How much petroleum does the United States import and from where?," EIA, accessed on January 18, 2012, http://www.eia.gov/tools/faqs/faq.cfm?id=727&t=6.

sell their own oil reserves. The capability of those states to increase oil production is to be proven. The US should set an accurate plan to reach the amount of oil needed, and be sure that other partners are able to increase their production. Otherwise, the only possible solution would be to reduce oil consumption.

According to the International Energy Agency, the Unites States is about to become the world's leading oil producer in a few years.[128] Yet today America still needs imported oil[129] and it might get hard to reach the huge amount currently provided by Saudi Arabia. Different and more comfortable – but less likely to be adopted – solutions are to rely on renewable resources and to decrease oil consumption.

Whereas in a few years the US might become independent from Arabian oil, the same won't be true for other affluent states relying on oil imports for energy supply. Around 54% of the world's total oil reserves are placed in the Middle-East region. Western countries currently need oil from countries such as Iran and Iraq as well as from Saudi Arabia.

The current situation about Iranian oil imports into the European Union may help us understanding the importance of such trade. Since July 2012,[130] the EU has banned Iranian oil from its territories, halted petroleum purchases and frozen the assets of Iran's central bank, to force Iranian government to stop its nuclear weapon program.[131] The EU ban has created energy supply problems in countries such as Italy, Greece and Spain, and has caused the loss of many jobs in refineries as well as an increase in oil price. Currently, Iranian crude oil represents 34,2% of Greece's total oil imports, 14,2% of Spain's and 12,4% of Italy's, and it is almost

128 World Energy Outlook 2012, International Energy Agency, http://iea.org/publications/freepublications/publication/English.pdf.

129 Frida Ghitis, *America: the Saudi Arabia of tomorrow*, CNN, January 14, 2013, http://edition.cnn.com/2013/01/14/opinion/ghitis-obama-energy/index.html.

130 See the "Council conclusions on Iran," adopted during the 3142th Foreign Affairs Council meeting in Brussel, 23 January 2012,

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127446.pdf

131 Roberto Bongiorni, *Dalla UE sanzioni più dure all'Iran*, Il Sole 24 Ore, October 12, 2012, accessed January 29, 2013, http://www.ilsole24ore.com/art/notizie/2012-10-16/dalla-sanzioni-dure-iran-064119.shtml?uuid=AbybfWtG

impossible[132] to replace the 2,6 million barrels per day currently provided by Iran. Moreover, no changes in the Iranian nuclear policy are visible as far as today.[133]

There is a second question arising from the analysis of the US oil importers list. Among the top fifteen crude oil and petroleum importers, about half are rated between 5 and 7 by FH.[134] Most of them are countries where the conditions proposed by Wenar as minimum requirement for allowing trade in natural resources are barely met. We cannot rule out the possibility of a fall in the human rights standard of such countries, which might take place at any moment.

Then, what if the political situation of a country close to the boundary between a rating of 6 and 7 changes abruptly? Corporations owning resource extraction contracts with such country would have to address a severe situation. Usually, such agreements last years and are outcome of hard negotiations. Investments require large sums of capital[135] and in case of a ban on resources coming from the country in question corporations would lose a lot of money invested in machineries, transports and workers. Not least, they would lose a lot of time. Thus, we can expect great pressure on governments and on FH from energy lobbies.

Yet, as time moves on, such disincentives for corporations to support the clean trade approach may turn into disincentives to trade with repressive regimes, becoming an important step to achieve the goal of stopping trade in stolen resources. On the one hand, corporations will be much less keen to sign resource extraction contracts with countries where human rights standards are very low,

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132 Nima Baheli, *L'embargo sul petrolio iraniano non conviene a nessuno*, Limes, January 27, 2012, accessed January 29, 2013, http://temi.repubblica.it/limes/lembargo-sul-petrolio-iraniano-non-conviene-a-nessuno/31634

133 Ladane Nasseri, *Iran won't yield to pressures, foreign minister says; nuclear news awaited*, Bloomberg, February 12, 2012, http://www.bloomberg.com/news/2012-02-12/iran-won-t-yield-to-pressure-foreign-minister-says-nuclear-news-awaited.html.

134 Among the list we find Russia (around 700 thousand bbl/d, ratings of 6 in political rights and 5 in civil liberties), Iraq (1 million bbl/d, ratings of 5 and 6), Equatorial Guinea (49 thousand bbl/d, rating of 7 in both indices) and Libya (46 thousand bbl/d, rating of 7 and 6).

135 William Hogan, Federico Sturzenegger and Laurence Tai, *Contracts in natural resources: a primer*, 2007, accessed January 27, 2012, http://www.hks.harvard.edu/fs/whogan/Populism_Nat_Res/Populism_Agenda_files/HST_Intro_101007.pdf.

because of the time and money they would lose if conditions fall below the limit fixed by the FH ratings. Countries maintaining some semblance of political and civil liberties[136] would be stricken too, losing some wealthy investors. Thus, positive effects might occur also in countries rated 6 by FH – though this is a much harder circumstance. On the other hand there is a negative aspect. Politically unstable yet human rights respectful countries such as those suffering from economic breakdown or extremely poor ones, may see their chances to attract foreign investments unjustifiably reduced.

3.4.4 *Energy policy: gas supply*

Oil could be the biggest, but natural gas is big business too. Turkmenistan is a leading gas exporter in Central Asia, and is one of the world's worst dictatorships. After independence from the USSR, the Turkmen Communist Party secretary Saparmyrat Nyýazow seized power and dominated the country until his death in 2006. His rule became famous on foreign media because of his totalitarian and repressive policy. His successor, ex-prime minister Berdimuhamedow, proceeds on the same line.

Turkmenistan ranks 170th out of 176 states according to the Transparency International CPI. The country is rated 7 in both indices by FH. civil liberties and political rights are almost entirely absent whereas arbitrary arrests, detention and torture are usual. There is no press freedom and internet access is strictly monitored.

In spite of the severe poverty for more than half of Turkmen population – around 4,6 millions inhabitants – the country is very rich. According to the EIA, <<Turkmenistan currently ranks in the top six countries for natural gas reserves and the top 20 in terms of gas production.>>[137] Saudi Arabia is rich in gas too. The Arabian state gas production is more than double that of Turkmenistan, yet the

136 Such as, for instance, Belarus, rated 7 in PR and 6 in CL by FH.

137 Country analysis brief, Turkmenistan, EIA, http://www.eia.gov/cabs/Turkmenistan/pdf.pdf.

Central Asian state exports are larger. According to the CIA *World factbook*, the country natural gas export is around 34,9 billion cubic meters per day (2011).[138] Turkmenistan has several of the world's largest gas fields, including what has been estimated to be the world's second largest, the South Yolotan gas field.

The country has historically relied on Russia as primary export market,[139] but in recent years new agreements to transport gas to China and Iran have been signed, through the building of new pipelines. The Central Asia-China pipeline route built between 2006 and 2011 brings gas from Turkmenistan to China, through Uzbekistan and Kazakhstan. Natural gas also travels into European markets through Russia.

The human rights violations occurring in Turkmenistan has been denounced by many NGOs and the US Department of State as well,[140] yet no effective international sanction has been imposed to the country. Presumably, Turkmenistan's strategic geographical position – between Iran and Afghanistan – and gas fields are good incentives to perpetuate the *status quo*, avoiding any kind of international intervention.[141] Once again, we notice how quit trading with certain countries can be hard because of either political or economic reasons.

Turkmenistan is among the biggest world gas producers, yet it is not the only state rated 7 by FH involved in natural gas trade. Uzbekistan is quite similar. Since its independence from the USSR in 1991 the country has been governed by Islom Karimov, ex secretary-general of the Communist Party in Uzbekistan. Both leaders of these Central Asian states have built a firm cult of personality around their image and established two of the world's most totalitarian regimes.[142]

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138 Even though the entry is quite high, according to the EIA Turkmenistan faces many problems in natural gas export because of a lack of infrastructures, know-how and foreign investments. Datas about Turkmenistan's export can be found on the CIA *World factbook*, https://www.cia.gov/library/publications/the-world-factbook/geos/tx.html.

139 Turkmenistan, EIA.

140 NGOs such as Amnesty International (Turkmenistan – AI Report 2007) and Freedom House have more than once denounced the awful human rights standard in Turkmenistan. The US Department of State described some of the systematic human rights violations committed by the Turkmen regime in the 2008 Human Rights Report.

141 Ingrid De Armas, "Turkmenistán: el reino de lo absurdo," *El Universal* (October 21, 2012).

142 On the situation of human rights in Uzbekistan see the report *Mission to Uzbekistan*,

Uzbekistan is now ranked a few positions after Turkmenistan in the world's natural gas exporters list, exporting around 14,5 billion cu. m. of gas per day. The same goes for Libya, which amount of gas export is 9,9 billion cu. m. per day.

Among the first thirty world's natural gas exporters rank also several countries rated between 6 and 7 in at least one of the two indices, such as Russia, Burma, Iran, Algeria and Yemen, all states where political and civil rights standards can worsen abruptly. This lead us to argue that affluent states ought to revise their energy demand to effectively stop trading with countries where human rights standards are very low. Once again, the most praiseworthy answer to the issue is to develop sustainable means and rely on renewable resources to secure energy supply.

3.4.5 *Political pressures*

The case of Saudi Arabia is explanatory yet fortuitous, since the country is the biggest oil exporter in the world (2009).[143] Once Arabian oil is removed from international markets we can reasonably expect oil price to increase.

The clean trade approach would set a mechanism through which every illegitimate exchange would be not only discouraged, but tracked and punished through economic measures. A system of incentives should deter trade in stolen resources, since who buys looted resources will meet obstacles to the sale of derived products to economies which have adopted the “trust-and-tariffs” mechanism. Moreover, according to Wenar this proposal would gain support from different actors, since it generates incentives for a variety of domestic economic interests. National manufacturers will lobby the government to set tariffs on foreign goods, because they would fear competition. The banking industry will support the creation of a clean hands trust because banks would handle the fund until it is turned over to the people of the country where the irregular sale of

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in *Civil and Political Rights, Including the Question of Torture and Detention,* Commission on Human Rights, UN Economic and Social Council (February 3, 2003), E/CN.4/2003/68/Add.2.

143 World factbook, CIA, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2242rank.html.

natural resources took place. All these forces should provide support to the enactment of the clean trade approach and set a counter-balance to pressures on the government coming from natural resources corporations.

Wenar makes a list of actors who are supposed to be pleased by the ban on oil imports from countries governed by authoritarian regimes: committed citizens, security advisors, environmentalists and humanitarians, as well as free market advocates. We agree that citizens committed to the enforcement of human rights standards around the world and interested in Third World issues would be certainly satisfied by such a change in trade policies. The same applies to humanitarians, and the change would please environmentalists too since the enforcement of the rule of law in cursed countries is likely to bring more control over resource extraction process and rough materials transport. Yet consumers of wealthy states would have much less incentives to support the adoption of a clean trade legislation entailing an increase in fuel price. If the ban on natural resources coming from cursed countries cuts oil income, oil price will raise. Cost increases will be felt by national firms as well in terms of production processes and transport of goods, raising tough pressures on the government. Then, the higher costs of production and transport bore by producers will inevitably fall back on an increase in commodity prices. Eventually, the population of the country enacting the clean trade approach will have to make some sacrifices and accept a partial rise in the cost of living. People may not be ready to make sacrifices in the name of the enforcement of people's liberties and rights in distant countries.

We do not know whether it is the right moment to rely on the unselfishness of affluent states populations, nor if nationalism is desisting in favor of a greatest concern for foreigners and their living conditions. Yet we can argue that a sense of responsibility towards oppressed peoples in the world should spread among the population, if we want the population itself to support the clean trade initiative. Increased awareness of our obligations along with a deeper understanding of our moral duties towards the people of least-developed countries are eventually needed.

The clean trade approach involves changes which have to pass through the political, economic and social field. Wenar builds a good framework to address

poverty and oppression in least-developed yet resource rich countries, but it is a long way to make it work properly.

3.5 More harms to the poor?

We are going to conclude our analysis of the feasibility of the changes involved in Wenar's clean trade approach with a moral question. This is an objection Wenar proposes by himself in *Clean trade*. Changes in trade policy of rich nations can harm people in resource-cursed countries, since they are aimed at cutting off the flow of money into such countries. These people live in very hard conditions, under the rule of tyrants exerting their power in the most unpleasant ways such as imprisoning, torturing and killing dissidents. Wenar states that citizens of such countries usually do not benefit at all of the revenue from natural resource sales, while those revenues are often the source of the oppression people are afflicted by.

Paradoxical as it may seem, quit trading with resource-cursed countries could really worsen the situation of some people. Yet in Wenar's opinion <<even if in the short run some poor people may lose out when they can no longer catch, as it were, the scraps that fall from a dictator's table, in the long run the great majority of poor people will be better off when their entitlements to their resources are enforced .>>[144]

We can agree with Wenar's view. An improvement in such countries standard of living is the most likely thing to happen, once the link between authoritarian élites and their first "sponsors" – international natural resource corporations – is cut. What we ought to consider is that catching the <<scraps that fall from a dictator's table>> presumably is a matter of life and death for many citizens. In statistical terms, the number of people dying because those scraps will no longer fall from that table could be insignificant once compared to the number of people who will improve their situation as consequence of improved human rights enforcement – or compared to the number of people actually dying.

144 Wenar, *Clean Trade*, 33

However, what is at stake are human lives. We agree that all human lives have the same value, as stated in human rights covenants. Even though, it is true that we cannot expect to improve such countries living and human rights standards without some sacrifices, to be made – at a very different costs – by us, wealthy people, and them together.

Anyway, this issue is worth being considered and might become a thorny question. Or maybe, as Wenar writes, <<this is perhaps the most we can ask of any realistic proposal.>>[145]

145 Wenar, *Clean Trade*, 33

Conclusion

The analysis of Wenar's proposal to combat the resource curse leaves us with some questions about its actual feasibility. For sure, the clean trade approach is grounded on some of the firmest principles of international law, thus its legal basis is quite hard to contest. The principle of self-determination, property rights and human rights Wenar wants to enforce through reforms in affluent countries' trade policies are without any doubt worth being promoted and protected against any violation, and the current behaviour of the international community towards their infringement must reasonably change.

Sadly, Wenar fails to address some of the issues resource importing countries would have to face if they decided to implement the clean trade approach within their legal order. As we have seen, foreign policy issues as well as energy supply problems would almost certainly play a large role in the decision of whether to enact or not the clean trade legislation proposed by Wenar. These issues could become a serious obstacle to the implementation of the reforms required to quit trading with resource cursed countries. Presumably, no state will take the initiative by itself as the costs it would have to face are big enough to create a disincentive towards a unilateral implementation. Eventually, we can argue that a supranational coordination is required to make the clean trade approach give its best outcomes in terms of human and property rights enforcement around the world. For instance, the Kimberley Process provided a viable normative framework that encourages all diamond exporting states to comply with its requirements. On the example provided by the Kimberley Process, a similar international initiative could be taken with regard to trade in other natural resources, providing disincentives towards all states that decide not to join it. The system of positive and negative conditionalities Wenar proposes as part of the clean trade legislation to encourage the achievement of certain standards of political and civil rights could be included as well within this international

initiative with regard to non-participating states, to deter commerce in stolen resources and encourage states out of the initiative to join it.

The clean trade approach involves changes that have to pass through the political, economic and social field to be definitively approved. Thus, aside from political and economic issues, for it to be possible for the clean trade approach to give the best outcomes a large change in the extent to which people of wealthy countries are concerned about living standards in others is an inevitable requirement. As we argued in chapter 3, two main changes are necessary for the clean trade approach to be supported by affluent countries' citizens: increased information about wealthy countries responsibility and deeper understanding of our contribution to the current conditions of resource cursed countries, as well as improved awareness of the ability that affluent countries have to change the existing global economic system. As we have seen, the enactment of the clean trade legislation would require the affluent countries' citizens to bear some of the costs it entails, and we cannot be sure whether people are ready or not to make sacrifices in the name of the enforcement of rights in distant countries.

Wenar partially disagrees with the arguments presented by Pogge to blame affluent states because of their imposition of an unfair and slanted global economic order on poor countries. In Wenar's opinion, Pogge should not ground its argument on the claim that we could have established a different global order – more just, committed to the eradication of massive poverty and avoidable deaths or at least not encouraging their perpetuation – unless he provides a realistic version of the alternative global order he claims to be more just. But Pogge provides a moral theory on what we owe to the poor with respect to our role in shaping the current economic order to justify the changes he proposes, whereas Wenar argues that affluent countries should reform their policies because their current behaviour is breaching some of the most basic norms on international law, not providing any moral view of the issue. It is certainly true that affluent states are violating the current international law, and this infringement is sufficient to justify switches in trade policies by itself, but some moral grounds are required as well for the proposal to be actually feasible as we have noticed that affluent states' population would play a large role in supporting or contrasting the implementation of the approach.

Eventually, citizens of importing countries will have to make some

sacrifices and accept a partial rise in the cost of living. In order for this to be acceptable, Wenar's proposal needs to be completed with a moral theory on what are our responsibilities towards the current dramatic conditions whereby poor countries lie, unable to start a process of development or to achieve even the minimal subsistence level for their people. Without some moral arguments at its basis, the entire proposal risks to be opposed not only by governments because of political and economic interests, but by the people themselves because they would see no reason to make sacrifice in the name of the enforcement of human rights in distant countries. This is sad enough, but if Wenar wants his proposal to be realistic he has to address these arguments as well. A moral theory specifically focused on why we should be very concerned about what happens in distant countries and on why we should bear the costs of the changes involved in the clean trade approach is necessary to persuade affluent countries' citizens to give their support to its implementation. Without the citizens' support, the whole project risks to fail.

Moreover, a complete implementation of the clean trade approach indirectly requires the move for affluent countries towards sustainable means of energy production. Wenar discusses what incentives the approach provides for actors committed to environmental protection, and what benefits the implementation of the reforms required by his proposal can bring to this problem. If a regime have no customers for the natural resources it tries to sell on the international market, and if energy corporations have no way to buy oil and gas unless a government enforcing at least minimal political and civil rights is established in the country where these resources are placed, we can surely expect an improvement in the internal political situation of the country in question. A government even minimally accountable to the people under its rule would surely enforce the rule of law, and, as a result, this will benefit the environment because controls over resources extraction and transport are likely to be enhanced. But the environment will benefit even more of the changes the clean trade approach would bring to resource importing countries' trade policies if such countries will decrease their energy demand. Moving towards sustainable means of energy production would also facilitate the implementation of the clean trade approach, since this switch would enable affluent countries to stop relying almost entirely on resource exports from cursed countries to get the energy they need. It will make much easier for

affluent states to decide positively about the implementation of the approach, and the costs that the population should have to bear would be much smaller.

Thus, the clean trade approach would increase its chances of being implemented in importing countries' trade policies if completed with a theory of environmental ethics, aimed at increasing importing states reliance on sustainable means of energy production, and with a moral theory on what our duties towards the poor are. Wenar puts forward a viable recipe to address the resource curse, yet there are some flaws in the mechanism he proposes and some issues the author do not consider at all. Aside from political and economic issues, the proposal is inextricably tied to moral and environmental concerns that are actually weak among the world's affluent people.

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