



What business practices are used to get a conflict-zone natural resource into the international market at the best possible price? The Case of the Democratic Republic of Congo

This paper lays out key business routes that natural resources can take from conflict zones to 'legitimate' markets in the destination countries. The approach taken here is that the methods used to transfer natural resources from conflict-zones are structurally similar to international criminal networks with two significant additional features : in some cases nation-states are active partners for their own political self-interests and in other cases transnational corporations are active participants for their own commercial self-interests. For the commercial movement of natural resources from conflict-zones to persist, there must be significant benefits from the end-sale of the natural resources in the wealthier markets. The goal of this short paper is to categorise the common mechanisms used so that effective public policies in the wealthier importing countries can be formulated in the most effective manner.

The four primary categories of shifting a conflict-related resource to a legitimate market are (a) disguising the geographic origin of the war-related product; (b) disguising the ownership of the war-related product; (c) disguising the physical characteristics of the war-related product and (d) disguising a conflict-zone-product behind assertions of State legitimacy and sovereignty. For each specific market mechanism, the paper provides a short technical description of the mechanism, summarises variants of the mechanism, describes the market benefits and the market based risks of each mechanism; provides references to specific situations where these mechanisms have been documented and then offers policy options for the major importers and separately for the international community.

The Institute for Environmental Security hopes that the EC, other OECD countries and the

relevant institutions of the international community can use this business mapping to design economically effective interventions that undermine the financial incentives for combatants in war zones to misuse the natural environment for military or political objectives.

Category A : Disguising the geographic origin of the war-related product

A1. Crossing unmanned neighbouring borders

There is a great need to better control the transportation of natural resources from the recognised conflict zone into another jurisdiction. In the case of the DRC, Global Witness explains that “ the pervasiveness of corruption at all levels of government would suggest that official border control patrols at roads, ports and railways, where they existed, could have been bypassed with the payment of bribes or commission on the sale of illicit commodities”¹. Although smugglers face the risk of seizure in transit by competing forces or state authorities, this practice has been largely documented:

- “The Panel identified 11 African States through whose territory goods originating in the Democratic Republic of the Congo are likely to pass. Some are directly involved in the conflict, namely, Burundi, Rwanda, Uganda and Zimbabwe. The remaining seven are the Central African Republic, Kenya, Mozambique, the Republic of the Congo, South Africa, the United Republic of Tanzania and Zambia. None of the authorities in these countries gave any indication that Congolese resources traded through their territories should or could be regarded as conflict goods. Almost none of the countries proposed any meaningful measures to help curb trade in Congolese commodities that are tainted by criminality and militarisation”².

¹ Global Witness, *Same Old Story—Natural Resources in the Democratic Republic of Congo*, 2005, pg 9;

² UN Group of Experts, S/2002/1146, 2002, Para 139;

- “For instance, in Goma, because the customs warehouses were destroyed during the last eruption of a volcano near there, trucks transporting un-inspected containers habitually stretch out along the road towards town without customs supervision. The duty of the customs office in Goma is to complete customs formalities for merchandise arriving by road and air. However, due to the lack of warehousing facilities, after the declaration of goods and payment of taxes by the transporter, the goods are directly delivered to the end-user without any further physical verification by customs officials. This system allows all kinds of abuses, and particularly false declarations. According to customs officials, this lack of infrastructure makes possible the import and export of prohibited goods, including weapons and minerals. For example, customs officers in Goma informed the group that based on informant’s tip-off, in September 2007, they had seized from trucks a significant quantity of cassiterite destined for export, which had not been declared to the customs authorities nor inspected”³.

- “Studies show that smugglers in Zaire used roads, railways, the Lufra, Luvua and Lualaba Rivers, and Lake Tanganyika to transport their goods within and across national borders. For instance, in Katanga (southern Zaire) ivory was smuggled from the trading centre of Lubumbashi to Moba or Kalemie on the shores of Lake Tanganyika, across the lake and then on to Lusaka, Dar es Salaam or Johannesburg for sale in Hong Kong. Copper and cobalt were taken from Kolwezi to Sakania and then across the Zambian border by trucks to the nearby Zambian city of Ndola before being transported down to South Africa by train”⁴.

Among the policy options for international system and UN peacekeeping forces, the UN Group of Experts recommended that “the

Committee encourage the Government of the Democratic Republic of the Congo and its international cooperation partners to establish sufficient customs storage facilities and equip its customs administration and law enforcement institutions with appropriate operational equipment for the fulfilment of their missions. These should include radar surveillance systems on Lakes Albert, Edward, Kivu and Tanganyika, and modern means and methods of targeting and rummaging vehicles (including boats and aircraft) as well as containers (including scanners)”⁵.

A2. Re-labelling country of origin

Another practice commonly used by warring factions is to export natural resources to an allied transit country and re-labelling the resource as if it was extracted in the transit country. Once the country of origin designation is changed, the product appears untainted by war and apparently legal. Such practices have been observed in Eastern Congo, where rebel factions, such as Laurent Nkunda’s CNDP, have benefited from the support of the Rwandan or Ugandan Governments. Global Witness explained in a 2005 report that “As Congolese coltan production has been monopolised by Rwanda, there is a strong possibility that tantalum listed in the US and Western Europe as imports from Rwanda is in fact Congolese tantalum”⁶.

A3. Fake geographic extraction records

Getting documents to show that the natural resource was extracted outside of contested war zones can be an easy way to get through controls in a country where governance is poor or inexistent. The risks are that resources are travelling on a greater distance, raising the likelihood of more frequent transport-related ‘taxes’.

³ UN Group of Experts, S/2008/43, 2008, para 93;

⁴ Global Witness, *Same Old Story—Natural Resources in the Democratic Republic of Congo*, 2005, pg 8-9;

⁵ UN Group of Experts, S/2008/43, 2008, para 97;

⁶ Global Witness, *Same Old Story—Natural Resources in the Democratic Republic of Congo*, 2005, pg 20;

As a possible response to such practices, the UN Group of Experts made the following statement: “individuals and entities buying mineral output from areas of the eastern part of the Democratic Republic of the Congo with a strong rebel presence are violating the sanctions regime when they do not exercise due diligence to ensure their mineral purchases do not provide assistance to illegal armed groups. The Group further considers that due diligence entails the following steps. First, companies buying from areas at risk in the eastern part of the Democratic Republic of the Congo (see para. 84 above) determine the precise identity of the deposits from which the minerals they intend to purchase have been mined, rather than simply the territory of origin, as currently registered by CEEC. (...) Failure to follow these steps constitutes a lack of due diligence, and in the Group’s view puts purchasers in violation of the arms embargo for provision of assistance to armed groups”⁷.

A4. Regional pre-processing to conceal geographic origin

Industrial processing is an effective way to conceal the origin of a named resource. Once natural resources have been undergone industrial processing, it can be difficult to associate it as a product from a conflict zone. Furthermore, the greater the degree of processing and industrial transformation, the higher the price on international markets and the return for war-related activities.

One way to prevent this would be to set up state-sponsored lists of business entities in and around conflict-zones that are presumed to be engaged in laundering conflict-zone natural resources which legitimate businesses in the importing countries can use to de-select as prime contractors or suppliers of goods (a list that would be similar to prior “trading with the enemy” lists of firms).

Category B : Disguising the ownership of the war-related product

B1. Fake, Vague, or Dubious ownership documents

This business practice consists in getting documents to show ownership by legal corporate entities within or outside conflict-zone countries. Once the ownership by a ‘reputable local business’ is arranged, the product appears apparently legal. Moreover, ownership by ‘reputable local business’ or by TNC related firm makes it harder for the State, particularly those with weak court systems, to seize the goods.

As noted by the Group of Experts, “system-wide weaknesses that require improvements include: (a) The relevant branches of the Government of the Democratic Republic of the Congo have insufficient capacity to conduct due diligence of corporations and their investors who would like to negotiate natural resource concessions. The Group of Experts found evidence that exploration and exploitation rights are negotiated with, and have been granted to, individuals who do not comply with the stipulations of the Mining Code; (b) Under the various Governments since independence, as well as the administration of the transition Government and of the various illegal armed organisations, concessions rights were granted without properly revoking those issued by previous leaders. This has led to multiple ownership claims, which cause complex legal battles and vacuums in which rebel groups prosper (see S/2006/53, chap. IV, sect. C);

As a result of the above two failings, the integrity of the natural resources export industry of the Democratic Republic of the Congo is dangerously impaired. The lack of proper ownership controls over many mining sites permits the illegal exportation and trading of natural resources at a great loss to the country’s workforce and overall economy. The Group of Experts cannot exclude that some of this trade is funding illegal arms acquisitions or that they might serve as financial

⁷ UN Group of Experts, S/2008/43, 2008, para 85;

sources for political campaigning in the upcoming elections”⁸.

In 2008, the Group of Experts declared that: “individuals and entities buying mineral output from areas of the eastern part of the Democratic Republic of the Congo with a strong rebel presence are violating the sanctions regime when they do not exercise due diligence to ensure their mineral purchases do not provide assistance to illegal armed groups. The Group further considers that due diligence entails the following steps. (...) Second, once the precise identities of the mineral deposits are known, purchasers establish whether or not these deposits are controlled and/or taxed by illegal armed groups. (...) Failure to follow these steps constitutes a lack of due diligence, and in the Group’s view puts purchasers in violation of the arms embargo for provision of assistance to armed groups”⁹.

The sanctions proposed by the Group consist in establishing penalties based on existing national law in conflict zones where the implementing authority of the state is weak¹⁰.

B2. Owner pays ‘taxes’ to warring partners to prevent theft, destruction or delay in movement of goods

Warring factions in areas of weak governance tend to secure their position by claiming taxes. This is usually done by intimidating existing business owners or by installing complicit businessmen at key positions on the resource extraction market.

In the case of the DRC, according to national civilian and military authorities and MONUC,

even in areas with a strong rebel presence, not all the mineral deposits are controlled by illegal armed groups. Reportedly, these areas include Masisi and Walikale in North Kivu, and Lulingu, Lemera and Kilembwe in South Kivu. However, purchasers of mineral output from the eastern part of the Democratic Republic of the Congo interviewed by the Group maintain that they do not knowingly buy minerals from deposits controlled or taxed by illegal armed groups¹¹.

B3. Complex Ownership Web

Describes the situation in which the ownership of the natural resources is held or managed through a complicated series of firms making it difficult for an external party to determine at any given time who has the goods. This practice can however be undermined by the existence of a commercial domestic legal regime that might from time to time attempt to enforce its laws and regulations.

In 2002, the Group of Experts pointed that “management control is essential to the elite network’s strategy for extracting maximum revenue from the joint ventures. Much of the revenue from the joint ventures is off the balance sheet in overpriced subcontracting and procurement arrangements with companies and individuals linked to the network. The two biggest Zimbabwe-Democratic Republic of the Congo joint ventures — Sengamines and KMC — are declaring huge losses”¹².

Policy options for specific importing countries include a set of legally binding guidelines for domestic firms to use in implementing “due

⁸ UN Group of Experts, S/2006/525, 2006, para 125;

⁹ UN Group of Experts, S/2008/43, 2008, para 85;

¹⁰ The Group of Experts recommends that the existing laws of the Democratic Republic of the Congo, particularly the regulations governing natural resources and their orderly exploitation, be used as a baseline for a new sanctions regime. Violations of these laws would be considered sanctionable, and the Group of Experts, strengthened with appropriate legal expertise, would be mandated to investigate relevant acts. Violators could be added to the list of individuals and entities subject to the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005). Since the core violation would be the infraction of current Congolese law, due process would be automatically built into the sanctions regime. Should the evidence against violators not prevail in orderly Congolese courts of laws, the listing under paragraphs 13 and 15 of resolution 1596 (2005) would be removed. S/2007/40, 2007, para 52;

¹¹ UN Group of Experts, S/2008/43, 2008, para 83;

¹² UN Group of Experts, S/2002/1146, 2002, para 42;

diligence” in their selection of commercial partners from conflict zones or and a black list of business entities that are presumed to be associated with exporting natural resources from conflict zones. Multilateral options include an internationally supervised business registration system for enterprises working in zones of conflict.

Category C : Disguising the physical characteristics of the war-related product

C1. Mis-classifying products for trade deception

This practice implies exporting under one trade classification that is not associated with conflict-related natural resources (e.g. baby cribs) and declaring import under another one unrelated category or the current category.

C2. Blending

Blending consists in mixing illegal conflict exports together with legal ones and export the whole as legal. Owners of legal export items might be interested as they get additional resources to market at a significantly lower cost.

In the Kivus, the *Centre d'évaluation, d'expertise et de certification* (CEEC), which monitors the origin and quality of national mineral output, is currently only present in Goma and Bukavu. According to CEEC officials and commercial sources, by the time mineral output reaches those cities, material from militia-controlled mines in the Eastern part of the Democratic Republic of the Congo has often already been mixed with other material. To overcome this problem, CEEC needs to register the origin of mineral output with greater precision. This will require CEEC to increase its capacity and expand its presence closer to the Kivus' mining sites. In this context, the Group acknowledges the World Bank's commitment to provide technical assistance to CEEC, which will assist with this process¹³.

Category D : Disguising a conflict-zone-product behind assertions of State legitimacy and sovereignty

D1. State bodies give “get of jail passes” to conflict-zone products

Military officers, police officers, custom agency civil servants or other Government officials are sometimes pushed to issue State exemptions or special Government permits for products from ‘their’ side in a local or neighbouring war. Although it might have negative repercussion and de-legitimise a range of other State commercial actions, this practice is effective as it provides easy access to legitimate markets at no or little cost to the States.

A multilateral option consists in the Security Council designating exemptions or social permits from offending States as one not to be granted commercial landing rights in other States.

Based on this typology Governments in the end product countries and the EC can select from their civil system, their criminal law system or their customs regulations the best combination of procedures to block the greatest number of goods from conflict-zones from domestic markets.

www.envirosecurity.org/activities/law/trade

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¹³ UN Group of Experts, S/2008/43, 2008, para 84.