Sanctions and the Effort to Globalize Natural Resources Governance

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- UN sanctions on natural resources are among the most consistent forms of coercive actions in support of international norms, including humanitarian laws and rights, in maintaining and restoring global peace and security.
- The predominantly South-South trade in natural resources increasingly bypasses the evolving framework of Western norms and standards established by the OECD on which UN sanctions compliance is based.
- Competitive advantages in the form of sanctions discounts accrue to those who perceive themselves as politically and economically able to eschew such compliance.
- Balancing the interests of the industrialized West and East with the emerging voices of the resource-rich South offers an opportunity to fashion governance norms for natural resources sanctions that will enjoy truly global respect.

Dialogue on Globalization

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1. Introduction

At critical times in the past, the UN system has supported and coordinated global responses to conflicts involving natural resources. In the 1960s, the Security Council imposed commodity sanctions against Southern Rhodesia, and in the 1990s and 2000s banned the trade of oil and petroleum products with Iraq, Haiti, Iran and Libya, and invoked Kimberley Process guidelines on the diamond trade to stem civil war in Angola, Sierra Leone, Liberia and Côte d'Ivoire. Over the past 12 years, the UN has linked sanctions compliance with the evolving framework of corporate social responsibility standards established by the Organization for Economic Cooperation and Development (OECD)[1] in the context of trade in precious and semi-precious minerals from the Democratic Republic of the Congo (DRC) and from Eritrea.

After years of Security Council sanctions (see Annex for an overview of all pertinent resolutions) designed to curtail conflicts triggered or prolonged by revenues from diamonds, timber, minerals and other natural resources, it may now be useful to assess the viability of these strategies. In question is the practicability of linking compliance with Security Council sanctions with governance and due diligence guidelines established by an organization that does not represent a global consensus. This question is all the more pertinent in light of recent shifts in geopolitics, economics and value systems. The proposed inquiry should include an evaluation of the intended and unintended consequences of natural resources-related Security Council sanctions.

The dearth of consequences for violations of UN sanctions, including individual targeted sanctions, is perhaps an indication of the low level of political resolve behind the implementation of recent natural resources sanctions. In the specific case of individuals and entities who ignore Security Council-prescribed OECD due diligence guidelines in dealings with the DRC's natural resources, sanctions may even become counterproductive. It is an open secret that resource-rich developing nations and their buyers in Asian industrial nations have little if any sense of ownership of Western due diligence concepts. While Security Council action should include efforts toward balancing global interests, the Council has not been effective in narrowing the gulf between Northern-dominated norms and standards and the predominantly South-South nature of the extraction, processing and trade of natural resources. As a consequence, violators of natural resource sanctions have a very good chance of operating with impunity and benefiting from avoiding the costs of due diligence practices.

Among the vast body of literature on natural resources and conflict, the risk of a continued lack of global leadership on natural resources is a recurring theme. More perplexing is the total absence of any discussion about the role of sanctions in re-establishing such leadership[2]. Yet in many post-conflict states, old contests over natural resources could reignite once peacekeeping missions scale down and leave (Liberia, Côte d'Ivoire, DRC, Burundi, Afghanistan); existing or new unrest or conflicts may escalate (South Sudan, Darfur, Iraq, Libya, Columbia, Peru, South Africa) as is currently occurring in the Democratic Republic of Congo; and new contests over non-mineral resources may erupt (water, unpolluted soil, agricultural products). Such new threats to international peace and security may deliver these crises to the agenda of the Security Council.

Because the citizens of resource-rich but conflict-prone countries are most at risk, they are most likely to pay the price for failed policies. Such states should ideally be most interested in fostering more effective prevention of new crises over natural resources. Just as it is self-evident that developing and emerging economies should define their corporate responsibility standards to protect their own security, and economic and political interests, it is equally evident that such standards should aspire to achieve a truly global reach. They should also serve as the basis for future Security Council natural resources sanctions.

1. The OECD is a Paris-based bureaucracy with currently 34 high-income and highly industrialized member states. The membership does not include a single African state or developing country, or Russia or China. Originally the bureaucracy was set up under the name ›Organization for European Economic Cooperation‹ by the United States and Canada as a facilitator for the implementation of the Marshall Plan. By 1961 it was restructured to fit into the emerging European Economic Community and given its current name. Over time, it spun off the International Energy Agency (IEA) and the Financial Action Task Force on Money Laundering (FATF). After the end of the Cold War, the OECD attempted to become the facilitator to globalized business by offering itself as a clearinghouse for statistical trade data, as a centre for the definition and harmonization of regulatory and supervisory frameworks, and as a standard-setter for voluntary business principles. Thus the OECD became a prolific producer of »soft-laws.«

2. See for instance High-value natural resources: A blessing or a curse for peace? by P. Lujala and S. Aas Rustad (Eds.), Environmental Law Institute and UNEP, June 2012.

The question of the likelihood of such an evolution arises in the face of the prioritization by major Western states of their own political and economic interests while the newly powerful BRICS (Brazil, Russia, India, China, and South Africa) pursue similar objectives beyond the boundaries of Western-imposed governance systems. This tension becomes all the more relevant since for many resource-rich countries in Africa, non-OECD countries are replacing industrialized nations as their most important trading partners (see Table 1).

Table 1: Sub-Saharan African states ranked by GDP and their most important trading partners. Non-OECD States are designated in grey.

State	GDP in $ Billion	Trading partners listed as percentage of overall national exports				
Nigeria	$ 329.00	US 28.9 %	India 12 %	Brazil 7.8 %	Spain 7.1 %	France 4.9 %
Kenya	$ 51.19	Uganda 10 %	Tanzania 9.7 %	Netherlands 8.5 %	UK 8.2 %	US 6.2 %
Angola	$ 44.03	China 37.7 %	US 21 %	India 9.5 %	Canada 4.1 %	
Sudan	$ 37.57	China 68.1 %	Japan 14.3 %	India 5.6 %		
Ghana	$ 31.36	France 19.5 %	Netherlands 10.4 %	US 8.8 %	Italy 8.3 %	UK 4.8 %
Cameroon	$ 18.32	China 16.9 %	France 16.8 %	Nigeria 12.4 %	Belgium 5.3 %	Italy 4.3 %
Côte d'Ivoire	$ 17.48	Netherlands 11.6 %	US 11.5 %	Germany 7.3 %	Nigeria 6 %	Canada 6 %
Ethiopia	$ 13.32	Germany 13.7 %	China 11.8 %	Belgium 7.5 %	Saudi Arabia 6.5 %	US 6 %
Tanzania	$ 12.78	China 14.2 %	India 9.9 %	Japan 7.7 %	Germany 6.7 %	UAE 4.5 %
Zambia	$ 10.91	China 34.8 %	Switzerland 18.3 %	South Africa 11.7 %	Democratic Republic of the Congo 5.4 %	South Korea 4.4 %
Botswana	$ 10.33	UK 62.4 %	South Africa 13.5 %	Israel 5.3 %		
Gabon	$ 9.55	US 40.9 %	Australia 9.1 %	Malaysia 8.6 %	Japan 5.9 %	China 5 %
Uganda	$ 9.32	Sudan 15 %	Kenya 10 %	Rwanda 8.3 %	UAE 7.8 %	Democratic Republic of the Congo 7.6 %
Senegal	$ 8.94	Mali 22.6 %	India 9.2 %	France 4.8 %	Italy 4.4 %	
Equatorial Guinea	$ 8.56	Spain 14.6 %	China 13 %	Italy 10.8 %	Japan 10.5 %	US 9.5 %
Democratic Republic of the Congo	$ 8.54	China 48 %	Zambia 21.2 %	US 9.4 %	Belgium 5.4 %	
Mozambique	$ 7.61	Belgium 17.8 %	South Africa 17.4 %	Italy 13.9 %	Spain 10 %	China 7.7 %
Rep. of Congo	$ 7.39	China 37.9 %	US 20 %	Australia 6.2 %	France 6 %	Spain 4.8 %

The following sections will discuss the evolution of natural resource sanctions and how in the context of the DRC the Security Council surrendered the lead to the OECD. Following this deviation of Council practices, the rise of South-South trade with differing norms and standards as represented by Chinese companies will be analysed. As this dynamic has created the current dual-norm system that undermines the credibility of Security Council decisions, including sanctions, this study concludes by proposing a way towards a more equitable sanctions and natural resource governance architecture.

2. History of Natural Resources-Related Sanctions

The use of UN commodity sanctions in response to conflicts is tightly interwoven into the history of the international community's conflict resolution system. The Security Council's role in imposing commodity-based sanctions has over time undergone fundamental changes (see Box 1). In over 50 years of history, the Council's commodity-based sanctions regimes have evolved from very comprehensive, towards targeted sanctions, to subtle regulatory interventions. The very first sanctions regime[3] against Southern Rhodesia in the mid-1960s not only imposed one of the most draconian natural resource bans by blocking the country's exports of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather; it also sanctioned all financial assistance or dealings as well as the use of vessels or aircrafts intended to promote the export of the prohibited commodities. Finally, resolution 232 (1966) banned the provision of any materials that could be used for the manufacture and maintenance of arms and ammunition in Southern Rhodesia.

As long as the comprehensive sanctions approach dominated, commodity sanctions were intended to cripple the target country's economy as a whole. The oil embargo against Iraq (Security Council resolution, Res 661/1990) stands out as a particularly strong action, closely followed by sanctions against the import of oil and petroleum products into Haiti, and the prohibition against the import of spare parts for the oil industry in the case of Libya in the early 1990s. Change occurred gradually, until in the late 1990's the Security Council responded to crises

Box 1: The international community's countermeasures against norm-breaking activities (conflict, organized crime) depend, among other factors, on the nature of the conflict and norm-breakers; type of natural resources; and the strength of government presence at extraction sites and border control posts.

States	Natural Resource	Norm-Breaking Activity	Measure
Southern Rhodesia	S. Rhodesia produced asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products, hides, skins and leather Foreign-produced minerals for arms and ammunition production	Natural resources are used to promote control by illegal government	Comprehensive ban on all imports and exports
South Africa	Oil	Natural resources are used to promote apartheid regime	Comprehensive ban on oil imports
Iraq, Haiti, Former Yugoslavia	All commodities originating in the sanctioned state All commodities shipped to the sanctioned state	Natural resources are used to promote norm-breaking regime	Comprehensive ban on all imports and exports on all commodities
Angola, Sierra Leone, Liberia, Côte d'Ivoire	Rough diamonds, timber	Revenues from natural resources used to finance illegal armed activities, and acquisition of arms, ammunition and combatants	Ban on importation of rough diamonds originating from Angola, Sierra Leone and Côte d'Ivoire not certified according to Kimberley Process Ban on importation of round logs originating from Liberia
DR Congo, Somalia-Eritrea	Precious and semi-precious minerals and stones	Revenues from minerals and stones used to finance illegal armed activities, and acquisition of arms, ammunition and combatants and mercenaries	Imposition of due diligence obligations on trading chain actors

3. UN Security Council Resolution 232 (1966).

and conflicts with narrower commodity sanctions, usually limiting the supply or sale of petroleum and petroleum products to norm-breaking military or militia organizations.

By the late 1990's, international efforts to end the 30-year long Angolan civil war by undermining the sources of funding for UNITA (União Nacional para a Independência Total de Angola) provided the springboard for a completely new approach to natural resources related sanctions. The rebel movement had occupied and exploited many of Angola's diamond fields to sustain its military expenditures. Security Council resolution 1173 (1998) imposed an embargo against the importation of all diamonds from Angola outside the control of the government's Certificate of Origin regime. African diamond-producing states, the international diamond industry, and civil society groups, further developed the conceptual approach of linking sanctions with certification. By 2001, the United Nations General Assembly had endorsed the Kimberley Process with Resolution 55/56, which was followed by the Security Council with a similar resolution in 2003. Almost simultaneously, sanctions were also linked with the certification of diamonds in Sierra Leone for the purpose of denying diamond revenues to sanctioned individuals and entities.

These hopeful beginnings towards smarter commodity sanctions were interrupted by the Liberian sanctions. With a ban on the country's diamonds (resolution 1521, 2003) and timber exports, two out of three of the most important export earners from the country's already starved economy (rubber being the third) were cut[4]. International intervention in Liberia was the most intrusive for any resource-rich nation. It included not only the deployment of 15 000 peacekeepers, but also the establishment of a Governance and Economic Management Assistance Program (GEMAP) to oversee virtually all government functions, allowed debt forgiveness, and forced a complete restructuring of the government's timber, diamond and aviation management. Whether Liberia benefited from the vigorous holistic intervention disproportionally more than other resource-rich and war-wracked countries where the international community's response was more modest should be subject to further research. Afro-centrists have made it clear that no other African state would tolerate the same treatment that Liberia received.

The full-brunt and high-cost intervention in Liberia left no illusions about the need to develop a new approach for the much more complex dimensions of the Central African conflicts. The Democratic Republic of Congo became the next testing ground for intervention once its century-long history of exploitation by colonialists, despots and combatants that ended in two catastrophic Congo Wars, started to wind down and more peaceful conditions appeared to become a reality.

3. Sanctions on the DRC

3.1 The Democratic Republic of Congo as a Test Case for UN Sanctions

The first attempt to curb the role of natural resources in fuelling conflicts involved the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC (not to be confused with the later Group of Experts on the DRC, mandated to monitor the sanctions regime). This Panel had an unusual history. First, it operated within a mandate that was initially delivered by Presidential Statement[5] rather than by resolution, a mandatory decision. Secondly, the Panel only towards the end of its mandate recommended the imposition of sanctions in an attempt to merge its findings and recommendations with the emerging »soft laws« of the OECD's Guidelines for Multinational Companies[6]. Yet, the greylisting of companies and individuals that the Panel had accused of non-compliance with voluntary OECD standards prompted significant media and activist attention. The Panel's belated recommendation to impose individual targeted sanctions was not acted upon until three years later and only after an arms embargo was imposed and a different UN expert group with a mandate to monitor sanctions compliance recommended specific names for specific sanctions. However, the original Panel's naming and shaming was effective, except that OECD member states failed to give weight to the OECD's corporate responsibility concepts when it came to their own companies. Because of this overt

4. For the diamond ban see UN Security Council 1521 (2003); for the timber ban see UN Security Council 1478 (2003).

5. Statement by the President of the Security Council S/2000/20.

6. Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth, S/2002/1146.

politicization, the process lost credibility, particularly among non OECD-based states and industries.

The second attempt, which resulted in the actual imposition of sanctions against the illegal use of natural resources, evolved since 2005 and against strong political crosscurrents. After 2004, when the Security Council adopted an arms embargo on the DRC, a new path opened up through investigation of the financing of arms embargo violations. Some violators of the arms embargo on the DRC are supported by direct or indirect income from natural resources wealth and it was a small and logical step to look at those who exploit minerals illegally. The Group of Experts had already in 2007 observed in paragraph 173 of its report (S/2007/423) that »widely compromised supply chains and the lack of adequate due diligence systems undermine the measures authorized by the Security Council to prevent financial assistance to illegally armed groups«. The Group recommended that, in future, »companies which cannot demonstrate adequate due diligence practices be sanctioned.«

3.2 Due Diligence for Mining in the DRC's High-Risk Regions

It was only in 2010 that the Security Council, with resolution 1952 (2010), endorsed guidelines for appropriate due diligence principles for the DRC. These guidelines serve as the basis for sanctions against those who deal with minerals without demonstrable efforts to avoid providing financial assistance to illegally armed groups.

In proposing the guidelines, the UN Group of Experts closely collaborated once again with the OECD, which had taken the initiative to develop »Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas«. These efforts were also closely coordinated with representatives of the Ministry of Mines of the DRC, the International Conference on the Great Lakes Region, and civil society.

Still, political support for these measures remains feeble. To date, despite repeated recommendations to the Sanctions Committee for designations, no individual or entity has been targeted with sanctions for failing to comply with the UN's due diligence principles. This flies in the face of the economic realities of the Eastern DRC. For example, it is notoriously difficult to state with confidence the true annual production and value of total gold exports. But the discrepancy between what the Congolese Government officially registers annually in gold exports with actual exports that include the estimated illegally smuggled production is stunning. For 2011, less than 11.5 kilograms of gold with a value of less than $ 0.5 million[7] were officially exported. The true exports are difficult to estimate owing to the complete lack of official production data. Nevertheless, extrapolating from a World Bank estimate for 2008 of an annual production of $187 million, and other factors such as rising gold prices, the activation of many more gold extraction sites and a much higher number of gold miners, it can be confidently assumed that the current level of the Eastern Congo's annual gold production is between 30 – 36 tons of raw gold with a value of 1.5 to 2 billion dollars[8]. This data leaves no doubt that gold worth hundreds of millions of dollars continues to be smuggled out of the Congo. Any person or entity involved with the trade is therefore likely violating the UN sanctions, albeit criminal gangs instead of illegally armed groups. These illegal gold trading groups could be targeted under the new due diligence sanctions provision.

3.3 Evolving Regulatory Chains in the DRC

The proliferation of extraterritorial laws and voluntary and binding instruments further complicates impact assessments of UN commodity sanctions. On the most basic level it is not known whether OECD guidelines that are inconsistently complied with only by industrial actors within the OECD and some affiliated countries, actually create competitive advantages for others. Specifically, those actors who operate outside the OECD and are thus not exposed to the costs of complying with OECD guidelines or other Western due diligence mechanisms must logically enjoy such an advantage.

Western mineral supply chain actors must now comply with a growing number of regulations. In the Congo, there is the Congolese Mining Law, and a number of Presidential and Ministerial Decrees that regulate the certification of natural resources, most of which have not received explicit Security Council endorsement. However,

7. See official statistical disclosures by each member state of the ICGLR: https://icglr.org/spip.php?article94.

8. Conflict Gold to Criminal Gold, by SARWatch, released 15 November 2012: http://www.gold.sarwatch.org.

the regional certification mechanism of the ICGLR (International Conference on the Great Lakes Region)[9] of which the DRC is an important member state, links well with the Congolese legal system. The ICGLR certification mechanism is now also endorsed by Security Council resolution 1952 (2010) by virtue of its linkage with the OECD's »Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High-Risk Areas«.

Also, the Dodd–Frank Wall Street Reform and Consumer Protection Act includes a provision on conflict minerals – Section 1502 – that links to these OECD guidelines, as do similar legislative attempts by other states or the European Union. All of these raise a range of delicate challenges as they impose reporting and disclosure obligations for companies that may import conflict minerals from the Eastern DRC. The U.S. Securities and Exchange Commission (SEC) has released 356 pages of rules that define how the conflict/conflict-free status of the original extraction site for minerals in the DRC must be determined. All of these non-Congolese laws do not take sufficiently into account that:

First, the term »conflict-minerals« is no longer an accurate description for most of the Eastern DRC's mining regions. While some localized and small-scale rebellions instigated by surviving FDLR and Mayi-Mayi groups may at times affect small artisanal mining sites, they have no major impact on the mineral trade. A case in point is the rebellion of the M23 in North Kivu including the temporary occupation of Goma. Throughout its reign, the movement has never occupied zones in North Kivu where mining is conducted[10]. There are no longer large-scale wars that cover the entire region and the significant mineral extraction sites are no longer under the control of illegally armed groups. However, many artisanal and small-scale mining sites are zones of high-density crime and corruption, with the perpetrators usually renegade or corrupt government forces and officials who work in tandem with commercial elites. These conditions are reminiscent of many other, resource-rich but unstable developing countries.

Second, the extraction and trading of gold follows entirely different patterns from those for industrial minerals such as coltan, cassiterite or wolframite. Very valuable consignments of raw gold weighing up to 50 kg are routinely exported »invisibly« as part of personal baggage on local flights or in cars. Border control agents are bribed not to check the bags. As neighbouring countries such as Uganda or the primary processing haven for gold from the Congo, the United Arab Emirates, require no, or very little, customs declaration for gold, »laundering« the minerals for use by international markets is very easy. For this reason, ordinary supply chain controls are unlikely to help end-user companies to understand the origins of their gold. This challenge is accentuated for international banks that issue and trade gold bars, some of which are produced by refineries in non-OECD countries.

Third, the determination of which extraction sites deliver »conflict-minerals« and which do not remains one of the most vexing problems that serve to undermine extraterritorial approaches to the issue. The only »eyes and ears« available for this determination are the DRC government's own evaluation teams, or reports by the UN Group of Experts and Non-Governmental Organizations (NGOs). There are significant drawbacks to all of these options:

- So far, the government's evaluations cover only a very small fraction of the Eastern Congo. More important, these teams are ill-equipped to report malfeasance by today's culprits – military, police, local government agents and commercial elites.

- The UN Group of Experts is too small; its mandate allows only for intermittent reporting; and its independence is often challenged by states that do not like the Experts' conclusions. Its methodology and evidentiary standards also fluctuate according to the level of professionalism of its members.

- NGOs tend to have widely divergent methodology and evidentiary standards, and the lack of unified disclosure and accountability of their financial and political backers often fuels suspicion regarding conflicts of interest.

9. The ICGLR was created by the 11 regional states, under the patronage of the AU and the UN as part of peacemaking efforts after the genocides, wars and violence in Central Africa. Part of its extensive mandate includes the introduction of regional mechanisms to deal with the illegal diversion and exploitation of natural resources.

10. M23 does control the Lueshe mines in Rutshuru. However, owing to ongoing property disputes between the German government, the Austrian firm Edith Krall Consulting and a new Russian joint-venture partner, the mine has not been operational for over 10 years. M23 has at times also competed for control with some Mayi-Mayi groups over small gold mining sites located around Lubero.

3.4 Effectiveness of an Extraterritorial Legal Approach

Extraterritorial laws such as Section 1502 of the Dodd–Frank Wall Street Reform and Consumer Protection Act signed into law by US President Barack Obama on 21 July 2010, and others in preparation by other States or by the EU, have so far had no positive impact on artisanal gold mining communities. To begin with, the operationalization of Section 1502[11] was severely delayed and highly contested and is only now in the process of implementation. Moreover, the extent to which such measures have an impact on the illegal mining of other Congolese »conflict minerals« – cassiterite, coltan, wolframite – is unclear at this stage.

In general, the SEC has no ability to conduct spot checks in the Congo and will not easily uncover fraudulent disclosure practices. The true test will come from manufacturers of products operating outside the OECD, with no SEC reporting obligations, who will enjoy a competitive advantage by continuing to ship their products into the US with no disclosure requirements. The pressure to disclose will be on retailers who sell these products. And whereas activists are likely to stimulate consumer boycotts against non-compliant retailers, they are not likely to target non-compliant manufacturers. Without drastic action, the economic burden on compliant companies will be excessive. They will be left with the choice of continuing to absorb the extra costs or abandoning the Congo and its risk-prone minerals.

Even without the potential pressure of Section 1502, a number of industries have pursued some voluntary compliance with OECD norms. Having for years resisted all accountability and due diligence standards, members of ITRI (international members of the tin industry) have now introduced iTSCi (ITRI Tin Supply Chain Initiative), a conflict-free certification mechanism for Congolese tin and cassiterite. The global gold industry has also demonstrated its willingness to adjust its practices. As expressed most prominently with the World Gold Council's Standard for Conflict-Free Gold, the major producers and traders also agreed to abide by standards that should stigmatize or isolate those who deal with illegitimate gold.

According to the most recent reports of the UN Group of Experts on the DRC and non-governmental organizations, these efforts have already produced positive changes. However, the scarce data supporting these assessments do not inspire great confidence. Any proper assessment must be based on comparisons with data on the previous situation, which implies that reliable conflict minerals production and export data are available. Clearly, that is not the case. The institutions of the DRC have not been able to collect reliable data for many years. The most glaring failure of all these efforts remains that virtually all raw gold produced in the DRC is extracted and smuggled out of the country without any legitimate checks and controls.

Clearly, Western activists also hope to bring more effective tools to bear than mere regulatory intervention. The Open Society Justice Initiative has, for example, developed a number of documents and has organized workshops and conferences that refine legal remedies for the ›resource curse'[12]. It has also developed substantial evidentiary material to facilitate criminal or civil litigation on national or international judicial venues. Litigation is a welcome addition to the international arsenal against the most grievous crimes involving natural resources. It cannot, however, substitute for the quick and decisive effects of the tool of UN sanctions, and even in cases where the Security Council adopts sanctions and simultaneously mandates the international courts to start investigations, it should proceed with caution. Ill-timed legal actions fundamentally undermine the quick and coercive powers of sanctions. Anyone under indictment by the international judicial system has little hope of political rehabilitation through compliance, and therefore has no incentive to bend to UN sanctions.

Such gaping disparities between the legislative, regulatory and legal scaffolds that have been hastily built to address the Congo's mineral disputes and the realities in the mining centres are instructive. In the view of some companies who can afford to ignore them, the new laws and regulations are merely vanity projects of overly idealistic members of the international community eager to achieve progress. The unintended consequence is increased division between the Western, OECD-based natural–resources-consuming economies and the traders,

11. The SEC Commissioners voted 3:2 for a set of guidelines on 22 August 2012, more than two years after President Obama signed the act into law.

12. Legal Remedies for the Resource Curse, 2005, Open Society Initiative; or Corporate War Crimes: Prosecuting the Pillage of Natural Resources; September 1, 2011 by James G. Stewart.

manufacturers and exporters who operate in non-OECD states (BRICS, or G-77 member states, for example).

4. Identifying New Global Values and Overcoming Systemic Differences

This stark discord leaves some companies in the global business community floundering between the vagaries of an increasingly divided Security Council, various national laws, the inherently coercive powers of activists' campaigns, and the threat of litigation, while other companies remain largely immune to these heavy compliance pressures. Equally, rules that do not apply to all market participants create unfair competitive advantages. UN backing of this uneven regulatory system further contributes to disjointed market conditions and diminishes perception of the organization's neutrality and legitimacy.

Therefore, the first priority is to make the UN natural resources sanctions system more equitable. This can be accomplished by developing a natural resource governance system of truly global relevance. This priority requires a process of negotiation regarding globally acceptable norms and standards, and the burden the private sector can effectively accept. Attempts to renegotiate the terms and values required for such solutions however have regularly shattered on the brick walls of great power politics.

The most forceful attempt at arriving at a global consensus occurred with the Africa-China-US Trilateral Dialogue that took place from 2005–2007[13]. The US delegation proffered Western-style corporate social responsibility principles developed with a view to limiting corporate abuses and the misallocation of revenues from Africa's natural resources. The Chinese delegation noted that China had not participated in developing these principles, questioned their practical value, and emphasized the need for adjustment to local conditions. The conclusion was that the two countries' views diverged and merited further dialogue. In addition to Chinese resistance against Western standards, there is also a Western bias against Chinese social and environmental practices.

13. The Trilateral Dialogue was organized by the Brenthurst Foundation, the Chinese Academy of Social Sciences, the Council on Foreign Relations, and the Leon H. Sullivan Foundation, and issued a Final Statement. on 11 September 2007.

In light of these differing perspectives, attempts to regulate global business with an OECD-centred soft law approach and to base UN sanctions on such a construction has run into global gridlock. The first challenge is to overcome the widely-held view that only the Western industrialized world produces solutions to urgent environmental, social, humanitarian, and governance challenges.

In part, this erroneous view is due to perceived and real differences in normative and practical approaches towards the globalization of economic and political processes, sometimes juxtaposed as the Washington versus the Beijing Consensus. The Washington Consensus encompasses neoliberal macroeconomic policy prescriptions such as privatization of state assets, trade liberalization, and relaxed taxation systems, which are accompanied by broader democratic principles such as transparency and accountability.

An opposing view is the Beijing Consensus that articulates non-interference and win-win policies that China pursues with its Southern partners. Again, depending on the commentator, the consensus revolves around authoritarian and state capitalism driven innovation, reform and export-based economic growth; or on China's socialist market economy, that emphasizes »harmonious development«, »trial and error gradualism«, or »holistic thinking«.

A reality check of the progress of China's »Going Global« initiative reveals strong and determined efforts to craft laws, regulations, industry-specific directives and company policies for environmental, social, humanitarian and governance behaviour. The Chinese government has organized the management of all of these companies under the State-owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China (PRC). This agency is guided by the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, adopted on 27 May 2003. It also adopted, in January 2008, Corporate Social Responsibility (CSR) guidelines.

Some observers also cite the Institute of Policy and Management of the Chinese Academy of Sciences and its work with the State Forestry Administration and with Chinese NGOs such as the Global Environmental Institute, to develop an integrated policy package for the

country's internationally active companies. Given the success of Chinese companies in raising capital on the international markets, one has to assume that their operations, guidelines and standards withstand comparison with their Western competitors. Risk modelling for companies traded on stock exchanges and used by the global investment community differs very little from country to country and takes into account not only traditional financial factors, but also a company's exposure to environmental, social and governance issues[14].

Do clear conceptual differences between the references in corporate social responsibility standards by Westerners to Human Rights and International Humanitarian Law or by their Chinese counterparts to the concept of Harmonious Society necessarily lead in practice to different outcomes? If so, are the differences detrimental to a global society seeking international peace and stability? And specifically to the purpose of this paper, will the emerging systems with their separate cultural identities create a response gap that allows natural resources to fuel breaches of international peace and security?

Perhaps the apparent competiveness of these approaches merely conceals the real problem: evidence for any practical and serious implementation of regulatory or voluntary standards promulgated by companies operating within the OECD, Chinese, other BRICS or G-77 environments is scant. The lack of real implementation mirrors the experience with Security Council sanctions. Cooperation and political will among its members are not a problem as long as no serious political or economic prerogatives of the permanent five members are at stake.

5. Conclusions: How the South Can Lead the Way Towards More Equitable Sanctions and Natural Resource Governance

Leaving aside the political sloganeering that accompanies the global natural resources trade, African leaders occupy a comfortable position from which they can choose from different models. China, India, Russia, Brazil and many emerging industrial nations prefer to focus on business with few or no political or idealistic strings attached. These decidedly pragmatic approaches are in sharp contrast with Western partners with their conditionalities on aid and commerce, and constantly changing concerns. For senior government officials of many resource-rich and conflict-prone states, doing business with non-Westerners eliminates the risk of encountering challenges to their sovereignty. For these reasons African leaders have readily engaged with China, India and other economically strong G-77 powers.

Yet many of these African leaders have not accepted the responsibility to provide leadership in global natural resources politics and conflict management. For example, a nation whose natural resources are routinely labelled »blood diamonds«, »conflict minerals«, »illegal exploitation of natural resources« is triply penalized: first because of the actual and collateral damage caused by the conflict, regardless of how limited to a sub-sub-regional level it may be; second, because the conflict and a possible linkage to natural resources appears to be the only theme that the international media is willing to report; third, the barrage of negative news causes very real credit-rating implications, making the state less attractive to foreign investors who may otherwise be willing to help build a natural resources sector. It is an important responsibility of political leaders of such states to forcefully speak up against the unnecessary disapprobation accorded their state.

Senior politicians can also demonstrate improved leadership by leveraging their state's rich and often strategic endowments of raw materials into a value-added strategy by tying grants of exploitation rights with capital, technical and human investments in new refining capacities, as well as trading and brokerage capacities.

Finally, political decision-makers of resource-rich and conflict-prone countries should join the global effort that includes all stakeholders, to assess the effectiveness of Security Council sanctions practices involving natural resources. These leaders may want to analyse lessons-learned from many years of the Security Council's experience with natural resources/commodity sanctions that lack global compliance. As a next step, they may also consider how they can better promote their concerns to the Sanctions Committees of the Council. They also should investigate existing governance mechanisms

14. So-called ESG screens are used by many analysts and are mainstreamed throughout the capital market participants by financial media such as Thompson-Reuters, Bloomberg and many other media operations.

developed in the West and East by industry and country groups that are active in their countries as donors or natural resource licensees. Finally, African leaders in particular should address in detail how their countries' credit rankings and the viability of their natural resources sectors are assessed – and how to mitigate unmet needs or erroneous perceptions.

These suggested points of consideration can be expanded by engaging Southern experts and advocacy groups who have already concluded that their governments and regulatory authorities must achieve greater economic benefits and improved physical security rather than relying on clients from East or West to deliver such benefits[15]. Their proposals for prodding their governments towards securing a fairer share of their natural resources wealth deserves attention, engagement and dialogue as well as political and economic support.

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6. Annex: Security Council Natural Resources Sanctions Resolutions

Date/ Document Number	Country	Measure
S/RES/232/1966 16 Dec 1966	Southern Rhodesia	Embargo against importation of Southern Rhodesian asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, mean and meat products, hides, skins, leather. Embargo against any supply to Southern Rhodesia of oil or oil products.
S/RES/661/1990 6 Aug 1990	Iraq and Kuwait	Embargo against the importation of all commodities and products originating in Iraq and Kuwait. Embargo against the exportation of any commodity or products to any person or body in Iraq or Kuwait.
S/RES/665/1990 25 Aug 1990	Iraq and Kuwait	Calls on all member states to participate in maritime blockade and inspection of all vessels to ensure compliance with Res 661.
S/RES/757/1992 25 May 1992	Federal Republic of Yugoslavia	Embargo of imports of commodities in the Federal Republic of Yugoslavia.
S/Res/787/1992 16 Nov 1992	Bosnia and Herzegovina	Prohibit all trans-shipments of crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber.
S/RES/841/1993 16 June 1993	Haiti	Prohibit any and all traffic from entering the territory of territorial sea of Haiti carrying petroleum or petroleum products.
S/RES/864/1993 15 Sept 1993	Angola/UNITA	With a view to prevent arms-sales to UNITA, embargo was imposed against all supplies of petroleum and petroleum products to Angola, except through designated points of entry.
S/RES/883/1993 11 Nov 1993	Libya	Exempts funds derived from the sale or supply of any petroleum or petroleum products, gas and natural gas products, originating in Libya from general financial sanctions, provided that any such funds are paid into separate bank accounts exclusively for these funds. Decides that all States shall prohibit any provision to Libya by their nationals or from their territory of the items listed in the annex to this resolution [some oil-transporting equipment], as well as the provision of any types of equipment, supplies and grants of licensing arrangements for the manufacture or maintenance of such items.
S/RES/1132/1997 8 Oct 1997	Sierra Leone	Embargo against the supply of petroleum and petroleum products to Sierra Leone.

15. Win Win partnership? China, Southern Africa and Extractive Industries; Edited by Garth Shelton and Claude Kabemba; Southern Africa Resource Watch (SARW), Johannesburg 2012.

Date/ Document Number	Country	Measure
S/RES/1173/1998 12 June 1998	Angola	Embargo against the import from Angola of all diamonds that are not controlled through the Certificate of Origin regime of the GURN.
S/PRST/2000/20 2 June 2000	Democratic Republic of Congo	Presidential Statement requests from the Secretary-General to establish a Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo in order to follow up on reports and collect information on illegal exploitation, research and analyse the links between exploitation and conflict, revert to the Council with recommendations.
S/RES/1306/2000 5 July 2000	Sierra Leone	Prohibit importation of all rough diamonds from Sierra Leone.
A/Res/55/56 29 January 2001	Diamonds	The UN General Assembly welcomed the Kimberley Process and urged all States to support the associated efforts to break the link between conflict diamonds and armed conflict.
S/RES/1343/2001 7 March 2001 and S/RES/1521/2003 22 December 2003	Liberia	Prohibit importation of all rough diamonds from Liberia.
S/Res/1459/2003 28 January 2003	Diamonds	The Security Council strongly supports the Kimberley Process Certification Scheme. This is not in itself a UN sanctions but provides the basis for country-specific sanctions resolutions to declare dealings with non-Kimberley certified diamonds as sanctionable.
S/RES/1478/2003 6 May 2003	Liberia	Embargo against the importation of all round logs and timber products originating in Liberia.
S/RES/1643/2005 15 Dec 2005	Côte d'Ivoire	Embargo against the import of all rough diamonds from Côte d'Ivoire. Requests the Kimberley Process to communicate as appropriate to the Security Council, information about the production and illicit export of diamonds.
S/RES/1698/2006 31 July 2006	Democratic Republic of Congo	Requests the Group of Experts to consult with neighbouring States, the World Bank, MONUC and private sector actors to explore whether all illegal exploration, exploitation and commerce with natural resources could be declared a sanctionable act.
S/RES/1952/2010 29 Nov 2010	Democratic Republic of Congo	Repeats and strengthens the previously stated support for guidelines for due diligence for importers, processing industries and consumers of Congolese mineral products if these transactions are supporting illegal armed groups.
S/RES/2023/2011 5 Dec 2011	Somalia and Eritrea	Decides that States, in order to prevent funds derived from the mining sector of Eritrea contributing to violations of resolutions, shall undertake appropriate measures…including the issuance of due diligence guidelines.
S/RES/2036/2012 22 February 2012	Somalia	Decides that Somali authorities shall take the necessary measures to prevent the export of charcoal from Somalia and that all Member States shall take the necessary measures to prevent the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia.

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