Pillage: a new threat to global supply chains

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This paper explores the business risk of association with economic war crimes as supply chains lengthen and activist interest grows.

Shifting regulatory, jurisprudential and public opinion landscapes have revitalised the war crime of pillage as an offence, and business must respond.

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Executive summary

The war crime of pillage poses a multilayered threat to multinational business. Its interaction with money laundering offences extends the risk from direct involvement to guilt by association. Prosecution for pillage can attach to individuals or, where jurisprudence permits, companies. Proceedings can be instituted in any jurisdiction where the entity or individuals are resident (regardless of where the offence took place), and some legal systems will entertain an indictment even of foreign residents – the nature of the crime is so extraordinary that prevention and punishment justify prosecution regardless of nexus.

Although there are limits to the prosecution of corporate entities for pillage itself, its incorporation within the canon of offences predicate to money laundering magnifies the risks to a modern business. Even where the evidence does not support a direct conviction for pillage, and where corporate liability for pillage is definitively precluded, businesses can be open to prosecution for money laundering if pillaged goods are found in their supply chain.

As supply chains lengthen, the risk increases of receiving goods into the business that are 'tainted' by pillage. Though the precise formulations vary, it is quite possible for a business to be indicted despite a lack of clear intention or specific knowledge of the nature of the goods received. In some jurisdictions even genuine ignorance on the part of senior management will not be a defence and 'turning a blind eye' ('wilful blindness' in the US) can also be grounds for prosecution. The mere existence of evidence that might imply unlawful sourcing of the goods can be enough to support prosecution and conviction.

Management should be prepared to manage that threat – by controls and assurance. From a long-term financial perspective, the only real defence against the possible impacts that handling pillage could have on a business will be the ability to refute absolutely any allegation of involvement in or connection with pillaged goods in the supply chain. While a conviction of either the business or its employees may well be fatal to the continued economic survival of the business, financial systems and reporting structures should be designed not just to control economic profit but also to identify and control risks in the supply chain. The proper design, implementation and operation of due diligence procedures will be an essential element of the well-managed business, quite apart from the looming threat of their imposition through regulation.

1. Why is pillage a risk issue for business?

The war crime of pillage has been subject to renewed interest in academic circles, with the emergence at the end of the 20th century of the phenomenon of the resource war. If war in the 19th century could be characterised as the continuation of politics by another means, so a new spectre has arisen of war as the continuation of economics by other means.

To what extent is the risk of prosecution for, or association with, pillage a real one for businesses outside any warzone? If the risk is real, what measures can or should be taken to protect against it? And to what extent can such measures align with existing or impending regulatory requirements, or even improved business processes?

The benefits of extensive resource networks, and the related length of supply chains, are well recognised. The ability of business to offer finely differentiated end products to different markets and consumers while still realising the advantages offered by economies of scale is a key feature of the favoured model of transnational corporations.

Examples of global brands reliant upon these structures can be found in every major city and airport on the planet, in both service and retail goods sectors. The rise of online selling across borders has expanded markets still further, and raised the potential rewards for manufacturers who can meet every variant of demand for their products, hand in hand, of course, with a wider presence and wider exposure for the business through the World Wide Web.

Nonetheless, the risk of opacity is inherent in the length and complexity of the supply chains that make up the substance of modern trade and production. At every link in the chain, participants are dependent on trust in their business partner that their supplies have all the desired characteristics, but no negative ones.

Perhaps one of the most commercially damaging associations a business could have today is with war crimes. In addition to the direct legal consequences of a conviction for involvement in war crimes, public revulsion in many markets is likely to have a significant impact on public perception and demand for the business's products.

From a societal perspective, this extension of the possible scope of the ramifications of war crimes is a good thing, as it increases the likelihood that those responsible for such acts will be brought to account. From the standpoint of an individual business, however, the more constructive approach will be to see the enhanced responsibility as a trigger for greater transparency and clarity in its trading relations to ensure that war crimes are in no way encouraged, even indirectly.

Prevention is always better than cure, and especially so in this area. As the message spreads out that there will be no financial reward for pillage, so one possible incentive for it is removed.

Powerful as public opinion may be, corporations also face legal realities and liabilities. Management will be concerned with identifying the mechanism by which any threat to the business will operate, and what concrete measures managers can take to ensure that such threats are managed at the most appropriate level. Integral to this assessment will be the evaluation of likely financial impacts, direct and indirect, of association with, prosecution for, or ultimately conviction for pillage. Lost sales, lost contracts and direct penalties will all play a part.

2. What is pillage?

Pillage is essentially the crime of theft in the context of situations of armed conflict. Its commission and consequences are seen as so grave that several countries have introduced a 'universal jurisdiction' to deal with it – that is to say, such a country will entertain charges against any person, whether that country's jurisdiction might normally attach or not, regardless of where in the world the acts have taken place. Remote though management may consider the risk of such an action to be, the potential consequences are so great that it must be managed.

With the length of modern supply chains and the potential extension of the crime to cover corporate activities as well as individual liability, the scope for a business to find itself interacting with individuals or entities that have committed pillage is increased.

Although the International Criminal Court (ICC) itself has no jurisdiction over corporate bodies, being restricted to prosecution of natural persons, most national jurisdictions have some kind of domestic mechanism for prosecuting pillage, either by enforcing the ICC statutes, incorporating the ICC offences into their own jurisprudence, or implementing national laws that either replicate the ICC wording or outlaw similar offences.

The war crime of pillage broadly covers the removal without the owners' consent of goods or resources during an armed conflict. There need not be an international element to the conflict. The issue for multinationals is not so much the actual, direct commission of pillage, but the risk of being an accomplice to the crime. Moreover, the risk is wider than that of legal action in the countries where the business operates, given the point about universal jurisdiction made above.

Thus the potential risk for a multinational corporation (MNC) is that the parent corporation will find itself on the receiving end of an indictment for a war crime in a country where it does not operate, brought by persons with whom it has had no contractual relations, in respect of actions that it did not instigate or control.

THE DEVELOPMENT OF PILLAGE

The crime of pillage has been codified since 1863, and is now a feature of international court statutes and of most domestic legal systems. Reflecting the historic roots of the crime, some international formulations of the crime include reference to plunder, and to the taking by force of towns or villages, although more recent codifications refer simply to 'pillage'.

It has been embedded in even the earliest codifications, however, that pillage need not occur directly in the commission of acts of war: it can occur after the initial military action.

The domestic reflections of these international and treaty precedents take one of three forms. The first variant is cross-referencing the relevant provisions of a treaty, and thus effectively granting jurisdiction over the international offence to the domestic court. The second approach is to create a domestic crime of pillage, by reference to definitions within international treaties. The third approach is to create a domestic offence based upon explicit definitions within the domestic statute, although these are in many cases based more or less closely on existing international definitions.

Whichever method is used to create the offence, there are a number of features common to the jurisprudence of the crime across the world. For all practical purposes, the crime of pillage will align with the definition given in the ICC's Elements of Crimes, which incorporates the following five factors.

- The perpetrator appropriated certain property.
- The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
- The appropriation was without the consent of the owner.
- The conduct took place in the context of and was associated with an international or non-international armed conflict.
- The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Identification of the perpetrator is, of course, key to the prosecution, and here we have perhaps the key factor in the

development of the law on pillage, namely its application to bodies corporate. There is by no means universal academic support for the proposition that liability for pillage can be attributed to a body corporate. Yet there are strong indications that the concept of pillage is developing so as to encompass this wider application.

In November 2013, TRIAL, a Swiss based NGO, filed a complaint with the Swiss authorities in respect of Argor-Heraeus SA, alleging the company's complicit involvement in the processing of three tonnes of pillaged gold from the Democratic Republic of Congo (DRC). The initial Swiss complaint related to money laundering, but the evidence relating to Argor, Hussar Services Limited (a UK company) and Hussar Limited (a Jersey company) has been passed to the relevant prosecutorial authorities in Jersey and the UK.

If the complaint against Argor is upheld on grounds of pillage, there will be considerable pressure for those more directly involved in the sourcing of the gold from the DRC to be prosecuted for pillage in the UK and Jersey. A number of commentators have set out clear paths to a prosecution, in particular Professor James Stewart, a former prosecutor for the International Criminal Tribunal for the former Yugoslavia (ICTY), whose 2010 work *Corporate War Crimes: Prosecuting the Pillage of Natural Resources* sets out in detail the basis for corporate liability for pillage.

In parallel with the debate over the identity of perpetrators, there is some debate about the continuing relevance, and underlying meaning of, 'for private or personal use'. The difficulties here have mostly been superseded, and most domestic formulations of the crime instead refer to the limited list of exemptions from liability afforded by the Hague Regulations. These exemptions operate to exclude appropriations made out of military necessity, in principle, from constituting pillage, although the restrictions are in practice very tightly drawn.

In any event, it seems unlikely that any goods that would make their way into the supply chain of an international business could have been appropriated directly for military use. Any military use would typically consume any resources or materials that might otherwise be destined for the supply chain, so their survival and incorporation into international trade would be incompatible with the 'military necessity' exemption.

Individual courts are increasingly disregarding the 'international or non-international' distinction in establishing the 'armed conflict' requirement. The logic to this is clear, since it is immaterial to the prosecution whether the conflict was national or international in nature; the crime and the consequences remain the same.

As long as there is protracted armed violence (which can mean as short a timespan as 30 hours) between two (or more) organised armed groups then the condition of 'armed conflict' is satisfied.

Nonetheless, for the theft, money laundering or similar offence to be classified as 'pillage', rather than simply falling under the existing domestic criminal regime, there does have to be a defining link, a nexus, with the armed conflict. Establishing this precondition of the war crime will have a number of significant consequences for those connected with the commission of the offence, and for those attempting to prosecute them. There is an obligation at state level to investigate and prosecute war crimes within the jurisdiction of the international criminal courts, which are exempt from any statute of limitations.

The formulation followed by the ICTY is widely regarded as setting out the current position: '[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed'.

This test is remarkably broad as applied to the commercial activities of a business operating in, or adjacent to, an area where there is an armed conflict. As a number of the convictions of businesses after the Second World War demonstrated, the company need not be directly linked to the armed combatants, and more recent judgments have confirmed that the crimes can still be committed even if 'temporally and geographically remote from the actual fighting'.

There is even a further judgment, from the Netherlands, which suggests that acts that 'stimulate warfare' can constitute the war crime. In the context of resource wars, demand for the underlying resources undoubtedly encourages the continuing violence – although satisfying the legal burdens of proof on this point may be another matter.

3. The interaction of pillage with modern business practices

The potential impact of pillage on the consumer electronics industry is well documented, as the '3Ts', tantalum, tungsten and tin, are essential to the manufacture of consumer electronics, and significant factors in the various conflicts afflicting the DRC. In practice, there are risks for businesses far beyond mineral extraction.

A key element of the initial case against Charles Taylor, former president of Liberia, related to illegal logging activities carried out in Liberia. Garment manufacturers must deal with the complexities of the cotton supply chain, and the capital-intensive nature of production is already recognised as producing a potential environment for child labour abuses; introduction of a link to warfare would doubtless prompt the additional exploration of war crimes. Coal, palm oil, even works of art could potentially be tainted by pillage and give rise to money-laundering implications.

POTENTIAL OUTCOMES FOR BUSINESS – PROSECUTION, CONVICTION OR SIMPLY GUILTY BY ASSOCIATION

The risks for MNCs even of association with so emotive a crime as pillage are clear. While the ICC declines jurisdiction over corporates, business will at least be spared the direct reputational impact of association with a prosecution before the main international court.

Nonetheless, it seems clear that even a domestic prosecution for pillage would be deeply damaging in reputational terms for any consumer-facing business, while the public procurement impacts of any criminal conviction are typically far reaching. Even in the absence of specific procurement rules it seems unlikely that any public authority would want to be associated with a contractor convicted of a war crime.

There is a further consideration for international actors subject to money-laundering regulations, and that is the extension of the group of 'crimes predicate' to money laundering to include the illicit trafficking in stolen and other goods. Any person found to have knowingly handled funds deriving from this activity will be open to prosecution for money-laundering offences. While the public perception of such activities may not be quite so censorious as for 'pillage', the legal and commercial impacts of a prosecution for money laundering would be every bit as significant.

For all the fact that a corporate group may be able to characterise a money-laundering offence more as a technical bookkeeping error than as the criminal abuse and exploitation of the victims of warfare, the more technical nature of the offence renders a prosecution correspondingly more likely. The satisfaction of evidential burdens will be easier, and the impact of a criminal prosecution on a body with major public procurement contracts will be the same whether the wrongdoing is pillage or money laundering.

The possibility of linkage with money laundering vastly increases the risks posed by the presence in an MNC's supply chain of pillaged goods.

In the aftermath of the global financial crisis the role of business in society has been subject to widespread scrutiny, and it is increasingly clear that consumers are imposing far higher standards on their suppliers that might previously have been the case. There is a renewed interest in the wider impacts of corporate behaviour.

The creation of the corporate vehicle as a means for those with capital and wealth to invest without the need to manage, and the opportunity for those with the skills to manage but not necessarily the means to work with, has made separate corporate personality the key to growth. Alongside that opportunity, however, comes a need for accountability, and that finds part of its most powerful expression in the context of issues such as war crimes.

4. Risks to businesses

A business faced with a possible action in relation to pillage will need to consider a number of issues. Of the likely impacts upon the business, the marginal costs of an actual conviction may, in fact, be one of the least concerning aspects, and certainly in terms of a 'likelihood *vs* impact' analysis. The likelihood of a successful conviction might reasonably be assessed at the outset as so small that the overall risk weighting is minimal.

A business faced with an association with pillage will face an immediate reputational issue. A number of factors will play into the analysis of reputational impact, including the nature of the customer base, the existence of competitors and credible substitutes, and the proximity of the allegations to the business's own activities.

The response of consumers to allegations of war crimes is likely to be of considerable concern to a board. Businesses that have relied for market position on a perception of ethical behaviour will be particularly susceptible to accusations relating to war crimes, but it is increasingly the case that consumers are demanding higher standards from business generally.

It may well be the case, given the evidential difficulty of establishing complicity to a level sufficient to sustain a conviction for pillage, that legal action would not run so far up the supply chain as to affect final producers with a direct consumer relationship. Nevertheless, even for an exclusively 'business to business' supplier, being cited in a war crimes prosecution would still cause significant economic damage.

Customers will have their own reputations to consider and, where they are subject to close consumer scrutiny, they will wish to avoid the taint of pillage.

The business may believe that it has insufficient direct competitors for there to be a likely impact – or perhaps that consumers would simply regard all competitors as similarly tainted, accordingly defusing the impact of association with commercial exploitation of warfare. In the highly brand conscious field of consumer electronics, there will be a number of factors influencing consumer choice, and in some cases a perceived superiority of underlying product, or compatibility issues with other devices, will initially have a greater influence on consumer choice.

Nevertheless, there is a clear long-term risk even for a currently dominant market player, and it is perhaps notable in this context that one of the first electronics manufacturers to take independent action to verify the conflict-free status of elements of its supply chain was Apple.

The proximity of the allegations to the business's own activities will be relevant in two ways. Firstly, there is the reputational risk of association, and the fewer links in the chain between the business and the crime, the greater the risk that the public will identify the business as complicit in the wrongdoing. The greater the business's influence over the conduct of its supply-chain partners, the greater the perceived culpability of management for their actions.

Perhaps more important from a risk perspective, however, is the interaction with the legal burden of proof in any court action. The standards of complicity sufficient to justify a criminal prosecution are high, and the evidential burden is likely to be significant. The differing approaches of prosecutors in different jurisdictions will, of course, be relevant given the domestic nature of actions.

While by no means universally adopted, the imposition of criminal liability on corporate bodies is increasingly widespread, with moves even within Germany to introduce corporate criminal liability at a federal level.

Germany already operates a universal jurisdiction approach to the prosecution of war crimes, and while it is tempered by a restriction to persons present within Germany, for many major multinational corporations the 'presence' test is likely to be satisfied. For a business, subjection to the inquisitorial German judicial process, as opposed to, for example, the more adversarial US process, might have significantly different implications in terms of the relative rights and responsibilities of prosecutor and defendant, and the impact that would have on the timing and extent of disclosures.

Once a prosecution is under way, the business will be faced with a number of further issues. The precise level of disruption to normal business activities in order to comply with the prosecutors' information requests will vary depending upon the jurisdiction, but the gravity of the charges, the complexity of modern business and the

high standard of proof required will all combine to ensure that the volume of evidence required is substantial. In addition to the financial costs of retaining legal representation, quite possibly in a jurisdiction with which the board might otherwise have thought that the business had no connection, the business will need to divert resource to collating the materials required to establish the relevant facts

HOW ACCOUNTANTS CAN HELP TO SOLVE THE PROBLEM

Professional accountants can bring their skills to bear in two ways – designing control programmes and providing assurance on them. The skills and processes relevant to the two aspects of dealing with the risks posed by long supply chains are complementary.

Where better alternatives exist, the imposition of mandatory regulation is not in principle advocated by ACCA. Equally, there is a risk inherent in any voluntary transparency regime that those who will implement it are those who do not need to, while those businesses that society would most want to implement such transparency regimes will be those that choose to ignore them. Reliance upon the enlightened self-interest of business depends firstly upon the disclosures being in the interests of the business, and then upon the business's recognition of this fact.

The EU has proposed regulations on transparency and reporting (Directive 2013/34/EU, the Non-Financial Reporting Directive) which would impose supply chain due diligence on all entities with a balance sheet greater than €20 million, or turnover in excess of €40 million. In proposed recitals to the Directive, the Commission noted: 'The supply chain of an undertaking can become disconnected from source and liability and can therefore pose significant risks not only to the undertakings themselves, but also to the wider society as a result of their business operations. It is therefore important that undertakings perform due diligence on their supply chains, including where they use sub-contractors and that these particular policies are disclosed in order to mitigate such risks and inform stakeholders of the assessments they have undertaken.'

There are a number of possible models for presentation of the information related to these areas, and the EU has suggestions for which should be used: 'In providing this information, undertakings should rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative. In the case of information provided relating to social and employee matters and human rights, the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises should be considered the basic set of guidelines. Similarly, in the case of Environmental, Corruption and Bribery matters, the (UN) Global Compact should be considered the basic set of guidelines.'

SUPPLY-CHAIN SPECIFIC REGULATION

More directly, the US has enacted, and the EU has proposed, regulations directly relating to conflict minerals in the supply chain. The US rules (Section 1502 of the *Dodd–Frank Wall Street Reform and Consumer Protection Act)* impose significant mandatory record-keeping and disclosure requirements on US listed corporations by reference specifically to one conflict zone, the DRC, whereas the EU proposals (Proposal for a Regulation 2014/0059 COD) allow for voluntary adoption of disclosure by importers of tin, tungsten, tantalum and gold into the EU, whatever the minerals' origins.

Each approach has its supporters and detractors, with the US approach often characterised over unduly burdensome on business, and the EU proposals ineffectual. Certainly it could be suggested that it is the side effects of the US system that are its weakness, with the opposite being the case for the EU proposals.

The 2010 Dodd–Frank Reform Act (US) requires companies using tin, tungsten, tantalum or gold to document their supply chain and report to the Securities and Exchange Commission. Companies must prove that they have taken reasonable precautions to avoid

using consignments of these four minerals that have originated in the DRC and surrounding countries. The EU proposals are broader based, and involve the positive assertion by participating suppliers that their products are verifiably sourced from responsible sources (whether in the DRC or elsewhere). The majority of larger enterprises involved in relevant trades are engaged with the anti-conflict mineral partnership of the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI), which have established two tools that companies can use to check the conflict-free status of their supply chains.

The CFSI (conflict-free sourcing initiative) programme focuses upon the smelters and refiners that are a key pinch point in the supply chain, especially for tungsten and tantalum. The programme is voluntary, and firms are evaluated on the steps they take to avoid purchasing and/or processing conflict minerals.

The Conflict Minerals Reporting Template documents information related to the minerals that suppliers use, the products they create, and the smelters from which they source. Completion of the template allows manufacturers to build up a comprehensive picture of the firms from which they source.

In addition to the knock-on effects up and down commercial supply chains, there are indications that the EU might integrate compliance with its regulations into the official EU procurement processes, effectively forcing major manufacturers to implement the due diligence mechanisms. Notwithstanding the nominally voluntary nature of the EU proposals, there is still a distinct likelihood that the processes and mechanisms required to implement them will become the default option for increasing numbers of businesses.

The natural prudence of parties (or perhaps more likely that of their lawyers) towards mergers, takeovers and acquisitions is likely to see increasing numbers of businesses warranting that they are compliant with the relevant regulations simply as a consequence of the due diligence operations surrounding transactional activities.

It has been noted in a similar fashion that warranties of compliance with the UK Bribery Act have become a part of standard business sale precedents in the UK, and as a result many businesses that might otherwise have believed themselves to be outside the scope of detailed regulation have implemented the relevant controls and processes. Given the potential downsides of failure to comply, widespread compliance with the regulation out of enlightened self-interest seems likely in time.

Yet to what extent will compliance with such provisions constitute a defence specifically against pillage? The answer will depend on the facts of the case, but it is worth remembering that the simple act of disclosing in accordance with standards and then receiving a favourable auditor's report will not necessarily protect a company, or its managers, from accusations of financial crimes.

The contribution of the auditor is defined by the scope of the role. The viability of conducting full-scale supply chain due diligence on every aspect of the production process of, for example, a modern microwave oven, at every stage in that process where a supplier satisfies the turnover or balance sheet requirements, would clearly represent a massive duplication of administrative effort on the part of suppliers and vendors.

On the other hand, if manufacturers were simply to seek assurance from their suppliers that the latter had undertaken full due diligence, would this constitute a full defence? It seems unlikely that this would necessarily protect the final manufacturer in the chain from prosecution for pillage if a blind eye had deliberately been turned, and given the subjective nature of proving such an offence, the reliance that end-users might be prepared to place on such assurance seems likely to be compromised, putting us back into the position where management is exposed to the risk of accusations of pillage.

What are the defences, and how can accountants ensure that these are available?

While the two main areas of defence for a business will relate to the knowledge of circumstances and intention to commit pillage, a 'win' based on ignorance of their own supply chains is unlikely to be satisfactory for most MNCs. In addition to involvement in highly emotive criminal conduct, they will in addition have been shown not to have fully understood their own supply chains, albeit not to a criminally irresponsible level.

The only fully satisfactory outcome for a business will be to demonstrate that it has no involvement in pillage, whether intentional or otherwise. The reporting regimes proposed around the world all rely upon detailed knowledge not only of the business's own activities, but of its relationships with others and their activities.

The administrative burden of maintaining, for example, a consistent paper trail of accountability at every stage in the production process in respect of every individual shipment of materials is, however, unlikely to be an attractive prospect. The levels of due diligence required at each stage of the production cycle will vary according to the perceived risk, and the resources available to the business. It should be noted that lack of resource to confirm the status of goods will not in itself constitute a defence.

Business may need to give consideration to finding proxies for direct assurance. For example, suppliers' membership of recognised trade bodies or submission to certain levels of audit will demonstrate a commitment to good practice. Whether this can be judged adequate will involve a considered appraisal of the circumstances, a process ideally suited to the skills of the modern accountant.

Notwithstanding the abhorrent nature of the underlying crimes, a business must, in managing its risk, maintain a focus on the economic realities of staying in business. If the costs of effective supply chain assurance become too great then competition from less scrupulous competitors may well render the best efforts of a responsible business counterproductive as its goods are priced out of the market.

5. Conclusion

The war crime of pillage lay dormant for decades after the Second World War, revived only for the most dreadful atrocities identified on the African continent. Now, a confluence of shifting legal interpretations, heightened social awareness and globalisation of trade has raised the possibility of corporate prosecutions, not just for the direct commission of the offence but also for involvement in the laundering of pillaged materials.

The development of a credible litigation risk which could destroy the businesses and careers of those involved in pillage will be a major step along the road to a more just society. The implementation of proportionate and effective controls to stem the flow of illicit goods while supporting trade networks that ensure continued trade with those areas most affected by resource wars is supported by ACCA as one of the most beneficial steps that big business can take to improve its relationship with society.

Businesses have reaped the rewards of a global resource pool. The time has come to acknowledge responsibility for the externalities of multinational supply chains, not just in terms of accounting disclosures, but in concrete actions to recognise and reinforce the role that business should play in society.

Appendix: a case study of compromised good intentions

A concrete example of regulatory imposition of supply chain assurance is the conflict-minerals provisions of the Dodd–Frank Act applying to US listed manufacturers and distributors of consumer electronics devices. The aims of the provisions are laudable: to reduce the incentives for abusive artisanal mining in the Democratic Republic of Congo (formerly Zaire) for coltan, wolframite, cassiterite and gold ore, which are the base materials for tantalum, tungsten, tin and gold respectively. All four materials are or have been significant in the production of consumer electronics devices, specifically capacitors.

A number of shortcomings with the assurance regime have been identified. Perhaps most fundamentally, the disclosures are imposed at the US manufacturing/assembly stage of the process, and will affect an estimated 6,300 businesses. Each of those businesses will be required to investigate its suppliers and seek the relevant assurances that these suppliers are compliant with the requirements of the Act.

Estimates of the cost of compliance have been estimated at between $40 million and $4 billion. Applying certification this far down the supply chain, and on the basis of contractual assurances creates a potentially lengthy chain of trust-based pronouncements.

As an alternative to this process, the disclosures in respect of tantalite and wolframite, in particular, could be imposed at the smelting stage. While there are a significant number of sources of the minerals, there are comparatively few plants worldwide with the capacity to process the raw materials and produce metals of the required quality for consumer electronics; the worldwide total of smelting plants has been put at around 500. A focus on this pinch point in the supply chain reveals a potentially effective and efficient monitoring process for identifying the source of any particular batch of the relevant metals at the point where it enters the wider supply chain.

As part of the smelting process, a refinery analyses each batch of ore on receipt, profiling the precise proportions of elements present. The purpose is twofold, firstly ensuring that amounts of, toxic substances such as radioactive materials are at an acceptably low level (so as to avoid poisoning both the plant and its workers) and secondly to ensure that the ore is subjected to the appropriate processes to extract all the materials present (for economic efficiency).

The precise make up of ores varies from one mine to another, allowing the source of any particular batch to be 'fingerprinted' with a remarkable degree of accuracy. Batches emanating from the conflict zone can be identified at this stage, and further assurance sought that no laws were broken in extraction of the ores.

Materials sourced from elsewhere will de facto be exempt from the strictly geographically defined provision of the Dodd–Frank Act. A certification process allowing the refinery to confirm that its output was not mined in the DRC should then be acceptable onwards through the supply chain. Availability of a certificate of origin from the smelting plant in respect of the materials present in each a particular batch of components should then meet the aim of assuring the acceptability of those items.

It is notable in this context that both Intel and Apple have followed the route of smelter certification to reassure stakeholders that their products are to at least some extent 'conflict-mineral free'. Assurance of this nature has many benefits; it is subject to objectively verifiable criteria, and it builds upon existing economic processes and management measures.

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