

The Role of Companies in Conflicts within the Court's Jurisdiction

First I would like to extend a sincere thank you to the organizers of this conference. The topic is cutting-edge and of great importance to our shared goal of ending impunity for massive crimes. I bring greetings from the Prosecutor, Luis Moreno-Ocampo, who regrets that he cannot be with us in person today. The Prosecutor and I share a deep commitment to finding ways to hold all individuals, including members of corporations, responsible for their involvement in crimes of greatest concern to the international community. I hope my remarks today will contribute in a fruitful and productive way to the final outcomes of the conference.

Investigating the link between finance and conflict has been part of our strategy from its inception when the Prosecutor took Office in 2003. When the idea was initially presented, we encountered resistance to it, externally but even internally because it was not in line with more traditional ways of approaching crimes committed in conflict zones. Our assumption was and still is however that in order to prevent such crimes, one needs to look at the dynamics that fuel a conflict. Conflicts seem to be largely driven either by ideology or the potential for financial enrichment, or a combination of both. Allow me to illustrate how doing financial investigations has helped the Office of the Prosecutor in developing its cases and in identifying opportunities to maximize its impact on the continuation of crime.

The Office of the Prosecutor has three main goals with its financial investigations:

1. Offering a different type of evidence against those most responsible and by doing so decreasing the number of physical witnesses which come with highly complicated protection issues

2. Identifying assets for victims compensation and reparation
3. Disrupting the criminal organization through asset freezing or other enforcement action by nation states using ICC information

Implementing financial investigations in all situations where the Court is active was, and is, not without its difficulties. For example, the Courts investigation in northern Uganda revealed that the financial aspect of the Lords Resistance Army (LRA) operation was largely unsophisticated, principally involving an assistant of the infamous Joseph Kony carrying a bag of cash at all times – subsequently leaving little or no footprint. Following the money in other cases, however, proved more fruitful. The weapons trade in DRC identified new leads in the Court’s case against Thomas Lubanga. Similarly, in the Bemba case, the structured review of property and exhibits recovered following his arrest, with a particular emphasis on financial documentation, led to the identification of a previously unknown corporate / trust structure and a far better understanding of his lifestyle, assets and associates.

So in dealing with armed groups or even a State apparatus, the financial investigations have helped us to identify assets and provided us with evidence on who are the most responsible persons. In order to be effective we should look however beyond these structures that commit the actual atrocities and identify who are the others players in the conflict, namely the broader network around the criminal organization. Here, once again, the financial angle of the investigation is of extreme value. Indeed, there is more to following the money than money itself.

Let’s briefly explore the financial dynamics behind a conflict and see how these can help us to identify persons and companies that are involved in the conflict without being part of the

armed groups. First of all, to fight one needs troops that are fed, accommodated and supplied with weapons, ammunition, communications and other equipment. Such products often transfer from the legal to the illegal market and require the involvement of companies as well as public administration. The involvement is not always criminal. For example during our investigation of crimes committed in the Central African Republic, it was revealed that Bemba purchased communication equipment in Belgium that was used in MLC operations. Another useful example in this context is the trade in small arms. The 2007 Small Arms Survey estimated that there were at least 875 million small arms in circulation globally. The legal market in small arms is estimated to be worth \$4 billion per year while the illegal market is estimated to be at least a quarter of that, approximately \$1 billion. More than 90 countries produce such weapons and more than 1200 companies are involved. The tragic consequences of the global small arms market was well documented in Sierra Leone, Liberia, and CAR (to name a few) and continues to fuel the conflict in the DRC. So, finding ways of identifying companies that provide equipment and weapons in conflict zones is another way of addressing the business community's responsibility, regardless of whether their intention was criminal or not.

Now, to obtain the necessary material to fight, armed groups need money. The spectrum of ICC cases reveals the diversity of funding sources: be it illegal trade in natural resources in the DRC; resources collected through violence and through funds from supporters in other countries, like in the case of Uganda; the Central Government itself providing the funds, as is the case in Sudan; or even the perpetrators funding the violence from their own assets, as is alleged to have been the case in Kenya. The funding of the arms and equipment brings us to the heart of the matter, as far as this conference is concerned: the trade in natural resources. As the U.N. Deputy Secretary General Asha-Rose Migiro acknowledged in March of this

year, “The link between the illicit exploitation of trade and natural resources, and the illicit proliferation and trafficking of arms, has become increasingly apparent.”

Let’s look at some facts. The Eastern Congo for instance is rich in mineral, ore and gold which are used in the manufacturing of modern technology, including cell phones and laptop computers. Of the 13 major mines in that region, 12 are controlled by armed groups. It is also interesting to note that the DRC Department of Mining recently stated that 780 tonnes of cobalt had been produced in a year while the DRC Customs Department reported 13,365 tonnes as having been exported.

So, when looking at the illegal trade in natural resources, three questions come to my mind: when in the whole process does the illegal market transform itself into legal business; what is the responsibility of the end user companies in preventing this transformation; how can we impact on this transformation.

Answering the first question seems to be quite difficult already due to the fact that the initial phase of the whole criminal process consists of illegal exploitation of mines, transfer of the pillaged goods through small amounts and various channels to trading houses. For this part of the process there is no paper or electronic trail of transactions. Trading Houses are often the first auditable transaction or business process that legal, illegal or pillaged material goes through. These trading houses are often registered and established under local jurisdiction but often have foreign shareholders or beneficial owners which once again emphasizes the need to see the connection between conflict and non-conflict countries.

Moving to my second question of end user company responsibility, we must also look at the companies that need the resources coming from producer states, including conflict zones. A key question in this context is how to deal with the longstanding, and much discussed, theory of the “corporate veil” which may well be something that this conference touches upon. As long as there is worldwide demand for high tech goods the demand for the raw materials and minerals will continue to grow. The question we need to examine is to what extent companies could do more to ensure that they use validated minerals and raw materials. While the repeated commitments from companies professing they will not use illegal material are promising, we should at the same time acknowledge that guaranteeing this in practice poses important challenges in light of the myriad of Trading Houses and brokers in the supply chain. We need to think about how we can help and push them, while recognizing the tension that undoubtedly exists between their financial interests and the cost of improved transparency but also without replacing their corporate responsibility by our action. Some things do seem to change however under the increasing international pressure. Specialists in the diamond sector for instance allege that conflict diamonds represent less than 1% of international transactions now compared to 15% in the nineties which is seen to be the result of the Kimberly procedures that have been put in place.

If things can change, then this brings me to my last question, namely what can we do next to impact further on business related to conflict. An integrated and diversified action plan will be required which looks into the vulnerabilities of each step in the criminal process that I described. Such a strategy to be effective will require comprehensive, multi-agency cooperation. The participants at this conference are well positioned to lay the foundational building blocks for future action. Some points to consider are:

- First, a more integrated and effective information gathering and analysis process to establish links between companies and conflict zones would be of great benefit. We should aim at connecting the information held between different actors to establish risk profiles for companies: information from NGO's and others operating in conflict zones, customs' information, financial transactions and Suspicious Activity (SARS) reporting, company data published on regulatory databases or their own annual reports and so on.
- Second, once identified, determining who would be in the best position to impact on the suspect companies is a next question. There is wide variety of possibilities and it is important to always ensure the fairness and proper process of the actions undertaken (persons and companies should stay innocent until proven guilty). There is however a broad portfolio of measures already possible: exposing poor practice through the media, judicial action based on ICC or other national law, sanction commissions, or even taking administrative measures in order to disrupt activities like for instance grounding planes for non-compliance with regulations.
- Finally, increasing pressure on multinational corporations to ensure better validation processes will have to be part of the solution. Civil society advocacy will be key for this.

Within this context of integrated action, the Office of the Prosecutor has recently initiated a network with national law enforcement agencies and other specialized institutions and organizations to coordinate and strengthen the efforts to investigate and prosecute persons responsible for international crimes. This network can be used, among others, to support and foster domestic investigations and prosecutions of persons responsible for doing illegal

business with armed groups in conflict zones. This can be done by exchanging evidence, mutually supporting investigations and by sharing expertise. The Office of the Prosecutor intends to contribute to this network by sharing with national authorities some of the information that it has obtained in the context of its own investigations, but also by facilitating contacts among national authorities and other specialized organizations and by sharing its experience in investigating and prosecuting crimes committed in conflict zones in an efficient manner. Through this type of support, the Office of the Prosecutor has for instance successfully contributed to the investigation by German authorities of two senior leaders of the FDLR, an armed group operating in DRC, who have been arrested and who will be prosecuted in Germany in the coming months.

As you will have noticed, the OTP is a strong believer in a systems-approach to crime. In this case the system seems evolve around troops – arms & equipment, and funding which also comes from illegal trade in natural resources. If you are not able to understand the dynamics behind the conflict, then you will not be able to change it.

Thank you and I look forward to a fruitful conference with practical outcomes.