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Exaggerating unintended effects? Competing narratives on the impact of conflict minerals regulation

Dirk-Jan Koch[1], Sara Kinsbergen

Faculty of Social Sciences – Radboud University, P.O. Box 9104, 6500 HE Nijmegen – the Netherlands

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ABSTRACT

This article contributes to the literature on unintended effects by adding a dimension to existing typologies: *exaggerated* unintended effects. It analyses the existence of this dimension resulting from the adoption of the United States' conflict minerals legislation, the Dodd-Frank act, article 1502. The article makes evident that there were two competing narratives on the unintended effects of the American regulation: the duration and the scope of the *de facto embargo*. While in the Democratic Republic of Congo (DRC; the target of the legislation) the negative unintended effects were declining, the dominant narrative on unintended effects was not changing and omitted crucial elements. A quantitative analysis shows that especially those companies that stood to gain from deregulation did not incorporate these positive developments into their narrative. The narratives of other stakeholders, such as non-governmental organizations and investors, progressed together with the changes observed in the DRC. The research indicates how the discussion on unintended effects impacted the formulation on conflict minerals regulation in the European Union. The article concludes by drawing parallels to debates on unintended negative effects in other domains of international cooperation, such as migration. It is suggested that policy makers, researchers and journalists verify claims of negative unintended effects before integrating them into their own narratives.

1. Introduction

This article explores unintended effects of the conflict minerals legislation of the United States government in 2010, the Dodd-Frank act, article 1502. Prominent public figures, such as the chair of the Securities and Exchange Commission have argued in 2017 that the law has led to 'unintended consequences washing over the Democratic Republic of the Congo and surrounding areas' (United States Securities Exchange Commission, 2017). The consequences of the Dodd-Frank act in the Democratic Republic of the Congo (DRC) have been enormous and have led to an overhaul of the mineral trading system in the eastern part of the DRC (OECD, 2015). Various types of unintended effects have been noted with respect to the conflict minerals legislation, and they will be analysed in detail in this paper (Cuvelier et al., 2014; Parker et al., 2017; Parker and Vadheim, 2017).

There has been a marked increase in academic interest in the unintended effects of international policies (e.g., Burlyuk, 2017; Jabeen, 2016; Koch & Schulpen, 2017a). The Evaluation and Program Planning journal has even devoted an entire special issue to it in 2017, with articles focusing on diverse topics such as peacebuilding (Lemon and Pinet, 2017), health interventions (Leenstra, 2017) and governance (Dijkstra, 2017), and wage effects of local aid workers (Koch & Schulpen, 2017b). Dijkstra's article is of particular interest as it highlights an unintended effect that was hitherto not debated: the exaggerated unintended effect. Dijkstra analysed the unintended negative effects of international aid on the quality of governance in recipient countries. By means of a systematic literature review, those often-cited unintended effects appear to be exaggerated, as the empirical literature has failed to identify such a link since the fall of the Berlin wall.

This article builds on the existing literature and asks the following key questions: can one, also in the debate on conflict minerals regulation, speak of exaggerated unintended effects? If so, how does this exaggeration come about? Who is driving it?

This paper starts with an introduction to the conflict minerals legislation in the United States and minerals in the DRC (Section 2), followed by a brief section on the methodology used (Section 3). Then, it focuses on the different dimensions of typologies of unintended effects (Section 4). This section also describes which of those effects were encountered in the DRC according to the academic literature. Subsequently, two competing narratives on the *de facto embargo* resulting

E-mail address: d.koch@maw.ru.nl (D.-J. Koch).

[1] D.J. Koch was working as the Special Envoy for Natural Resources for the Netherlands Ministry of Foreign Affairs between 2014 and 2018 and in that capacity involved with the Dutch policy with respect to conflict minerals.

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from the conflict minerals legislation are described (Section 5). That section also shows how the situation in the DRC changed while at the same time the narrative of some actors remained the same. Section 6 turns to a qualitative and statistical analysis, which shows in a systematic way which actors support which narratives, and whose narrative evolved with the developments in the DRC, and whose narratives remained unaltered. This statistical analysis provides some insight into why some narratives stay, even though circumstances change. The finally, Section 7 discusses the implications of these narratives on the conflict minerals regulation process in the European Union. The final section concludes by drawing parallels to other sectors in the area of international cooperation, where claims of unintended effects have also potentially been exaggerated.

2. Conflict minerals and legislation

2.1. Minerals and conflict in the DRC

DRC played a globally significant role in the world's production of cobalt, copper, diamond, tantalum, and tin. In 2014, the country's share of the world's mined cobalt production amounted to 51%; tantalum, 17%; diamond, 13%; copper, 6%. Congo accounts for about 47% of the world's cobalt reserves (United States Geological Survey, 2014).[2] Minerals are very important to the DRC: 95% of the export earnings are from its exports, and it contributes to 28% of government revenue (Extractive Industries Transparency Initiative, 2017). It employs 11% of the formal labour force, but in addition to that hundreds of thousands of people are working on informal mine sites (IPIS Research, 2016).

Minerals from the three Eastern provinces North-Kivu, South-Kivu and Maniema are often referred to as *conflict minerals*. Most often it concerns the '3 T + G', meaning Tin, Tantalum and Tungsten and Gold. Something is considered a *conflict mineral* if the extraction and trade contributes to conflict or human rights abuses, for instance through the financing of armed groups. In the DRC from 1996 onwards, many rebel groups were indeed profiting from the trade in natural resources. An International Peace Information Service (IPIS) study executed in 2009 and 2010 found that in 56% of the 3 T + G mines, armed forces (either rebels or from the government) were present (Organization for Economic Cooperation and Development, 2015).[3]

Also in other parts of the world minerals have contributed to conflict, such as gold in Colombia and Jade in Myanmar, and prior to this diamonds in Angola and Liberia. However, this article focuses on the aforementioned Dodd-Frank Act, focusing exclusively on the DRC and surrounding countries, and on 3 T + G. (Fig. 1)

2.2. The Dodd-Frank act - article 1502

During the financial crisis of 2008–2010, the Obama administration sought to develop extra regulation to reduce the risks in the financial sector, and it developed the Dodd-Frank Act of 2010. As part of this wider regulation, one article, article 1502, was inserted with respect to conflict minerals originating from the DRC. This was done after intense lobbying by Non-Governmental Organisations (NGOs). Article 1502 obliges stock listed companies in the United States to declare which due diligence they exercised to prevent Tin, Tungsten, Tantalite and Gold (3TG) in their supply chain from contributing to conflict in the Great Lakes region of Africa.

The focus in this paper is on Article 1502 of the Dodd-Frank legislation, as it was the first of its type, and had an enormous impact on the way in which minerals are being exploited and exported in the DRC (Bashwira, 2017; Radley and Vogel, 2015; Vogel and Raeymaekers, 2016; Wakenge, 2017). In addition, it has stimulated other jurisdictions, notably the Chinese chamber of commerce (CCCCMC) and the European Union, to develop similar initiatives and legislation (Chinese Chamber of Commerce of Metals, 2016; European Commission, 2017).

Fig. 2 presents a timeline of the Dodd-Frank act implementation. Above the arrow, major moments in the implementation of the Dodd-Frank act in the United States are mentioned. Below the arrow the regulatory changes in the DRC, as well as the main changes in the operational environment in DRC are highlighted. Some relevant elements to note are that the DRC government adopted an export ban on minerals from North & South Kivu and Maniema, before the Securities and Exchange Commission (SEC) approved the final rules. Other elements of note are that there was not a functioning traceability scheme active in North and South Kivu and Maniema when the export ban was lifted. A last pertinent element is that the review process of the SEC started just after all the traceability schemes were up and running.

3. Methodology

To analyse potential unintended effects of the Dodd-Frank act in the DRC, a systematic literature review was performed with respect to the term 'unintended effects' and 'Dodd Frank Act' (section 4.2). Within the systematic review, a snowball method was used, in which relevant references (which did not appear in the initial search) cited in articles could still be pursued. A total of 12 texts where analysed and this led to a list of five unintended effects. These unintended effects were classified according to the existing dimensions of typologies. The existing dimensions didn't include references to one of the encountered unintended effects: the exaggerated unintended effect.

To identify the two dominant narratives (Section 5), an analysis of the non-academic literature was executed, focused on major international English language journals and magazines, such as the New York Times, Foreign Policy and the Washington Post. To juxtapose the narratives as laid down in those premium outlets to the developments in the DRC, primary data on actual mineral exports and military and rebel activity were gathered from the Congolese Ministry of Mines and independent research institutes, such as IPIS Research in Belgium.

To perform a quantitative analysis (Section 6) on who is driving the narrative of unintended effects, all the comments that the SEC received when it launched the public consultation in early 2017 were reviewed. A total of 281 comments were received during the consultation period. To analyse an evolution in the narratives of key actors over time, where possible, their comments from different years were compared to each other.

4. Academic literature review of unintended effects

Table 1 describes six different dimensions that are commonly used to classify unintended effects. The last row of the table indicates the dimension that this articles adds. The last column provides an overview of the findings of the academic literature review on the unintended effects of the Dodd-Frank act. More information on those studies can be found in Annex 1.

12 academic studies dealing with unintended effects of the Dodd-Frank act in the DRC were encountered and analysed. A first unintended effect that surfaced related to increased human rights violations, such as looting in the minerals trade (2 documents focused on this). Secondly, one paper mentioned the unintended effect of section 1502 on gender relations, and noted that it had a negative unintended effect on women in mining. A third unintended effect related to smuggling and the black-economy: section 1502 is allegedly stimulating more of both (1 document). A fourth unintended effect surfaced in the more

[2] Copper and cobalt have been found mostly in the Southern part of the country, called Katanga, bordering Zambia (Figure 1). The diamonds are mostly found in the centre of the country, in the provinces close to Angola. Tantalum (coltan) is found mostly in the Eastern provinces, of the Kivu's, close to Rwanda and Burundi. Gold is found everywhere in the eastern-part, from areas bordering South-Sudan to Burundi.

[3] Major rebel groups in and around mining areas were the Force Démocratique pour la Libération de Rwanda (FDLR), the CNDP (later morphed into the M-23) and the RaiRai Mutomboki, and they their dependence on mineral extraction and trade has differed and changed over time (United Nations Group of Experts, 2012).

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