WIN PARTNERSHIP IN THE RE- EXAMINATION OF THE MINING CONTRACT IN DEMOCRATIC REPUBLIC OF CONGO.

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 “If an exchange between two parties is voluntary, it will only take place if both believe they will benefit from it. Most economic mistakes stem from forgetting this idea, from the tendency to assume that there is a set cake, that one side can only win at the expense of the other.”

Milton Friedman, 1990

### **ABSTRACT**

In the context of the decision of the government of the Democratic Republic of Congo taken to review some sixty mining contracts, it is rather necessary to use the term review . According to the Minister of Mines, this last expression differs from revision in that it constitutes a rereading of contracts to correct them. However, it is difficult to imagine that we manage to correct a contract without modifying it. This definition therefore does not seem to differ from the meaning traditionally given to the concept of revision as that of a process which undoubtedly leads to the modification of the contractual provisions.

The objective of this review , modification or review is to bring all mining contracts in the Democratic Republic of Congo to a win-win partnership where the DR. Congo and the investors all come together.

It should be noted that renegotiating a State contract so as to find a concrete solution is the best approach in terms of contractual review for the simple and good reason that it saves the parties from long lawsuits only, the fact remains that whenever the State exercises its sovereignty by unilaterally revising or terminating foreign investment contracts, it only incurs international liability within the meaning of public international law, it only incurs civil liability which generally results in grant of compensation to the foreign investor.

KEY WORDS: Issue, Partnership, Win-Win, Mining

### **INTRODUCTION**

### Experts from the Government of the Democratic Republic of Congo (DRC) are in the midst of a review of the gigantic “minerals for infrastructure” contract concluded in 2017 between the DRC and the Chinese companies Sino Hydro Corp and China Railway Group.

This initiative is part of the readjustment of all mining contracts in the country, as announced in May this year by President Félix Tshisekedi.

The objective of this review is to ensure that the partnership is “ **equitable** ” and “ **effective** ”.

The hardening of the will to revise the minerals-for-infrastructures contract reveals the weakness of a practice of decision-making based on short-term considerations.

Taking into account the present and future objectives of the DRC, the current and potential degree of radicalization and the present and future perception of foreign investments should form the basis of the decision to authorize investment.

Economic theory on international exchanges notes that these must be seen, beyond ideologies, as a zero-sum game where each of the participants has to win, as the DRC now wants.

It was through David Ricardo's theory of comparative advantages 200 years ago that we learned that it is exchange that is the source of wealth, and not production. The economy can thus have several winners.

However, the determinants of this theory in the 21st century are not the same. The comparative advantage is being redrawn today on:

* The notion of tasks intended for production;
* Integration into international production chains;
* Access to imported intermediate products.

What can the win-win strategy be made of to reconcile the objectives of fairness and efficiency with the new global situation which implies both finer specializations within sectors and an ability to connect , for certain tasks, the technologies of companies in rich countries to the workforce in emerging countries?

This article would like to be a contribution in the field of International Business Management. Its localized target is the DRC and its immediate objectives are to help it consider in its desire to readjust mining contracts that from a strictly economic point of view, the win-win partnership is a dynamic balance.

**Methodology**

We propose the analytical approach that presents the "minerals against infrastructure" contract using game theory. We will show that the win-win partnership is based on;

1. Identification of the non-zero-sum game situation
2. Analysis of the objectives pursued by the DRC
3. Forecast of the general evolution of the terms of the contract.
4. **Identification of the game situation**

The mining contracts of the DRC and CHINA represent the situation of a game in the matrix of the associated gains. The two partners proceed to the simultaneous creation by the contracts, of the same market.

The win-win partnership is a search for balance, that is to say a situation that no one has any interest in leaving. If the table looks like this: the game admits a single equilibrium corresponding to pairs of tactics (II), (II),

Table I

|  |  |
| --- | --- |
| CHINAground floor | 1. (II)
 |
| I | (0.20, 0.20) | (0.00,0.50) |
| II | (0.50, 0.00) | (0.15, 0.15) |

This balance is not necessarily optimal, it does not always correspond to the best result that can be obtained, but it is stable. This is a paradox well known as the “prisoner's dilemma”.

The fact that the contracts are spread over a period of time and met with the willingness of adjustment on the part of the DRC government leads to another paradox of “dynamic equilibrium”. »

1. **Adjustment of terms of mining contracts or dynamic equilibrium**

The contract terms to be adjusted are:

* The anonymous capital of the Chinese in search of added value;
* Technology
* Management techniques
* Industrial experience

To better understand the DRC's current adjustment policy for mining contracts, it is necessary to consider two levels:

* Declaration of intent of the government of the DRC and the mining code in force in the country;
* Feedback felt by the Chinese and applied by foreign investment control organizations.

The contracts before the will of adjustment obey the type of policy of laissez faire and of promotion of foreign investments s by tax incentive, the adjustment obeys the strategy of negotiation.

The two partners will seek to achieve a situation of balance; but the equilibrium is dynamic since it integrates the time factor. The negotiations will cover a couple of strategies based on short-term and long-term decisions. This situation brings out the paradox which consists in the coexistence of two dynamic equilibriums.

1. A "semi-reflexive" balance: the DRC and CHINA seek an ex ante balance, i.e. they choose the terms of the contract and agree not to change them along the way because the defined optimum is a static best. It is therefore difficult to deduce the strategy that investors must develop to find this optimum.

The game admits a single equilibrium which corresponds to the pair of strategies (II-I), (II-II) and which ensure the partners respectively gains of 0.18 and 0.28

 Table 2

|  |  |
| --- | --- |
| CHINAground floor | (II) (I-II) (II-I) (II-II) |
| (II)(I-II)(II-I)(II-II) | (0.18,0.18)(0.25,0.10)(0.45,0.20)(0.30 ,0.10) | (0.10,0.25)(0.30,0.30)(0.35,0.05)(0.33,0.08) | (0.20,0.45)(0.05,0.35)(0.13 ,0.13)(0 .28 ,0.11) | (0.100.30)(0.08,0.33)(0.18,0.26)(0.16,0.16) |

1. **A reflexive balance**

The DRC and China seek to be at all times in balance on the future, to determine such a balance, we use the classic reasoning of dynamic programming.

* During the readjusted contract, to be in balance, the strategies to be used correspond to the following pair of tactics:
* (II, II) with gains (0.20,0-20).
* (I, I) with gains of (0,20,0-20)
* (I, II) with gains of (0.10, 0.20).

Table 3

|  |  |
| --- | --- |
| Chinaground floor | 1. (II)
 |
| I | (0.10+0.20 ,010+0.20) | (0.00+0.20,O.25+0.20) |
| II | (0.25+0.20,00+0.20) | (0.08+0.10,0.08+0.20) |

Whose equilibrium corresponds to the pair of tactics (I, II); in total, the pair of strategies is (II, II-I) with gains of (0.20, 0.45). Semi-reflexive and reflexive equilibria characterize non-zero-sum dynamic games.

What is the economic interpretation?

The two balances illustrate the impact of foreign investment on the growth of the national economy and the way in which the latter adjusts this impact over time.

Adjustment becomes possible when each partner does not influence the expected results of the other and when the game is zero-sum ie. the absence of synergistic effects.

To achieve this, a study of a fairly wide variety of economic contexts is needed, which makes it possible to adjust the structure of the economy and production in the DRC to the evolution of its environment. And a sensitivity analysis and a study of the short and long term effects of a change in the situation.

1. **EVOLVING MODEL OF CONTRACT TERMS**

Chinese investments in the DRC are one of the means for them to develop their share of influence on the minerals market in the world. This desire is a function, among other factors, of economies of scale.

For the DRC, it is one of the means allowing not only the transfer of capital, but of a set of other factors: technology, information system, management technique, financial guarantee and industrial experience.

All of these goals must be carried over a long period of time in a dynamic analysis of the reports. These reports reflect indirectly on the climate of the negotiations by an effect of transfer of ideas and demonstration; this constitutes a process that must take place in several phases for adaptation, including the systematic consideration of risks, the evaluation of the impact and systematic negotiation.

**CONCLUSION**

In search of the Win-Win partnership, representation using Game Theory brings out the paradoxes. That of the “prisoners' dilemma” and of the reflexive and semi-reflective dynamic balance. These paradoxes demonstrate that the objectives of fairness and efficiency sought by the DRC in the adjustment of mining contracts will be from a strictly economic point of view, in the stationary regime because of the opposing interests in the evaluation of marginal revenues. Negotiations will revolve around these balances.

We propose that the DRC opt for the “semi-reflexive” balance which is equivalent to contracts stipulating a schedule of decisions to be taken for each partner throughout the duration of the contracts until the economic horizon of the investments envisaged. This is how we will achieve fairness and efficiency. What matters is not balance, but rather convergence towards balance.

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