

CARATS AND STICKS: PURSUING WAR AND PEACE THROUGH THE DIAMOND TRADE

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I. INTRODUCTION

The end of the Cold War shifted international focus from a great power confrontation to internal conflicts and their global consequences. This shift resulted in numerous interventions in internal conflicts through measures such as preventative action, use of force, and humanitarian assistance. A major difficulty inherent in any such intervention, however, is discerning the proper measures given a particular situation. Scholars and practitioners attempting to learn from the mistakes of the past face a dizzying array of conditions that affect each conflict, as each situation varies in its circumstances, approach, and outcome. Finding a meaningful resolution to a particular conflict in the context of these distinctive conditions may be akin to searching the entirety of medical history for the cure to a set of symptoms. To prescribe a cure, it is first essential to diagnose the disease.

Similarly, the discourse that surrounds intervention in any conflict must first ascertain the conflict's particular causes, a task understandably affected by the rhetoric of the parties involved. Such discussion is often dominated by themes of political and ethnic strife—grievances that, given the turbulent political environment common in many states prior to internal conflict, often appear to be logical rationales. Rationale, however, is not necessarily equivalent to cause: While many countries have similar reasons for civil war to break out, opportunity may be a better predictor of actual conflict. This opportunity is often manifested in economic conditions, notably reliance on primary commodity exports, which allow parties to

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generate and sustain a civil war. These economic conditions may even provide a strong incentive for conflict, creating “war economies” through which parties profit from the prolongation of war. In such a system, there is no incentive for peace or even victory.

Although perhaps overlooked in the past, the economic sustainability of a conflict is increasingly recognized as vital to the study of civil wars.¹ The wars in Sierra Leone, Angola, and the Democratic Republic of Congo (D.R.C.) are notorious examples of conflicts fueled by greed and pillage. This Note analyzes the feasibility of resolving, and perhaps preventing, conflict through the economic transactions that sustain one side. Part II explores the emerging view that economic conditions, particularly primary commodity exports, play a vital role in generating and sustaining civil wars by providing the necessary opportunities for insurgencies to grow, and even profit, from conflict. Part III provides case studies that support this view, examining situations where illicit diamond trading has fueled conflicts in Sierra Leone, Angola, and the D.R.C.

Part IV analyzes the means by which control of the diamond trade may be used to drain resources from insurgencies, focusing on the current international endeavor to design and implement a combination of domestic and international controls that stifle the trade of conflict diamonds. These efforts are roughly divided into three interdependent levels: the international effort, defined primarily by U.N. sanctions to prevent the trade of conflict diamonds from Sierra Leone and Angola and by the formation of the Kimberley Process, a negoti-

1. Recent links between the honey trade and al Qaeda, and between al Qaeda and the conflict diamond trade in Sierra Leone, have also reinforced the importance of economic resources in conflicts worldwide. American officials announced in October 2001 that Osama bin Laden had been using the honey trade in the Middle East to generate income and move weapons, drugs, and money. See Judith Miller & Jeff Gerth, *Honey Trade Said to Provide Funds and Cover to bin Laden*, N.Y. TIMES, Oct. 11, 2001, at A1. In November 2001, the *Washington Post* revealed that key al Qaeda operatives had made millions of dollars buying diamonds from Sierra Leone rebels at low cost and then selling them in Europe. The article also speculated that, perhaps in anticipation of their assets being frozen, al Qaeda changed tactics a few months prior to September 11, buying at higher prices to protect its assets by sinking them into diamonds, which are easily hidden and almost untraceable. Douglas Farah, *Al Qaeda Cash Tied to Diamond Trade; Sale of Gems from Sierra Leone Rebels Raised Millions*, SOURCES SAY, WASH. POST, Nov. 2, 2001, at A1.

ating scheme to implement a global certification system for the import and export of diamonds; industry self-monitoring; and domestic controls, illustrated by systems currently in place in Sierra Leone and Angola. Although the resulting certification system provides a promising means to control both current and future conflicts through the diamond trade, this Note will identify three significant obstacles that the system faces: (1) lack of monitoring for compliance with the standards of the certification system that have been set by the Kimberley Process; (2) inherent reliance on successful internal controls by countries from which conflict diamonds originate and their neighboring countries, a reliance that threatens to render the system moot if it fails to take into account the strong schemes of smuggling and corruption and the crucial need for infrastructure and resources to battle these schemes; (3) difficulty in developing a coherent definition of a “conflict diamond” that responds to the realities of the modern international landscape. Part V analyzes measures that may strengthen the chances of success for the Kimberley Process and other similar endeavors.

II. THE ECONOMIC ORIGINS OF CONFLICT: WAR AS AN ECONOMIC SYSTEM

For years, discussion of civil wars has centered on issues of political and ethnic strife. Increasingly, however, the political grievances and ethnic hatreds once commonly accepted as the causes of civil conflict turn out to conceal less romantic economic incentives. Although this distinction is often labeled the “greed-versus-grievance” discourse, the title can be misleading in that most proponents of an economic analysis of civil conflict do not pit one cause against the other—it may instead be a question of degree. While political grievances may play an important role in promoting rebellion, an economic analysis of conflict shows that the sustainability of a civil war has a stronger link to economic conditions.

Paul Collier of the World Bank has created what might be the most systematic and productive research on this topic. Collier used a sample of seventy-eight civil wars during the period 1965–1999, dividing the period into eight five-year subperiods, and using multiple variables to predict the occurrence of war during a subperiod by the state’s characteristics at

the subperiod's start.² The findings contradicted common perceptions that grievance predicts civil wars, finding inequality of income as well as lack of democratic rights to have no significant effect on the likelihood of civil war.³ Perhaps even more surprisingly, ethnic diversity was found to correlate with safer societies, while ethnic and religious homogeneity made a society unexpectedly dangerous.⁴ In contrast to commonly accepted beliefs,⁵ a significant risk factor unveiled was whether a country derived a substantial share of its GDP from the export of primary commodities.⁶ Other strong indicators were geographic dispersion, recent conflict, wealthy diasporas, and economic opportunity.⁷ Conflict tended to be concentrated in countries with little education and those suffering economic decline.⁸

While potential insurgents in many states have cause for violent conflict, Collier found that few have the economic ability to create a sustainable civil war. His findings illustrate that conflict emerges when it can be maintained, and an economic agenda provides far more resources and incentives to generate a sustainable conflict. The risk of rebellion has a strong empirical link to three economic conditions that can help sustain a conflict: dependence upon primary commodity exports, low average income, and slow growth. Primary commodity exports are extremely lootable and the most heavily taxed, relying on

2. PAUL COLLIER & ANKE HOEFFLER, WORLD BANK, GREED AND GRIEVANCE IN CIVIL WAR 3 (rev. version Oct. 21, 2001), available at http://www.worldbank.org/research/conflict/papers/greedgrievance_23oct.pdf.

3. See *id.* at 10, 17; Paul Collier, *Doing Well Out of War: An Economic Perspective*, in GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS 91, 97-98 (Mats Berdal & David M. Malone eds., 2000).

4. See COLLIER & HOEFFLER, *supra* note 2, at 17; Collier, *supra* note 3, at 98. Collier posits that this relationship may go beyond mere correlation and be causal in nature. See *id.*

5. For excellent discussions of the social and psychological explanations for conflict, see Ted Robert Gurr, *Minorities, Nationalists, and Ethnopolitical Conflict*, in MANAGING GLOBAL CHAOS 53-77 (Chester A. Crocker et al. eds., 1996); David Little, *Religious Militancy*, in MANAGING GLOBAL CHAOS, *supra*, 79-91; Janice Gross Stein, *Image, Identity, and Conflict Resolution*, in MANAGING GLOBAL CHAOS, *supra*, 93-111.

6. See COLLIER & HOEFFLER, *supra* note 2, at 8. The risk of conflict was found to peak when primary commodity exports comprised about 32% of GDP, indicating a high level of dependence. See *id.* at 12.

7. See *id.* at 5, 9, 12.

8. See *id.* at 5.

assets that are long-lasting and immobile.⁹ Unlike manufacturing, for example, rebel predation does not kill off the industry or force it to move elsewhere, as “[o]nce a mine shaft has been sunk, it is worth exploiting it even if much of the anticipated profits are lost to rebels.”¹⁰ As the product is moved for export, there are numerous opportunities for rebel forces to extract money for passage. Furthermore, in areas of low income and low education, young men can be recruited cheaply by either rebels or the government. Low income yields low government revenue from taxes and makes a sustainable military hard to finance, giving the recruiting and financial edge to rebel armies who can fund their activities through pillaging.¹¹

Economic incentives may also sustain a conflict through the emergence of war economies. In such war economies, rebels or warlords linked to international trade networks derive immediate economic gain from violence and thus have both the incentive and the resources to beget more violence and thus more profit.¹² In such a situation, a “Shadow State” may develop, a product of personal rule in which it is in the interest of those in power to make life less secure and more impoverished for their subjects in order to maintain their power and wealth.¹³ As David Keen has noted, rather than a continuation of politics by other means, war may be a continuation of economics by other means.¹⁴ Those perpetrating the

9. See PAUL COLLIER, WORLD BANK, ECONOMIC CAUSES OF CIVIL CONFLICT AND THEIR IMPLICATIONS FOR POLICY 9 (June 15, 2000), available at <http://www.worldbank.org/research/conflict/papers/civilconflict.pdf>.

10. *Id.* at 9-10.

11. In some situations, the rebels and government armies both utilize this method of payment. For example, in Sierra Leone, where the government was unable to provide soldiers with salaries, it at one point instituted “Operation Pay Yourself.” This contributed to coinciding interests between the military and the rebels and, in part, led to the *sobel* phenomenon, where soldiers would fight with the government by day and loot with the rebels at night. William Reno, *Shadow States and the Political Economy of Civil Wars*, in GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS, *supra* note 3, at 43, 50.

12. See David Keen, *Incentives and Disincentives for Violence*, in GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS, *supra* note 3, at 19, 24. For discussion and examples of this concept, see *infra* Part III and accompanying notes.

13. See generally Reno, *supra* note 11.

14. Keen, *supra* note 12, at 27.

horrors of war may have no intention to win, but merely to continue the lucrative state of conflict and violence; as Keen writes, “the ‘end’ is to engage in abuses or crimes that bring immediate rewards, whereas the ‘means’ is war and the perpetuation of war.”¹⁵

These concepts by no means imply, however, a simplistic view of the war economy or of civil wars in general. Although Collier’s work is compelling, he is quick to point out that it does not provide conclusive evidence that extortion of economic opportunity is the sole motivation for civil conflict.¹⁶ Some scholars question whether it is the poverty associated with these states that motivates the violence, or whether the resources foster greed, which promotes rebellion.¹⁷ The term “greed” itself is of questionable value, since it implies a uniform judgment of many different players within an extreme situation. Is everyone who profits from conflict greedy, or are some merely making the best of an unbearable situation?¹⁸ Recent events in Afghanistan provide a daily reminder of this blurred line. *The New York Times*, for example, reported about a man who, living near a road obstructed by rubble from U.S. bombings, started to clear the road and set up a tollbooth, hoping to prolong his work and thus reap greater profits.¹⁹ In the absence of any public department to clear the roads, this man’s work could be seen as commendable and enterprising or opportunistic and predatory. It should be contrasted, how-

15. *Id.* at 29.

16. See COLLIER & HOEFFLER, *supra* note 2, at 2.

17. See, e.g., Indra de Soysa, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity?*, in GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS, *supra* note 3, at 113, 125-27.

18. It is necessary to consider the numerous factors motivating opportunistic actions during a civil war:

At the local level, where the effects of the war are the most drastic, civilians caught in the hostilities are concerned primarily with basic survival. Theirs is generally an opportunistic adaptation to the conditions that have been forced upon them It is . . . tempting to regard these acts as criminal. However, one should bear in mind that that moral restraints that usually function in times of peace . . . break down in do-or-die situations.

Musifiky Mwanasali, *The View from Below*, in GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS, *supra* note 3, at 137, 150.

19. C.J. Chivers, *A Nation Challenged: Road Mender Tries to Make Bomb Rubble Last a While*, N.Y. TIMES, Dec. 17, 2001, at B1.

ever, with the activities of the local warlords, which included the theft of Red Crescent food and resources to be sold at hotels to Western tourists.²⁰

Whatever the myriad causes and conditions that spark a conflict, it is clear that civil wars, regardless of the motivation, are far more likely to be sustained in the proper economic situation.²¹ Even those civil wars with political motivations and spurred by legitimate grievances have a tendency to mutate into conflicts where immediate economic agendas have a central role.²² Economic agendas create both vested interests in continued conflict and widespread destitution that promotes more economically motivated violence.²³ These findings can provide additional, perhaps alternative, means for both resolving civil wars and preventing the emergence or reemergence of sustainable insurgencies in volatile states. Successful resolution strategies must specifically address the economic agendas fueling conflicts.

III. CASE STUDIES: DIAMONDS AS A SOURCE OF CONFLICT

The conflicts in Sierra Leone, Angola, and the D.R.C. illustrate the broad range of roles that resources, particularly diamonds, may play in nurturing a civil conflict. In Sierra Leone and Angola, control of diamond mines has been both a means and an end for rebel movements, and the current systems of certification and control discussed in Part IV are vital to sustaining peace and rebuilding the states. Sierra Leone, perhaps the clearest example of a civil war fueled by greed, has recently concluded disarmament of the rebel forces after a brutal civil war. It has held elections and has entered a stage of rebuilding. After years of rebel control of the diamond mines in a war that reaped huge revenues for the insurgency leaders, the Angolan government took control of most of the Angolan diamond mines in 1999, cutting off much of the rebel production capability but still allowing them to trade from

20. C.J. Chivers, *A City, Free of Taliban, Returns to Thieves*, N.Y. TIMES, Jan. 6, 2002, at A1.

21. See COLLIER & HOFFLER, *supra* note 2, at 16 (noting that the availability of finance and cost of rebellion influence the opportunity for rebellion).

22. Keen, *supra* note 12, at 24-25.

23. *Id.*

existing stockpiles and mount a significant guerilla offensive.²⁴ On April 4, 2002, six weeks after the death of rebel leader Jonas Savimbi, a cease-fire agreement was signed between the rebels and the government.²⁵ The rebel movement has transformed itself into a political party and has elected a new leader.²⁶ Meanwhile, the D.R.C. has provided a stark example of a brutal conflict where diamonds are but one of many resources sustaining war and where resources are but one of many sources of conflict. Though international actors have agreed to a cease-fire and withdrawal, and a new constitution has been signed, internal skirmishes in the mineral-rich eastern parts of the country leave the peace process fragile.²⁷ The current implementation of international, domestic, and industry efforts to curb the trade of rebel-sourced diamonds in Sierra Leone and Angola may provide a framework for control of the source of diamonds and other resources funding conflicts in the D.R.C. and other countries.

A. *Sierra Leone*

Perhaps no state better exemplifies the war-economy scenario than Sierra Leone. The conflict between the military and the Revolutionary United Front (RUF) rebels created a profitable state for the leaders of both groups, often mirrored in the strange, symbiotic relationship between the parties. Ele-

24. See *infra* Part III.B and accompanying notes.

25. The peace process called for the rebel National Union for the Total Independence of Angola (UNITA) party to demobilize its 50,000 soldiers and armed supporters and to turn over all of its weapons. In turn, the government is to provide food and shelter for the guerrillas and up to 300,000 of their relatives for about one year. The government has also agreed to absorb some 5,000 rebels into the military and 40 into the national police; the remaining rebels are expected to receive vocational training. The entire process is expected to take approximately one year, but the lack of government resources has caused some officials to indicate that this may be an unrealistic schedule. See Rachel L. Swarns, *Angolans Cheer the Peace and Hope It Will Stay Awhile*, N.Y. TIMES, Apr. 5, 2002, at A3.

26. *Unita Chooses Savimbi Successor*, BBC NEWS, June 24, 2003, available at <http://news.bbc.co.uk/2/hi/africa/3014474.stm>.

27. James Lamont, *Forces Clash on Burundi Border*, FIN. TIMES (London), Oct. 14, 2002, LEXIS, News Library, Financial Times (London) File; see Rory Carroll, *Rwandan Battalions Pull Out of Congo*, THE GUARDIAN, Oct. 2, 2002, LEXIS, News Library, Guardian (London) File; Ishbel Matheson, *DR Congo's Curious New Line-Up*, BBC NEWS, July 17, 2003, available at <http://news.bbc.co.uk/2/hi/africa/3076279.stm>.

ments of the military worked with the RUF to plunder civilian assets, transfer arms between sides, and avoid intense battles, resulting in a May 1997 joint coup by RUF and defecting members of the military.²⁸

Although it is undeniable that Sierra Leone's war was in part due to corruption, poverty, and widespread disenchantment with the failing state, it was the economic opportunity provided by this breakdown in law and order that allowed the RUF to establish a sustainable insurgency, which in turn generated the horrendous violence in Sierra Leone absent in other countries with similar political problems.²⁹ Gross economic mismanagement by the government, particularly the corrupt licensing system for diamond mines, led to swiftly declining wages, while public services, such as healthcare and education, disappeared.³⁰

Consistent with Collier's model, the insurgency was able to sustain itself by preying on a primary commodity export, diamonds, and a generation of alienated youth readily recruited under a "vaguely populist agenda"³¹ of fighting government corruption. Easily looted and smuggled, diamonds formed the primary source of income for RUF leader Foday Sankoh, and the alluvial³² diamond fields of the eastern Sierra Leone Kono region were the center of fighting and the RUF's

28. See Keen, *supra* note 12, at 35. Some Sierra Leoneans have labeled this collaborative effort as "sell-game," a term Keen deems analogous to a fixed football match. *Id.* at 36.

29. IAN SMILLIE ET AL., THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS, AND HUMAN SECURITY 2 (P'ship Afr. Can., Insights Series, Jan. 2000), available at <http://www.partnershipafricacanada.org/>.

30. See Michael Chege, *Sierra Leone: The State That Came Back from the Dead*, 25 WASH. Q. 147, 152-53 (2002) ("[S]tate licensing of private diamond exports created a lucrative payoff system between those well connected to the Stevens government and the cliques of Lebanese and Indian traders who sold the stones overseas, earning hard currency.").

31. See JOHN L. HIRSCH, SIERRA LEONE: DIAMONDS AND THE STRUGGLE FOR DEMOCRACY 30-31 (2001).

32. Alluvial describes both the diamond and the type of mine from which it is collected. Alluvial mines are superficial, and diamonds can be found in riverbeds and shallow deposits. These mines can be used easily by artisanal miners with unsophisticated equipment. GLOBAL WITNESS, A ROUGH TRADE 16, 21 (1998), at <http://www.globalwitness.org/reports/show.php/en.00013.html> [hereinafter A ROUGH TRADE]. For further discussion of the effects alluvial mines have on preventing the trade of conflict diamonds, see *infra* Part IV.D and accompanying notes.

base of operations from the conflict's inception.³³ Although it is widely accepted that the RUF had no credible political demands, the revenues their leaders reaped from their reign of violence were formidable. Diamonds were traded for arms, allowing Sankoh, diamond merchants, and arms merchants to profit from the prolongation of the war.³⁴ The RUF reportedly funded their campaign with an estimated \$25-125 million per year in diamond sales.³⁵ With no alternative source of money in a failed state, the profits gained from mining and pillaging³⁶ gave the RUF and the often complicit military little incentive to take the peace process seriously, or even to attempt to win the war.³⁷

In order to understand the conflict, it is necessary to understand the diamond industry within Sierra Leone. Sierra Leone diamonds are mostly alluvial and mined over a large area of the country by "diggers" working manually or with rudimentary equipment.³⁸ Diggers obtain permission to mine from their respective chiefs and are usually financed by "dealers" in an exploitative relationship whereby food and resources are given to the diggers, the value of which is deducted from the sales of the diamonds mined.³⁹ The "[s]tones can change hands several times among dealers" before they are finally sold

33. See HIRSCH, *supra* note 31, at 15; AMNESTY INT'L, SIERRA LEONE: CUTTING THE LINK BETWEEN DIAMONDS AND GUNS, May 31, 2000, at <http://www.amnesty.ca/library/news/afr512700.htm> (AI Index: AFR 51/027/00).

34. See HIRSCH, *supra* note 31, at 15, 96; SMILLIE ET AL., *supra* note 29, at 2 ("The point of the war may not actually have been to win it, but to engage in profitable crime under the cover of warfare.").

35. *Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone*, U.N. SCOR, 55th Sess., ¶ 1, U.N. Doc. S/2000/1195 (2000) [hereinafter *Panel of Experts Report Pursuant to 1306*].

36. David Keen describes the situation as "the emergence of an exploitative political economy in which armed groups preyed on and taxed civilians." Keen, *supra* note 12, at 36.

37. Furthermore, since the signing of the Lomé Peace Agreement, numerous flagrant breaches by the RUF have destroyed their credibility. HIRSCH, *supra* note 31, at 103, 105-06.

38. OFFICE OF TRANSITION INITIATIVES, U.S. AGENCY FOR INT'L DEV., SIERRA LEONE: "CONFLICT DIAMONDS"—PROGRESS REPORT ON DIAMOND POLICY AND DEVELOPMENT PROGRAM 5 (2001), at http://www.usaid.gov/hum_response/oti/pubs.html [hereinafter USAID Report].

39. *Id.*

to exporters and their agents.⁴⁰ Throughout the early part of the war, the smuggling of diamonds coexisted with the legitimate diamond trade, run mainly by Lebanese merchants whose system, albeit often corrupt, was most likely not part of the RUF war machinery.⁴¹ When the Lebanese merchants fled, a small cadre of diamond merchants remained that serviced only the RUF, giving the rebels the cover of legitimacy.⁴² The RUF's ability to smuggle and trade vast quantities of diamonds contributed to their campaign of violence, made peace attempts unstable, rendered U.N. sanctions far less effective, and continues to endanger the country's stability.

Diamond smuggling through Sierra Leone's porous borders has been aided by the complicity of neighboring governments such as Liberia.⁴³ Economic and political power in Liberia are intertwined and confined to a small circle comprised of Charles Taylor, the former president who stepped down from power in August 2003,⁴⁴ and a limited number of businessmen. This concentration of power has enabled them to aid actively RUF rebels through what a U.N. report referred to as a "covert sanctions-busting apparatus that includes criminal activity and the arming of the RUF in Sierra Leone."⁴⁵

40. *Id.* at 6.

41. *Id.*

42. *Id.*

43. See *Panel of Experts Report Pursuant to 1306*, *supra* note 35, ¶¶ 81-89; *Blood Diamonds*, BBC NEWS, Oct. 19, 2001, <http://news.bbc.co.uk/2/hi/programmes/correspondent/1604165.stm>; Norimitsu Onishi, *In Ruined Liberia, Its Despoiler Sits Pretty*, N.Y. TIMES, Dec. 7, 2000, at A1. Liberia's complicity led the Security Council to impose a ban on rough diamond exports from Liberia. See S.C. Res. 1343, U.N. SCOR, 56th Sess., 4287th mtg., ¶ 6, U.N. Doc. S/RES/1343 (2001).

44. As of the time of publication, it was unclear what effect Taylor's removal would have on the illicit diamond trade.

45. *Panel of Experts Report Pursuant to 1306*, *supra* note 35, ¶ 212; see also *id.* ¶¶ 180-273; GLOBAL WITNESS, TAYLOR-MADE: THE PIVOTAL ROLE OF LIBERIA'S FORESTS AND FLAG OF CONVENIENCE IN REGIONAL CONFLICT (2001), <http://www.globalwitness.org/reports/show.php/en.00021.html> [hereinafter TAYLOR-MADE]. The principals in the Liberian timber industry, which is also tied to the government, see *infra* Part V, have numerous links to international organized crime, particularly the mafia of states belonging to the former Soviet Union. Leonid Minin, reputed head of the Ukrainian mafia, is believed to be a central figure in the trafficking of arms to Liberia and to West Africa and was chairman of the Liberia-based Exotic Tropical Timber Enterprise. TAYLOR-MADE, *supra*, at 9-10. This company was one of the three investigated by the U.N. Panel of Experts on Sierra Leone for its involvement

Evidence of this widespread smuggling is apparent from the Liberian diamond production records. While the annual Liberian diamond mining capacity is between 100,000 and 150,000 carats, rough diamond imports to Antwerp from Liberia were recorded at 31 million carats between 1994 and 1998—an average of over 6 million carats per year.⁴⁶ In 2000, following the passing of Resolution 1306 banning the sale of rough diamonds from Sierra Leone,⁴⁷ Liberian diamond production increased 162.1% from 1999 production.⁴⁸ In the first quarter of 2001, diamond output increased over 75%.⁴⁹

Liberia's significant role in contributing to regional instability through diamond smuggling led to the enactment of Security Council Resolution 1343, which mandates that states take all necessary measures to prevent the import of rough diamonds from Liberia, whether or not those diamonds originated in Liberia.⁵⁰ The U.N. Panel of Experts determined that the smuggling of diamonds in violation of Resolution 1306 could not have been conducted "without the permission and the involvement of [Liberian] government officials at the highest level."⁵¹

The catastrophic effect that civil war has had on Sierra Leone cannot be understated. In the nineteenth and early twentieth centuries, Sierra Leone was full of promise, boasting an exceptional university and highly skilled civil servants. The state was unable to mount a formidable opposition to the RUF for years, and the depletion of its resources left it unable to provide fundamental services to its people or to pay civil ser-

in "a large amount of unrecorded extra-budgetary income to President Taylor for unspecified purposes." *Panel of Experts Report Pursuant to 1306*, *supra* note 35, ¶ 217. The others are the Oriental Timber Company (OTC) and Forum Liberia. *Id.* Minin was arrested in August 2000, and seized documents show that he was planning a shipment of weapons to Liberia. They also show that a payment for a weapons delivery was made from an account of a mother company of OTC. *Report of Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, U.N. SCOR, 56th Sess., ¶¶ 346-49, U.N. Doc. S/2001/1015 [hereinafter *Panel of Experts Report Pursuant to 1343*].

46. SMILLIE ET AL., *supra* note 29.

47. See *infra* notes 56-58 and accompanying text.

48. *Panel of Experts Report Pursuant to 1343*, *supra* note 45, ¶ 352.

49. *Id.*

50. See S.C. Res. 1343, *supra* note 43, at ¶ 6.

51. *Panel of Experts Report Pursuant to 1306*, *supra* note 35, ¶ 87.

vants.⁵² This intensified the enormous distrust of the government, the roots of which were well established by prewar corruption. The physical and psychological damage to the people of Sierra Leone has been devastating. The violent tactics used by the RUF were among the most shocking in recent history, systematically targeting civilians and children by either burning them alive in their houses or amputating their limbs and leaving them to die.⁵³ Thousands of children were unwillingly recruited into the RUF, where girls served as “wives” to soldiers, and boys were drugged and sent out to commit atrocities.⁵⁴ Approximately one million Sierra Leoneans were internally displaced, and 470,000 more have fled to Guinea and Liberia; the conflict uprooted 30% of the country’s 4.6 million people.⁵⁵

The atrocities of the Sierra Leone civil war and the key role of diamonds in fueling the conflict has generated a global response from organizations such as the United Nations, Global Witness, Oxfam, Fatal Transactions, and Amnesty International. In response, the U.N. Security Council passed Resolution 1306 in July of 2000, which imposed a ban on all direct and indirect imports of rough diamonds from Sierra Leone.⁵⁶

52. See HIRSCH, *supra* note 31, at 76-77. Upon his visit in June 1999, Hirsch noted that the minister of education was barricaded in his office to protect himself not from the RUF but from angry teachers. *Id.* at 77.

53. As of October 2001, there were an estimated 1,800 civilian and child amputees. *Conflict Diamonds: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 107th Cong. 48 (2001) (statement of Rory E. Anderson, Government Relations Manager, World Vision) [hereinafter Anderson Statement]. The RUF began its campaign of amputations in villages in the north as a warning to civilians against voting in the 1996 elections. See HIRSCH, *supra* note 31, at 44-45. In 1998, as northern Sierra Leone became a zone of terror, the RUF codenamed their attacks “Operation No Living Thing” to warn the population that the government and the Economic Community of West African States Monitoring Group (ECOMOG) were incapable of protecting them. *Id.* at 75.

54. For a moving account of four such children’s stories, see Norimitsu Onishi, *Children of War in Sierra Leone Try to Start Over*, N.Y. TIMES, May 9, 2002, at A14. The U.N. Children’s Fund estimates that 5,400 children were forced to fight with the RUF. *Id.*

55. Anderson Statement, *supra* note 53, at 58; see also *Blood Diamonds*, *supra* note 43 (quoting Tamba Lebie, a miner formerly from Kono who lost most of his family to the RUF: “It even got to the point where you hid from the rebels, from the militia and even the government soldiers.”).

56. S.C. Res. 1306, U.N. SCOR, 55th Sess., 4168th mtg., U.N. Doc. S/Res/1306 (2000).

Resolution 1306 exempted imports of rough diamonds whose origin is certified by the Sierra Leone government; it called upon the diamond industry to cooperate with the ban.⁵⁷ A panel of experts was also established to monitor the ban's implementation. Although a U.N.-backed certification system is in place,⁵⁸ it is often bypassed through lack of enforcement.⁵⁹

Currently, the war has ended in Sierra Leone, and the country has shifted its goals to sustaining peace and rebuilding its ravaged state. A peace accord was signed in May of 2001, although the peace process was continuously undermined by RUF mining and stockpiling of diamonds, which enabled the rebels to maintain a primary source of income and revenue more than sufficient to maintain a military effort.⁶⁰ In January of 2002, however, Sierra Leone announced its disarmament process complete. It held elections the following May, in which the RUF, the rebel movement's political party, failed to win even one seat in the Parliament.⁶¹

Although there are technically no more conflict diamonds in Sierra Leone since peace was declared, the trade of diamonds by the RUF and other illicit diggers continues to threaten the nation's peace and security. The conflict diamonds issue is not only about ending civil wars but also about ensuring they do not arise. The stability of the new government and civil society will depend on many factors. These include reintegration of the RUF and child soldiers now coming of age, training and funding of a new army and police force, restoring the public's trust in the government to provide services to the poor and pay its civil servants, and the success of

57. See *id.* For a discussion of certification efforts and the diamond industry's role in their creation and implementation, see *infra* Part IV.D and accompanying notes.

58. For discussion of the domestic efforts at creating certification systems in Sierra Leone and other countries, see *infra* Part IV.C and accompanying notes.

59. Norimitsu Onishi, *Africa Diamond Hub Defies Smuggling Rules*, N.Y. TIMES, Jan. 2, 2001, at A1 ("Under those rules, dealers can buy only from licensed diggers, but few diggers actually have licenses. And while the regulations call for rigid enforcement, neither the government nor the United Nations has taken any steps to make the new rules stick.").

60. See *Blood Diamonds*, *supra* note 43; see also *Panel of Experts Report Pursuant to 1306*, *supra* note 35, ¶¶ 79-80.

61. Danna Harman, *Sierra Leone: The Path from Pariah to Peace*, CHRISTIAN SCI. MONITOR, Sept. 18, 2002, 2002 WL 6428078.

two means of bringing justice to war victims: a war crimes tribunal and a truth commission, both based within Sierra Leone. Stability will also depend on whether this time the diamond trade can be controlled effectively and responsibly by the government. Diamonds were by no means the sole cause of civil war in Sierra Leone, but the government's corrupt use of the diamond mines and its subsequent inability to control the resource as it fell into even more dangerous hands contributed to both the greed and the grievances behind years of violence and turmoil. Efforts to rebuild the state will depend in large part on the government's control over the resource and its ability to use it responsibly. Domestic and international endeavors to curb the flow of illicit diamonds from Sierra Leone will continue to play an important role in maintaining the peace process and stifling the renewal of rebel activity.

B. *Angola*

Until little over a year ago, the ruling Popular Movement for the Liberation of Angola (MPLA) party and the rebel group National Union for the Total Independence of Angola (UNITA) had been fighting for control of the state almost consistently since Angola's independence from Portugal in 1975.⁶² After UNITA rejected the possibility of an MPLA victory in the 1992 elections, a resumption of violence ravaged the country, destroying its infrastructure and killing approximately 182,000 people between May and October of 1993.⁶³ Although 1996–1998 brought many positive developments in the war, such as the Lusaka Protocol, UNITA repeatedly breached the Protocol and U.N. Security Council resolutions, building up formidable warfare capacity and preparations.⁶⁴ It became evident that UNITA leader Jonas Savimbi had been using the Lusaka peace process to undertake a major rearmament while significant numbers of combatants remained in hiding in preparation for a major offensive.⁶⁵ In 1999, the government captured the crucial UNITA strongholds of

62. A ROUGH TRADE, *supra* note 32, at 1.

63. *Id.*

64. *Final Report of the Monitoring Mechanism on Angola Sanctions*, U.N. SCOR, 55th Sess., ¶¶ 8-10, U.N. Doc. S/2000/1225 (2000) [hereinafter *Final Report*].

65. *Id.*

Andulo and Bailundo and forced Savimbi into exile.⁶⁶ This offensive cost UNITA key diamond-mining areas.⁶⁷ On February 22, 2002, Savimbi was killed, and on April 4, 2002, the Angolan government and UNITA declared a cease-fire and began yet another attempt to establish peace. UNITA converted into a political party, electing Isaias Samakuva in June 2003 to lead the party.⁶⁸

Diamonds played an enormous role in funding the UNITA military. One of Africa's largest diamond resources, the Angolan diamond output was under the near-exclusive control of UNITA from 1992 to 1996.⁶⁹ Between 1992 and 1998, UNITA obtained an estimated minimum revenue of between \$3.7 and \$4 billion from diamond sales.⁷⁰ With the money from these sales, UNITA continued to purchase arms and build up its military capacity in defiance of the Lusaka Protocol. Faced with the obvious link between the diamond industry and the continuing conflict in Angola, the U.N. Security Council passed Resolutions 1173 and 1176, which prohibit the direct or indirect export of "unofficial" Angolan diamonds, i.e. diamonds not accompanied by a government-issued certificate of origin.⁷¹

More than a source of funding, diamond control may have often been a goal of the conflict: Two of UNITA's major wars were launched at a time of significant recession in the diamond industry, and during the 1997 recession, UNITA withdrew from the Cuango Valley mines, cutting back supplies in an overstocked industry.⁷² During each major war, UNITA attempted to close down Angola's official mining industry, following a pattern of steadily attacking government mining

66. *Id.* ¶ 10.

67. *Id.* ¶ 11.

68. *Timeline: Angola*, BBC NEWS, June 28, 2003, available at http://news.bbc.co.uk/2/hi/africa/country_profiles/1839740.stm.

69. *See id.* ¶ 145.

70. *See A ROUGH TRADE*, *supra* note 32, at 5 (estimating \$3.72 billion between 1992 and 1998, excluding interest generated in overseas bank accounts); Mark Duffield, *Globalization, Transborder Trade, and War Economies*, in *GREED & GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS*, *supra* note 3, at 69, 84.

71. S.C. Res. 1173, U.N. SCOR, 53d Sess., 3891st mtg., U.N. Doc. S/RES/1173 (1998); S.C. Res. 1176, U.N. SCOR, 53d Sess., 3894th mtg., U.N. Doc. S/RES/1176 (1998).

72. *Final Report*, *supra* note 64, ¶ 146.

projects.⁷³ This tactic made it extremely difficult for the government to reap any profit from its diamond resources and turned government mining projects into “a war zone, with buildings protected by sandbags and high security convoys traveling the roads between base camp and mine site.”⁷⁴

The gains made by the Angolan government in 1999 hampered UNITA’s ability to produce major quantities of diamonds but still allowed it to reap formidable profits and fund a serious guerilla offensive. Investigations of the Angolan diamond trade revealed that diamond exports in small quantities were prevalent, usually by air, through other countries such as Zambia.⁷⁵ UNITA sold diamonds to smaller traders, who acted as agents to larger diamond cutters, buying African diamonds from a range of countries.⁷⁶ These diamonds were “moved via tax havens from the first trader to the second” and thoroughly concealed upon arrival at their second destination.⁷⁷ Such sales could take place in any country with a small diamond market.⁷⁸ Although likely decreasing since 1999, when the estimated production was almost certainly larger than \$150 million, lower production may not have hurt UNITA, which was and may continue to be trading from a stockpile.⁷⁹ This supply is most likely small but high in value, with predominantly higher quality stones.⁸⁰ The issue is, therefore, not UNITA’s access, or lack thereof, to diamonds, but its access to a market; a system of mining and stockpiling

73. See *id.* ¶ 147 (“The timing of UNITA’s military activities in relation to economic crises in the diamond trading sector suggests an altogether closer relationship between UNITA and elements of the diamond trade than has yet been explored.”).

74. *Id.* ¶ 148.

75. A ROUGH TRADE, *supra* note 32, at 4.

76. *Final Report*, *supra* note 64, at ¶ 177.

77. *Id.*

78. See *id.* This report also provides a deeper discussion of the role of other countries in the UNITA smuggling process. See *id.* ¶¶ 194-202.

79. *Id.* ¶ 171. UNITA diamonds are not, and may very well never have been, traded primarily on open markets, but instead are sold directly to cutters and can be stockpiled by buyers; these trades would not be visible on the world markets. *Id.*

80. *Id.* ¶ 172. Strategically, UNITA targeted at least three of the highest-value areas in Angola for mining: Cuango, Malange, and Mavinga. *Id.*

high-value stones has facilitated UNITA's ability to find buyers in the past and may continue to do so in the future.⁸¹

Savimbi's death set into action a series of events that would eventually lead to the April 4, 2002, ceasefire between the Angolan government and UNITA.⁸² This ceasefire, however, is merely the beginning of what will likely be a long and arduous process toward a sustainable peace. It has been barely a year since the peace process entered what U.N. Special Representative Ibrahim Gambari called "a very critical stage" in a September 2002 meeting with reporters.⁸³ The difficult transformation from a war economy to a peacetime economy has revealed a substantial humanitarian crisis, particularly with regard to the demobilization of UNITA rebels and the return of refugees and internally displaced Angolans.⁸⁴ Many are concerned that the Angolan government cannot trust UNITA given the fragile economic conditions of the present and the broken agreements of the past,⁸⁵ most notably the Lusaka Protocol and UNITA's subsequent secret purchase of arms that enabled it to reignite hostilities in 1998.⁸⁶

Another concern, however, is whether the government itself can be trusted to handle diamond resources responsibly. Government misuse of revenues from oil has drawn severe criticism. Oil revenue is the Angolan government's primary source of income, accounting for approximately 70 to 89% of government revenue between 1995 and 1999 and \$3.26 billion

81. *See id.*

82. For a description of the resulting agreement, see Swarns, *supra* note 25.

83. UN: "Angola Peace Process at Very Critical Stage," AFROL.COM, Sept. 12, 2002, at http://www.afrol.com/News2002/ang022_peace_food.htm.

84. *Id.*

85. *See* IAN SMILLIE, THE KIMBERLEY PROCESS: THE CASE FOR PROPER MONITORING 7 (P'ship Afr. Can., The Int'l Peace Info. Serv. & Network Movement for Justice and Dev., Occasional Paper No. 5, 2002), available at <http://www.partnershipafricacanada.org/> ("[A]fter 40 years of resource-based war, it would be premature to say that the danger of conflict diamonds in Angola has ended forever.").

86. UNITA leaders, however, seem anxious to portray the image of a fresh start under new leadership. *See* Rachel L. Swarns, *Angola's Fragile Peace Rests on a New Guerilla Leader*, N.Y. TIMES, Apr. 10, 2002, at A19 (quoting new UNITA leader General Paulo Lukamba as stating, "We start a new era, the era of cooperation. The past of military confrontation is already past. We are sure that from now on Unita and the commanders I am leading are ready to fulfill what are our duties in this agreement.").

of government revenue in 2000.⁸⁷ Angola's oil is in offshore reserves, which keep it from disputed territory and within government control.⁸⁸ The Angolan people, however, see little benefit from this resource and the investment it brings. Because of the lack of transparency in oil revenue use, military and other government spending is able to mask corruption and misuse of funds.⁸⁹ The International Monetary Fund (IMF) has been investigating the disappearance of \$4 billion in government oil revenues over five years, almost \$1 billion of which vanished in 2001 alone.⁹⁰ The IMF attributed the disappearing funds to pervasive corruption,⁹¹ echoing the concerns of NGOs that accused the Angolan government of "wholesale state robbery."⁹² With the lack of transparency demonstrated in the Angolan oil trade, there is the real possibility that corruption within the government could extend to the diamond industry, creating further conflict within Angola. As one Nigerian news source stressed after Savimbi's death, "What is uncertain, is whether the heavy deposit of diamonds will not give rise to a thousand Savimbis."⁹³

87. HUMAN RIGHTS WATCH, *THE OIL DIAGNOSTIC IN ANGOLA: AN UPDATE 1* (Mar. 2001), available at <http://www.hrw.org/background/africa/angola/>; OXFAM INT'L, *ANGOLA'S WEALTH: STORIES OF WAR AND NEGLECT 10* (2001), available at www.oxfam.org.uk/policy/papers/angola/angola.html [hereinafter *ANGOLA'S WEALTH*]. It is notable that the United States spent about \$60 million per year in the late 1980s supporting UNITA. See Rachel L. Swarns, *Oil Abounds, Misery Too: A Case Study*, N.Y. TIMES, Jan. 14, 2001, § 4 (Week in Review), at 6.

88. See *ANGOLA'S WEALTH*, *supra* note 87, at 9.

89. See *id.* at 10-12; see also GLOBAL WITNESS, *ALL THE PRESIDENTS' MEN 36*, Mar. 25, 2002, available at <http://www.globalwitness.org/reports/show.php/en.00002.html> [hereinafter *ALL THE PRESIDENTS' MEN*]; Swarns, *supra* note 87; Rachel L. Swarns, *Angola's Goal: Stepping Back from the Abyss*, N.Y. TIMES, Dec. 24, 2000, at A1.

90. *IMF Probes Angola's Oil Sales*, BBC News, Apr. 30, 2003, available at <http://news.bbc.co.uk/2/hi/business/2986557.stm>; see also Declan Walsh, *Billions of Dollars Simply Vanish; Angolan Government Accused of "State Robbery," HAMILTON SPECTATOR*, Aug. 24, 2002, LEXIS, News Library, Hamilton Spectator (Canada) File.

91. See *IMF Probes Angola's Oil Sales*, *supra* note 90.

92. *ALL THE PRESIDENTS' MEN*, *supra* note 89, at 3.

93. *So Long Jonas, May You Not Wake Up*, THE NEWS (Nigeria), Mar. 11, 2002, LEXIS, News Library, Global News Wire-Asia Africa Intelligence Wire File.

C. *Democratic Republic of Congo*

Although various reasons account for the commencement of conflict in the D.R.C., both the cause and the sustenance of the conflict have generated numerous economic agendas. Suspicions of this development led to the creation of a U.N. Panel of Experts to report on the exploitation of resources in the D.R.C.⁹⁴ A U.N. report dated November 13, 2001, found that the civil war in the D.R.C., deemed “Africa’s First World War,”⁹⁵ has become a “sporadic, low-intensity conflict [creating] a certain status quo . . . in this region where many precious resources are extracted, traded, and routed for export.”⁹⁶ Among the resources being exploited are diamonds, timber, gold, copper, cobalt, and coltan, a mineral used in the aerospace industry. The report revealed that the war acts as a cover for many Congolese officials to profit illicitly.⁹⁷ Peace, it asserted, might bring calls for greater transparency and accountability in the industries and thus would be adverse to the interests of those profiting from war.⁹⁸ The report concluded, “[T]here is a clear link between the continuation of the conflict and the exploitation of natural resources. It would not be wrong to say that one drives the other.”⁹⁹

The D.R.C. is an unusual situation, however, in that both internal and international actors have been involved in the conflict and have used the conflict to extract resources from the D.R.C. The conflict has included intervening military forces from Uganda, Rwanda, and Burundi (who have supported Congolese rebels), as well as Angola, Namibia, and Zimbabwe (who have supported the Congolese government).

94. *Statement by the President of the Security Council*, U.N. SCOR, 55th Sess., 4151st mtg. at 1, U.N. Doc. S/PRST/2000/20 (2000).

95. *DR Congo “Looters” Condemned*, BBC NEWS, Nov. 20, 2001, available at <http://news.bbc.co.uk/1/hi/world/africa/1665952.stm>.

96. *Addendum to the Report by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, U.N. SCOR, 56th Sess., ¶ 58, U.N. Doc. S/2001/1072 (2001) [hereinafter *Congo Report*].

97. *Id.* ¶ 60; see also Mwanasali, *supra* note 18, at 145 (describing coffee, timber, gold, diamonds, and other agricultural products as key primary commodities used by belligerents in their “personal enrichment scheme” in the D.R.C.).

98. *Congo Report*, *supra* note 96, ¶ 60.

99. *Id.* ¶ 147.

It is further complicated by militias acting as proxies for the international actors, such as the non-Congolese Hutu rebel forces (ALR) that masterminded the Rwandan genocide, the Congolese Mai-Mai units, and Burundi rebels (FDD), all of whom are supported by the Congolese and Zimbabwean governments.¹⁰⁰ The report notes that “[t]he military operations and presence in the Democratic Republic of the Congo of all sides have been transformed into self-financing activities.”¹⁰¹ In such a situation, it is difficult to target a particular group of diamond exports, since several parties are involved in their trade. A U.N. Security Council resolution targeting any particular rebel group or international actor would involve a political decision as to who should win the war, a decision the Security Council may not be in a position to make in such a volatile and complicated situation.¹⁰² Furthermore, it may be ineffective to target diamonds specifically since other resources, particularly coltan, are already being used to fund the conflict and could be substituted if the diamond trade were halted.¹⁰³ Although there is no current Security Council resolution banning the trade of any of these resources with the D.R.C., the report recommended a moratorium on the purchase and import of these resources from any area where foreign or rebel troops are present in the D.R.C. and the implementation of local measures to monitor the industries.¹⁰⁴

After protracted unproductive peace talks,¹⁰⁵ Burundi, Angola, Uganda, and Rwanda have agreed to pull their forces

100. For further discussion of the current state of conflict and disarmament efforts in the D.R.C., see INT’L CRISIS GROUP, *DISARMAMENT IN THE CONGO: JUMP-STARTING THE DDRRR TO PREVENT FURTHER WAR* (2001), available at <http://www.intl-crisis-group.org/projects/showreport.cfm?reportid=509>.

101. *Congo Report*, *supra* note 96, ¶ 147.

102. These issues relate directly to how the international community defines a conflict diamond, discussed *infra* Part IV.B and accompanying notes. For a more in-depth discussion of the problems involved in defining and regulating conflict diamonds, see CHRISTIAN DIETRICH, *WHAT ARE CONFLICT DIAMONDS?* (manuscript on file with author).

103. See Telephone Interview with Johan Peleman, Director of the International Peace Information Service, Member of the U.N. Panel of Experts on Sierra Leone Diamonds and Arms (Jan. 9, 2002) (notes on file with author).

104. See *Congo Report*, *supra* note 96, ¶¶ 156-57, 159.

105. Norimistu Onishi, *Congo Peace Negotiations End Without Accord After 7 Weeks*, N.Y. TIMES, Apr. 20, 2002, at A2.

out of the D.R.C.¹⁰⁶ Almost immediately after the Rwandan troops withdrew, however, fighting began between tribal warriors.¹⁰⁷ The potential breakdown has led one U.N. official to predict “a period of local anarchy . . . that will go on for some time.”¹⁰⁸ A new constitution has been signed and a transitional government put into place to lead the country until democratic elections, scheduled for 2005. But in much of the country, particularly the northeastern region, rebels have carved out separate fiefdoms where they continue to battle over the mineral-rich territory.¹⁰⁹ In the coming months, resource control may be the key to resolving tribal disputes in the D.R.C. and to maintaining a peaceful resolution to the conflict.

IV. CONFLICT DIAMONDS

A. *Introduction: Chasing Solutions Through the Diamond Pipeline*

Despite U.N. sanctions on Sierra Leone, Angola, and Liberia, diamond smuggling from these areas continues to destabilize the region. This is in part made possible by the unique structure of the diamond industry. It is impossible to discuss the diamond industry without reference to the De Beers Group and its Central Selling Organization (CSO).

106. On January 9, 2002, the Burundi president made a formal commitment to withdraw troops from the D.R.C. He also announced that Congolese authorities had promised measures to ensure their territories would not be used to attack Burundi. Burundi troops had been in the D.R.C. since 1998 to guard against attacks by Burundi rebel forces (FDD). *Bujumbura to Withdraw Troops from Congo*, U.N. INTEGRATED REGIONAL INFO. NETWORK, Jan. 9, 2002, at http://www.irinnews.org/report.asp?ReportID=18643&SelectRegion=Great_Lakes&SelectCountry=BURUNDI-DR. In early September 2002, Uganda and Rwanda agreed to withdraw their forces and began to do so within weeks. See James Lamont & Mark Turner, *Congo Peace in the Balance Despite Start of Rwandan Troop Withdrawal*, FIN. TIMES (London), Sept. 24, 2002, LEXIS, News Library, Financial Times (London) File; *Leaders of Uganda and Congo Sign an Accord to Bring Peace*, N.Y. TIMES, Sept. 8, 2002, at A19. The agreement with Rwanda is contingent upon the D.R.C. fulfilling a pledge to help disarm and send the Hutu militia back to Rwanda. *Id.*

107. Lamont & Turner, *supra* note 106; Matthew Green, *Clashes Erupt in Congo After Rwandan Troops Leave*, SAN DIEGO UNION-TRIB., Sept. 20, 2002, LEXIS, News Library, San Diego Union-Tribune File.

108. See Lamont & Turner, *supra* note 106.

109. See Matheson, *supra* note 27.

“The De Beers group of companies mines, or partners in mining, the majority of the world’s diamonds . . . De Beers purchases by far the majority of all diamonds produced, and more or less sets the price of rough diamonds on the global market.”¹¹⁰ Through the CSO, headquartered in London, De Beers is able to manipulate the supply and demand of diamonds, attaining diamonds from De Beers mines as well as non-De Beers firms.¹¹¹ These diamonds are then sold at multiple annual “sights” (sales) to “sightholders.” The sightholders are presented with mixed parcels of diamonds, which may include stones from several countries.¹¹² Sightholders transport the diamonds to other cities, where they are re-sorted and repackaged for cutting and polishing or sale.

The chain of sales, or “Diamond Pipeline,” is often criticized for facilitating diamond smuggling. The number of middlemen in the trading process often makes it quite difficult to trace the movement of diamonds.¹¹³ A single diamond may be resold many times before ultimately reaching a retail customer, and as it proceeds down the pipeline, the frequency of transactions and number of small businesses involved increases radically, while the monetary size of a typical transaction diminishes.¹¹⁴ In addition, diamonds are continuously sorted, mixed, and resorted throughout the pipeline in order to fit various commercial requirements.¹¹⁵ Because it may be difficult to identify the true origins of the diamonds De Beers buyers are offered, tracing diamond smuggling becomes increasingly difficult as diamonds travel further down the pipeline. Perhaps in response to international pressure, De Beers has closed its offices in Sierra Leone and has ceased to buy on the outside market.¹¹⁶

110. SMILLIE ET AL., *supra* note 29, at 3.

111. *See id.*

112. *Id.* Sightholders are designated by De Beers, and parcels are purchased by sightholders without being seen first. *Id.*

113. *See A ROUGH TRADE*, *supra* note 32, at 7.

114. *Trade in African Diamonds: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 106th Cong. 58-60 (2000) (statement of Jeffrey Fischer, President, Diamond Manufacturers and Importers Association of America).

115. *Id.* at 58, 60.

116. *See Africa’s Diamonds: Precious, Perilous Too?: Hearing Before the Subcomm. on Afr. of the House Comm. on Int’l Relations*, 106th Cong. 97-98 (2000)

Critics often accuse the industry of contributing to the ease and proliferation of smuggling through its lack of transparency. The trade of rough diamonds is primarily centered in Antwerp, with over half of CSO sightholders residing in the city.¹¹⁷ The Diamond High Council (HRD), a nonprofit umbrella agency, represents the Belgian diamond industry's interests.¹¹⁸ When diamonds enter Belgium and are declared to customs officials, the Ministry of Economic Affairs and the HRD Diamond office must license them for import.¹¹⁹ The HRD, however, records the origin of a diamond as the country from which the diamond was last exported, not the country from which the diamond was actually mined.¹²⁰ In addition, due to E.U. laws, once diamonds are imported into the European Union they no longer require an import license into Belgium.¹²¹ The U.N. monitoring mechanism on the Angola

(written testimony of De Beers Consolidated Mines Ltd. & De Beers Centenary AG) [hereinafter De Beers Testimony]. Prior to these efforts, Tom Tweedy, a De Beers spokesman, was quoted as saying, "The buying offices are open to all comers and unless an offerer of diamonds openly showed his affiliation we wouldn't be aware of it." Chris McGreal, *UNITA "Sells De Beers Illegal Diamonds,"* THE GUARDIAN, Mar. 4, 1993, LEXIS, News Library, Guardian (London) File.

117. See SMILLIE ET AL., *supra* note 29, at 3; A ROUGH TRADE, *supra* note 32, at 14.

118. See SMILLIE ET AL., *supra* note 29, at 3.

119. *Id.*

120. *Id.* at 4.

121. See *Final Report*, *supra* note 64, ¶¶ 196-97; Myriam Vander Stichele, Centre for Research on Multinational Corporations (SOMO), *Presentation of the Report "Conflict Diamonds: Crossing European Borders,"* in EU CONTROL OF DIAMOND IMPORTS FROM AFRICAN COUNTRIES IN CONFLICT: REPORT OF THE EUROPEAN UNION EXPERT MEETING, SEPTEMBER 25, 2001, at 9, at <http://www.niza.nl/fataltransactions/docs/ExpertMeeting20010925.PDF>; see Telephone Interview with Johan Peleman, *supra* note 103; Interview with Mark Van Bockstael, Director International Affairs, HRD and Chairman, Technical Committee, World Diamond Council (Oct. 19, 2001). Instead of a re-export system, the European Union is considering adopting an intra-European monitoring system or creating a specific, European, industry-driven chain of warranties. See INGRID J. TAMM, DIAMONDS IN PEACE AND WAR: SEVERING THE CONFLICT-DIAMOND CONNECTION 28 (World Peace Found., WPF Report 30, 2002).

Within Europe, Switzerland's tax-free zones . . . provide a major route into cutting centers. The majority of diamonds moved through Switzerland originate with De Beers, which [imports these] diamonds . . . to the United Kingdom, and also [re-exports] them through Switzerland, for tax purposes, leading to the anom-

sanctions also noted that the complexity of gathering information on UNITA diamond smuggling was made more complicated by the lack of industry transparency, the absence of paper trails, and industry statistics that are not standardized.¹²²

In response to the global outcry against conflict diamond smuggling, many solutions have been proposed. A widely suggested possibility was for the diamond industry or customs officials to identify diamonds by their area of origin through physical characteristics, thereby enabling the exclusion of diamonds identified as originating in areas under rebel control.¹²³ This method would determine the origin of a diamond using one or several of the following analyses: visual features of rough or polished diamonds, physical properties such as infrared and luminescence, or detailed chemical composition analysis.¹²⁴ Another suggestion has been to “tag” diamonds with some sort of identification number or label, ensuring only legitimate, labeled diamonds are traded.¹²⁵

These methods have been consistently opposed by the diamond industry as unrealistic and unfeasible.¹²⁶ According to

ally that in the United Kingdom almost all diamonds imported are said to originate in Switzerland.

Final Report, *supra* note 64, ¶ 198. “Within the Swiss tax-free zones, diamonds may be re-sorted, mixed into new parcels, and then re-exported, . . . [but] there is no obligation to record the country of origin.” *Id.* ¶ 200.

122. *Final Report*, *supra* note 64, ¶ 179.

123. For an in-depth discussion of this view, as well as its technological possibilities, see GLOBAL WITNESS, CONFLICT DIAMONDS: POSSIBILITIES FOR THE IDENTIFICATION, CERTIFICATION AND CONTROL OF DIAMONDS 7-14 (2000), at <http://www.globalwitness.org/reports/show.php/en.00005.html>. [hereinafter POSSIBILITIES FOR IDENTIFICATION].

124. *Trade in African Diamonds: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means*, *supra* note 114, at 76 (statement of William E. Boyajian, President, Gemological Institute of America) [hereinafter Boyajian Statement] (describing his institution’s research into the feasibility of identifying diamonds through these means).

125. POSSIBILITIES FOR IDENTIFICATION, *supra* note 123, at 20-27.

126. On July 19, 2000, the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association issued a joint resolution in which they recognized that “rough diamonds individually are not sufficiently determinable as to source and origin” and “[t]here is no implementable means of tagging, tracking and identifying finished polished diamonds.” World Diamond Council, Joint Resolution: World Federation of Diamond Bourses and International Diamond Manufacturers Association (July 19, 2000), at www.worlddiamondcouncil.com/antwerp.shtml. Since then, the diamond industry has repeatedly opposed this course of action.

diamond industry spokespeople, the qualities of diamonds and the structure of the industry make it extremely difficult to identify reliably a diamond by its source without imposing an unbearable burden on the industry.¹²⁷ When diamonds are formed, those “originally emplaced in several primary deposits (in one or more countries) could be weathered out of their original host rock, be transported by rivers, and become concentrated in [secondary deposits].”¹²⁸ This has several implications: Even if identifying characteristics existed for the diamonds of a particular deposit, these features may be lost due to weathering in the course of their transport to secondary deposits; in addition, a single secondary deposit in a conflict country may contain diamonds with characteristics distinctive of several primary deposits in other countries.¹²⁹

The structure of the diamond trade imposes several additional obstacles for these methods. Identification of the origin of diamonds relies heavily on the diamonds’ integrity as a parcel—like the pieces of a puzzle, they must be studied together to reveal their origin.¹³⁰ Yet as diamonds are passed through the industry pipeline, they are constantly resorted, making it much more difficult to discern the origin of any individual diamond.¹³¹ Perhaps most importantly, in order to determine whether the characteristics of any individual diamond are in-

See, e.g., De Beers Testimony, *supra* note 116, at 96 (arguing that the suggestion of identifying diamonds based on physical characteristics is an “illusory solution” that “ignores the complexities of the diamond industry”); *id.* at 97; *Trade in African Diamonds: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means, supra* note 114, at 39, 43-44 (statement of Matthew A. Runci, President and Chief Executive Officer, Jewelers of America, Inc.) [hereinafter Runci Statement] (arguing that there are no scientific means available to determine reliably the origin of individual diamonds in a nondestructive way, and that such a requirement would impose unnecessary hardship on the diamond industry).

127. *See* De Beers Testimony, *supra* note 116, at 96-97; Runci Statement, *supra* note 126, at 39, 43-44.

128. Boyajian Statement, *supra* note 124, at 75.

129. *Id.* at 75-76.

130. *See* Telephone Interview with Professor Jeffrey Harris, University of Glasgow (Sept. 21, 2001) (notes on file with author). Professor Harris is recognized by the Foreign and Commonwealth Office of the British Government as an independent expert on diamond identification, with respect to the U.N. sanctions program against illegal sales. *See also* Boyajian Statement, *supra* note 124, at 75-77.

131. *See* Boyajian Statement, *supra* note 124, at 76.

dicative of those from a particular region, they must be compared with a large database of information about that region.¹³² Such a database is lacking in many developing regions, such as Sierra Leone, Angola, and the D.R.C.¹³³ The alluvial nature of many of the Sierra Leone, Angola, and D.R.C. diamonds makes collection of data additionally difficult due to the lack of control over production that is typical in alluvial mines.¹³⁴ Furthermore, physical and chemical identification methods, as well as tagging methods, would be highly time consuming and thus might be prohibitively expensive to the diamond industry given the sheer quantity of diamonds produced, many of which are less than a single carat.¹³⁵

As a result of these obstacles, the concepts of diamond identification and tagging have been discarded in favor of a certification and control system, whereby diamond exports would be accompanied by a certificate issued by each government guaranteeing that the diamonds in question had not originated in conflict areas. Because of the intricacies of the diamond industry and its reliance on international trade, the most feasible solutions must involve three actors working in concert: the international community (including both national governments working in concert and the United Nations), domestic governments, and the diamond industry.

The following sections analyze the efforts made by these bodies to reduce the trade in conflict diamonds through an international certification system, domestic controls, and industry measures to ensure the system's effectiveness. This analysis illustrates three significant obstacles to controlling the conflict diamond trade: (1) lack of monitoring and enforcement of compliance with the standards of the certification system that have been set by the Kimberley Process; (2) the certification system's inherent reliance on successful internal controls by countries where conflict diamonds originate and their neighboring countries, a reliance that threatens to render the system moot if it fails to take into account the strong schemes

132. *See id.*

133. *See* Telephone Interview with Professor Jeffrey Harris, *supra* note 130.

134. *See* Boyajian Statement, *supra* note 124, at 77. For further discussion of the artisanal mines of these areas and the challenges to controlling and recording their output, see *infra* Part IV.D and accompanying notes.

135. *See* Telephone Interview with Professor Jeffrey Harris, *supra* note 130.

of smuggling and corruption and the crucial need for infrastructure and resources to battle these schemes; (3) the difficulty in developing a coherent definition of a “conflict diamond” that responds to the realities of the international backdrop against which conflict takes place.

B. *International Certification and the Kimberley Process*

Because the various domestic import and export systems have created loopholes within the diamond industry, a global approach is necessary to root out diamond smuggling. Although many countries, such as Sierra Leone, Guinea, Angola, and the D.R.C., have set up certification schemes to control the diamond market,¹³⁶ the cross-border nature of the diamond industry requires an international system to ensure that these controls are given effect.¹³⁷

The United Nations has played an important role in encouraging and, at times, compelling members of the international community to take action to prevent the trade of conflict diamonds. The United Nations first recognized the role diamonds play in fueling conflicts in General Assembly Resolution 55/56 of December of 2000.¹³⁸ The Security Council has given some force to this recognition by establishing panels of experts to research the role of diamonds in various specific conflicts and to publish reports. These reports not only draw international attention to the issue of conflict diamonds but also establish a valuable pool of information from which decisions can be made by the United Nations, the diamond industry, and individual governments.

136. For further discussion of the more well-established systems in Sierra Leone and Angola, see *infra* Part IV.D. and accompanying notes.

137. “The urgent need to cut off RUF revenue from their sales of diamonds, and also to protect the legitimate diamond industry of Sierra Leone are complicated and difficult tasks which require a systematic and coordinated approach from many governments, national and international agencies, companies and civil society organizations.” GLOBAL WITNESS, BRIEFING DOCUMENT, APRIL 25TH 2001: REVIEW OF THE SIERRA LEONE DIAMOND CERTIFICATION SYSTEM AND PROPOSALS AND RECOMMENDATIONS FOR THE KIMBERLEY PROCESS FOR A FULLY INTEGRATED CERTIFICATION SYSTEM (FICS) 2 (2001), at <http://www.globalwitness.org/campaigns/diamonds/downloads/SIERRA%20LEONE%20REPORT2.doc> [hereinafter SIERRA LEONE REVIEW].

138. G.A. Res. 55/56, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/56 (2001).

Security Council resolutions have also played an active role in responding to and shaping the conflict diamond agenda. These resolutions contribute to international awareness by recognizing situations in which the trade of diamonds has become a threat to international peace and security and, perhaps most importantly, by preventing the international community from trading conflict diamonds from these countries.¹³⁹ While imposing trade bans on conflict diamonds from Sierra Leone and Angola, the United Nations was careful to distinguish between those diamonds traded by rebels and those by the official government, targeting only the former. To do so, it mandated the creation of a certification system in these countries that would ensure only diamonds mined in government-controlled areas were traded, and it encouraged all states and the diamond industry to assist in the creation of such a certification system.¹⁴⁰

The international cooperation envisioned by the United Nations has taken the form of the Kimberley Process, a program of voluntary negotiation among state governments to build an international Kimberly Process Certification Scheme (KPCS) for the import and export of rough diamonds. The Kimberley Process is a global endeavor to accomplish a substantial task—the control of a highly lootable, easily smuggled resource. In response to this formidable task, participant governments are attempting to create and implement a system whereby a rough diamond must be exported through a series of standardized international controls requiring a certification issued by the exporting government ensuring that the rough diamond did not originate in a conflict area. The KPCS thus consists of three basic elements: a system of internal controls from the mine to the point of export;¹⁴¹ requirements for shipping rough diamonds; and a system to track the movement of rough diamonds after the point of export.¹⁴²

139. See S.C. Res. 1306, *supra* note 56; S.C. Res. 1173, *supra* note 71; S.C. Res. 1176, *supra* note 71; S.C. Res. 1343, *supra* note 43.

140. See S.C. Res. 1306, *supra* note 56, at ¶¶ 2, 13; see also S.C. Res. 1173, *supra* note 71; S.C. Res. 1176, *supra* note 71.

141. For further discussion of these internal controls, see *infra* Part IV.D and accompanying notes.

142. See Interview with Cecilia Gardner, General Counsel for the World Diamond Council and Executive Director of the Jeweler's Vigilance Committee, in New York, N.Y. (Oct. 3, 2001) (notes on file with author).

This significant undertaking has incorporated not only participant states but also the United Nations and the diamond industry. The Kimberley Process was endorsed by the General Assembly in Resolution 55/56, and it maintains a strong relationship with the United Nations, making regular reports to the General Assembly and seeking its endorsement and resources in the implementation of the KPCS. Working closely with the diamond industry, Kimberley Process participants receive reports and recommendations from the World Diamond Council (WDC), an international body chartered by the World Federation of Diamond Bourses and the International Diamond Manufacturers Associations for the sole purpose of developing and implementing a comprehensive scheme to restrict the trade in conflict diamonds while minimizing the impact on the legitimate diamond industry.¹⁴³ The WDC acts as the voice of the diamond industry in the Kimberley Process.

Since drawing a “roadmap” for its progress, Kimberley Process participants have met several times, drawing increasing numbers of state officials, nongovernmental organizations, and recommendations from the WDC. The Kimberley Process is divided into two phases: (1) the establishment of minimum acceptable international standards for national certification schemes of import and export of rough diamonds, and (2) the implementation of an agreed system of monitoring and enforcement.¹⁴⁴ The first phase of the Kimberley Process was completed substantially by late November 2001 when, after over a year of collaboration between governments, NGOs, and the diamond industry, a working document outlining a global certification scheme was produced. The working document, “Essential Elements of an International Scheme of Certification for Rough Diamonds, with a View to Breaking the Link Between Armed Conflict and the Trade in Rough Diamonds,” was sent to the General Assembly in March 2002, with a recommendation that the United Nations “take action to support the implementation of the international certification scheme for rough diamonds as an instrument that would help to promote legitimate trade and ensure the effective implementation of

143. Runci Statement, *supra* note 126, at 41.

144. See The Kimberley Process Official Website, at <http://www.kimberleyprocess.com/background.asp>.

the relevant Resolutions of the United Nations Security Council.”¹⁴⁵ On March 13, 2002, the General Assembly issued a resolution expressing firm support for the document.¹⁴⁶ On November 5, 2002, in a meeting held in Interlaken, Switzerland, forty nations, including the United States, committed to the Kimberley Process by January 1, 2003.¹⁴⁷ The United States was reportedly pressuring other nations to implement the Kimberley Process by that date.¹⁴⁸ In April 2003, however, the deadline for meeting membership requirements was extended to the end of July. As of August 1, 2003, fifty-four countries, including the United States, Angola, and Sierra Leone, officially qualified as participants.¹⁴⁹ Those not qualifying are banned from trading rough diamonds with Kimberley Process Participants as of August 31, 2003, until their own implementing legislation is put into place.¹⁵⁰

The key aspects of the KPCS are outlined below:¹⁵¹

- **Exporting Requirements:** Participants must ensure that a duly validated certificate accompany all rough diamond exports. The certificate must meet certain minimum requirements: Each certificate should bear the Kimberley Process logo and guarantee, be tamper and forgery resistant, and contain the relevant harmonized commodity description, the coding system, and a validation of certificate by the exporting authority. Other requirements include labeling un-mixed parcels with the country of origin, the date of issue and expiry, the issuing authority, the identification of the exporter and importer, carat weight, value in U.S. dollars,

145. Kimberley Process II Gaborone Ministerial Statement (Nov. 29, 2001), at <http://www.kimberleyprocess.com/news/documents.asp?Id=34>.

146. G.A. Res. 263, U.N. GAOR, 56th Sess., 96th plen. mtg., Agenda Item 37, U.N. Doc. A/RES/56/263 (2002).

147. Alan Cowell, *40 Nations in Accord on "Conflict Diamonds,"* N.Y. TIMES, Nov. 6, 2002, at A6.

148. *Id.*

149. Nicol Degli Innocenti, *Strong Support for 'Conflict Diamond' Curbs,* FIN. TIMES, Aug. 1, 2003, at A2.

150. Press Release, Global Witness, Kimberley Process Finally Agrees Membership List but Lack of Monitoring Undermines Credibility (July 31, 2003), available at http://www.globalwitness.org/press_releases/pressreleases.php?type=Diamonds.

151. Kimberley Process Certification Scheme, at <http://www.kimberleyprocess.com/news/documents.asp?Id=14> (last visited Aug. 12, 2003).

- and number of parcels in the shipment. Additional security measures, such as the use of transparent bags, are optional.
- **Importing Requirements:** Participants must require that a duly validated Certificate accompany all shipments of rough diamonds imported from another participant. Confirmation of receipt must be sent to the relevant exporting authority expeditiously and should refer to the Certificate number, weight of the parcels, carat weight, and importer and exporter details.
 - **Exceptions:** Participants through whose territory rough diamond shipments pass are not required to meet the above requirements, provided that the authorities of that territory ensure that the shipment leaves the territory in a state identical to that when it entered (the shipment may not be opened or tampered with in any way).
 - **Exclusivity:** Rough diamond trade is exclusive to Participants. Participants should ensure no shipment of rough diamonds is imported from or exported to a nonparticipant.
 - **Internal Requirements:** Participants must establish a system of internal controls to eliminate the presence of conflict diamonds from shipments of rough diamonds imported to and exported from their territories. Such controls include the creation of Importing and Exporting Authorities, use of tamper-resistant containers for all diamond imports and exports, the creation of laws to implement and enforce the certification scheme, and the collection of production, import, and export data, as well as regular exchange of that data with other Participants.
 - **Cooperation Requirements:** Participants should provide each other with information to assist the operation of the controls, such as the identification of the authorities in each state who are responsible for implementing the certification scheme and relevant laws. Provisions for cooperation are also laid out, such as the consideration of requests for assistance to improve the functioning of the certification scheme, the manner in which Participants should notify each other if laws do not ensure the absence of conflict diamonds in exports, and mechanisms to resolve problems that may impede the fulfillment of the minimum requirements of the scheme.
 - **Monitoring and Dispute Resolution:** Review missions must be conducted with the consent of the Participant con-

cerned, and reports of compliance verification are to be posted on the restricted access section of an official website. Compliance and dispute resolution are addressed by allowing Participants with concerns to inform the Chair, who will in turn inform all Participants. Dispute resolution is to be accomplished through dialogue among the Participants, and strict confidentiality is encouraged.

The completion of the working document marks a significant step in the effort to end the trade of conflict diamonds. The document, however, is only as strong as the will of the Participants to execute it. This is particularly true in the case of diamond trade, where the inclusion of conflict diamonds into the legitimate trade at any point during the diamond pipeline can result in overall ineffectiveness. As discussed below, the laundering of illicit and conflict diamonds into the certified diamond trade is not only a frightening possibility but a harsh reality.¹⁵² Although specific controls naturally must vary from country to country, the working document may be too vague in prescribing the necessary internal controls to ensure that the system functions adequately.¹⁵³ Though it requires Participants to “amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions,”¹⁵⁴ the document provides little enlightenment as to what constitutes appropriate laws.

In addition to providing little in the way of specific internal requirements, the document lacks the necessary monitoring and enforcement mechanisms to ensure that such laws are enacted. Monitoring is left to the discretion of the entire membership of the Kimberley Process at plenary meetings, and there are several obstacles to triggering it. Review missions may only be taken by other Participants or their representatives “where there are credible indications of significant non-compliance with the international certification scheme” and may only be taken with the consent of the Participant and

152. See *infra* Part IV.D for a discussion of the difficulties inherent in attempts to keep conflict and illicit diamonds out of the certified diamond trade.

153. See Kimberley Process Certification Scheme, *supra* note 151; Telephone Interview with Christian Dietrich, Researcher, International Peace Information Service (Jan. 3, 2002) (notes on file with author).

154. Kimberley Process Certification Scheme, *supra* note 151, § IV(d).

with the consultation of all Participants.¹⁵⁵ It requires minimum transparency, stating, "Participants and observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter."¹⁵⁶ Without monitoring and enforcement, there is overall little guidance or incentive to instigate the burdensome overhaul a country's system may require, particularly for countries whose resources are already taxed by war and poverty.¹⁵⁷ These countries, however, are often the ones upon which the success of the Kimberley Process depends most: neighboring states through whose porous borders diamonds are easily smuggled.

Such strong reliance on internal controls and the will of the Participants may be particularly troublesome given the lax entry requirements of the KPCS. In response to Participant concerns about violating nondiscrimination rules of the WTO, delegates in Gaborone agreed that the certification scheme would have no entry requirements and would be open to all countries.¹⁵⁸ Countries that join designate an authority responsible for implementation of the KPCS, pass relevant legislation pertaining to the KPCS, provide a specimen of the KPCS certificate, and provide the implementation date of the KPCS.¹⁵⁹ However, there is no requirement that a country implement the process in order to become a member, and no guarantee that a member ever will.

In a recent paper for the Diamonds and Human Security Project, Ian Smillie pointed to the possible implications of this gap in enforcement using the example of the United Arab Emirates (U.A.E.). The U.A.E. never attended Kimberley Process meetings and was mentioned in several U.N. Expert Panel

155. SMILLIE, *supra* note 85, at 4 (emphasis removed).

156. Kimberley Process Certification Scheme, *supra* note 151, § VI(15); see also SMILLIE, *supra* note 85, at 5.

157. Some believe that the internal controls are vague because the necessary reforms are unrealistic, due to the deeply ingrained practices of corruption and smuggling and the lack of resources to combat them. See, e.g., Telephone Interview with Christian Dietrich, *supra* note 153. For further discussion of the obstacles facing internal controls in such countries, see *infra* Part IV.D and accompanying notes.

158. See TAMM, *supra* note 121, at 31.

159. Kimberley Process Requirements for Participation, at <http://www.kimberleyprocess.com/news/info1.asp?Id=13> (last visited Aug. 31, 2003).

reports in connection with diamonds and arms smuggling—its diamond exports to Belgium increased from \$4.2 million in 1998 to \$149.5 million in 2001.¹⁶⁰ Yet, were the U.A.E. to take the above steps with no intention of fully complying with its own legislation, Participant status could only be denied if the entire Kimberley plenary were to decide that the U.N. panel findings and the increase in diamond exports triggered significant noncompliance. Such findings are necessary but not sufficient to trigger a review mission; the U.A.E. must agree to submit to a review and agree on the size, composition, terms of reference, and time frame of the review.¹⁶¹ In an international diamond trade in which almost no country involved currently meets the requirements of the proposed scheme,¹⁶² it hardly seems likely that such review will be undertaken as necessary. While it is not feasible for the entire community to stop the diamond trade until it meets all requirements, such unlikely enforcement gives little incentive for most countries ever to take serious measures to comply.

Without effective controls to ensure that conflict or illicit diamonds do not enter the legitimate trade, the Kimberley Process risks being counterproductive by fostering a false sense of security. In response to this dilemma, NGOs involved in the campaign against the trade of conflict diamonds are calling for a small number of significant changes. Most importantly, several NGOs have banded together to issue a statement appealing for stronger verification and monitoring measures.¹⁶³ They are advocating the creation of an independent body composed of Kimberley Process representatives to monitor countries' compliance with the certification scheme, including good faith implementation of necessary reforms.¹⁶⁴ These reforms, as well as alternative measures, are discussed in Part V.

If the Kimberley Process and its resulting KPCS does work effectively, it will provide a strong means through which to end

160. SMILLIE, *supra* note 85, at 6.

161. *Id.*

162. *Id.*

163. See Press Release, Global Witness, A Good Watchdog but Crucially Lacking in Teeth (Nov. 29, 2001), at http://www.globalwitness.org/press_releases/display2.php?id=109; see Telephone Interview with Alex Yearsley, Global Witness Campaigner (Jan. 4, 2002) (notes on file with author).

164. See Telephone Interview with Alex Yearsley, *supra* note 163.

and prevent civil wars fueled by diamonds by enabling diamond-importing countries effectively to exclude from their markets diamonds used to fund conflicts. This goal, however, may raise an additional dilemma: defining a target. In other words, a degree of difficulty lies in simply defining the diamond sales the Kimberley Process seeks, or should seek, to curtail. The term “conflict diamond,” coined by the NGO community, is widely used, but without consensus as to what it encompasses.¹⁶⁵ Meanwhile, the Kimberley Process’s definition of conflict diamonds has changed throughout the development of the certification scheme.

Before the working document was produced, the Kimberley Process used the definition “rough diamonds whose trade is deemed illegal by the United Nations, specifically the Security Council, because the proceeds of those rough diamonds are demonstrably fuelling armed conflict by rebel movements and their allies so as to undermine or overthrow legitimate governments.”¹⁶⁶ The working document, however, changed this definition:

CONFLICT DIAMONDS means rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood and recognized in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future.¹⁶⁷

U.N. General Assembly Resolution 55/56 provides an additional definition of conflict diamonds: “rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments.”¹⁶⁸

165. DIETRICH, *supra* note 102 (manuscript at 1-2).

166. *Id.* (manuscript at 2). Dietrich notes that “[m]embers of the Kimberley process did not universally agree to this definition.” *Id.* (manuscript at 9 n.2).

167. Kimberley Process Certification Scheme, *supra* note 151, § I.

168. G.A. Res. 55/56, *supra* note 138.

From these definitions, it seems that two elements are consistently used to define a conflict diamond: use by a rebel movement to finance its operations and status as the subject of a U.N. Security Council Resolution.

These definitions, however, may not account adequately for the variety of conflicts that diamonds fuel. To begin with, they cause confusion in conflicts where labels such as rebel movements and legitimate governments are of questionable application, yet diamonds are still being used to fund a war. Furthermore, conflicts may arise in which the Security Council, due either to political circumstances or to other reasons, does not issue a resolution with regard to the conflict.

The D.R.C. provides a significant example of such confusing circumstances. Trade in diamonds originating in the D.R.C. has no Security Council embargo currently, yet diamonds which fuel the conflict in this region are usually labeled “conflict diamonds,” even by U.N. reports.¹⁶⁹ The U.N. Panel of Experts on the D.R.C. defined conflict diamonds as “[d]iamonds that originate in areas controlled by forces or factions opposed to legitimate and internationally recognized Governments, and are used to fund military action in opposition to those Governments or in contravention of the decisions of the Security Council.”¹⁷⁰ This view reflects the current efforts of the Kimberley Process and the Security Council: U.N. sanctions and the certification process have focused wholly on restoring the trade to the official governments, and no action has been taken towards ending the official diamond trade of the Sierra Leone or Angolan government. However, the D.R.C. report later refers to diamonds used to buy weapons for the Congolese army as “conflict diamonds,”¹⁷¹ creating a situation in which it might be inferred that any diamond fueling a war might be deemed a conflict diamond.

169. The reports by the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo have specifically termed these diamonds “conflict diamonds.” *See Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo*, U.N. SCOR, 56th Sess., ¶¶127, 230, U.N. Doc. S/2001/357 (2001).

170. *Congo Report*, *supra* note 96, ¶ 36 n.1; *see also* DIETRICH, *supra* note 102 (manuscript at 3).

171. *Congo Report*, *supra* note 96, ¶ 69; *see also* DIETRICH, *supra* note 102 (manuscript at 3).

This latter view is supported by some NGOs, who maintain that conflict diamonds include those sold by governments to finance war.¹⁷² Several inherently tricky questions are raised by this view. Is it fair simply to distinguish rebel movements as intrinsically wrong, or can there be a situation in which a conflict diamond is being traded by a government to fund its own military actions? For example, can diamonds be used by legitimate movements undermining illegitimate governments, and, if so, what governments are to be deemed illegitimate, and by whom?¹⁷³ These questions will take on increasing importance as responsible government use of diamonds becomes vital to the reconstruction of a nation—if irresponsible and illicit diamond trade by governments calls the legitimacy of those governments into question, the very notion of conflict diamonds may have to adapt. Indeed, there are many kinds of modern conflict, and the ties between illicit diamond trade and terrorist activities may further blur the line between illicit and conflict diamonds.

This dilemma places the Kimberley Process in a difficult position, as the Process relies upon the cooperation of participant governments, many of whom are making good faith efforts to create a legitimate diamond industry. Because the Kimberley Process is composed of government bodies, it is unlikely that it would leave the definition of conflict diamonds open to those traded by recognized governments. In the end, the distinction between a conflict diamond and an illicit diamond is an inherently political one, and is therefore likely to reflect the irregular and volatile political landscape.

C. *Industry Self-Monitoring*

The unique structure of the diamond industry is a complex web of transactions that has impeded both the study and the control of the diamond trade.¹⁷⁴ Increased attention to the conflict diamond issue, however, has generated a considerable response from the diamond industry. Its involvement in the Kimberley Process through organizations such as the WDC and the HRD,¹⁷⁵ and the HRD's involvement in assisting coun-

172. See DIETRICH, *supra* note 102 (manuscript at 6).

173. For further discussion of this dilemma, see *id.*

174. See *supra* Part IV.A and accompanying notes.

175. See *supra* Part IV.B and accompanying notes.

tries such as Sierra Leone in creating a certification and control system,¹⁷⁶ have been met with both optimism and skepticism.¹⁷⁷ The diamond industry, however, has proposed that several reforms be made to ensure compliance with the Kimberley Process. At the September 2001 Kimberley Process meeting, the WDC submitted the following proposals and recommendations for the KPCS:¹⁷⁸

- Exporter's Warranty Requirement: All exporters of rough diamonds should be required to make a warranty as to the diamond's conflict-free status.
- Transparent Monitoring of KPCS: An independent international committee consisting of members from government, NGOs, and the industry should monitor all rough diamond imports and exports and report to the U.N. Security Council. The committee would publish statistics detailing the total quantity and value of rough diamonds exported and imported by all countries in compliance with the KPCS, and investigate irregularities, recommending, if necessary, that diamond imports from or exports to a country be embargoed.
- Voluntary self-regulation by the diamond industry: The WDC listed proposed requirements for all member organizations of the WDC, including that an invoice with a warranty accompany each transaction. This proposal also would mandate that WDC members not buy diamonds from any suspect or unknown source, including countries that had not implemented the KPCS and been approved by the KPCS monitoring committee described above. Violation of this would incur expulsion and publicity.

176. See *infra* note 191 and accompanying text.

177. While the general feeling seems to be one of appreciation for the efforts of the diamond industry, many are concerned that the reforms the industry proposes are not being instituted quickly enough. This mixed sentiment is perhaps best expressed by U.S. Representative Tony P. Hall in his remarks to the Second Annual Diamond Mining Conference. Representative Tony P. Hall, Remarks to the Second Annual Diamond Mining Conference (Aug. 23, 2001), <http://www.worlddiamondcouncil.com/press/BW0401.html>.

178. Interview with Cecilia Gardner, *supra* note 142; see also Proposals and Recommendations of the World Diamond Council (WDC) for Submission to the Kimberley Process Meeting, London, September 2001 (notes on file with author).

While these recommendations were greeted with appreciation by Participants, they were not integrated into the working document produced by the Gaborone meeting in late November 2001.¹⁷⁹ Instead, the working document contains a paragraph in Section IV entitled “Principles of Industry Self-Regulation,” which states an understanding among Participants that a voluntary system of self-regulation will provide for a system of warranties.¹⁸⁰ Furthermore, the document describes the warranties as “underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry.”¹⁸¹

The WDC plans to oversee the operations of the diamond industry and to regulate the trade through internal mechanisms. This will be accomplished mainly through the Bourses, which comprise a body of membership in the WDC. A Bourse is a private commercial enterprise with its own infrastructure, constitution, bylaws, and membership requirements.¹⁸² The Bourse operates like a stock market, creating a secure international trading floor for diamonds that is available only to members.¹⁸³ Little trading takes place outside the Bourse, and thus membership is considered highly advantageous.¹⁸⁴

The WDC’s reforms entail altering the rules of the WDC and Bourses to require compliance with the Kimberley Process

179. Interview with Cecilia Gardner, General Counsel for the World Diamond Council and Executive Director of the Jeweler’s Vigilance Committee (Dec. 12, 2001); *see also* Kimberley Process II Gaborone Ministerial Statement, *supra* note 145.

180. Kimberley Process Certification Scheme, *supra* note 151, § IV. The voluntary system of self-regulation is also referred to in the document’s preamble. *See id.* pmb1.

181. *Id.*

182. *See* Interview with Cecilia Gardner, *supra* note 142. For more information on Bourses, *see* The Keyguide Trade Directory website, at <http://www.keyguide.net>. For an interesting history of the New York Diamond Dealer’s Club, the New York City Bourse, *see* Museum of the City of New York, New York Trade Offs: Single Trade Districts—The Diamond and Jewelry Districts, at <http://www.mcny.org/Exhibitions/nytradeoffs/diamond.htm>.

183. Interview with Cecilia Gardner, *supra* note 142. There are over twenty Bourses around the world, all affiliated with the World Federation of Diamond Bourses, based in Antwerp. *See* Keyguide Trade Directory, at <http://www.keyguide.net/bourses>.

184. Interview with Cecilia Gardner, *supra* note 142.

and the aforementioned industry reforms.¹⁸⁵ If a dealer trades diamonds without following the mandatory regulations, he will lose his membership in the WDC and the Bourses.¹⁸⁶ It will be the responsibility of the Bourses to monitor trading for compliance through their own mechanisms.¹⁸⁷

These controls are an important step in creating a diamond industry that is responsive to the concerns of the Kimberley Process. It is vital to note, however, that all these controls rely on the assumption that internal controls within participant countries can function appropriately, making the certification system a reliable source of determining who is importing conflict diamonds. Like the Kimberley Process itself, these controls raise the questions of whether proper attention is being paid to the actual internal controls and whether countries implementing these controls, particularly those countries that are sources of the conflict, will be able to act as the fulcrum of the certification process and bear the weight of this enormous endeavor.

D. *Internal Controls and the Implementation of the Kimberley Process*

The certification system proposed and implemented by the Kimberley Process and the corresponding industry controls are inherently dependent on the efforts of Process Participants; this is most obvious in their reliance on internal controls. Without proper internal controls, conflict diamonds can enter the diamond pipeline before the first point of export, making the international certification system simply a legitimization of the trade of conflict diamonds. It is therefore essential to address the efforts made by domestic systems to control their diamond industries and halt illicit diamond trade.

The internal controls already implemented in Sierra Leone and Angola can serve as important models for future en-

185. *Id.*

186. *Id.*

187. *Id.* The Bourses already hold proceedings if faced with a possible violation of their bylaws. If such a violation is found, the outcome of the proceeding is published to alert all members, and often the transgressor's photograph will be placed on a board in the Bourse to put all members on notice. *Id.*

deavors, and each system has made significant advances in controlling its diamond industry and preventing the trade in conflict diamonds. These systems, however, are currently undermined by smuggling, both within their borders and through neighboring countries. Certification can be used as a tool to prevent and control future conflicts in other countries, but it must be recognized that problems of smuggling and corruption are likely to be magnified during war and those times preceding and following war, when state control is weak and resources are strained. Ongoing domestic and regional conflict may compromise or destroy the monitoring infrastructure necessary to implement these controls successfully and prevent smuggling, an infrastructure presumed by the Kimberley Process and industry controls.

In accordance with U.N. Security Council Resolution 1306, Sierra Leone has begun to implement a system to regulate the diamond trade based on licensing and certification of origin. The system is designed to ensure that only diamonds that are mined from government-controlled areas and are the product of a chain of legally authorized transactions by licensed dealers, agents, and exporters are exported from Sierra Leone.¹⁸⁸ Licensing of mines and exporters is the responsibility of the Ministry of Mineral Resources (MMR).¹⁸⁹ The Certificate of Origin regime,¹⁹⁰ which exempted diamonds from sanction under U.N. Security Council Resolution 1306,¹⁹¹ consists of security paper with two detachable slips, one of which is placed inside the parcel, and the other of which is sent by the importing authority to the exporting authority in Sierra Leone as a receipt.¹⁹² The certificate must be signed by four different government authorities,¹⁹³ and is equipped with an electronic

188. USAID Report, *supra* note 38, at 9.

189. *See id.*; SIERRA LEONE REVIEW, *supra* note 137, at 4.

190. The regime is based upon the Angolan system, which was developed by the government of Angola with assistance from the HRD. USAID Report, *supra* note 38, at 9.

191. The Sierra Leone system was developed with the assistance of the U.S., U.K., and Belgian governments, and the HRD, which began developing the system well before the U.N. sanctions. This enabled qualification for exemption to be accomplished in only three months. *Id.* at 8-9.

192. *Id.* at 9.

193. The four authorities are: the Government Gold and Diamond Office, which records the value of all exported diamonds and is responsible for recording the Certificates of Origin; the Minister of Mineral Resources; the

tracking system so that, along with the detachable receipt, the importing authority must send an electronic confirmation to Freetown.¹⁹⁴

A Global Witness Report in April 2001 indicated that, although experiencing expected problems, the control system had seen significant results.¹⁹⁵ Many problems with the system are linked to the vagueness of its requirements: Licenses, for example, were meant to be limited to a very small number of exporters, with a few agents working under them, but licensing seems to be done “on an ad hoc basis . . . with a consistent lack of clarity over the number and status of licensed exporters.”¹⁹⁶ A report issued by the U.S. Agency for International Development (USAID) one month prior to the Global Witness report noted that limiting the number of licensed exporters as planned would probably increase smuggling by forcing exporters into illicit channels and that the best course of action would be to attempt to register as many practicing exporters as possible in order to better regulate the existing industry.¹⁹⁷ Both reports called for clarification of licensing guidelines and recording of licenses.¹⁹⁸

The system breaks down the most in the crucial task of monitoring mining activity. A lack of control over mining activity makes it easier for conflict diamonds to enter the stream of commerce at the very beginning.¹⁹⁹ Because most diggers are not yet licensed, diamond dealers often do not check the identity of people selling them diamonds in order to ensure that they are not buying from the RUF.²⁰⁰ Even if in full compliance with the law and buying only from licensed miners,

Governor of the Central Bank, whose signature attests to the fact that the value of diamonds exported matches the value of foreign exchange imported; and the Customs Official. *Id.* at 9-10.

194. *Id.* at 10.

195. SIERRA LEONE REVIEW, *supra* note 137, at 2.

196. *Id.* at 4.

197. See USAID Report, *supra* note 38, at 8.

198. See *id.*; SIERRA LEONE REVIEW, *supra* note 137, at 3, 5.

199. See SIERRA LEONE REVIEW, *supra* note 137, at 3-6; Telephone Interview with Christian Dietrich, *supra* note 153.

200. See, e.g., Onishi, *supra* note 59 (quoting an unnamed Lebanese diamond dealer: “You do not know if [the seller] is a rebel or Kamajor . . . They’re all black, they are all wearing civilian clothes. I don’t know. They are all the same One hundred percent you cannot ask [their identity] It’s not your business.”).

diamond dealers have no way of authenticating where the miners obtained the diamonds.²⁰¹ In conversations with the U.N. Panel of Experts on Sierra Leone Diamonds and Arms, the MMR has admitted that it is unable to prevent rebel diamonds from going to the same licensed dealers as official diamonds, creating a situation in which the system, in effect, launders rebel diamonds.²⁰²

Without control over the system as a whole, even diamonds certified from the point of export will not be fully authenticated.²⁰³ The MMR, responsible for licensing mining, simply lacks the resources and infrastructure at present to deal with this formidable task, and the Mines Monitoring Officers (MMOs) have been unable to accomplish effective oversight.²⁰⁴ MMO reports rely on the physical inspection of the record books kept by dealers, which usually contain only a small amount of information about the lower value transactions.²⁰⁵ Lack of oversight may allow government corruption to hinder this process. Furthermore, it is not clear what is done with the MMO reports once they reach the MMR, and Global Witness has criticized the lack of coordination between the two entities.²⁰⁶

Most of these problems are the realistic product of working with limited resources in a highly complex system with ingrained traditions of smuggling and corruption. It is significant that Global Witness assessed the Sierra Leone system positively despite these problems, complementing the Government Gold and Diamond Office (GGDO) in particular for its efforts at spotting and confiscating conflict diamonds.²⁰⁷

201. For example, diamond dealer Kenda Sowe states:

Beaucoup miners come to me every day They all have licenses. I will buy only from licensed miners. But where did they get the diamonds? I don't go in the bush. I don't mine. I don't know how they got the diamond I ask only one question "You want leones or you want dollars?"

Id.

202. See Telephone Interview with Johan Peleman, *supra* note 103.

203. See SIERRA LEONE REVIEW, *supra* note 137, at 4 (quoting a Ministry of Mineral Resources official: "We believe the crux of the matter is the mining areas").

204. *Id.* at 5.

205. *Id.*

206. *Id.*

207. *Id.* at 7.

Meanwhile, Global Witness noted the GGDO sometimes allows individual diamonds identified as originating from RUF-controlled areas into the stream of commerce.²⁰⁸ This practice is founded on the fear that penalizing dealers for including a stone of questionable, but profitable, nature would drive the dealers away from the new system and back to smuggling.²⁰⁹ Global Witness cautioned against this course of action, recognizing that this dilemma results from the practical difficulties of implementing the system given the commercial realities inherent in gathering diamond players into the new system.²¹⁰ It released a series of recommendations for the implementation of the Sierra Leone system, most of which required an increase in government resources and oversight to counter these problems.²¹¹

Like Sierra Leone, Angola has a considerable number of alluvial diamond sources and thus, along with sophisticated surface mining, has a large community of artisanal miners known as *garimpeiros*.²¹² Many factors have created a wide array of challenges to government regulation of the diamond industry: deeply ingrained, cross-border smuggling networks involving political and military elites; large, unquantified numbers of *garimpeiros*; high-quality gem diamonds in easily accessible alluvial mines; alluvial fields spread over vast geographic areas; lack of international import/export controls; and war and widespread terrorism.²¹³ The certification scheme established in Angola to further U.N. Security Council Resolutions 1173 and 1176 differs from Sierra Leone, however, in that it is based upon a monopolistic buying system, or “single channel” system, rather than a competition-based buying system. The single channel system is implemented by the Angolan Selling Corporation (ASCorp), a joint venture between the Angolan

208. *Id.*

209. *Id.*

210. *Id.* at 7-8.

211. *Id.* at 3.

212. GLOBAL WITNESS, CAN CONTROLS WORK? A REVIEW OF THE ANGOLAN DIAMOND CONTROL SYSTEM 5 (2001), at <http://www.globalwitness.org/campaigns/diamonds/briefing.php> [hereinafter ANGOLAN REPORT].

213. *Id.* at 11; see also Telephone Interview with Christian Dietrich, *supra* note 153.

government and private companies²¹⁴ with a mandate to purchase all of Angola's diamond production and regulate the industry from the mine to the first point of export.²¹⁵

The centralized nature of the single channel system has resulted in many positive developments in the Angolan diamond trade. Daily quantities and values of diamonds bought or seen by each buying office can be tracked through the gathering, centralization, and analysis of detailed purchasing records.²¹⁶ This will ideally allow detailed production profiles to be developed, which would be a major feat in an artisanal community with widespread alluvial diamond areas.²¹⁷

ASCorp is also attempting to centralize the system by implementing a credential system and tighter controls for the various collaborators (middlemen) of the industry. The credential system will apply to all players in the industry (collaborators, ASCorp buyers, ASCorp security guards, and *garimpeiros*), an ambitious goal considering there is a large but unknown number of *garimpeiros*—between 100,000 and 200,000.²¹⁸ Registration is an essential aspect of *garimpeiro* projects, a system to monitor diamond mining at the very source. The *garimpeiros*, mining in hierarchical teams of twenty, are protected by ASCorp security from UNITA attacks and are required to carry licenses at all times.²¹⁹ The daily production of each team is bagged, with the details of the shipment attached, and transported to the nearest ASCorp buying office for sale.²²⁰ The combination of a credential system and the *garimpeiro* projects could become a standard for the control of alluvial mining.²²¹ The system of ASCorp controls also extends to collaborators, buyers, and mining companies.²²² Controls over the mining companies, however, seem weak—there

214. ASCorp's formal structure is as follows: 51% SODIAM, which is itself 100% owned by the Angolan state parastatal mining company Endiama; 24.4% WELOX Ltd., which is registered in Hong Kong; 24.5% TAIS, a Belgium-based company. ANGOLAN REPORT, *supra* note 212, at 6.

215. *Id.*

216. *Id.* at 7.

217. *Id.*

218. *Id.*

219. *Id.* at 9.

220. *Id.*

221. *Id.*

222. For detailed discussion of these controls, see *id.*

is little transparency as to the shareholding and potential political connections of the mining companies or their diamond production figures.²²³

The centralized nature of the ASCorp system is both its strength and a potential weakness. Without proper transparency, the monopolistic nature of the system risks focusing the power of the diamond production into the hands of a few powerful shareholders. The shareholders and investors of ASCorp and SODIAM have not been publicly disclosed, prompting rumors that some shareholders are closely connected to Angola's president, José Eduardo dos Santos.²²⁴ Some mining companies have complained that ASCorp has already begun to abuse its monopolistic position by forcing prices down, thus encouraging smuggling.²²⁵ Some view the controls as a means of cutting middlemen from the industry and forcing *garimpeiros* to work through government channels, transferring the profit into the hands of government officials.²²⁶ There is also concern that, once the profit from smuggling among non-elites is reined in, higher-ranking officials will abuse their power and continue to smuggle diamonds to avoid paying duties.²²⁷ These concerns are magnified given the gross misuse of resources that has been typical of the Angolan government. Misuse of the diamond resource would derail development, strain the Angolan government's legitimacy, and potentially be destabilizing.

The common thread running throughout the problems plaguing the monitoring systems of Sierra Leone, Angola, and other countries seeking to control their diamond industries is a lack of resources dedicated to combating deeply ingrained traditions and interests in smuggling. These problems are ex-

223. *Id.* at 10.

224. *Id.* at 2.

225. *Id.*; see Telephone Interview with Christian Dietrich, *supra* note 153; Telephone Interview with Alex Yearsley, *supra* note 163. Mr. Yearsley, however, pointed out that the current economic downturn is another possible cause of the fall in prices. *Id.*

226. See Telephone Interview with Christian Dietrich, *supra* note 153; see also ANGOLAN REPORT, *supra* note 212, at 2 ("There is a serious question over whether a company with a structure of political connections over which there are legitimate concerns can be trusted to come up with a system that works.").

227. See Telephone Interview with Christian Dietrich, *supra* note 153.

aggregated in the D.R.C., which, like Sierra Leone and Angola, is attempting to implement a certification system to control its numerous alluvial mines and large artisanal mining industry.²²⁸ Between Angola and the D.R.C. there are thousands of alluvial mines run by an equally large population of artisanal diggers.²²⁹ To complicate matters, mining often takes on a migratory nature due to the rains and flooding.²³⁰ This structure makes the path of a diamond complex and extremely difficult to track, providing many opportunities for smuggling and for the personal profit of numerous actors throughout the process, thus creating what has become an industry of corruption.²³¹

Although the steps taken by these countries have been substantial, implementing a system of control in a time of civil war, during a cease-fire, or in the fragile stage of rebuilding a nation requires facing significant obstacles. The short-term sacrifices required of all the players in the diamond industry are often unrealistic demands.²³² Where war and chaos threaten or prevail, the governments simply may lack the resources and infrastructure to regulate an industry where illicit activity has been the norm.²³³ This may lead to a Catch-22, in which the industry must be controlled to establish stability, yet stability is necessary for industry control to be exercised adequately.

228. See Press Release, Conflict Diamonds, D.R. Congo to Set Up Certification Scheme for Diamonds (Apr. 27, 2001), at <http://www.conflictdiamonds.com/pages/Interface/newsframe.html>; see Telephone Interview with Christian Dietrich, *supra* note 153.

229. See Telephone Interview with Christian Dietrich, *supra* note 153; ANGOLAN REPORT, *supra* note 212, at 3, 5.

230. See Telephone Interview with Christian Dietrich, *supra* note 153.

231. See Telephone Interview with Johan Peleman, *supra* note 103; Telephone Interview with Christian Dietrich, *supra* note 153.

232. See Telephone Interview with Johan Peleman, *supra* note 103 (noting that, because customs officers or officials controlling licenses in Guinea and Sierra Leone earn about twenty dollars per month, one could imagine that it might not be difficult to bribe one of these officers \$1000 to look the other way).

233. See *id.* (noting that corruption is common practice at the political level in Sierra Leone, particularly given the low salaries paid to officials and the high costs associated with their jobs); Telephone Interview with Christian Dietrich, *supra* note 153 (describing the weekly bribing activities of the various police); see also ANGOLAN REPORT, *supra* note 212, at 11-12.

It is also apparent that internal controls will be rendered useless without the cooperation of the international community—most notably from countries neighboring those producing conflict diamonds and from importing countries. The prevalence of smuggling in the conflict diamond trade²³⁴ necessitates the current two-tiered approach of international agreements and internal controls, but global interest must be taken into account in implementing both tiers. Although the internal controls implemented in Sierra Leone and Angola so far are promising, diamond smuggling can clearly undermine their efforts significantly, making international vigilance essential to the success of internal controls.

Perhaps in response to the overwhelming need for action by importing countries, the United States Congress passed the Clean Diamond Trade Act in April 2003.²³⁵ The Act requires the President to impose trade-related sanctions on countries that are not implementing a system of controls on rough diamonds as required by either U.N. Security Council resolutions or the Kimberley Process, although this requirement may be waived for reasons of national security.²³⁶ A compromise version of the original Clean Diamond Trade Act, the Act gives the President wider discretion than the original, which provided an automatic trigger for sanctions against a country not implementing a system of controls.²³⁷ The Act also allows the

234. See Part III and accompanying notes; see also Telephone Interview with Johan Peleman, *supra* note 103; Telephone Interview with Christian Dietrich, *supra* note 153; ANGOLAN REPORT, *supra* note 212, at 12 (“It is clear that producer countries such as Angola must have cooperation from importing countries It simply is not credible that the diamond trade, especially those trading and polishing these goods are not aware of the illegal provenance of such large quantities of high value gem diamonds.”).

235. Clean Diamond Trade Act, 19 U.S.C. § 3901 (2003).

236. See *id.* § 3903. The inclusion of the Kimberley Process is important, as there are no Security Council resolutions mandating export controls on diamonds from the D.R.C. or, with the exception of Liberia, from countries neighboring Sierra Leone or Angola.

237. See World Diamond Council, Changes from HR 2722 to Compromise HR 2722, at http://www.worlddiamondcouncil.com/changes_from_hr_2722_to_compromi.htm; Simon Barber, *US Opposes “Blood” Diamond Trade*, BUS. DAY (S. Afr.), Nov. 29, 2001, 2001 WL 5969851; *Washington in Brief: Agreement Reached on Diamond Bill*, WASH. POST, Nov. 28, 2001, at A5. The Act also imposes requirements to temper the President’s discretion with accountability. The President must report to Congress on a yearly basis describing actions taken by countries that have exported rough diamonds to

President to prohibit or seize shipments of polished diamonds and jewelry if they attempted to evade the prohibition on conflict diamonds.²³⁸

As authorized by the Act, the President brought the United States into compliance with the KPCS through an executive order issued the day before the Kimberley Process deadline.²³⁹ While this is a substantial step, the increased degree of presidential discretion granted by the Act troubled some conflict diamond activists.²⁴⁰ This reaction may be understandable considering the Bush administration's previous opposition to international efforts to impose controls on the purchase and sale of diamonds, on the grounds that they might be burdensome and contrary to international trade obligations, most notably to the WTO.²⁴¹ The administration's attitude changed

the United States to implement a certification system and identifying those countries that have failed to do so and whose failure has increased the likelihood that conflict diamonds are being exported to the United States. With regard to the latter group of countries, the President must describe appropriate actions, such as sanctions, that may be taken by the United States or by the named country to prevent the import of conflict diamonds to the United States. These countries must be the subjects of semiannual reports by the President describing what measures have been taken since the previous report to prevent the import of conflict diamonds into the United States from these countries. In addition, in his yearly report, the President must identify countries not the subject of a UNSC Resolution on conflict diamonds that are involved in conflicts linked to rough diamonds. See 19 U.S.C. § 3911.

238. See *id.* § 3907.

239. Exec. Order No. 13,312, 68 Fed. Reg. 45,151 (July 31, 2003).

240. The bill's sponsor, U.S. Representative Tony P. Hall, an Ohio Democrat and outspoken campaigner on the issue of conflict diamonds, commented, "I wasn't crazy about that, but I understand their way of thinking." Malia Rulon, *Lawmakers Seek Limits on Jewels*, ASSOCIATED PRESS, Nov. 27, 2001, 2001 WL 31029916; Adotei Akwei, Africa Advocacy Director of Amnesty International, urged the Bush administration to "[accept] the idea that effective regulation of U.S. diamond imports is a concept whose time has come and [allow] the Senate to exercise its right to strengthen the current bill." Adotei Akwei, Opinion Letter, *The Value of Legitimate Trade in Diamonds*, CHRISTIAN SCI. MONITOR, Dec. 10, 2001, at 10; see also Barber, *supra* note 237 (describing the bill as "watered down" and noting concern over the Presidential discretion by critics such as Physicians for Human Rights); *Sell Diamonds for Love, Not War*, Editorial, CHI. TRIB., Dec. 15, 2001, 2001 WL 30802070 (calling the Bush administration's efforts to weaken the bill "understandable but shortsighted").

241. Joseph Kahn, *House Votes to Combat Sale of Diamonds for War*, N.Y. TIMES, Nov. 29, 2001, at B6 (describing Bush administration concerns that

only in the fall of 2001, after reports that bin Laden and the al Qaeda network made millions of dollars through trade in conflict diamonds with the RUF.²⁴² The possibility that such measures might conflict with other international obligations should also be noted, as it may be a recurring theme in the effort to combat the trade of conflict diamonds. It is paralleled, for example, in the conflict between Belgian law, which mandates that all diamond imports be inspected by a specialized customs agency in Antwerp, and E.U. law, under which parcels must pass through customs only upon entry into the European Union, and not between E.U. countries.²⁴³ When implementing domestic controls, the issue of international obligations is certain to resurface.

The wide presidential discretion granted by the Act may also raise problems inherent in entrusting the entire effort to the White House and the industry. Should the motivation behind the White House's sudden call to action, a link between conflict diamonds and terrorism, suddenly prove unfounded, the long-term dedication of the U.S. government to the conflict diamond effort may be called into question, leaving only the industry to regulate itself. An enduring commitment on the part of the United States, the importer of two-thirds of the world's diamonds²⁴⁴ and a permanent member of the Security Council, likely will be invaluable to the success of the KPCS.

V. RECOMMENDATIONS AND REALITIES

The international effort to develop a diamond certification and control system demonstrates the significant potential of controlling civil conflicts through economic transactions.

such measures would be burdensome and contrary to international trade rules); see also *Sell Diamonds for Love, Not War*, *supra* note 240 (arguing that the Bush administration should "exercise its right to ignore WTO compliance in the interest of national security").

242. In the words of Representative Hall, the bill's sponsor, "That [information on al Qaeda] is what put us over the edge." Kahn, *supra* note 241. For discussion of the links found between al Qaeda and the conflict diamond trade, see *supra* note 1 and accompanying text.

243. Stichele, *supra* note 121, at 9-10; see Telephone Interview with Johan Peleman, *supra* note 103; Interview with Mark Van Bockstael, Director of International Affairs, HRD, and Chairman, Technical Committee, World Diamond Council, Cambridge, Mass. (Oct. 19, 2001).

244. Kahn, *supra* note 241.

However promising the international certification scheme may be, it is also a fragile system whose effectiveness necessarily relies on the efforts of unmonitored members, particularly those frail governments enduring civil wars or engaging in peace processes. These governments face enormous challenges—with their resources drained by years of war, they must exercise control of the diamond trade under their power to prevent the inadvertent laundering of diamonds into the legitimate market. As the two different systems in Sierra Leone and Angola illustrate, such control faces considerable obstacles from smuggling both by internal actors—including all players in the diamond industry, government elites, and military officials—and by neighboring countries that may be uninterested, weakened by civil war themselves, or even actively supporting rebel efforts. The current lack of monitoring and enforcement of the KPCS may further threaten the success of the system, particularly considering the crucial need for neighboring countries actively to prevent the smuggling of conflict diamonds into their markets that has so effectively funded rebel activities in the past.

The Kimberley Process's reliance on the cooperation of unmonitored governments, the ambiguity of domestic requirements, and the open membership of the KPCS are issues that must be addressed if the certification system is to be employed to halt current conflict diamond trade from the D.R.C. and to prevent diamonds from becoming a source of conflict in other areas. The exclusiveness of the document will encourage most diamond exporting and importing countries that become Participants in the international certification system to enjoy trade with other Participants. But without a reliable monitoring mechanism to ensure that countries actively and responsibly control their diamond trade, membership may lack true meaning.

One suggestion is to delegate this responsibility to the Security Council. Given the connection between conflict diamonds and international peace and security, such a proposal may be a reasonable extension of the Security Council's power. In this view, the international certification scheme of the Kimberley Process could play a role in enforcing preexisting and future sanctions, as well as augmenting existing

peacekeeping efforts by weakening insurgencies indirectly.²⁴⁵ In addition, the resources of the Security Council, in combination with the Council's ability to require government cooperation through a Chapter VII resolution, would certainly be an enormous aid to this endeavor.

It appears unlikely, however, that the Security Council will take an active role in monitoring the Kimberley Process's implementation and enforcement, particularly given that the Council has repeatedly maintained an indirect role in the Kimberley Process. Although encouraging countries to follow through with certification systems, the Security Council has never issued a formal statement of general endorsement like the General Assembly's Resolution 55/56. The Security Council's endorsements of certification schemes have been country-specific, focusing on Sierra Leone, Angola, and Liberia. It has never encouraged all states to join, leaving substantial doubt as to whether it would ever mandate global compliance with the Process's international certification scheme.

An underlying obstacle to the creation of a robust Security Council monitoring mechanism for the Kimberley Process is the question of political will. For an example of this, one need look no further than Liberia, where a widely recommended sanction against the timber trade, which was designed to address a valuable source of funding for the RUF and other regional insurgencies, has been blocked by two permanent members with interests in the Liberian timber industry.²⁴⁶ A similar lack of political will is likely to prevent the creation of a Security Council monitoring mechanism for the Kimberley

245. Consider the extensive U.N. involvement in Sierra Leone, which might have been successfully aided, although certainly not supplanted, by a Kimberley Process-like certification system, had one been in place. For a more in-depth discussion of the U.N. involvement in Sierra Leone through the United Nations Observer Mission in Sierra Leone, see HIRSCH, *supra* note 31.

246. For an in-depth discussion of the timber industry in Liberia, its link to regional instability, and the failed efforts to pass sanctions on the timber industry, see GLOBAL WITNESS, *LOGGING OFF: HOW THE LIBERIAN TIMBER INDUSTRY FUELS LIBERIA'S HUMANITARIAN DISASTER AND THREATENS SIERRA LEONE* (2002), at <http://www.globalwitness.org/reports/show.php/en.00006.html> [hereinafter *LOGGING OFF*]; TAYLOR-MADE, *supra* note 45. As of yet, no sanctions have been passed on the Liberian timber industry, mainly due to the efforts of France and China to remove timber from proposed U.N. sanctions on Liberia in early 2001. See *LOGGING OFF*, *supra*, at 5.

Process, as the same countries that objected to the creation of an independent monitoring mechanism in Gaborone will either attempt to influence, or likely have a seat on, the Security Council.

A more feasible solution might be one less specific to the Kimberley Process: the recent proposal to institutionalize a permanent sanctions monitoring body at the Security Council. The Angolan Monitoring Mechanism originally recommended this idea in its October 2001 report, citing the “need [to establish] a permanent capability of the Security Council to ensure ongoing monitoring of targeted sanctions regimes and illicit trafficking in high-value commodities in armed conflicts.”²⁴⁷ The report noted that such a capability would be far more efficient and cost-effective, as it would avoid the overlapping of research between Security Council expert panel mechanisms.²⁴⁸ In addition, the report noted that a permanent capability could foster long-term relationships with technical and regional organizations such as Interpol, the Economic Community of West African States (ECOWAS), the International Civil Aviation Organization (ICAO), and the Organization of African Unity (OAU).²⁴⁹ While independent panels of experts are often used by the Security Council, a single permanent monitoring capability would allow experts—who are often asked to assist the Security Council almost out of good will, with little knowledge of how long their role will last—to work on cross-border issues as well as those pertaining to certain countries. A permanent Security Council monitoring capability would allow a more regional and international approach to diamond smuggling, an essentially regional and international problem.

A permanent Security Council monitoring capability would target various types of sanctions-busting, *not* merely conflict diamonds, and its goals would include neither specific monitoring nor direct enforcement of Kimberley Process compliance. A Security Council monitoring mechanism would likely be prone to politicization of the process, targeting states when great powers have nothing to lose through involvement.

247. *Supplementary Report of the Monitoring Mechanism on Sanctions Against UNITA*, U.N. SCOR, 57th Sess., ¶ 260, U.N. Doc. S/2001/966 (2001).

248. *Id.* at ¶ 261.

249. *Id.*

In politically messier situations where the Security Council may fear to tread, the monitoring mechanism would be of little help; without Security Council sanctions, there can be no sanctions-busting, and thus no monitoring would technically be required. This monitoring mechanism would therefore be inapplicable to the diamond trade of the D.R.C., where the Security Council has yet to pass any sanctions.

A mechanism independent of the United Nations therefore may have several advantages, most notably the ability to avoid political squabbling and the bureaucratic obstacles often associated with the United Nations. A possible alternative advocated by Global Witness is an independent body comprised of Kimberley Process representatives to monitor countries' compliance with the Kimberley Process, including good faith implementation of necessary reforms.²⁵⁰ Representatives should include people who have worked within the diamond industry and thus have expertise in the field but also who can establish a clear independence from the interests involved.²⁵¹ This would avoid the political complications often inherent in U.N. decisions, as well as provide the opportunity to involve representatives from states affected by diamond smuggling, reducing the risk of unfairly persecuting a particular country.

Many civil society organizations have taken on this task in the past and can provide a valuable framework for monitoring mechanisms for the Kimberley Process. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), for example, relies on the NGO Traffic, which in turn works with governments to maintain compliance.²⁵² Various combinations of intergovernmental relationships and NGO assistance have been used in this manner, ranging from the International Action Network on Small Arms (IANSA), an NGO network, to the Landmines Agreement, which entails both government monitoring agreements and an NGO mechanism, Landmine Monitor.²⁵³ The Kimberley Process itself

250. POSSIBILITIES FOR IDENTIFICATION, *supra* note 123, at 30-36.

251. *See id.*

252. For a full discussion of the monitoring mechanisms of CITES and other international agreements and their applicability to the Kimberley Process, see SMILLIE, *supra* note 85, at 3, 15-22.

253. *See id.* at 15-22.

represents the powerful role that NGOs can play in motivating governments and industry to act.

In any form, a monitoring mechanism must be capable of having a strong presence within diamond importing and exporting countries, particularly within the mining regions of exporting countries and their neighbors. As illustrated earlier, this is no simple task when dealing with alluvial mines, which rely on an artisanal, often transient, community that may be nearly impossible to regulate. Security will most likely be extremely important to the development of the mining sector. Private or public, security is a vital but difficult responsibility, as it is both critical for the functioning of the certification system and easily abused by those in power. If taken properly, certain measures may help alleviate these serious concerns in both Angola and Sierra Leone, providing a model from which other countries can draw when instituting similar reforms. Angola has begun to develop state-sponsored security to police the diamond industry and reduce diamond smuggling out of Angola. The current security body, Stanwest Security, is an initiative of the Angolan government and ASCorp.²⁵⁴ Effective security will require Stanwest to do what past policing has been unable or unwilling to do: take on the more powerful figures in the illicit diamond trade, including military and political elites.²⁵⁵

The independent monitoring mechanism can also serve an important function by monitoring the provision of security, ensuring that it is both effective and uncorrupt. This will require hiring experts with experience in the diamond industry and imposing strict standards to prevent the abuse of power. It will also require a monitoring mechanism to strike the tenuous but vital balance between assisting governments with implementing controls on one hand, and monitoring their actions to ensure that mining populations are treated humanely and that resource control does not merely switch from rebel exploitation to government abuse on the other.

254. In March 2000, the *Corpo Especial de Fiscalizaco e Seguranca de Diamantes* (CSD) was established to combat illicit diamond activity and check the credentials of applicants for middleman positions at ASCorp. In response to CSD's failure to execute key elements of the control system with regard to powerful Angolans involved in diamond smuggling, Stanwest Security was created. See *ANGOLAN REPORT*, *supra* note 212, at 11.

255. See *id.*; Telephone Interview with Christian Dietrich, *supra* note 153.

Unfortunately, it seems highly unlikely that a monitoring mechanism will be formed willingly by Kimberley Process Participants. The general attitude among Participants has opposed this course of action. Although many governments had initially agreed that such monitoring was critical, when presented with an NGO paper on the topic at the November 2001 meeting in Gaborone, no government would even consent to discuss monitoring.²⁵⁶ This attitude is even more disappointing given that NGOs present at the meeting consented to open membership for the Kimberley Process under the mistaken belief that the monitoring provisions would give teeth to the scheme, forcing members to implement strict controls.²⁵⁷

Even if a monitoring mechanism could be established specifically to implement the Kimberley Process, monitoring or enforcing compliance with a toothless document is a questionable victory. The current lack of internal controls in the working document would make this task unduly arduous by providing a great deal of room for countries to adopt a lax attitude toward implementation and enforcement of the certification system. This difficulty is compounded by the problem of an open membership that would allow countries to join without any proof of their commitment to enforce a certification scheme. Stricter and more explicit internal controls are necessary to ensure compliance in both spirit and practice. For example, in addition to licensing requirements for all players within the diamond industry, these controls should mandate transparency within the industry. The measures that would help deter corruption include the publication of statistics on diamond production from government monitored mines and information about shareholders in mining corporations, particularly those who are government and military officials.²⁵⁸

The establishment of stricter internal guidelines and an expert mechanism to monitor their implementation could strengthen the international certification scheme envisioned by the Kimberley Process, making it a far more useful tool for

256. See, e.g., TAMM, *supra* note 121, at 31.

257. See *id.*

258. These and other recommendations have already been made by Global Witness, which outlines them in greater depth in a recent report on the Angolan certification and control system. See ANGOLAN REPORT, *supra* note 212, at 3-4.

preventing and controlling future conflicts. This potential role, however, may require participant governments and the United Nations to rethink and clarify the definition of conflict diamonds. Many situations where diamonds may be a source of conflict will not fit neatly into the rebel/government scenario, as evidenced by the current situation in the D.R.C.

Defining a conflict diamond may be, in reality, no different than taking a side in a conflict, a task that has been fulfilled by the Security Council thus far and will most likely remain with it, given the necessary role Security Council resolutions play in the Kimberley Process working document. This role threatens to overlook the fact that diamonds and other resources such as timber can contribute to conflicts in many forms and stages, whether through government misuse, rebel trade, funding of terrorism, or, more likely, combinations of all three. The line between illicit and conflict diamonds is necessarily blurred, and a narrow definition of and focus on conflict diamonds will reduce the KPCS to, at best, a cure when prevention might be most valuable.

VI. CONCLUSION

The obstacles facing the international certification system envisioned by the U.N. sanctions on Sierra Leone and Angola—and designed by the Kimberley Process—are unsurprising given the enormity of the enterprise. Overcoming these obstacles will be an arduous process, requiring efforts from the international community and massive restructuring of the diamond industries in warring countries and their neighbors. It is clear that a more robust commitment is needed by the Kimberley Process Participants, in particular the commitment to allow themselves to be monitored more closely for compliance with stricter, well-defined, internal controls. These efforts, however, may provide significant gains. The diamond trade is a powerful and potentially destabilizing tool if it falls into the wrong hands, whether those of a violent insurgency or an irresponsible and corrupt government. Indeed, as in Sierra Leone, insurgencies funded by pillaging may easily result from reckless government use of a valuable and highly lootable resource. An effectively controlled diamond industry, however, can also be a tool for stability by fostering development and strengthening the legitimacy of a government. If, and only if,

the necessary steps are taken, successful implementation of the Kimberley Process may present the international community with a promising alternative with which to promote peace and development.

