

**DIAMONDS IN PEACE AND WAR:
SEVERING THE CONFLICT-
DIAMOND CONNECTION**

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**WORLD PEACE FOUNDATION
WPF PROGRAM ON INTRASTATE CONFLICT
CARR CENTER FOR HUMAN RIGHTS POLICY
Cambridge, Massachusetts
2002**

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Preface

On October 19-20, 2001, the World Peace Foundation and the WPF Program on Intra-state Conflict, in cooperation with the Carr Center for Human Rights Policy and the Project on Justice in Times of Transition, convened a conference at the John F. Kennedy School of Government, Harvard University, on the role of diamonds in prolonging conflict in Africa, and the state of current efforts to reform the diamond trade in order to stem the funding of so-called “conflict diamonds.” Participants were drawn from the geosciences, the U.S. government, nongovernmental organizations, the diamond industry, and academia; most were involved in the international negotiations to curb the trade of conflict diamonds. The conference provided a neutral space for participants to discuss existing challenges and opportunities for positive action.

The conference agenda covered five topic areas:

1. *The nature of diamonds.* Their geological make-up, and technical problems with regard to identifying their places of origin.
2. *The diamond trade.* How the diamond industry operates, and how the reform of the diamond trade could limit the contribution of diamond exports to the fueling of civil wars and other African conflicts.
3. *The nexus of conflicts and diamonds.* How wars in Angola, the Democratic Republic of the Congo, and Sierra Leone are associated with diamond mining in each country.
4. *Current initiatives.* Assessment of national legislative efforts and negotiations to develop an international diamond certification regime through the Kimberley Process.
5. *Further action and the assessment of alternative diamond trade regulation models.*

Diamonds in Peace and War: Severing the Conflict-Diamond Connection reflects the outcomes of discussions by organizers and participants in the October conference, post-conference efforts to curb the trade in conflict diamonds, and primary research into the entire diamond question.

All actors involved in recent efforts to stem the trade in conflict diamonds — the United Nations, national governments, the diamond industry, and civil society organizations — are working toward the goal of loosening the ties between diamonds and war, if with differing motivations and senses of urgency. This report assesses progress to date, and shows that there is agreement in principle that an international certification system for diamonds would be an improvement over current *ad hoc* efforts, which do provide helpful precedents for the future, but cannot substitute for an international system of controls. In general, the conference participants had serious concerns about the efficacy of the Kimberley Process outcomes.

This report is organized into two parts: 1) an overview of the diamonds and war connection, and 2) an analysis of the global certification negotiations known as the Kimberley Process. A concluding section summarizes an overriding concern — that the goal of efforts to stop diamonds from funding wars should not lose sight of work that is necessary on other levels to end these wars, most importantly that of strengthening global support for Africa. Only by increasing such global support will the diamonds and war link finally dissolve.

The WPF Program on Intrastate Conflict and the World Peace Foundation served as the central coordinators of the conference, and Robert I. Rotberg, program director of the WPF Program on Interstate Conflict, and President of the World Peace Foundation, chaired the meeting.

Introduction

*I don't know how to tell this story. There are no words to describe what I have seen in Sierra Leone. My mind tells me to block out the really bad stuff, to deny the impossible reality. But the images of the amputee camp haunt me and the voices of the victims cry out. "Tell them what has happened to us," say the survivors. "Show them what the diamonds have done to us."*¹

Martin Rapaport is an American diamond dealer and industry analyst. In March 2000 he took a trip to Sierra Leone and saw first-hand how rebel atrocities in Sierra Leone were linked to the mining and trade of diamonds. In response, he wrote "Guilt Trip," from which this quote is taken. His article is a heartfelt call to the industry to do its part to deny diamond profits to rebel groups responsible for the atrocities. His is a reform-minded industry perspective, one that reflects a willingness to confront the conflict diamond trade on human rights grounds, and also reflects a desire to avoid the potential damage of a consumer campaign that might affect the diamond industry as a whole.

Diamond industry reformers such as Rapaport, and the nongovernmental organizations whose investigative reports spurred them on, have together motivated governments to create a global diamond certification system to stem the flow of "conflict diamonds." Efforts to break the link between diamonds and war have thus involved civil society, the diamond industry, governments, and the United Nations. It is unusual for a human rights problem to attract such a disparate group of actors all working toward a common end. The purpose of the Harvard conference, and the goal of this report, is to show how this convergence of actors came about, and the continuing challenges to success.

The international efforts have paid off. There was a rush of activity regarding diamonds and war a month after the

Kennedy School conference, at the end of November 2001. On November 28, the U.S. House of Representatives passed legislation that, if enacted by the Senate, will regulate the importation of rough diamonds into the United States, the world's largest market for retail diamonds. In addition, on November 29, an international negotiation process to set up an international certification system for diamonds concluded with a set of final recommendations for consideration by the UN General Assembly.

This report describes these momentous events in the light of previous endeavors, and offers several recommendations for future action. Among other proposals, this report advocates tough external monitoring mechanisms for an international certification scheme, and a reopening of the debate on what an international certification scheme for diamonds will mean for WTO Agreements, concern for which has unfortunately served to weaken any robust international certification regime.

But in assessing international efforts to curb the trade in diamonds fueling war, this report does not intend to imply that these constitute a panacea. Sanctions against diamonds that fuel warfare, whether implemented through *ad hoc* United Nations Security Council resolutions, or through an international certification system, are but one element in the resolution of difficult problems that will require a more holistic and engaged approach on the part of the international community.

Overview — Diamonds and War in Africa

To understand the relationship between diamonds and war, one must start with diamonds themselves: their geological makeup, location, and extraction methods, and the nature of the diamond industry, all of which have combined to make diamonds particularly vulnerable to exploitation by armed rebel movements mining and trading diamonds in Africa. The last half of this section reviews the diamond-war connection in Angola, Sierra Leone, and the Democratic Republic of the Congo.

THE NATURE OF DIAMONDS AND AN OVERVIEW OF THE DIAMOND INDUSTRY ²

Diamonds are the transparent form of pure carbon; they are formed by geological processes that take place 150 kilometers below the Earth's surface, in a region known as the Earth's mantle. Diamonds rise to the Earth's surface in molten rock that originates in the mantle, called magma. This magma moves up to the Earth's crust, carrying diamonds and other samples, and erupts in small volcanoes. Just beneath each volcano is a carrot-shaped "pipe" filled with volcanic rock, mantle fragments, and some embedded diamonds. The rock is called kimberlite, named after the city of Kimberley in South Africa, where kimberlite pipes were first discovered.

Diamonds are found in two basic types of diamond deposits: first, in kimberlite pipes that are mined by excavating a pit into the mouth of the pipe and then digging shafts adjacent to the pipe, and second, in what are known as "alluvial" deposits created by diamond pipe erosion, such as surface scatterings around a pipe, concentrations in river channels, and fluxes from rivers moved by wave action along ocean

coasts. These alluvial deposits, especially in riverbeds, require very little investment and no sophisticated mining techniques in order to exploit them.

Prior to the late nineteenth century, diamonds were found only in riverbeds in India and Brazil. The diamond supply was small, and each was highly valued for its beauty and scarcity. But everything changed in 1866 when diamonds were discovered in South Africa. This new source of diamonds created a diamond mining rush that had the potential greatly to increase the world's supply.

One company dominates the history of the diamond industry: De Beers. One of those attracted to the new South African mining prospects was Cecil Rhodes, who began digging diamonds in 1870 and co-founded the De Beers Mining Company in 1880. Rhodes sought control of diamond prices through full control of the mining and marketing of diamonds. In 1888, he managed to secure a monopoly of the Kimberley diamond production and he formed a "syndicate" with ten of the largest of South Africa's diamond merchants. Each was guaranteed a certain percentage of the diamonds from De Beers' mines. In return, the merchants provided Rhodes with data about the market so that he could ensure a steady, controlled supply. In the following years, De Beers retained this system for disseminating diamonds, but its original partners in the cartel were replaced by over a hundred of the world's most powerful diamond traders and manufacturers. Their goal was to match the supply of diamonds at one end of the pipeline with demand on the other.

Today, De Beers controls almost two-thirds of the world's annual supply of rough diamonds. All the rough diamonds that De Beers gets directly from its mines (50 percent of global annual output) or buys from Russia and Canada (15 percent of

global annual output) are sent to the De Beers' London-based marketing arm, the Diamond Trading Company (DTC), where diamonds are separated into thousands of categories, and divided by the company's sorters into lots called "boxes." Ten times a year, De Beers holds what it calls a "sight," and distributes the boxes to its 125 partners, known as "sightholders." De Beers sets the price of its boxes in advance and determines the quality and quantity each sightholder receives.

Once the sightholders take rough diamonds back to cutting and polishing factories in Antwerp, Tel Aviv, New York, Bombay, Johannesburg, and Smolensk, it becomes increasingly difficult to trace the "diamond pipeline." The diamonds are sold from the cutting and polishing manufacturing centers to wholesale and retail customers throughout the world, but the trade does not flow sequentially from trader to manufacturer to retailer. Traders and manufacturers sell diamonds "upstream" and "downstream" from the diamond pipeline, taking advantage of swings in the market. Diamonds "often pass through as many as a dozen hands before they ultimately reach the retail counter. Given the characteristics of the pipeline as described above, it is easy to understand why most diamonds are sold in an undifferentiated manner in the marketplace."³

Over the last two decades, De Beers' control of the rough diamond market has dropped from 80 percent to 65 percent as new mines owned by other companies in Australia and Canada have increased world supply. De Beers has historically used its position as the dominant miner of rough diamonds to manipulate world supply and keep prices high. When it realized that it could no longer control world supply, De Beers declared in July 2000 that it would abandon its traditional "supply management" model of stockpiling diamonds to

create demand. It now hopes to maintain stable world prices by becoming the "supplier of choice" of the diamond industry, by raising overall demand through aggressive marketing and "branding" of its own diamonds. When implemented, this policy shift will revolutionize the diamond industry.

Meanwhile, De Beers' traditional "supply management" practices have led to legal trouble in the United States, where Department of Justice officials have charged De Beers with violating U.S. antitrust laws. Thus De Beers has no official presence in the U.S. of any kind; instead, it sells its diamonds through the DTC in London and lets its sightholders export them legally into the U.S. Indeed, the participation of two directors of De Beers' Diamond Trading Company at the conflict diamond conference drew the favorable attention of the diamond industry press. The diamond industry magazine *Mazal U'Bracha* noted that the conference marked the first time De Beers officials have attended an event in the United States in their official capacity since the late 1970s; there has long been an indictment outstanding against De Beers; De Beers thus had to receive official permission to attend the Harvard meeting.⁴

But the diamond industry is not just about De Beers' corporate structure. The diamond industry is critical to many economies. In Botswana, Namibia, and South Africa, diamond mines bring prosperity, not war, to their populaces. Botswana is a good case in point. De Beers operates mines in Botswana in a 50/50 partnership with the government. Since the large-scale development of the diamond industry in Botswana in the 1970s, it has achieved record economic growth — in 1999 it was one of the fastest growing economies of the world, with real GDP growth of 9 percent a year. Diamonds provide three-quarters of export revenues and one-third of

the GDP. Botswana shows how mineral wealth can be a beneficial mainstay of an economy.

Likewise, Namibia's diamond industry dates back to the beginning of the twentieth century, and diamonds today account for 40 percent of the country's export revenues. In South Africa, the diamond industry as a whole gives employment to 30,000 people. In developing countries, the diamond industry is vital to manufacturing centers such as India, which employs 700,000 people in its diamond cutting and polishing plants.

DIAMONDS AND WAR

Most of the world's diamonds are mined in Australia, Botswana, Canada, Namibia, Russia, and South Africa — all peaceful and politically stable. However, those who work to stem the trade in conflict diamonds focus on the sliver of the diamond trade controlled by rebel movements in Sierra Leone, Angola, and the Democratic Republic of the Congo.

Diamonds are perhaps the most highly concentrated form of wealth in the world. The combination of the difficulty in detecting the origins of diamonds, their high value, simple mining processes (at least for alluvial deposits), small size, and a lack of transparency in the diamond industry all combine to make diamonds particularly easy prey for exploitation by those seeking to exchange them for arms. One conference participant noted that diamonds are not inherently "evil," but evil people use diamonds in criminal ways.

The term "conflict diamonds" is defined by the United Nations as "rough diamonds that are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments."⁵ In addition, the UK-based nongovernmental organization Global

Witness recommends that diamonds traded by international terrorists to finance their activities should be considered conflict diamonds. This is a timely addition to the debate, given recent allegations that diamonds may be linked to the Afghanistan-based terrorist network al Qaeda.⁶

The problem of conflict diamonds is linked to a new academic field of study that attempts to measure the factors that "fuel" rebel movements and civil war, especially those in Africa. The economics of civil war has received a fair amount of scholarly attention. As Paul Collier, director of the World Bank's Development Economics Research Group has written:

Rebellions either have the objective of natural resource predation, or are critically dependent upon natural resource predation in order to pursue other objectives. These, rather than objective grievances, are the risk factors which conflict prevention must reduce if it is to be successful.⁷

Collier's research suggests that civil wars are more often fueled by rebel groups competing with national governments for control of valuable primary commodities than by ideological, ethnic, or religious differences. Diamonds happen to be a "primary commodity" as well as one of the most highly concentrated forms of wealth, and are easily smuggled and traded by rebels. The role of rebel movements in their trade is integral to the definition of conflict diamonds; rebel movements in Sierra Leone, Angola, and the Democratic Republic of the Congo have put the "conflict" in "conflict diamond."

See the table, below, for a summary of the approximate levels of diamond production for 1999 and 2000, which includes estimates of diamond revenues for rebel movements. Estimates of diamond production and value vary widely, especially in countries where conflict diamonds are mined, due to differing methodologies and lack of data.

WORLD ROUGH DIAMOND PRODUCTION

Diamond output by country (U.S. \$million)		
	<u>1999</u>	<u>2000</u>
Botswana	1,800	2,200
Russia	1,600	1,600
South Africa	800	900
Angola	600	750
<i>Of which: UNITA</i>	<i>150</i>	<i>75 (estimates range from 75-100+)</i>
Namibia	400	500
Canada	400	400
Australia	400	300
Other	800	900
<i>Of which: RUF</i>	<i>70</i>	<i>70 (estimates range from 35 –100)</i>
<i>Of which: DRC rebels</i> (Kisangani)	<i>35</i>	<i>35 (estimates range from 35-70)</i>
Total	6,800	7,500

Source: Nicholas Shaxson, “Transparency in the international diamond trade” *Global Corruption Report 2001* (Berlin, Germany: Transparency International, 2001), 214. Shaxson’s estimates come from De Beers; he notes that the UN Security Council’s Monitoring Mechanism on sanctions against UNITA is almost twice the De Beers’ estimates for UNITA output. Also, where the DRC is concerned, some researchers place the total at twice the 1999 De Beers figure (Panel of Experts, Sierra Leone, December 2000), 27.

If one looks at the high end of the estimated diamond revenues for rebel groups, this table shows that rebels control between 3 and 4 percent of the world's total rough diamond supply; it should be noted that calculations of the exact figures under such control in each country can vary widely.

As several conference participants pointed out, any discussion of the trade in conflict diamonds that emphasizes how small it is compared to the total trade ignores the reciprocal role of small arms, which are widely available and very cheap. One conference participant noted that if an automatic weapon costs as little as ten dollars, then UNITA rebels, in control of perhaps \$100 million per year income from sales of rough Angolan diamonds, can buy 100,000 weapons.⁸

In addition, conflict diamonds make up only a small proportion of total trade, but they are actually a subset of the larger category of illicit diamonds — these are diamonds that have either been smuggled to countries where they will receive higher prices, stolen from mines, and/or used in money laundering, tax evasion, and other criminal activities. Indeed, illicit diamonds may represent up to 20 percent of the global diamond trade.⁹ Although this figure is debatable, what is generally agreed upon is that conflict diamonds enter the diamond markets in the same circuitous way as the illicit stones, often involving the same routes and networks of dealers, and it is often very difficult to distinguish conflict and illicit diamonds. As the UN Security Council's Panel of Experts report on Sierra Leone (December 2000) says of conflict diamonds: "they are, in essence, illicit diamonds that have gone septic."¹⁰

Given the size of the illicit diamond category in the world diamond trade, several conference participants stressed the importance of institutionalizing a global

diamond certification scheme with teeth that would block the flow of conflict diamonds entering legitimate trade through illicit channels, in addition to curbing crime associated with smuggling of illicit diamonds, by making the trade more transparent. As one participant stated: "We're here because 20 percent of the industry is rotten, and provides a cover for the 4 percent."

The link between diamonds and war is described in the following brief accounts of diamond exploitation in Angola, Sierra Leone, and the Democratic Republic of the Congo. Diamonds are a common element in terms of what sustains rebel wars, but the roots of the conflicts are deeper and differ greatly.

Angola

The world first officially recognized the role of diamonds in fueling conflict in the case of Angola when the United Nations Security Council (UNSC) imposed an embargo on diamonds mined by its rebel force, UNITA. This UNSC action (UNSC Resolution 1173 of June 1998) included UNITA diamonds among several other sanctions areas. By including diamonds, the Security Council strengthened an existing 1993 UNSC arms and fuel embargo. The new resolution specifically required that states ban "the direct or indirect import from Angola ... of all diamonds that are not controlled through the Certificate of Origin regime of the GURN [Government of Unity and National Reconciliation]." The UN's acknowledgment that UNITA's access to diamonds prolonged the country's civil war marked the first time that the international community attempted to impose an embargo on a rebel-controlled diamond trade. Soon, the international community came to realize that the entire diamond industry would need to be reformed in order to make sanctions stick.

Angola was split between three nationalist movements when it finally became independent from Portugal in 1975 (after fourteen years of war against Portugal): the Popular Movement for the Liberation of Angola (MPLA), the National Union for the Total Independence of Angola (UNITA), and the National Front for the Liberation of Angola (FNLA). The MPLA seized power in 1975, standing for “democratic socialism” and backed by the Soviet bloc. The FNLA retreated, but UNITA, backed by South Africa and the U.S., sustained a bid for power. The post-independent state was effectively split in two.

As Angola became a Cold War pawn, the pattern of the ownership of its natural resources was divided between the two factions: MPLA leaders profited from Angola’s oil resources, while UNITA controlled much of the diamond mining. In 1989, with the Cold War ending, funding from Angola’s Cold War masters (the U.S., the USSR, Cuba, and South Africa) dried up, and Angola’s plentiful natural resources became crucial to funding conflict. A peace deal was signed in 1991, but when UNITA leader Jonas Savimbi failed to win the 1992 elections, he reignited civil war. UNITA managed to gain control of 70 percent of Angola, and fighting ground to a halt after peace talks and the signing of the Lusaka Protocol at the end of 1994. But President Eduardo dos Santos’s MPLA went on the offensive in 1998, and managed to drive UNITA back from much of its former territory. Fighting continues.

Today, the Angolan government sustains itself with revenues from offshore oil deposits, while diamond sales continue to bankroll UNITA’s war effort. Oil provides over 90 percent of official exports, and 80 percent of total government revenue during the 1990s, a natural resource literally fueling the Angolan economy. Meanwhile, Angola’s diamonds are very vulnerable to

UNITA mining because they are spread over vast amounts of territory that the government is not able to control.¹¹ However, as one conference participant stated, the MPLA has had some success in driving UNITA out of key diamond sites since 1998. Doing so has significantly reduced the rebels’ diamond revenues. Between 1994 and 1997, when UNITA was in control of most diamond sites, it may have earned up to \$600 million per year (close to 10 percent of total world production of rough diamonds by value). Today, analysts estimate that UNITA earns only \$100 million per year from diamonds, and is most likely living off stockpiles, the exploitation of Angola’s many small, artisanal mines, and theft. One participant emphasized that battle victories by the MPLA, not Security Council sanctions, are the main reason behind the decline of UNITA diamond sales.

Angola is the world’s fourth largest producer by value of diamonds, and Angola’s official diamond monopoly, ASCorp, now controls most of the trade. In early 2000, Angola gave up all marketing rights for its diamonds to ASCorp, a joint venture between the state diamond company, SODIAM, Wellox of Israel, and Tais of Belgium. (Israeli-Russian businessman Lev Leviev is the main financier behind ASCorp and, thanks to ASCorp’s control of Angolan output, is now the biggest buyer on the outside diamond market — that is, diamonds that do not pass through De Beers’s marketing arm, the Diamond Trading Company). The monopoly was touted as a means to increase state revenue by reducing the chaos of the domestic diamond market and to channel rough diamonds through an official, transparent outlet, and, along the way, to curb the trade in conflict diamonds.

The Angolan government took a further step to assure the world of its “clean” diamonds by signing a structural coopera-

tion agreement in March 2000 with Belgium's Diamond High Council, which operates on behalf of the Belgian diamond industry and the Belgian Ministry of Economic Affairs. Both parties agreed to introduce an import confirmation certificate and to exchange data, technical assistance, and research about the characteristics of Angolan diamonds.

Angolan diamonds are divided into formal, informal, and illicit sectors.¹² The formal market consists of diamonds from mines officially licensed by ASCorp; the informal market consists of diamonds mined by unlicensed, "freelance" miners that are bought by buyers licensed by ASCorp; and the illicit sector consists of diamonds mined and traded by unlicensed diggers and buyers (including those mined and traded by UNITA or in UNITA territory). Analysts have described how difficult it is to differentiate between the informal and illicit (which includes conflict diamonds) sectors; "the legitimacy of the buyer is the only separation between the two."¹³ And, as one conference participant pointed out, the diamond monopoly may have been counterproductive in terms of curbing smuggling because it has effectively reduced the sums dealers pay to miners, and thus actually served to increase the flow of smuggled diamonds in the region.

ASCorp may have increased the amount of diamond revenues to the state, but the smuggling of diamonds, and UNITA's involvement in it, remain a problem. Indeed, the UN's Monitoring Mechanism on Sanctions against UNITA, established after the 1998 Security Council resolution, has found that up to \$1 million worth of diamonds are smuggled out of Angola each day, equivalent to \$350–\$420 million per year. Perhaps 25 percent of this flow constitutes revenue for UNITA. An excerpt from a recent report by the monitoring mechanism shows how frustrated its

investigators have become by diamonds leaking out of the official system and reaching world markets:

The primary responsibility for intercepting diamonds mined in defiance of the embargo clearly lies with States, yet diamonds equivalent to the production of an entire country are reaching markets across the world. To date not a single parcel of illicit Angolan gems has been intercepted anywhere, to the knowledge of the Mechanism, beyond one suspect parcel in Belgium under the previous Angolan certificate-of-origin regime. No diamond dealer has claimed to have witnessed Angolan gems being traded on any diamond bourse. These diamonds seem to vanish into thin air after leaving Angola. How is this even possible, given the magnitude of the trade, which is close to the value of the output of Australia or Namibia? Perhaps more importantly, why is it possible for diamonds to vanish?¹⁴

It has been over three years since the Security Council first imposed diamond sanctions against UNITA, and the UN report shows that, even with a reduction from years past, UNITA's trade in diamonds is ongoing and funding the movement. Indeed, UNITA has been very active of late: in an incident in August 2001, UNITA attacked a passenger train, killing over 250 civilians. Security Council-imposed sanctions against the trade in diamonds from UNITA have been bypassed with the help of neighboring states through which these diamonds may be smuggled into "clean," legitimate diamond packages, and diamond bourses, where dealers do not ask too many questions.

With a rich supply of oil and diamonds, conference participants pointed to the paradoxical misery of Angola's people. The war between UNITA and the government

has claimed at least 500,000 lives, while, at the end of 2000, the UN put the total number of persons displaced since the beginning of the decades-long conflict at 3.8 million — nearly a quarter of the country's 12 million inhabitants. Since 1975, some 100,000 others have been maimed, mainly by land mines; Angola is one of the most heavily mined countries in the world with an estimated 8 to 10 million landmines. Infant mortality is the second highest in the world with one in three children dead before the age of five. Only 30 percent of the population has access to safe water. Life expectancy is 44 years.¹⁵

These statistics are made even more tragic by the lack of response by the Angolan government. At the end of 2000, several humanitarian NGOs published reports stating that the government had the resources to look after its people if only it cared to do so.¹⁶ Given its oil and diamonds, the government of Angola should be doing much more to aid its citizens. However, it has become abundantly clear that only a select elite profit from those industries. As one conference participant put it, "Angola is the wealthiest failed state in the world."

Sierra Leone

In January 1999, the world's attention was drawn to a remote corner of West Africa, Sierra Leone. An armed rebel alliance attacked the capital, Freetown, and media reports of civilians raped, mutilated, and murdered by rebels horrified the international community. The rebels' use of child soldiers also came to light: after the January 1999 attack, over 3,000 children were reported missing — abducted by the rebels for brutal induction into their army. Six months later, in July 1999, the UN, the Organization of African Unity (OAU), and the West African regional security organization ECOWAS brokered peace accords between the government and the rebels, and

a UN peacekeeping force entered Sierra Leone that October. A year later, in July 2000, the UN Security Council instituted sanctions against diamonds mined by the chief rebel group, the Revolutionary United Front (RUF). Subsequent monitoring and reporting on the Sierra Leone situation revealed much about the particular problem of diamonds funding rebel activities in Sierra Leone, and also how sanctions-busting activities have evaded international regulatory attempts.

Sierra Leone attained its independence from Britain in 1961. Later, its populace suffered at the hands of corrupt and violent military leadership until 1996, when a civilian, Ahmed Tejan Kabbah, a former UNDP official, was elected president. Kabbah has been wholly unable to maintain control of the state because of frequent armed incursions from Sierra Leone's RUF and rogue soldiers.

In the late 1980s, a radicalized group of young men, opposed to then-president Joseph Momoh's military dictatorship, traveled to Libya for secret military training. Among them was a former army colonel named Foday Sankoh. This group became the core of the RUF leadership, and under Sankoh it began its revolt against the government of Sierra Leone in 1991. The RUF attacked Sierra Leone from neighboring Liberia, which has been ruled by RUF-supporter Charles Taylor since 1990. The rebel movement soon spread throughout Sierra Leone, often using child soldiers in its battles with the government.

A group of young, low-ranking soldiers — disaffected with the government and its war on the rebels — staged a coup in April 1992 and overthrew Momoh. The looting of the country by both soldiers and rebels led to chaos and state collapse. The international community's response was to press for elections, and in 1996, Kabbah became president in the country's first democratic

elections. He was slow to rebuild the country, where approximately 40 percent of the population lived in refugee camps, and was viewed as a weak ruler. A coup in May 1997 by soldiers brought to power a military junta known as the Armed Forces Revolutionary Council (AFRC), but its alliance with the RUF, and the violence and looting that followed, finally led the West African regional security organization, ECOWAS, to send in troops (ECOMOG), which ousted the AFRC in 1998, reinstalling Kabbah as president.

The RUF and elements of the AFRC continued to challenge the government. One of the most crucial dates of the conflict is 1994, which is when the rebels overran Sierra Leone's diamond regions. This source of wealth sustained the rebel war, granting the rebels the resources with which to purchase arms from Eastern Europe and neighboring countries, most notably Liberia, and to link up with criminal organizations around the world.

On July 7, 1999, the RUF and the government of Sierra Leone signed the Lomé Peace Accords, committing themselves to a permanent cessation of hostilities, the transformation of RUF into a political party, and the creation of a coalition-based Government of National Unity. The rebels were granted incentives that included full amnesty, legalized control of diamond resources, and senior positions in the government. All of this was achieved despite the rebels' role in a war that between 1991 and 1999 claimed over 75,000 lives, caused 500,000 Sierra Leoneans to become refugees, and displaced half the country's 4.5 million people. International human rights groups voiced their outrage at a peace that made a deal with killers. For example, Human Rights Watch stated: "The willingness of all international parties to the accord to accept the inclusion of a general amnesty stood in sharp contrast with the standards

of justice enforced in other conflicts, such as Kosovo and East Timor."¹⁷

The international community was forced once again to pay attention to Sierra Leone when, in May 2000, rebels violated the peace accords and took 500 UN Mission in Sierra Leone (UNAMSIL) peacekeepers hostage. The situation was only diffused when the British army intervened. Following renewed international concern at the role of the illicit diamond trade in funding rebels — most likely triggered by the UNAMSIL hostages incident — the Security Council adopted a diamond embargo on Sierra Leone. Security Council Resolution 1306 of July 5, 2000 imposed a ban on the direct or indirect import of rough diamonds from Sierra Leone not controlled by the Government of Sierra Leone through a certificate of origin regime. Between July and October 2000, the government of Sierra Leone and Belgium's Diamond High Council developed a certificate of origin system, involving a numbered confirmation certificate printed on security paper, electronic databases of exports with electronic confirmation at destination, and electronic transmission of digital photographs of the diamond packages being exported.

But flaws in the system soon became evident. Liberia's sponsorship of the RUF was exposed in the December 2000 Panel of Experts report on sanctions against rebels in Sierra Leone. The Panel of Experts report showed how diamonds far in excess of those available in Liberia were imported by Belgium as "Liberian." In effect, these "Liberian" exports served as cover for the export of RUF diamonds from Sierra Leone (although much of the "Liberian" production was in the larger illicit category; for example, there are rumors that Russian and Brazilian dealers falsely declared "Liberian" to disguise their origins in order to evade official contracts). The Sierra Leone report then led to Security Council sanctions

against Liberia in May 2001, which included a ban on the export of rough diamonds.

According to the October 2001 Security Council Panel of Experts report pursuant to sanctions against Liberia, the embargo on Liberian rough diamonds, combined with progress in the peace process in Sierra Leone, has resulted in a significant decline of diamonds marked as “Liberian” reaching diamond markets. However, many of Sierra Leone’s key diamond areas are still in RUF hands, and the rebels may be funneling their diamonds through official Sierra Leonean channels and those of neighboring countries. A November 2000 ceasefire has held, and as the “Disarmament, Demobilization, Reintegration” of former fighters has progressed, UNAMSIL has extended its presence throughout Sierra Leone, excepting the far eastern RUF-held areas of the country. Most importantly, RUF diamond mining continues unabated in the main diamond areas, the Kono District and Tongo Field regions, despite a UNAMSIL presence there. Ironically, UNAMSIL’s presence may have granted the rebels a respite from battle and time to regroup and rearm: they may be stockpiling diamonds in order to build up their weaponry. As a recent report by the International Crisis Group has noted, “this would be consistent with the rebels’ track record of using peace agreements tactically to gain strategic advantage.”¹⁸

Conference participants who had recently traveled to Sierra Leone and Liberia noted that the RUF was heavily pursuing diamond mining and was claiming that such stockpiles would be used to fund their nascent political party. Several conference participants expressed doubts that revenues would be used for peaceful purposes, and noted that the RUF was illegally stockpiling heavy weapons in Liberia. No one knows what its real plans are, but, with the RUF, actions usually speak louder than words. In

addition, since the conference, an investigative report in the *Washington Post* alleged that Osama bin Laden’s al Qaeda network profited from millions of dollars of RUF diamond sales. The report claims that diamonds are smuggled through Liberia, where Ibrahim Bah, the RUF’s principal diamond dealer, acts as a conduit between senior RUF commanders and the diamond buyers from al Qaeda and Hezbollah.¹⁹ In Sierra Leone, despite the peace process, the association of diamonds, war, and terror is not finished.

Democratic Republic of the Congo

A coup that overthrew the longtime dictator Mobutu Sese Seko in 1997 resulted in a change in this country’s name from Zaire to the Democratic Republic of the Congo (DRC), referring back to that land’s historic title. Like the fate of its historic namesake, uninhibited natural resource exploitation by outsiders had become commonplace. But this time, instead of massive outflows of resources to its colonial ruler, Congo’s own neighbors loot its riches, which have become the spoils of a complex civil war. As of the present writing, approximately half of the DRC is under rebel control.

The exploitation of Congo’s natural resources under the cruel personal rule of Belgium’s King Léopold II at the end of the nineteenth century is well known.²⁰ The Congo next came under the rule of the Government of Belgium, from 1908 until independence in 1960. But the new republic was rapidly embroiled in a civil war in the early 1960s that involved the attempted secession of its mineral-rich provinces. Finally, General Joseph-Desiré Mobutu (later renaming himself Mobutu Sese Seko) seized power in a coup d’état in 1965, renaming the country Zaire in 1971. His 32-year rule was characterized by extraordinary corruption; when Laurent Kabila overthrew him in 1997, it was widely reported that

Mobutu had amassed a personal fortune of \$10 billion.

Intimations of Mobutu's downfall came as early as 1994, when Zaire became increasingly destabilized by a refugee crisis in the aftermath of genocide in neighboring Rwanda. Close to 1 million refugees, including members of Hutu militias, flooded into the country and led to the building of refugee camps and a dangerous security situation along the border between Zaire and Rwanda. In 1996, war broke out between Zairian forces and the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), a rebel movement fighting against the Hutu militia that had infiltrated the Zairian refugee camps. The AFDL was led by Laurent-Désiré Kabila and supported by Rwandan and Ugandan troops. The entry of foreign forces would have dire consequences for the sanctity of Zaire's natural resources.

In 1997, Kabila's forces succeeded in toppling Mobutu; Kabila became president. But Kabila's Rwandan and Ugandan neighbors were soon dissatisfied with him. Kabila was unable to control his eastern border and the former soldiers of the deposed Rwandan Hutu government continued to attack Rwanda. Rwanda again supported a revolt that began in the eastern DRC in August 1998.

This time seven African countries sent troops onto DRC soil: Rwandan and Ugandan troops opposing Kabila, and troops from Zimbabwe, Angola, Namibia, Chad, and the Sudan supporting him. In July 1999, the Lusaka Ceasefire Agreement was signed by six of the warring states (the Democratic Republic of the Congo, Angola, Namibia, Zimbabwe, Rwanda, and Uganda — the Sudan and Chad having withdrawn) and rebel groups. The UN Security Council deployed UN liaison personnel and later the UN Organization Mission in the Democratic

Republic of the Congo to support the Lusaka Accords.

A bodyguard assassinated President Kabila in January 2001, and his son Joseph Kabila assumed the presidency. Joseph Kabila has been supportive of the 1999 Lusaka Peace Accords, and the international community views his engagement in peace talks positively. But the DRC remains divided into three parts: the north of the country is under FLC (Front de Libération du Congo) control, with support from the Ugandans. Much of eastern DRC is controlled by the RCD (Rassemblement Congolais pour la Démocratie), with the support of the Rwandan army. The western and southern parts of the country remain under the government's control, with military support from Angola, Zimbabwe, and Namibia (now pulling out). In addition, Burundi operates in the southern part of the Rwandan-supported RCD zone, but is not as active in support of rebel groups as Rwanda and Uganda.

One reason why the foreign troops will not leave is diamonds. In July 2000, the UN Secretary-General established a panel of experts to collect information on the illegal exploitation of natural resources and other forms of wealth in the DRC, as well as to examine whether the exploitation of the Congo's wealth was prolonging this conflict. The panel issued its report in April 2001, concluding that "illegal exploitation of minerals and forest resources of the Democratic Republic of the Congo is taking place at an alarming rate"²¹ and linking the continued presence of foreign troops to diamond mining and other natural resources, even claiming that the original decision to invade in 1998 may have been because, during the first war in 1996, Ugandans and Rwandans entering eastern Zaire saw business potential for the region. The initial entrance of foreign troops into Zaire in 1996 was a turning point:

This AFDL-led conquest of then eastern Zaire fundamentally altered the composition of the regional stakeholders and the distribution of natural resources. Previously, the distribution norm was (via legal and illegal channels) through locally based Congolese, mostly civilian-managed, business operations. However, these traditional modes were quickly overtaken by new power structures. Along with new players came new rules for exploiting natural resources. Foreign troops and their “friends” openly embraced business in “liberated territories,” encouraged indirectly by the AFDL leader, the late President Kabila.²²

Rebel groups make money exporting their stones eastward through Uganda, Rwanda, and Burundi, and also by taxing and regulating “freelance” miners, who then sell to foreign dealers with buying offices in rebel-controlled territories. Uganda, Rwanda, and Burundi are not diamond producers, and therefore diamond trade statistics that indicate that they have been exporting diamonds since their occupation of the DRC strongly hints that they are deeply involved in the DRC diamond trade. Among its recommendations, the April 2001 panel of experts report called for the Security Council to impose an embargo on mineral exports from Uganda, Rwanda, and Burundi until their involvement in the exploitation of natural resources in the DRC was clarified.

The DRC’s diamond wealth is not just exploited by its foes, but also by its army elite and its allies. Conference participants discussed reports of diamond mining connections between the DRC government and its ally, Zimbabwe, which has approximately 11,000 troops in the DRC. One example is Oryx, a diamond company with links to the governments of Zimbabwe and the DRC, which tried and failed to get a listing on the London Stock Exchange in spring 2000. Oryx was suspected to be a

profitable means of revenue for the two allies in Congo’s war because 40 percent of its profits apparently would have gone to Osleg, a company run by the Zimbabwean army; a further 20 percent would have gone to Comiex, a company that was linked to Laurent Kabila; and 0.2 percent would have gone to Zidco Holdings Ltd., a company associated with Zanu-PF, Zimbabwe’s ruling political party.²³ Opposition to the listing of Oryx on the London Stock Exchange was linked to international concern about conflict diamonds: “Due to questions of ownership and concerns about the concession’s location near Mbuji-Mayi in Congo’s main diamond area, and because of the risks involved in mining there, the LSE listing was reportedly opposed by the British government, which [was] leading a campaign to outlaw the sale of conflict diamonds.”²⁴

In 2000, the government of the DRC attempted to manage the diamond resources under its control in much the same way as did the government of Angola: by inviting foreign stakeholders in combination with the state-controlled diamond producers to form a monopoly. This “single channel” for DRC diamonds is supposed to reduce smuggling and increase state revenues, with the added bonus of cutting back on trade in rebel-supporting conflict diamonds. However, the monopoly in the DRC proved short-lived.

The DRC diamond monopoly began in July 2000, when the DRC, then under President Laurent Kabila, signed an eighteen-month monopoly contract with IDI Diamonds, an Israeli diamond-trading firm, giving the company exclusive rights to buy Congo’s production, with a potential diamond flow of approximately \$600 to \$700 million dollars per year. The IDI contract was haunted early on by press allegations that the deal provided for the training of a Congolese “anti-smuggling

force” by Israeli military experts (harkening back to the country’s repressive past under Mobutu, when Israeli advisers helped to train the brutal security forces) although both the government and IDI director Dan Gertler denied it.²⁵ Further, detractors claimed that IDI purchased diamonds from UNITA.

As in Angola, analysts claimed that the IDI monopoly offered below-market prices for diamonds, causing many producers to smuggle their stones into the neighboring Republic of Congo (Brazzaville). According to Ambroise Kawaywa Swana, the DRC’s deputy minister for mines, shipments of rough diamonds from Brazzaville to buyers in Belgium soared from \$1.2 million a month before IDI’s monopoly to \$25 million a month.²⁶ The DRC was receiving a greater percentage of diamond revenues than before the monopoly, but Joseph Kabila’s new government quickly revoked IDI’s monopoly in April 2001, most likely because of discontent on the part of DRC’s diamond producers shut out of the IDI monopoly and reported pressure from the International Monetary Fund to liberalize the diamond industry.

While the government struggles to establish control of its diamonds, DRC diamonds continue to finance conflict there, and the humanitarian situation is worse than ever. As a consortium of aid agencies wrote in August 2001: “The proliferation of armed groups, newly formed militia, and ill-disciplined soldiers pose a greater threat to security and stability for the population in eastern DRC than the conventional war ever did. Humanitarian access is therefore sporadic in some places, and impossible in many others.”²⁷ Aid agencies have estimated that more than 2 million people are internally displaced (of these, over 50 percent are in eastern DRC); more than 1 million of the displaced have received absolutely no outside assistance; and between 1998 and

2001, up to 2.5 million people have died due to lack of access to health care, among other reasons.²⁸

Efforts by the DRC to construct a more transparent diamond industry resulted in an agreement between the Belgian Diamond High Council and the DRC to set up a certification system for Congolese diamonds, similar to the systems for Angola and Sierra Leone following the end of IDI’s monopoly in April 2001. However, one analyst has called the certification plans “an entirely superficial system” because conflict diamonds enter the legitimate system through middlemen who buy diamonds from “freelance” miners far from any monitoring system.²⁹ Any truly effective certification effort would have to include monitoring provisions on the middlemen who supply rough diamonds to foreign buyers.

As of this writing, there has been no UN Security Council embargo on diamonds mined by rebels and foreign troops stationed in the DRC. A November 2001 panel of experts addendum report on natural resource exploitation in the DRC recommends a temporary moratorium on rebel-mined diamonds (among other natural resources). The panel also calls on the Security Council to establish an independent body to help President Joseph Kabila review and revise resource deals — such as with Zimbabwe — made under duress.³⁰

One conference participant observed that the real question is not how to raise the political will to implement sanctions against diamonds, but how to remove the occupying countries from the eastern Congo. His point was well-taken: policy prescriptions that focus solely on diamond embargoes risk losing sight of the “big picture;” the international community should see natural resource embargoes as part of broader political and military solutions.

PIECEMEAL SOLUTIONS

In the Angolan, Sierra Leonean, and DRC cases described above, each state's inability definitively to crush the rebel movements, combined with extensive internal corruption, have turned these three nations into failed states. The sheer numbers affected by these wars are astounding. As cited in U.S. congressional legislation: During the past decade, war has forced more than 6.5 million people in Sierra Leone, Angola, and the DRC from their homes, because of wars fought in large part for control of diamond mining areas. Approximately 3.7 million people have died during these wars. The countries caught in this fighting are home to nearly 70 million people whose everyday lives are caught up in war and concomitant human rights violations.³¹

International intervention has taken the form of facilitating peace accords, providing peacekeepers, economic and military assistance to governments, and targeted sanctions against rebel groups (arms embargoes, travel bans, financial sanctions, and diamond embargoes, among others). Diamond embargoes are the most recent manifestation of a growing trend toward sanctions as coercive action to bring an end internal conflicts and gross violations of human rights.³² But do they work?

Security Council-imposed sanctions and their monitoring bodies have been the chief method by which the international community has tried to curb the flow of diamonds from rebel hands. The Security Council can impose sanctions under Chapter VII of the UN Charter: "to maintain or restore international peace and security." As described in the three cases above, starting in 1998 with the embargo of UNITA diamonds, the Security Council has issued a total of three resolutions against dealing with rebel diamonds: UNITA, RUF, and Liberia. But such resolutions can never

totally stem the trade in conflict diamonds — diamonds are too easy to smuggle. Stones mined by rebels in Sierra Leone, Liberia, the DRC, and Angola reach the major trading centers under cover of such countries as the Central African Republic, Rwanda, Guinea, Congo-Brazzaville, and even South Africa, among others.

Because the sanctions are so piecemeal, it is hard to control the flow of diamonds from rebels into neighboring countries where there are no embargoes against their trade; conflict diamonds can easily be slipped into the stream of legitimate trade and exported under official export-authority certificates.

One solution might be to institutionalize a permanent sanctions monitoring body at the Security Council. The October 2001 monitoring mechanism report on Angola recommends such a monitoring body at the Security Council to ensure consistent monitoring of targeted sanctions regimes in armed conflicts. "Such a new unified facility would be cost-effective and would avoid duplication of tasks and overlapping of investigations and ensure the preservation of a comprehensive database as well as its systematic and continuing processing."³³

But sanctions committees, even if centralized and permanent, would not be enough on their own. The Security Council sanctions committees produce regular reports on the implementation and results of the diamond sanctions, and they ultimately rely on the punishment of "naming and shaming" to stop sanctions violators. These reports have boldly named heads of governments, diamond dealers, and rebels following investigations of sanctions-busters all over the globe. Yet the shame must not be too distressing, because violations against sanctioned regimes continue. As per the October 2001 report by the sanctions committee on UNITA, only one parcel of suspected diamonds has been seized in

Antwerp under the 1998 Security Council embargo of UNITA diamonds. This is all despite the widespread knowledge that UNITA today manages to sell about \$100 million worth of diamonds per year.

As U.S. Congressman Tony Hall has stated, “This is a global problem that cannot be solved with a piecemeal approach — whether that is UN embargoes, or individual producing countries’ laws. That is the firm conviction of the diamond industry, of civil society, and of others familiar with the problem of conflict diamonds.”³⁴ Because embargoes on rebel-mined diamonds are easily circumvented, establishing a diamond “paper trail,” which was the main focus of the October conference at Harvard, has become a key weapon. The international community has developed an international certification regime for diamonds that would strengthen existing diamond embargoes by creating a high level of assurance of a diamond’s origins and, in the process, force lax countries to strengthen their national certification of origins systems.

To strengthen or even supplant such a global certification system, is there some scientific way to establish a diamond’s origins? Geoscientists have explored techniques to determine the origins of any given rough diamond for decades. In recent years, the interest in stemming the trade in conflict diamonds has raised hopes that diamonds that are suspected to be from conflict regions could be identified by physical characteristics. But because of the

particular geological nature of diamonds, this would be very difficult.

Among the participants at the Kennedy School’s diamonds and war conference were two geoscientists who concluded that although some promising techniques are currently available, the chemical composition of diamonds limits such prospects unless and until scientists are given substantial resources to develop more accurate, less time-consuming, and much more cost-effective techniques. Diamonds are by nature clean minerals. They form in similar geological environments worldwide, making analysis of their component elements (other than carbon) extremely difficult. Statistically, it would be nearly impossible to identify the national source of individual diamond (not to mention the fact that rivers often carry alluvial diamonds far from their original source). Even if trace elements suggest a source country, analysts need a collection of diamonds from all major primary and secondary sources to analyze chemically in order to establish a database of information on trace element chemistry to make such a determination. No such diamond database exists. However, there are low-tech methods: some experts in the trade are able to make reasonable guesses as to diamond origins simply by looking at a collection of diamonds. But, in the meantime, a diamond’s paper trail, not the rough stone itself, is the focus of international efforts.

The Kimberley Process: the Foundation for an International Certification Regime

In 1999, the terms “conflict diamond” and “blood diamond” entered into common parlance and changed the diamond industry forever. Increasingly frequent and embarrassing reports by nongovernmental organizations and UN monitoring bodies documented blatant violations against sanctions on trading in diamonds with various African rebel movements. Even more worrying for the diamond industry, the media began to pick up on these reports and investigate the link between diamonds and war in West Africa. To nip the potential for consumer boycotts in the bud, the diamond industry was persuaded by nongovernmental organizations to become proactive regarding conflict diamonds, and, by mid-2000, issued proposals for a systematized diamond certification regime, and signaled its support for national legislation to block the export of diamonds from conflict areas.

Following the lead of nongovernmental organizations and the diamond industry, governments began to think about how to curb trade in conflict diamonds. Over thirty governments have participated in the international diamond certification negotiating process known as the “Kimberley Process” that concluded its negotiations in preparation for its final report in November 2001; it is the repository of the hopes and fears of efforts to stem the trade in diamonds that fuel conflicts.³⁵

South Africa’s Minister of Minerals and Energy initiated what became known as the Kimberley Process when it became clear that publicity over conflict diamonds might harm South Africa’s diamond industry. It

started with a group of government officials from countries that produce, process, and import diamonds, who officially launched the process at a meeting in Kimberley, South Africa in May 2000. The group agreed on a draft for an international certification program for rough diamonds. South Africa chairs the Process.

Conference participants at Harvard discussed the impetus behind the Kimberley Process. They praised the nongovernmental organizations that first exposed the problems of sanctions-violations in the diamonds trade; these NGOs, such as Global Witness and Partnership Africa Canada, as well as the coalition of groups making up the Fatal Transactions Campaign and the U.S.-based Campaign to Eliminate Conflict Diamonds, remain deeply involved in the current international certification scheme as well as national legislative efforts. In addition, conference participants cited the Fowler Report, the informal name for the report by the panel of experts mandated to investigate violations of Security Council sanctions against UNITA, named after the chairman of the sanctions committee, then-Canadian Ambassador to the UN Robert R. Fowler. The Fowler report’s damning account of sanctions-busting accused two sitting African presidents and a dozen countries of helping Angola’s UNITA rebels. Perhaps not coincidentally, the Kimberley Process was initiated in May 2000, two months after the release of the Fowler Report and the launch of a U.S. NGO campaign against conflict diamonds.

After a series of meetings in 2000 that served mainly to introduce participants to the issues at hand, the UN General Assembly ordered the Kimberley Process Task Force to develop a detailed proposal for an international certification scheme for rough diamonds, known more generally as “rough

controls,” in General Assembly Resolution 55/56 of December 1, 2000, which was sponsored by forty-eight states and universally adopted. The resolution stated that the international certification scheme should be transparent and rest primarily on national certification schemes that meet internationally agreed minimum standards. The adoption of the resolution signaled the start of the “expanded” Kimberley Process, when more states joined the task force. The resolution also gave participants a deadline by which to report on its negotiations: countries participating in the Kimberley Process had to present a report no later than December 2001.

The expanded Kimberley Process, or “Kimberley-Plus” phase began in February 2001 with a conference in Windhoek, Namibia. At that meeting, delegates agreed to a “roadmap” for subsequent meetings in order to prepare for the report to the General Assembly. The “roadmap” and mandate of the Kimberley Process task force are reproduced in Attachment 1. Subsequent meetings were held in Brussels, Moscow, London, Luanda, and a final meeting in Gaborone. Official participants represented governments or regional arrangements, with significant input from the diamond industry, as represented by the World Diamond Council, and nongovernmental organizations waging campaigns against conflict diamonds.

In practice, the Kimberley Process participants envision an international certification regime that would allow for the identification of the origins of rough diamonds: participating countries would export packets of rough diamonds in secure containers, the contents of which would be disclosed on a forgery-proof export certificate that would accompany each diamond packet. The certificate’s details would then be entered into an official database by the exporting country’s authorities, and, at the

point of first import, checked against that database by the importing country’s authorities. From there, a chain of warranties, designed by the diamond industry, would help to safeguard that the diamonds stay clean. The chain of warranties is a series of assurances, by sellers to buyers, that accompanies the diamonds until they are cut and polished. In a final step, governments would issue re-export certificates every time a rough diamond is traded, although they may rely in part on the industry’s chain of warranties. In general, the greatest hurdle for the Kimberley Process negotiations has been in developing a consensus regarding controls beyond the first point of import. (See Attachment 2 for a detailed description of the certification regime by U.S. Congressman Tony Hall, D-Ohio).

The Kimberley negotiations have raised a host of tough problems regarding the implementation of such a system. Progress has been slow because governments, ultimately, must sign off on an international certification scheme for diamonds and enact national legislation, and governments come to the table representing their own national concerns. Millions of diamonds pass through major world trading centers, and industry reform will mean major changes and new responsibilities, thus Kimberley Process government negotiators must consult with their departments of commerce, customs, mining, foreign affairs, and justice.

Conference participants spoke at length about the slow advance of Kimberley Process negotiations. Conference participants complained that because of internal concerns in their home countries, sometimes governments have participated in the Kimberley Process with no mandate to agree to anything. They also stated that key governments in the diamond industry (Russia, India, Switzerland, and the DRC,

for example) did not attend early meetings, and those newcomers had to catch up at each meeting, causing delays.

In addition, and perhaps most importantly in terms of the legitimacy of an international system, conference participants stressed that conflict diamonds are tied to the much larger illicit, criminal trade, and curbing their trade is ultimately about law enforcement. To aid enforcement, external monitoring of national certification systems and the creation of an international database to track diamonds is essential. On diamond trade statistics, Belgium is the only country that produces easily accessible trade data on rough diamonds. Currently, it is difficult to compare trade data on diamonds because of differences in values assigned to diamond shipments, among other customs differences between countries. NGOs and some governments have pushed for internationally-harmonized, transparent, easily-accessible diamond trade statistics. At the conference, however, participants complained that Kimberley Process provisions for external monitoring and an international diamond trade database were too vague.

Kimberley Process supporters have been immensely frustrated to see its promise stall time and again over relatively minor problems compared to some of the tough issues that have been pushed aside. The intensity of the criticism only serves to illustrate the importance of the goals of the Kimberley Process. Several conference participants pointed out that there were tough international controls on other goods and services, such as the textile industry and the Universal Postal Union, and therefore a robust diamond certification regime was possible, but that clearly there was not enough political will. Several participants observed that the negotiations required stronger leadership to move beyond the myriad sticking points in a timely fashion.

On November 29, 2001, at the conclusion of the Kimberley Process meeting in Gaborone, Botswana, representatives announced that they had developed a detailed proposal for an international certification scheme for presentation to the UN General Assembly. The working document that came out of this meeting recommends that each Kimberley Process governmental participant should:

- Create a “Kimberley Process Certificate” to accompany each exported shipment of rough diamonds (certificates should meet minimum requirements such as citation of country of origin for diamond parcels that contain diamonds originating from the same source)
- Implement import controls (confirmation of the Kimberley Process Certificate, etc.)
- Implement internal controls to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory (including a provision for an industry-driven voluntary system of chains of warranties, independently audited, to facilitate governmental internal control systems)
- Declare progress in terms of certification scheme implementation (and voluntarily cooperate with other participants to assist others in improving the functioning of certification schemes), and make available statistical data on rough diamond production, exports, and imports
- Participate in annual plenary meetings.

The Ministerial Statement issued at the conclusion of the meeting recommended that countries in a position to issue

Kimberley Process certificates do so immediately while encouraging others to issue certificates by June 1, 2002. The statement claims that full implementation of the scheme by all participants should be ready by the end of 2002.

Some problems are still unresolved, for example, steps to be taken against non-compliant Kimberley Process members, or members trading with non-members, and the financing of control mechanisms. Concerns raised by several conference participants were not allayed.

Nongovernmental organizations have found that the monitoring mechanism outlined by the Kimberley Process is inadequate. External monitoring of the system shall be performed at the convenience of the plenary at its annual meeting and on the basis of consensus, which may mean in practice that one country's veto will be enough to block the monitoring mechanism. Likewise, there has been some delay in considering the development of a database for formal transparent diamond trade statistics. In addition, as of this writing, there is no agreement on a secretariat or institution to manage the international system, only "administrative support." As this is an intergovernmental agreement, some sort of managerial body would be essential to ensure that the international process meets its goals. Indeed, a group of nongovernmental organizations has compared the system that has come out of eighteen months of negotiations to a watchdog without teeth.³⁶

However, it is a start. One conference participant said privately that despite the disappointment many in the industry and NGO community feel toward the final document hammered out by the Kimberley Process, the process has a momentum of its

own, and now that the architecture for a certification system has been agreed on, remaining problems can be fixed. Indeed, the Gaborone meeting in November 2001 does not the end of Kimberley Process negotiations. Its report is to be submitted to the UN General Assembly in March 2002 (it was not on the UNGA's agenda in December 2001, as originally planned). After the UNGA meeting, Kimberley Process members are scheduled to have an interim meeting in March 2002, in Canada. Matters on which there is still much disagreement will be discussed. Thereafter, the Kimberley Process members will participate in annual plenary meetings.

More broadly, in the words of one diamond industry conference participant, the Kimberley Process and concomitant national legislation in the U.S., "represent a successful case study on how civil society, industry and government can work together to overwhelm a problem which was too big to tackle individually. Looking to the future, ratification of the Kimberly Process by the UN Security Council will complete the study and ensure that it stands the test of time."³⁷ It is to be hoped that the final system is strong enough to allow all parties to work together harmoniously. NGOs have indicated that the planned system currently on the table is too weak, and they will continue to press governments to institute tougher measures.

The remainder of this section describes in more detail the actions of various actors involved in the Kimberley Process to date: nongovernmental organizations, the diamond industry, and national governments. During the negotiations, each moved toward the goal of eliminating conflict diamonds from legitimate trade, albeit with differing senses of urgency.

NONGOVERNMENTAL ORGANIZATIONS

*...for those NGOs in search of an issue, diamonds are almost heaven-sent. Their connection to three brutal wars is clear. The industry, dominated by one big company, is not regulated in any meaningful way. It epitomizes the globalization problem that has so exercised young people on the streets of Seattle, Prague, and Genoa. It is a much clearer issue than seals and the fur trade.*³⁸

Human rights and humanitarian organizations are responsible for first drawing world attention to the problem of conflict diamonds. Their efforts to expose conflict diamond sanctions violations were central to the creation of the Kimberley Process; governments and the diamond industry feared that catchy slogans such as “diamonds are a guerilla’s best friend” might find their way into the public consciousness and taint all diamonds, not just the 4 percent believed to prolong wars in West Africa.

The quote cited above is by Ian Smillie, a Canadian development consultant and leading conflict diamond expert who participated in the Kennedy School conference. Smillie is the research coordinator for Partnership Africa Canada’s diamonds project and co-author of an influential January 2000 report on how diamonds fueled rebel uprisings in Sierra Leone. As an analyst and NGO leader, Smillie is keenly aware of the power of the diamond as a symbol around which to base human rights campaign work. NGOs forced the industry to recognize that it would have a problem on its hands on par with the fur trade if it did not preemptively become involved in curbing the trade in conflict diamonds.

Early NGO actions against conflict diamonds did involve protests outside of major diamond retailers in the United States. However, for the last two years, NGOs have made a conscious attempt not to organize anything that might appear to call for boycotts on diamonds; the U.S.-based

Campaign to Eliminate Conflict Diamonds has displayed its “no boycott” policy prominently on its web site, and there are many NGO statements recognizing that the diamond industry benefits many in developing countries. In addition, NGOs acknowledge the preemptive actions by the industry and government to create solutions to the problem. Alex Yearsley, a campaigner for Global Witness, a member of the Fatal Transactions campaign, has remarked, “We didn’t really go to the mass media. We could have been a lot worse than we were, but because we’d seen moves from the industry, we didn’t see the need for that. If governments and the industry hadn’t reacted, then the profile of the campaign would have been raised dramatically.”³⁹

The first significant NGO action on conflict diamonds occurred in December 1998 when UK-based Global Witness released its report *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict*. Global Witness, once described by diamond industry analyst Martin Rapaport as a “feisty little troublemaker,” had already made a name for itself investigating the links between the Khmer Rouge and the illicit trade in Cambodian timber.⁴⁰ Global Witness’ *Rough Trade* investigations had revealed wide-spread sanctions-busting in Angola: UNITA was still sending its diamonds both by air and through neighboring countries such as Zambia, the DRC, and Congo-Brazzaville. Its diamonds were being sold in the major diamond importing centers. The report

implicated De Beers in buying up diamonds from UNITA to maintain market stability. De Beers responded to the report with a press release denying the allegations and stating that it fully supported both the letter and spirit of the UN Resolution 1173.

De Beers was forced to change its tune. The next major NGO action occurred in October 1999, when four European human rights groups launched the “Fatal Transactions Campaign” (Global Witness, Medico International, Netherlands Institute for Southern Africa, and the Netherlands Organization for International Development) to raise consumer awareness about how revenue from diamond sales was fueling wars in Sierra Leone, Angola, and Liberia. The campaign urged the diamond industry, especially De Beers, to take stronger measures to ensure that it was not marketing smuggled diamonds.⁴¹ Many analysts note that, perhaps not coincidentally, De Beers announced an embargo on the purchase of all diamonds from Angola by its buying offices around the world two days after the launch of Fatal Transactions, and also said it would review its buying operations in the DRC and Guinea. Shortly afterwards, De Beers announced that it would no longer buy diamonds from the outside market.

Sierra Leone’s diamond curse was exposed in Partnership Africa Canada’s (PAC) report *The Heart of the Matter: Sierra Leone, Diamonds and Human Security*, which definitively established the centrality of diamonds to Sierra Leone’s conflict, and caused a splash when it appeared in January 2000. The report described how RUF rebels exchanged diamonds for arms and drugs in open smuggling operations through Liberia and other countries in the region, and how rebel-mined diamonds were entering the diamond pipeline through Liberia. It garnered much mainstream press coverage,

and can take the credit for helping the public understand the problem and also for inspiring action; perhaps, for example, the July 2000 UN Security Council embargo on diamonds from Sierra Leone, which forced the government to develop an internationally acceptable certification system.

The following year, a coalition of seventy-three U.S.-based NGOs launched the Campaign to Eliminate Conflict Diamonds, choosing a significant date for the diamond industry, February 14, 2001. The campaign was coordinated by Physicians for Human Rights and included faith-based, development, and prominent humanitarian/human rights advocacy organizations such as World Vision, Oxfam, Amnesty International, and Human Rights Watch. The campaign’s mission was to encourage the introduction and passage of tough U.S. legislation that would halt all diamond imports from any country that was not part of a global certification regime. The campaign successfully fought off “soft” legislation that NGOs believed would only pay lip service to the problem — an investigative piece in *The Nation* describes how they were up against top Washington lobbyists hired by the diamond industry — and eventually went on to help shape compromise legislation with the World Diamond Council.⁴² The resulting bill is predicated on a global system, and NGOs hope that its passage in the world’s largest diamond market will force the Kimberley Process provisions into effect.

A small number of NGOs have been attending the Kimberley Process meetings, including Global Witness, PAC, and select members of the Fatal Transactions and Campaign to Eliminate Conflict Diamonds coalitions. PAC representatives describe their experiences at these meetings as difficult: “Half a dozen NGO voices in a room filled with people schooled in UN etiquette is a challenge, and there is a fine line for NGOs between being heard and being a

nuisance.”⁴³ Their presence in the Kimberley Process was critical not only for their substantive contributions to the debates, but also because no press was allowed in, and they were later able to spread information about the status of the negotiations to a wider audience.

Deeply critical of the slow progress of Kimberley Process meetings, NGOs regularly issue press releases alerting the public to obstacles holding up substantive change. For example, a group of NGOs released a statement on the final Kimberley Process meeting — entitled “A Good Watchdog But Crucially Lacking Teeth” — that lays out their objections to the lack of monitoring measures entailed in the final Kimberley Process document, and urges all Kimberley Process participants to pursue the goal of passing the certification process as a UN Security Council Resolution.⁴⁴ As they call on the Kimberley Process participants to grant teeth to the watchdog of the diamond trade, they themselves have become the watchdog of the entire process.

THE DIAMOND INDUSTRY

Once it was convinced that the problem of conflict diamonds would not go away, the diamond industry became proactive in calling for a system to certify diamonds to ensure that conflict diamonds were not entering legitimate trade. Members of the diamond industry at the Harvard conference stressed how they designed their efforts in order to leave the important diamond industries in developing countries such as Botswana and Namibia untainted. A participant from Botswana voiced deep concern that the entire diamond industry could be hurt by misdirected campaign work.

De Beers, the World Diamond Council, and Belgium’s Diamond High Council have all significantly contributed to the certifica-

tion regime currently under consideration by the Kimberley Process.

Above all, De Beers, the world’s largest trader of rough diamonds, has worked hard to rid itself of any association with conflict diamonds. De Beers produces about 50 percent by value of the world’s total annual global diamond production from mines it owns or co-owns, and the De Beers Group’s Diamond Trading Company (DTC), based in London, sorts, values, and sells a total of 65 percent of the world’s annual supply of rough diamonds. The total value of global rough diamond sales is over \$7 billion per year.

As early as October 1999, in response to the formation of a coalition of NGOs to work against conflict diamonds, De Beers announced its pullout from the Angolan market (with the exception of De Beers’ contract for diamonds from one official mine), and soon after De Beers announced that it withdrew from the “outside market” as a whole (the 35 percent of the rough diamond market not controlled by De Beers’ Diamond Trading Company). Since March 27, 2000, De Beers has produced written guarantees that any diamonds it sells comes from legitimate sources; the guarantee states that all the diamonds are from its own mines, its partners in Botswana and Namibia, and those bought by contract from Russia and Canada.

Some analysts of the diamond industry have claimed that large mining concerns like De Beers have used the anti-conflict diamond movement as a means to bring the world supply of diamonds under their control and to limit sales of illicit diamonds, which is composed of sales of diamonds stolen from legitimate mines as well as the much-publicized sales of diamonds by rebel movements. Limiting African diamonds to those from De Beers’ mines in South Africa, Botswana, and Namibia on the grounds that this would eliminate conflict diamonds

would also reduce global supply, and would make it easier for De Beers to sell its estimated \$4 billion stockpile in rough diamonds without pushing rough diamond prices down too far.⁴⁵

Whatever its reasons, the diamond industry took a concerted step to curb conflict diamonds in July 2000, when, at the 29th World Diamond Congress, the World Federation of Diamond Bourses and the International Diamond Manufacturers Association passed a resolution creating the World Diamond Council (WDC). The mandate of the WDC is the “development, implementation and oversight of a tracking system for the export and import of rough diamonds to prevent the exploitation of diamonds for illicit purposes such as war and inhumane acts.”⁴⁶ The WDC proposed steps to curb the trade in conflict diamonds that became the basis for the certification scheme negotiated in the Kimberley Process. These steps envisioned the establishment of an international “certificate of origin” system to protect the legitimate supply chain from rough diamonds mined in conflict zones. Matthew Runci, president and CEO of Jewelers of America and executive director of the World Diamond Council, outlined the essential elements of WDC recommendations in testimony before the United States House of Representatives:⁴⁷

1. All countries that export rough diamonds should have official dedicated import/export offices for rough and/or polished diamonds closely supervised by government authorities that register data on export shipments in an international diamond database (IDD). Furthermore, the diamonds are to be sealed in standardized tamperproof containers, which will include an officially signed document capturing all the information entered into the IDD and thereby certify

the origin of the contents of the shipment.

2. All countries that import rough diamonds should have official dedicated import/export offices for rough and/or polished diamonds closely supervised by government authorities that register import shipments in the IDD. No rough diamonds are to be imported unless they are in a standardized sealed tamperproof container from the country of export and the export shipment information in the international diamond database corresponds to the enclosed official documentation. The importing country will enter the date and country of importation in the IDD.
3. All countries that import commercial quantities of polished diamonds should adopt legislative programs requiring certification that imports of commercial quantities of polished diamonds may come only from countries that have implemented rough controls, as defined in #1 and #2 above, and allowing criminal prosecution of those who are found to be knowingly dealing in conflict diamonds.

The WDC urged governments of countries involved in the diamond trade to enact and enforce its measures in national legislation in coordination with the Kimberley Process, and also offered its assistance in drafting legislation. In late 2000, the WDC’s Legislative Committee oversaw the drafting legislation for presentation to the U.S. Congress, which it hoped would also be used as a model for other governments, the United Nations, and other trade regulating agencies. Eventually, in June 2001, as detailed in the U.S. section of this report, the WDC backed compromise legislation in the U.S. House and Senate that was also supported by human rights NGOs (there

was early division between the two sectors reflected in separate legislative efforts).

Finally, the WDC has pledged to monitor the diamond industry through a “chain of warranties.” Diamond dealers who buy diamond packets with validated export certificates from diamond importers have a legal basis for issuing a warranty to their customers. In principle, the sale of each validated diamond could be accompanied by a warranty that traces its authority back to the first sale. The WDC would monitor industry participants employing this chain of warranties and would take responsibility for disciplinary measures. In a victory for human rights NGOs, the WDC agreed to government or independent auditing of this chain of warranties at the Luanda meeting of the Kimberley Process.

In addition, diamond industry policy initiatives include efforts by Belgium’s Diamond High Council (Hoge Raad voor Diamant, or HRD), the officially recognized representative organization of the Belgian diamond industry, which is located in Antwerp, Belgium. An estimated 70 to 80 percent of all rough diamonds on the world market pass through Antwerp; it is the largest world diamond trade center, and it is a key destination for exports of rough diamonds from Africa. Therefore, conflict diamond initiatives that affect the diamond trade in Antwerp are significant to the trade as a whole.

The HRD has undertaken several initiatives to stop conflict diamonds from entering Antwerp’s legitimate trade. Indeed, the international certification regime proposed by the WDC is based on steps designed by the HRD.

The HRD’s first bilateral initiative was a certification system for official Angolan diamonds. Since 1998, the import of rough diamonds from Angola is allowed only with a certificate of origin from the official Angolan authorities. In December 1999, the HRD

began talks with the Angolan government about designing a forgery-proof certificate of origin documentation system for Angola. In March 2000, it signed a structural cooperation agreement with the government of Angola by which both parties agreed upon the introduction of an import confirmation certificate, data exchange, technical assistance, and research on the characteristics on Angolan diamonds. The HRD claimed success; an HRD report stated that “The imports from Angola increased ever since which provides additional tax revenues for the Angolan government. This evolution shows that the channels for illicit trade of Angolan diamonds are drying up.”⁴⁸ The reason for increased government revenue and decreased diamond revenues to UNITA is not necessarily due to sanctions by the Security Council or actions by the diamond industry, however. As mentioned in the Angolan case in the previous section, one conference participant thought MPLA victories since mid-1998 served to drive UNITA out of its former diamond strongholds and thus reduced the rebel diamond trade.

The HRD has supplied similar certification help to Sierra Leone. As part of a multilateral effort, the HRD provided technical assistance to the government of Sierra Leone, creating a system that consists of a forgery-resistant certificate of origin, containing a security slip that is sealed on the box and an import confirmation certificate that is returned to the exporting country after verification by Belgian customs. Detailed information of the goods, accompanied by digital photos, are electronically exchanged between the two custom authorities prior to shipment. This process was completed in October 2000, and allowed for official Sierra Leone diamond exports, thus amending the July 2000 Security Council embargo against diamonds from Sierra Leone.

In addition, the HRD and the Democratic Republic of the Congo signed an agreement to set up a certification system for Congolese diamonds in April 2001. In May 2001, Guinea became the first “non-conflict” country to agree to set up a certification system.

Beyond Belgium’s certification efforts, Belgium has also monitored diamonds from African countries that have a high risk of exporting conflict diamonds smuggled into their legitimate trade. In the past, the HRD, with the support of the Belgian Ministry of Economic Affairs, has required that diamond imports be licensed under the name of individual diamond dealers for all imports from “sensitive” countries that are suspected of importing and exporting prohibited diamonds from Angola or Sierra Leone. However the future of Belgium’s “sensitive” country policy is short because, as one conference participant noted, “some of the sensitive countries were too sensitive about it.” Countries on the high risk list apparently have included: Burkina Faso, Central African Republic, Congo-Brazzaville, the DRC, Ghana, Guinea, The Ivory Coast, Mali, Namibia, Rwanda, South Africa, Uganda, and Zambia. The governments of these countries do not need to provide verifiable certificates of origin, and if a suspicious packet of diamonds arrives in Belgium from one of these countries, the “sensitive” country policy allows Belgian officials to try to establish the true country of origin.⁴⁹

The Belgian diamond industry fears that its relatively strict regulations will drive the diamond trade to other trading centers, but it is to be hoped that the Kimberley Process will force similarly strict regulations on all diamond trading centers. However, the Belgian diamond industry’s efforts are further complicated by the growing role of the European Union in the Kimberley Process; Belgium’s efforts will eventually be subsumed under EU control, which may

mean laxer inspection and monitoring controls than those currently in place in Belgium.

REGIONAL AND NATIONAL EFFORTS: EUROPEAN UNION AND THE UNITED STATES

At the conference, much of the discussion on regional and national efforts centered on the activities of the European Union and the United States, which together consume over 60 percent of retail diamonds by value.

The European Union

Europe is an important hub for diamonds: De Beers’ Diamond Trading Company is located in London; Belgium is the world’s leading diamond trading center; and Europe’s share of the retail consumption of diamonds was 13 percent in the world market in 2000 (while the U.S.’ was 48 percent and Japan’s was 14 percent). But Europe’s implementation of the Kimberley Process agreement will not reflect the sum of actions taken by individual European states. Instead, the European Union will play the deciding role in terms of how these nations will conform to the Kimberley Process.

At the conference, several participants expressed concern that at the Twickenham, UK, meeting of the Kimberley Process (September 11–13, 2001), the European Union had not played a constructive role, and instead had stalled the Kimberley Process by interjecting representational concerns at the very last moment. The central problem was: who could negotiate at the Kimberley Process — individual European countries such as Belgium, or would European countries need to stand behind the European Commission representatives, who would then have the exclusive negotiating mandate for Europe?

This question was resolved at the Luanda meeting of the Kimberley Process (October 29–November 1, 2001), when the European Commission (EC) gained the upper hand. It was decided that the EC would speak on behalf of its member states, and individual European countries would not hold their own negotiating positions. The EC presumably would have the power to dismantle Belgium's controls when it institutes Europe-wide regulations. This means that the EC can either upgrade the diamond customs control systems in all EC countries before it dismantles the Belgian system, or, as feared by a number of conference participants, dismantle the Belgian controls because, as one participant said privately, "the easiest way to level the playing field is to lower one player and not bother trying to raise all the others."

In addition, a Europe-wide system may have negative consequences for the idea of re-export certificates. Re-export certificates would be issued for diamond packets that leave the point of first import for a secondary point of export. But EU trade regulations would render moot export certificates between member states. Several participants remarked that African countries would not be pleased if European countries could avoid re-export certificates while they themselves are burdened with the majority of controls. Instead of re-export certificates, the European Union may adopt some sort of intra-European monitoring system or create a European, industry-driven chain of warranties.

At this stage in the Kimberley Process, it is unclear what will transpire in practice. But it is to be hoped that the Kimberley Process, and thus the EU, will adopt the highest standards possible; it has the power to reform the diamond trade quite radically. As one of the participants observed, it is a shame that nations regulate alcohol more than diamonds.

The United States

The U.S. diamond industry and U.S.-based international advocacy NGOs have worked together to "jump start" the Kimberley Process with congressional legislation. Some observers are surprised at the teaming up of industry and humanitarian advocacy groups over conflict diamonds, but both have the same goals, if not motives. U.S. diamond industry representatives have explained this confluence of objectives in public statements that reveal that they indeed share NGO humanitarian concerns, but that they combine these concerns with the fear that conflict diamonds might taint the entire industry's prosperity. For the industry, a best-case scenario would be if a retail jeweler were able to tell a customer definitively that a given diamond was conflict free (which, without an international certification system, is not possible).⁵⁰ Because approximately half of the world's retail diamonds are sold in the United States by value, it follows that action by the U.S. government to ensure that conflict diamonds cannot enter into the U.S. would have significant impact on the Kimberley Process; in effect, U.S. legislation would serve as an incentive for exporting and manufacturing centers to put acceptable safeguards against conflict diamonds into place in order to coincide with the enactment of U.S. legislation.

As of early January, 2002, legislation supported by both the diamond industry and human rights/humanitarian NGOs is pending in Congress in the form of the Clean Diamond Trade Act (see Attachment 3). In an overwhelming vote of 408-6, the Clean Diamond Trade Act (H.R. 2722) passed the U.S. House of Representatives on November 28, 2001 and a companion Senate version should soon be enacted. If the president signs this new legislation into law, the Clean Diamond Trade Act would mainly affect the import of rough diamonds

into the United States (as opposed to polished diamonds or diamond jewelry), and would:

- grant the president the authority, with a national security/interest waiver, to impose sanctions against a country that does not have its own system of controls on rough diamonds in place
- authorize the president to prohibit or seize specific entries of polished diamonds and diamond jewelry if there is credible evidence that they were produced with conflict diamonds
- require the president to report on the controls on a yearly basis, and every six months on countries that have no system of controls but whose imports of rough diamonds are not sanctioned
- authorize appropriations of a total of \$10 million in 2002 and 2003 to be used to help countries that would have financial difficulties implementing the new system of controls on diamonds.

See Attachment 3 for the full text of H.R. 2722. The current version of the bill reflects a compromise with the Bush Administration from earlier versions. In the summer of 2001, companion bills in the House and the Senate would have prohibited the import of rough, polished diamonds, and diamond jewelry into the U.S. unless the exporting countries had a control system in place. In addition, in these earlier incarnations of the bill there was an automatic trigger for sanctions if the exporting country had no control system in place, but the bill would have granted the president a rather generous waiver that he could use every six months to exempt a country from sanctions so long as it was

deemed to be cooperating with the Kimberley Process.

The current version grants the executive branch the discretionary authority to impose sanctions, not an automatic trigger, and this gives the president firm control over which countries are sanctioned. The Bush administration required this change because of concerns that automatic sanctions might anger countries cooperating with the United States' anti-terrorism efforts.⁵¹ However, if the president does not sanction a country that has no system in place, he must state that it is because of a national security interest and must report on the exception every six months. As one conference participant stated privately:

Countries at the root of this problem (such as The Gambia, which has been cited in UN reports) probably won't expect the U.S. president will declare them to be in our national security interest, and so will get busy implementing a system. Under the original bill, they would just try to look busy "cooperating"!⁵²

Representative Hall has led the congressional fight against conflict diamonds. In 1999 and 2000, Hall introduced three bills meant to ensure that rough diamonds sold in the U.S. would be certified with a label indicating their country of origin. Those bills never left the House Ways and Means Committee. In March 2001, Reps. Hall, Frank Wolf, and Cynthia McKinney cosponsored the Clean Diamonds Act (H.R. 918) with the support of the U.S. Campaign to Eliminate Conflict Diamonds, representing over seventy human rights, religious, humanitarian, peace, and development organizations. This bill situated itself as part of the larger, international process: H.R. 918 proposed to prohibit the import of diamonds into the United States unless the exporting country implemented a

system of controls on the export or import of rough diamonds that met specified requirements, “consistent with United Nations General Assembly Resolution 55/56 (December 1, 2000), or a future international agreement which implements such controls and to which the United States is a signatory.” H.R. 918 was not supported by the diamond industry, and found a rival in April 2001 when Senator Judd Gregg, (R-NH) introduced the Conflict Diamonds Act, S. 787, which was based in part on World Diamond Council draft legislation, and which NGOs felt was too soft on the industry.⁵³

Eventually a compromise was reached – first in June 2001 when Senators Dick Durbin, Mike DeWine, and Russ Feingold introduced the Senate bill S. 1084, which represented a compromise that the World Diamond Council proposed to Congressman Hall, and that was negotiated among House and Senate sponsors, the Campaign to Eliminate Conflict Diamonds, and the World Diamond Council. The Senate bill was followed by a new House companion in August 2001, the Clean Diamonds Trade Act (H.R. 2722), which was introduced by Reps. Amo Houghton, Charles Rangel, Hall, and Wolf. Both the House and Senate bills were based on legislation introduced earlier in H.R. 918 and Senator Gregg’s S. 787. The new bills also included provisions not found in the earlier legislative proposals in order to improve the bills’ acceptability to the executive branch: a new waiver provision allowing the president flexibility for countries making good faith efforts to put the international control system in place, and language elevating WTO compatibility.

The summer 2001 compromise did not prove acceptable to the Bush administration, which wanted more leverage in terms of sanctions implementation. United States executive branch support was critical to the enactment U.S. legislation to support the Kimberley Process agreement, and there

were powerful calls to action, citing the near collapse of the Kimberley Process and links between diamonds and international terrorism.⁵⁴ Eventually, in the modified version of H.R. 2722 that passed the House of Representatives in November 2001, executive authority is front and center, and automatic sanctioning of non-compliant countries is no longer there.

The Clean Diamond Trade Act may be just the first stage of congressional legislation designed to implement the Kimberley Process global certification system. The Clean Diamond Trade Act only affects diamonds as they enter the United States. For the U.S. to comply fully with the Kimberley Process system, additional legislation will be necessary for the government to issue re-export certificates (the U.S. exported over 1 million carats of rough diamonds valued at over \$200 million in 2000). The U.S. diamond industry will implement an independently monitored “chain of warranties” — originally proposed by the World Diamond Council — to track diamonds after they have entered the United States and thus help to ensure that the diamonds stay clean. That guarantee would be the basis for the Department of Commerce to issue re-export certificates.

The passage of additional legislation to cover re-export certification will no doubt involve intense negotiations as it will involve both the commerce and customs committees in both the House and the Senate. Until the Kimberley Process meeting in Gaborone (November 2001) when it reversed its position, the U.S. executive branch often signaled its reluctance to supervise an industry chain of warranties to track diamonds once they arrive in the U.S. Nor did it want to issue re-export certificates. The executive branch’s concerns were never outlined publicly. Privately, one conference participant remarked that the chief reason behind executive branch wariness of the potential tough certification regime of

the Kimberley Process was the price tag. The process of certifying that a diamond is from a “clean” source and then tracking it after it enters the country is likely to be administratively burdensome and costly.

But by far the biggest hurdle to U.S. advocacy for a tough certification scheme has been the concern, voiced by the U.S. and other governments, that Kimberley procedures would violate World Trade Organization (WTO) agreements. In Kimberley Process negotiations, the U.S. and other countries often used the rules governing international trade laid out in the WTO agreements as trump cards to counter certain unpopular proposals. For example, one proposal would have constrained a Kimberley Process participant’s freedom to export diamonds to countries not participating in the Kimberley regime. If that non-participating country were a WTO member, this proposal would violate the non-discrimination trading rules.

According to one Harvard conference participant who later attended the Gaborone meeting, participants in Gaborone debated whether or not to make the agreement “WTO-proof,” with the U.S. arguing for scrubbing the working document of any wording that would put the agreement into conflict with the WTO. In the end, this debate became redundant when the delegates agreed to make it very easy for a nation to participate in the Kimberley Process. It was agreed that the certification scheme should be open to all countries, with no entry requirements: “Participation in the certification scheme is open on a global, non-discriminatory basis to all applicants willing and able to fulfill the requirements of that scheme.”⁵⁵ The NGOs present at the meeting consented to the open membership proposal, believing that monitoring provisions would toughen the scheme and force all “willing and able” applicants to implement strict controls. However, they were

mistaken in thinking that there would be support for strict monitoring conditions. According to this same civil society delegate, the NGOs presented a paper on how the monitoring provisions were unacceptably weak, but in the end no government wanted to discuss monitoring even though many governments originally said that it was critical.

WTO concerns will no doubt continue to haunt the process as various parties attempt to renegotiate aspects of the Kimberley certification document released after the Gaborone meeting. The UK-based NGO ActionAid commissioned one of the few analyses on whether early Kimberley Process proposals to restrict international trade were compatible with the WTO agreements.⁵⁶ ActionAid concluded that Kimberley Process proposals did comply with the WTO agreements, because the Kimberley Process restricts international trade under the permitted exemption categories of 1) protection of human life and maintenance of international peace and security in pursuance of obligations under the United Nations Charter, and, 2) protection of a country’s essential security interests. Thus, tough language in the Kimberley Process document that does not accept a country at its word could have been held up as fulfilling international peace and security goals, which would justify controls on the diamond trade.

In the complex realm of international trade, conflict diamonds may seem too small a trade problem, percentage-wise, to make major changes to the way diamonds are traded, especially at the risk of angering WTO member states that are not part of the Kimberley Process. But the link between diamonds and war directly affects seventy million Africans. If an international certification system promises to limit the funding of rebel movements that prolong conflicts in that region, cut back on the larger category

of “illicit” diamonds, and bring much needed transparency to the diamond industry, then it is to be hoped that WTO agreements are not continually used to pose a barrier to such toughened measures against conflict diamonds.

The U.S. has contributed a great deal to the Kimberley Process and has supported measures to curb the trade in conflict diamonds. For example, the U.S. has from the beginning backed UN Security Council sanctions against conflict diamonds, and the U.S. has provided assistance to the Angolan and Sierra Leonean export certification systems. In addition, the U.S. was a sponsor of the UN General Assembly Resolution in December 2000. And in January 2001, the White House Office of Science and Technology Policy, in conjunction with the National Security Council, the State Department, the

National Science Foundation, and the Treasury Department, hosted an all-day conference to examine ways to stop the illegal diamond trade in Africa. At the White House conference, U.S. officials stated that exploiting conflict diamonds helps to fuel deadly wars on the continent, threatening regional stability as well as U.S. security. As the world’s largest retail market for diamonds, the U.S. has the potential not only to be a supporter but a central driver in implementing the scheme laid out by the Kimberley Process final document. If current congressional legislation were signed into law, the U.S. would be the first major diamond importer to implement controls in support of the Kimberley Process, which, despite its weaknesses, would be a significant first step toward a global regimen.

Perspectives

Wars are prolonged by diamonds, and perhaps sometimes caused by them, but these wars might never have started and might never end without robust global support on many levels, reduction in official corruption in Africa, and political will on the part of the North to intervene forcefully to end conflicts early.

Supporters of international efforts to curb the trade in conflict diamonds should not lose sight of “big picture” problems that hold the key to peace in Africa. If rebels are effectively blocked from using diamonds to fund warfare, what safeguards are in place to prevent them from exploiting the next easily extractable and valuable primary commodity to buy weapons? For example, a September 2001 report by Global Witness has uncovered the links between timber sales and Taylor’s regime in Liberia.⁵⁷ In

addition, ordinary people in Angola, Sierra Leone, and the Democratic Republic of the Congo have not for the most part benefited from their countries’ rich natural resources, and if and when governments are able to halt armed rebel incursions, will governments build accountable, transparent, human rights-focused public administrations with such natural resource revenues?

In other words, if the goal is to prevent conflict, is a campaign to end conflict diamonds a long-term means to an end?

If the goal is conflict prevention, natural resources like diamonds are only part of the story of war in Africa: arms are certainly more integral to conflict than diamonds. As the executive director of Human Rights Watch has written, “For all its flaws, an international certificate scheme for diamonds is a good place to start. But more important is to ensure that abusive forces never get weapons in the first place.”⁵⁸ Governments that participate in anti-

conflict diamond work should not assume that they are doing all that they can to promote peace and stability if they are not working even harder to stem small arms and light weapons proliferation. Much like the international certification prescription advocated by anti-conflict diamond campaigners, organizations such as the World Peace Foundation and Human Rights Watch's Arms Division have called for tougher import/export regulations with regard to arms and have also called for strengthened enforcement of existing embargoes. But unlike arms, diamonds have proven to be an important wedge issue. As a highly visible consumer product, they are easier to campaign for than guns.

There is an even wider lens with which to look at root causes of war, beyond diamonds and guns. Jeffrey Herbst has written that the current emphasis on the economics of civil wars has skewed the emphasis of policy proposals toward recommending economic sanctions to defeat rebel movements in Sierra Leone or Angola:

.... ending the illegal export of diamonds or other lootable resources, promoting export diversification, and enhancing long-term growth are much 'cleaner' alternatives that do not involve armies, combat, and other messy questions surrounding military assistance. The appeal of the economic agenda of civil wars appears, in part, to be that the resulting policy recommendations point to ending conflict without getting the international community involved in the messy business of actually promoting fighting, much less the defeat of one side.⁵⁹

Herbst criticizes the international community for choosing policy prescriptions such as conflict diamonds at the cost of not engaging actively to intervene and stop Africa's wars. If the international

community were to take sides and intervene forcefully, it presumably could help curb wars more quickly than the slow burn of sanctions.

Proponents of the movement to end the trade in conflict diamonds argue that it is dangerous to make the best the enemy of the good: surely it is better to act with regard to diamonds while advocating a "new deal" for Africa. The diamond trade is bound up with war and terrorism, affecting the lives of tens of millions of people in Angola, Sierra Leone, and the Democratic Republic of the Congo, further destabilizing the overall security situation, and stimulating organized crime around the world. A global certification scheme may not work perfectly, but it might harden the barriers against conflict diamonds, and thus reduce the revenues brought by such diamonds because dealers will not want to pay full price for a product that difficult to bring into the legitimate trade. There is hope: a conference participant familiar with the diamond trade climate in Africa mentioned that UNITA diamonds are now sold at a 25 percent discount. It can be hoped that with an international certification system in place, their price will fall even further.

And, while controls on rough diamonds are implemented over the course of 2002, governments and civil society have a further task: to investigate the ways and means by which international diamond controls can be combined with other policy prescriptions to strengthen Africa's economic, political, and regional military institutions and thereby prevent the next easily exploitable natural resource from fueling instability and war.

Recommendations

1. The Kimberley Process system needs a stronger monitoring mechanism than is present in the current working document. Kimberley Process governmental members, the diamond industry, and civil society should work to put monitoring back on the table before, inevitably, more reports of conflict diamonds coming into the legitimate market make a mockery of the system that has been eighteen months in the planning.
2. Related to monitoring, a standardized and transparent database on global production and trade in rough diamonds is critical to an effective certification system. The Kimberley Process, the UN General Assembly, and others concerned with the problem must ensure that such a database is developed as soon as possible.
3. Countries that export diamonds but are not producers, and are suspected of trading in conflict diamonds, require special attention in future Kimberley Process negotiations. Their participation will need to be carefully monitored, provisions for which are not currently in place.
4. Diamonds (along with other natural resources) mined by foreign troops and rebels in the Democratic Republic of the Congo should be embargoed, as called for in the November 2001 Panel of Experts report on natural resource exploitation in the DRC.
5. World Trade Organization agreements are no reason to water down the Kimberley Process system. Seventy million Africans whose lives are affected by war should be enough to trigger exemptions under the permitted exemption categories of a) protection of human life and maintenance of international peace and security in pursuance of obligations under the United Nations Charter, and b) protection of a country's essential security interests.
6. The Kimberley Process deals only with rough diamonds, as does current U.S. legislation. Export/import controls on rough diamonds could conceivably be circumvented by pasting studs onto rough gems, thus making them qualify as "jewelry" and not subject to regulation. How will national legislative efforts and the Kimberley Process certification scheme prevent this from happening?
7. The diamond industry should become serious about investigating and punishing its members involved in buying and selling conflict diamonds. As reported in the UN monitoring mechanism of sanctions against UNITA report of October 2001, only one parcel of suspected diamonds has been seized in Antwerp under the 1998 Security Council embargo of UNITA diamonds. Given that UNITA is known to sell \$100 million worth of diamonds per year, it is hard to believe that all is being done that could be done to stop its trade in diamonds.
8. Targeted sanctions (arms, fuel, diamond embargoes against rebel groups) are not enough in and of themselves to stop conflict. They are not enough even if strictly enforced. While politicians score points for erecting barriers to "dirty diamonds," attention may be drawn away from long-term solutions to the problem of rebel war in Africa. Sanctions must be implemented in combination with policy prescriptions that strengthen Africa's economic, political, and military institutions. Doing so may include strengthening regional security organizations (ECOWAS) and also securing robust levels of international economic aid for Africa. The duty of governments and civil society is to keep pressure on conflict diamonds, but also find creative ways to link diamonds with other policy prescriptions.

ENDNOTES

* I am very grateful to Robert I. Rotberg, Ian Smillie, Nicolas Cook, Andrew Coxon, and Deborah DeYoung for their help with this report.

¹ Martin Rapaport, "Guilt Trip," on his web site <www.diamonds.net>, April 7, 2000.

² The following section is drawn from descriptions of the diamond industry in Lauren Weber, "The Diamond Game, Shedding Its Mystery," *New York Times*, April 8, 2001, Nicholas Stein, "The De Beers Story: A New Cut on an Old Monopoly," *Fortune*, February 19, 2001, 186-206, and Debora Spar and Jennifer L. Burnes, "Forever: De Beers and U.S. Antitrust Law," Harvard Business School Case 9-700-082, April 20, 2000.

³ Statement of Matthew A. Runci Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means Hearing on Trade in African Diamonds September 13, 2000.

⁴ "De Beers Participates in U.S. Conference," *Mazal U'Bracha*, October 2001, available online at <http://www.diamondsview.com/news_541_oct.htm>.

⁵ United Nations General Assembly Resolution 55/56, December 1, 2000 (A/RES/55/56).

⁶ Douglas Farah, "Al Qaeda Cash Tied to Diamond Trade" *Washington Post*, November 2, 2001, A1. The diamond trade has been linked to terrorist networks in the past. In April 2001, the Belgian daily *Le Soir* leaked a secret Belgium military report that alleged that certain Belgian diamond merchants were dealing directly with UNITA rebels. The *Le Soir* article quotes the report as saying that "there are indications that certain persons named in the diamond trafficking file are also in money laundering, drug trafficking and the financing of terrorist organizations such as Amal and Hezbollah." Agence France Presse, "Belgian diamond traders dealing with Angolan rebels," April 23, 2001.

⁷ Paul Collier, "Economic Causes of Civil Conflict and their Implications for Policy," World Bank, June 15, 2000, available at <<http://www.worldbank.org/research/conflict/papers/civilconflict.htm>>.

⁸ The World Peace Foundation has completed a study on the small arms trade, which describes how small arms and light weapons are inexpensive and universally accessible: Michael Klare and Robert I. Rotberg, *The Scourge of Small Arms* WPF Reports 23 (Cambridge, MA: World Peace Foundation, 1999).

⁹ According to the UN Panel of Experts Report on Sierra Leone, "At an October 2000 intergovernmental meeting on conflict diamonds in Pretoria, a senior diamond evaluator and trade consultant estimated that 20 percent of the worldwide trade in rough diamonds is illicit in nature. The Panel raised this issue in its travels, and the figure was widely accepted as a reasonable estimate." UNSC Panel of Experts, [S/2000/1195], 28.

¹⁰ UNSC Panel of Experts, [S/2000/1195], 28.

¹¹ Philippe Le Billon, "Angola's Political Economy of War: The Role of Oil and Diamonds, 1974-2000" *African Affairs*, C (2001), 61.

¹² Christian Dietrich draws these distinctions particularly clearly in his report, "Have African-based Diamond Monopolies Been Effective?" *Central Africa Minerals and Arms Research Bulletin*, (June 18, 2001), 8-12.

¹³ *Ibid.*, 8.

¹⁴ Supplementary Report of the Monitoring Mechanism on Sanctions against UNITA [S/2001/966], October 12, 2001, 30.

¹⁵ From the Norwegian Refugee Council's *Internal displacement in Angola: Profile summary*, October 25, 2001, at <<http://www.idpproject.org/>>.

¹⁶ "Oil, Diamonds and Danger in Angola," *The Economist*, January 13, 2001, 44.

¹⁷ Human Rights Watch, *Human Rights Watch World Report 2000* (New York, December 1999), 70.

¹⁸ International Crisis Group, *Sierra Leone: Managing Uncertainty* (Freetown/Brussels), October 24, 2001, 9.

¹⁹ Douglas Farah, "Al Qaeda Cash Tied to Diamond Trade" *Washington Post*, November 2, 2001, A1. The Belgian Diamond High Council disputes the link with Belgium diamond bourses cited in the *Post* article, and, at the request of the Diamond High Council, Belgium's Public Prosecutor has launched an investigation into the alleged connection between al Qaeda and conflict diamonds, see Tacy News Service, "Diamond High Council Calls for Investigation into Al-Qaeda Connection," December 6, 2001.

²⁰ Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (New York, 1998).

²¹ Report of the UNSC Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo, [S/2001/357], April 12, 2001, 3.

²² *Ibid.*, 6.

²³ Finbarr O'Reilly, "Congo in Crisis: Moral Opposition to Conflict Diamonds," *National Post Online*, August 21, 2000, < <http://www.nationalpost.com/features/0800/Congo/story8.html> >.

²⁴ *Ibid.*

²⁵ Bruce Stanley, "Diamond Monopoly Hands Obscure Israeli Firm the Key to Congo's Economy," *Associated Press Newswires*, March 19, 2001.

²⁶ *Ibid.*

²⁷ Christian Aid, Oxfam GB, and Save the Children UK, *No End in Sight: The Human Tragedy of the Conflict in the Democratic Republic of the Congo* (August 2001), 9.

²⁸ *No End in Sight* and International Rescue Committee, *Mortality in eastern Democratic Republic of the Congo* (May 2001).

²⁹ Dietrich, "Monopolies," 5.

³⁰ Addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of DR Congo, [S/2001/1072], November 13, 2001.

³¹ The Consensus Clean Diamonds Act (S. 1084), 107th Congress, 1st Session, June 21, 2001, Sec. 2, "Findings".

³² See Gary Hufbauer and Barbara Oegg, "Targeted Sanctions: A Policy Alternative?" *Law and Policy in International Business* XXXII (2000), 11-20.

³³ Supplementary Report of the Monitoring Mechanism on Sanctions against UNITA [S/2001/966], October 12, 2001, 49.

³⁴ From "Frequently Asked Questions - Clean Diamond Trade Act," attached to the Statement of the Hon. Tony P. Hall, Testimony before the Subcommittee on Trade Ways and Means Committee, United States House of Representatives, "Hearing on Conflict Diamonds," October 10, 2001.

³⁵ As discussed below, the November 2001 meeting does not spell the end of the negotiations. As yet unresolved problems will be discussed at an interim meeting in Canada in early 2002.

³⁶ Global Witness, Partnership Africa Canada, and Fatal Transactions, "Kimberley Process Meeting: A Good Watchdog But Crucially Lacking Teeth" Press Release, November 29, 2001.

³⁷ Andrew Coxon, De Beers LV, e-mail correspondence with the author, December 5, 2001.

³⁸ Ian Smillie, quoted in Partnership Africa Canada, *Other Facets: News and Views on the International Effort to End Conflict Diamonds*, no. 3, October 2001, 4.

³⁹ Lauren Weber, "Conflict Diamonds: What Do Consumers Know?" on RapNews, April 6, 2001.

⁴⁰ Martin Rapaport, "Blood Money" on his web site <<http://www.diamonds.net/>>, posted November 5, 1999.

⁴¹ The Fatal Transactions Campaign is online at the Netherlands Institute for Southern Africa web site [<http://www.niza.nl/uk/campaigns/diamonds/index.html>].

⁴² Ken Silverstein, "Diamonds of Death" *The Nation*, April 23, 2001.

⁴³ Ian Smillie and Lansana Gberie, "Dirty Diamonds and Civil Society," Paper for the 4th CIVICUS World Assembly (Vancouver, B.C., Canada, August 2001), 6.

⁴⁴ Global Witness, Partnership Africa Canada, and Fatal Transactions, "Kimberley Process Meeting: A Good Watchdog But Crucially Lacking Teeth" Press Release, November 29, 2001.

⁴⁵ For this "realist" perspective, see Erik Bruyland, "Conflict Diamonds: The Gems of War" *Wall Street Journal Europe*, July 21, 2000, 8.

⁴⁶ See the World Diamond Council's web site: <<http://www.worlddiamondcouncil.com/>>.

⁴⁷ Matthew A. Runci, President and Chief Executive Officer, Jewelers of America, Inc., Testimony before the Subcommittee on Trade Ways and Means Committee, United States House of Representatives, September 13, 2000.

⁴⁸ Diamond High Council, "Progress Report," November 1, 2000 at <<http://www.conflictdiamonds.com/>>.

⁴⁹ Fatal Transactions, "Conflict Diamonds Crossing European Borders? A Case Study of Belgium, the United Kingdom, and the Netherlands," (Amsterdam, August 2001).

⁵⁰ For a succinct statement on this combination of business and moral interests, see Matthew Runci's testimony before the U.S House of Representatives' Subcommittee on Trade, House Committee on Ways and Means, "Hearing on Conflict Diamonds," October 10, 2001

⁵¹ Partnership Africa Canada, *Other Facets: News and Views on the International Effort to End Conflict Diamonds*, no. 4, December 2001, 5.

⁵² Deborah DeYoung, e-mail correspondence with the author, November 29, 2001.

⁵³ See Global Witness's description of U.S. legislative initiatives at <<http://www.oneworld.org/globalwitness/diamonds/summary.htm>>.

⁵⁴ See for example Robert I. Rotberg, "'Conflict' Diamonds Aren't Forever" *Christian Science Monitor*, October 25, 2001 and Holly Burkhalter, "Blood on the Diamonds" *Washington Post*, November 6, 2001.

⁵⁵ "Essential Elements of an International Scheme of Certification for Rough Diamonds," Kimberley Process Working Document no. 10/2001, December 2001, Section VI, 10.

⁵⁶ Wanjiru Rubia, "The Kimberley Process Working Document: Chairman's Perception and WTO Compliance" ActionAid UK, October 2001. I am grateful to Ian Smillie for bringing this document to my attention.

⁵⁷ Global Witness and the International Transport Workers Federation, *Taylor-made: The Pivotal Role of Liberia's Forests and Flag of Convenience in Regional Conflict*, September 2001.

⁵⁸ Ken Roth, "Precious Stones Don't Kill, Guns Do: Enforce Arms Embargoes," *Los Angeles Times*, July 21, 2000 at <http://www.hrw.org/editorials/2000/ken-sl-july.htm>

⁵⁹ Jeffrey Herbst, "Economic Incentives, Natural Resources, and Conflict in Africa," *Journal of African Economies*, IX (2000), 287.

Conference Participants

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- Jeffrey Harris, *University of Glasgow*
- Tony Hodges, *Author of Angola: Afro-Stalinism to Petro-Diamond Capitalism (2001)*
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Attachment 1: Kimberley Process “Roadmap”

KIMBERLEY PROCESS TASK FORCE

Mandate

To assist the Chair of the Process in the development of detailed proposals for the international certification scheme for rough diamonds envisaged in United Nations General Assembly Resolution 55/56 of 1 December 2000.

Composition

Under the general guidance of the Chair, the Task Force will include representatives of some or all of the following governments: Angola, Australia, Belgium, Botswana, Canada, China, Israel, Namibia, Russia, Sierra Leone, South Africa, Switzerland, the United Kingdom and the United States, officials of the SADC and the European Union, and the World Diamond Council. At the discretion of the Chair, others may subsequently be added to the Task Force. The Task Force will work in close consultation with civil society.

Terms of Reference

To facilitate and accelerate the Kimberley Process, the Task Force will assist the Chair in tracking overall process, preparing draft agendas for meetings and coordinating the preparation of detailed working papers for each meeting.

With respect to the next meeting, and taking into account the statement of the Ministerial Conference held in Pretoria on 21 September 2000, as well as the report of the Working Group on Diamonds presented at that time, the Task Force is charged with preparing a working paper to serve as a basis for discussion. In preparing this working paper, which will be distributed to Kimberley Process participants at least three weeks before the meeting, the Task Force will:

1. Collect, collate and analyze existing systems of export and import control for rough diamonds including legislative regimes and others.
2. Analyze current practice and experience of national certification schemes for rough diamonds from Angola and Sierra Leone.
3. Identify elements to be incorporated into a set of minimum acceptable standards for the envisaged international certification scheme for rough diamonds.
4. Make recommendations with respect to subsequent steps in the development of the international certification scheme.

The Task Force will also draft detailed terms of reference for working papers for subsequent meetings as directed by the Chair and by the Process as a whole.

Source: Final Communiqué, Kimberley Process Meeting and Technical Workshop Windhoek, Namibia, February 13–16, 2001, on the Kimberley Process web site:
<<http://www.kimberleyprocess.com/bulletinboard.asp>>.

Attachment 2: The Four States of Diamond Trade Controls

Excerpt from “Frequently Asked Questions — Clean Diamond Trade Act”, attached to the Statement of the Hon. Tony P. Hall, Testimony before the Subcommittee on Trade Ways and Means Committee, United States House of Representatives, “Hearing on Conflict Diamonds,” October 10, 2001.

Here’s how the system works, in detail:

From the mine/mining area to export — This stage of the process of exporting diamonds poses the most difficult challenge to implementing an effective system of controls. That is because it is very difficult to monitor “the first 10 yards” a diamond travels from thousands of individual miners, to a diamond buyer. This problem is the focus of continuing work, but currently the expectation is that the system would require a producing country to license miners and regulate their activities closely. This once was a common practice, but has been neglected in some countries, a casualty of corruption and the chaotic nature of war.

To help correct the inherent difficulty of monitoring the trade, especially at its start, the global system will give diamond-trading countries that participate through the Kimberley Process a forum for alerting producing countries to problems. That will help dilute the incentive to cheat because while a producing country will want to get all of its diamonds through, an importing country will want to protect its supply of clean gems from the taint of conflict diamonds. It therefore will have an incentive to help the producing country safeguard its exports. That help could come in the form of carrots (like financial assistance), or sticks (like rejection of diamonds whose origin is easiest to determine at this stage).

From first export to first import — Rough diamonds to be exported are taken to a producing country’s authorities, who collect taxes on them (which average 3% and are the primary benefit African countries get from this resource; to keep this sum in perspective, rough diamonds now fetch about \$60 per carat in Antwerp). Authorities then issue a numbered export certificate on each parcel of diamonds, and log details about the parcel — including its total carat weight — on the certificate and into a database.

When the parcel arrives in the importing country (which is Belgium, in the case of 85 percent of rough diamonds traded), authorities check its contents against the certificate affixed to the parcel, and against the database. Because experts usually can tell a diamond’s origin before it is cut, they have this tool to help them judge the veracity of the certificate. Even in the rare instance when they cannot tell where the diamond **is** from, they almost certainly can conclude it is **not** from the country issuing the certificate, if that is the case. Several shipments have been interdicted in this manner already.

This ability to rely on a technical safeguard, and the expertise of Belgian authorities, makes this stage the logical place to focus enforcement efforts. If diamonds entering legitimate commerce are clean — and downstream countries protect the stream against imports from outside the clean stream — most smuggled diamonds (including those used to fund conflict) can be blocked from trading as legitimate goods.

From first import to first sale — The customers of importers whose export certificates have been validated have a legal basis for issuing a warranty to anyone to whom they sell these diamonds. From there, each sale of the same diamonds — even if the parcel is broken up — can be accompanied by a warranty that traces its authority back to that first sale.

The World Diamond Council, an industry association formed to address the problem of conflict diamonds, has pledged to monitor industry participants employing this chain of warranties and to take disciplinary action against any who use it improperly. Individual buyers also have recourse, through civil lawsuits, against improper warranties. Government or independent auditing of this chain of warranties would add credibility to it, in the view of civil society representatives and others. Such a proposal is now under consideration by the industry. However, US government experts doubt that a chain of warranties — whether it is audited or not — could provide a sufficient safeguard to constitute the basis for a government certificate.

The outstanding question is whether the chain of warranties is a useful contribution to efforts to block conflict diamonds from legitimate trade. The answer may be determined by how many private businesses are willing to participate in the chain. As offered, this initiative represents a good-faith effort by an industry whose active participation in safeguarding the clean stream is essential. It could have a significant practical effect if it is widely used and, given the realities of the trade, that potential should not be underestimated.

From first import to subsequent export — To combat the problem of conflict diamonds' entering the clean stream of legitimate diamonds, some observers believe that rough diamonds should be accompanied by re-export certificates as they cross every border. These would adhere to the same rules set forth above — the parcel's carat weight disclosed, a unique number recorded on the certificate and in a database maintained by the exporting country, and information checked by the importing country. However, US officials and others disagree on whether this mechanism could be enforced.

One alternative solution to this transshipment problem may be the creation of a police force that has access to detailed statistical information and tough law enforcement powers. The Securities & Exchange Commission offers one model for this: it routinely handles sensitive information that, like diamond trade flows, is considered proprietary by industry participants. And the SEC routinely exercises police power that serves as a significant deterrent to wrongdoing.

Available online at <<http://waysandmeans.house.gov/trade/107cong/10-10-01/10-10hall.htm>>.

Attachment 3: The Clean Diamond Trade Act (H.R. 2722)

Clean Diamond Trade Act (Placed on the Calendar in the Senate)

HR 2722 PCS

Calendar No. 248

107th CONGRESS

1st Session

H. R. 2722

IN THE SENATE OF THE UNITED STATES

November 29, 2001

Received; read the first time

November 30, 2001

Read the second time and placed on the calendar

AN ACT

To implement effective measures to stop trade in conflict diamonds, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Clean Diamond Trade Act'.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Funds derived from the sale of rough diamonds are being used by rebels and state actors to finance military activities, overthrow legitimate governments, subvert international efforts to promote peace and stability, and commit horrifying atrocities against unarmed civilians. During the past decade, more than 6,500,000 people from Sierra Leone, Angola, and the Democratic Republic of the Congo have been driven from their homes by wars waged in large part for control of diamond mining areas. A million of these are refugees eking out a miserable existence in neighboring countries, and tens of thousands have fled to the United States. Approximately 3,700,000 people have died during these wars.
- (2) The countries caught in this fighting are home to nearly 70,000,000 people whose societies have been torn apart not only by fighting but also by terrible human rights violations.
- (3) Human rights advocates, the diamond trade as represented by the World Diamond Council, and the United States Government recently began working to block the trade in conflict diamonds. Their efforts have helped to build a consensus that action is urgently needed to end the trade in conflict diamonds.
- (4) The United Nations Security Council has acted at various times under chapter VII of the Charter of the United Nations to address threats to international peace

and security posed by conflicts linked to diamonds. Through these actions, it has prohibited all states from exporting weapons to certain countries affected by such conflicts. It has further required all states to prohibit the direct and indirect import of rough diamonds from Angola and Sierra Leone unless the diamonds are controlled under specified certificate of origin regimes and to prohibit absolutely for a period of 12 months the direct and indirect import of rough diamonds from Liberia.

(5) In response, the United States implemented sanctions restricting the importation of rough diamonds from Angola and Sierra Leone to those diamonds accompanied by specified certificates of origin and fully prohibiting the importation of rough diamonds from Liberia. In order to put an end to the emergency situation in international relations, to maintain international peace and security, and to protect its essential security interests, and pursuant to its obligations under the United Nations Charter, the United States is now taking further action against trade in conflict diamonds.

(6) Without effective action to eliminate trade in conflict diamonds, the trade in legitimate diamonds faces the threat of a consumer backlash that could damage the economies of countries not involved in the trade in conflict diamonds and penalize members of the legitimate trade and the people they employ. To prevent that, South Africa and more than 30 other countries are involved in working, through the 'Kimberley Process', toward devising a solution to this problem. As the consumer of a majority of the world's supply of diamonds, the United States has an obligation to help sever the link between diamonds and conflict and press for implementation of an effective solution.

(7) Failure to curtail the trade in conflict diamonds or to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds could have a severe negative impact on the legitimate diamond trade in countries such as Botswana, Namibia, South Africa, and Tanzania.

(8) Initiatives of the United States seek to resolve the regional conflicts in sub-Saharan Africa which facilitate the trade in conflict diamonds.

SEC. 3. DEFINITIONS.

In this Act:

(1) **CONFLICT DIAMONDS**— The term 'conflict diamonds' means rough diamonds the import of which is prohibited by United Nations Security Council Resolutions because that trade is fueling conflict.

(2) **DIAMONDS**— The term 'diamonds' means diamonds classifiable under subheading 7102.31.00 or subheading 7102.39.00 of the Harmonized Tariff Schedule of the United States.

(3) **POLISHED DIAMONDS**— The term 'polished diamonds' means diamonds classifiable under subheading 7102.39.00 of the Harmonized Tariff Schedule of the United States.

(4) **ROUGH DIAMONDS**— The term 'rough diamonds' means diamonds that are unworked, or simply sawn, cleaved, or bruted, classifiable under subheading 7102.31.00 of the Harmonized Tariff Schedule of the United States.

(5) **UNITED STATES**— The term 'United States', when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 4. MEASURES TO PREVENT IMPORTS OF CONFLICT DIAMONDS.

(a) **AUTHORITY OF THE PRESIDENT**— The President may prohibit, in whole or in part, imports of rough diamonds into the United States from any country that does not take effective measures to stop trade in conflict diamonds as long as the prohibition is—

(1) necessary to protect the essential security interests of the United States, or pursuant to United Nations Security Council Resolutions on conflict diamonds; and

(2) consistent with the foreign policy interests of the United States, including the international obligations of the United States.

(b) **EFFECTIVE MEASURES**— For purposes of this Act, effective measures are measures that—

(1) meet the requirements of United Nations Security Council Resolutions on trade in conflict diamonds;

(2) meet the requirements of an international arrangement on conflict diamonds as long as the measures also meet the requirements of United Nations Security Council Resolutions on trade in conflict diamonds; or

(3) contain the following elements, or their functional equivalent, if such elements are sufficient to meet the requirements of United Nations Security Council Resolutions on trade in conflict diamonds:

(A) With respect to exports from countries where rough diamonds are extracted, secure packaging, accompanied by officially validated documentation certifying the country of origin, total carat weight, and value.

(B) With respect to exports from countries where rough diamonds are extracted, a system of verifiable controls on rough diamonds from mine to export.

(C) With respect to countries that reexport rough diamonds, a system of controls designed to ensure that no conflict diamonds have entered the legitimate trade in rough diamonds.

(D) Verifiable recordkeeping by all companies and individuals engaged in mining, import, and export of rough diamonds within the territory of the exporting country, subject to inspection and verification by authorized government authorities in accordance with national regulations.

(E) Government publication on a periodic basis of official rough diamond export and import statistics.

(F) Implementation of proportionate and dissuasive penalties against any persons who violate laws and regulations designed to combat trade in conflict diamonds.

(G) Full cooperation with the United Nations or other official international bodies examining the trade in conflict diamonds, especially with respect to any inspection and monitoring of the trade in rough diamonds.

(c) **EXCLUSIONS**— The provisions of this section do not apply to—

(1) rough diamonds imported by or on behalf of a person for personal use and accompanying a person upon entry into the United States;

(2) rough diamonds previously exported from the United States and reimported by the same importer, without having been advanced in value or improved in condition by any process or other means while abroad, if the importer declares

that the reimportation of the rough diamonds satisfies the requirements of this paragraph; or

(3) rough diamonds for which the importer provides evidence to the satisfaction of the United States Customs Service (or analogous officials of a territory or possession of the United States with its own customs administration) that the importation does not include conflict diamonds.

SEC. 5. PROHIBITION OF POLISHED DIAMONDS AND JEWELRY.

The President may prohibit specific entries of polished diamonds and jewelry containing diamonds if the President has credible evidence that such polished diamonds and jewelry were produced with conflict diamonds.

SEC. 6. ENFORCEMENT.

Diamonds and jewelry containing diamonds imported into the United States in violation of any prohibition imposed under section 4 or 5 are subject to the seizure and forfeiture laws, and all criminal and civil laws of the United States shall apply, to the same extent as any other violation of the customs and navigation laws of the United States.

SEC. 7. REPORTS.

(a) ANNUAL REPORTS— Not later than one year after the effective date of this Act, and every 12 months thereafter, the President shall transmit to Congress a report—

(1) describing actions taken by countries that have exported rough diamonds to the United States during the preceding 12-month period to implement effective measures to stop trade in conflict diamonds;

(2) identifying those countries that have exported rough diamonds to the United States during the preceding 12-month period and are not implementing effective measures to stop trade in conflict diamonds and whose failure to do so has significantly increased the likelihood that conflict diamonds are being imported into the United States;

(3) describing appropriate actions, which may include actions under sections 4 and 5, that may be taken by the United States, or actions that may be taken or are being taken by each country identified under paragraph (2), to ensure that conflict diamonds are not being imported into the United States from such country; and

(4) identifying any additional countries involved in conflicts linked to rough diamonds that are not the subject of United Nations Security Council Resolutions on conflict diamonds.

(b) SEMIANNUAL REPORTS— For each country identified in subsection (a)(2), the President shall, every 6 months after the initial report in which the country was identified, transmit to Congress a report that explains what actions have been taken by the United States or such country since the previous report to ensure that conflict diamonds are not being imported from that country into the United States. The requirement to issue a semiannual report with respect to a country under this subsection shall remain in effect until such time as the country implements effective measures.

SEC. 8. GAO REPORT.

Not later than 3 years after the effective date of this Act, the Comptroller General of the United States shall transmit a report to Congress on the effectiveness of the provisions of this Act in preventing the importation of conflict diamonds under section 4. The Comptroller General shall include in the report any recommendations on any modifications to this Act that may be necessary.

SEC. 9. SENSE OF CONGRESS.

(a) INTERNATIONAL ARRANGEMENT— It is the sense of Congress that the President should take the necessary steps to negotiate an international arrangement, working in concert with the Kimberley Process referred to in section 2(6), to eliminate the trade in conflict diamonds. Such an international arrangement should create an effective global system of controls covering countries that export and import rough diamonds, and should contain the elements described in section 4(b)(3).

(b) ADDITIONAL SECURITY COUNCIL RESOLUTIONS— It is the sense of Congress that the President should take the necessary steps to seek United Nations Security Council Resolutions with respect to trade in diamonds from additional countries identified under section 7(a)(4).

(c) TRADE IN LEGITIMATE DIAMONDS— It is the sense of Congress that the provisions of this Act should not impede the trade in legitimate diamonds with countries which are working constructively to eliminate trade in conflict diamonds, including through the negotiation of an effective international arrangement to eliminate trade in conflict diamonds.

(d) IMPLEMENTATION OF EFFECTIVE MEASURES— It is the sense of Congress that companies involved in diamond extraction and trade should make financial contributions to countries seeking to implement any effective measures to stop trade in conflict diamonds described in section 4(b), if those countries would have financial difficulty implementing those measures.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the President \$5,000,000 for each of fiscal years 2002 and 2003 to provide assistance to countries seeking to implement any effective measures to stop trade in conflict diamonds described in section 4(b), if those countries would have financial difficulty implementing those measures.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act.
Passed the House of Representatives November 28, 2001.

Attest:
JEFF TRANDAHL,
Clerk.

Attachment 4: Kimberly Process Working Document

Kimberley Process Working Document nr 10/2001

dd. ... December 2001

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

PREAMBLE

PARTICIPANTS,

RECOGNISING that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons;

FURTHER RECOGNISING the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

NOTING the negative impact of such conflicts on regional stability and the obligations placed upon states by the United Nations Charter regarding the maintenance of international peace and security;

BEARING IN MIND that urgent international action is imperative to prevent the problem of conflict diamonds from negatively affecting the trade in legitimate diamonds, which makes a critical contribution to the economies of many of the producing, processing, exporting and importing states, especially developing states;

RECALLING all of the relevant resolutions of the United Nations Security Council under Chapter VII of the United Nations Charter, including the relevant provisions of Resolutions 1173 (1998), 1295 (2000), 1306 (2000), and 1343 (2001), and determined to contribute to and support the implementation of the measures provided for in these resolutions;

HIGHLIGHTING the United Nations General Assembly Resolution 55/56 (2000) on the role of the trade in conflict diamonds in fuelling armed conflict, which called on the international community to give urgent and careful consideration to devising effective and pragmatic measures to address this problem;

FURTHER HIGHLIGHTING the recommendation in United Nations General Assembly Resolution 55/56 that the international community develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards;

RECALLING that the Kimberley Process, which was established to find a solution to the international problem of conflict diamonds, was inclusive of concerned stake holders, namely producing, exporting and importing states, the diamond industry and civil society;

CONVINCED that the opportunity for conflict diamonds to play a role in fuelling armed conflict can be seriously reduced by introducing a certification scheme for rough diamonds designed to exclude conflict diamonds from the legitimate trade;

RECALLING that the Kimberley Process considered that an international certification scheme for rough diamonds, based on national laws and practices and meeting internationally agreed minimum standards, will be the most effective system by which the problem of conflict diamonds could be addressed;

ACKNOWLEDGING the important initiatives already taken to address this problem, in particular by the governments of Angola, the Democratic Republic of Congo, Guinea and Sierra Leone and by other key producing, exporting and importing countries, as well as by the diamond industry, in particular by the World Diamond Council, and by civil society;

WELCOMING voluntary self-regulation initiatives announced by the diamond industry and recognising that a system of such voluntary self-regulation contributes to ensuring an effective internal control system of rough diamonds based upon the international certification scheme for rough diamonds;

RECOGNISING that an international certification scheme for rough diamonds will only be credible if all Participants have established internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories, while taking into account that differences in production methods and trading practices as well as differences in institutional controls thereof may require different approaches to meet minimum standards;

FURTHER RECOGNISING that the international certification scheme for rough diamonds must be consistent with international law governing international trade;

ACKNOWLEDGING that state sovereignty should be fully respected and the principles of equality, mutual benefits and consensus should be adhered to;

RECOMMEND THE FOLLOWING PROVISIONS:

SECTION I

Definitions

For the purposes of the international certification scheme for rough diamonds (hereinafter referred to as “the certification scheme”), the following definitions apply:

APPLICANT means a prospective Participant.

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 recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future;

COUNTRY OF ORIGIN means the country where a shipment of rough diamonds has been mined or extracted;

COUNTRY OF PROVENANCE means the last Participant from where a shipment of rough diamonds was exported, as recorded on import documentation;

DIAMOND means a natural mineral consisting essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42;

EXPORT means the physical leaving/taking out of any part of the geographical territory of a Participant;

EXPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant from whose territory a shipment of rough diamonds is leaving, and which are authorised to validate the Kimberley Process Certificate;

FREE TRADE ZONE means a part of the territory of a Participant where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory;

IMPORT means the physical entering/bringing into any part of the geographical territory of a Participant;

IMPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant into whose territory a shipment of rough diamonds is imported to conduct all import formalities and particularly the verification of accompanying Certificates;

KIMBERLEY PROCESS CERTIFICATE means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the certification scheme;

OBSERVER means a representative of civil society, the diamond industry, international organisations and **non-participants** invited to take part in Plenary meetings;

PARCEL means one or more diamonds that are packed together and that are not individualised;

PARCEL OF MIXED ORIGIN means a parcel that contains rough diamonds from two or more countries of origin, mixed together;

PARTICIPANT means a state or a regional economic integration organisation **or a member of the World Trade Organisation** for whom the certification scheme is effective;

REGIONAL ECONOMIC INTEGRATION ORGANISATION means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the certification scheme;

ROUGH DIAMONDS means diamonds which are unworked or simply sawn, cleaved or bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102.10, 7102.21 and 7102.31;

SHIPMENT means one or more parcels that are physically imported or exported;

TRANSIT means the physical passage across the territory of a Participant or a non-Participant, with or without transshipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a shipment passes;

SECTION II

The Kimberley Process Certificate

Each Participant should ensure that:

- (a) a Kimberley Process Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export;
- (b) its processes for issuing Certificates meet the minimum standards of the Kimberley Process as set out in Section IV;
- (c) Certificates meet the minimum requirements set out in Annex I. As long as these requirements are met, Participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements;
- (d) it notifies all other Participants through the Chair of the features of its Certificate as specified in Annex I, for purposes of validation.

SECTION III

Undertakings in respect of the international trade in rough diamonds

Each Participant should:

- (a) with regard to shipments of rough diamonds exported to a Participant, require that each such shipment is accompanied by a duly validated Certificate;
- (b) with regard to shipments of rough diamonds imported from a Participant:
 - require a duly validated Certificate;
 - ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;
 - require that the original of the Certificate be readily accessible for a period of no less than three years;
- (c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant;
- (d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

SECTION IV

Internal Controls

Undertakings by Participants

Each Participant should:

- (a) establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;
- (b) designate an Importing and an Exporting Authority(ies);
- (c) ensure that rough diamonds are imported and exported in tamper resistant containers;
- (d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;
- (e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V.
- (f) when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in Annex II.

Principles of Industry Self-Regulation

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

Section V

Cooperation and Transparency

Participants should:

- (a) provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each Participant should provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information;
- (b) compile and make available to all other Participants through the Chair statistical data in line with the principles set out in Annex III;
- (c) exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances;
- (d) consider favourably requests from other Participants for assistance to improve the functioning of the certification scheme within their territories;
- (e) inform another Participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other Participant do not ensure the absence of conflict diamonds in the exports of that other Participant;
- (f) cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfilment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other Participants of the essence of the problems encountered and of solutions found;
- (g) encourage, through their relevant authorities, closer cooperation between law enforcement agencies and between customs agencies of Participants.

Section VI

Administrative Matters

MEETINGS

1. Participants and Observers are to meet in Plenary annually, and on other occasions as Participants may deem necessary, in order to discuss the effectiveness of the certification scheme.
2. Participants should adopt Rules of Procedure for such meetings at the first Plenary meeting.
3. Meetings are to be held in the country where the Chair is located, unless a Participant or an international organisation offers to host a meeting and this offer has been accepted. The host country should facilitate entry formalities for those attending such meetings.
4. At the end of each Plenary meeting, a Chair would be elected to preside over all Plenary meetings, and any *ad hoc* working groups which might be formed, until the conclusion of the next annual Plenary meeting.
5. Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations.

ADMINISTRATIVE SUPPORT

6. For the effective administration of the certification scheme, administrative support will be necessary. The modalities and functions of that support should be discussed at the first Plenary meeting, following endorsement by the UN General Assembly.
7. Administrative support could include the following functions:
 - (a) to serve as a channel of communication, information sharing and consultation between the Participants with regard to matters provided for in this Document;
 - (b) to maintain and make available for the use of all Participants a collection of those laws, regulations, rules, procedures, practices and statistics notified pursuant to Section V;
 - (c) to prepare documents and provide administrative support for Plenary and working group meetings;
 - (d) to undertake such additional responsibilities as the Plenary meetings, or any working group delegated by Plenary meetings, may instruct.

PARTICIPATION

8. Participation in the certification scheme is open on a global, non-discriminatory basis to all Applicants willing and able to fulfill the requirements of that scheme.
9. Applicants wanting to participate in the certification scheme should signify this interest by notifying the Chair through diplomatic channels. This notification should include the information set forth in Section V, paragraph (a) and be circulated to all Participants within one month.
10. Participants intend to invite representatives of civil society, the diamond industry, and non-participants to participate in Plenary meetings as Observers.

PARTICIPANT MEASURES

11. Participants are to prepare, and make available to other Participants, in advance of annual Plenary meetings of the Kimberley Process, information as stipulated in paragraph (a) of Section V outlining how the requirements of the international certification scheme are being implemented within their respective jurisdictions.
12. The agenda of annual Plenary meetings is to include an item where information as stipulated in paragraph (a) of Section V is reviewed and Participants can provide further details of their respective systems at the request of the Plenary.
13. Where further clarification is required, Participants at Plenary meetings, upon recommendation by the Chair, can identify and decide on additional verification measures to be undertaken. Such measures are to be implemented in accordance with international law. These could include, but need not be limited to measures such as;
 - a. requesting additional information and clarification from Participants;
 - b. review missions by other Participants or their representatives.

(Reservations by NGOs noted.)

14. Review missions are to be conducted with the consent of the Participant concerned and include no more than three representatives of other Participants.

(Reservation by NGOs noted.)

15. Membership and terms of reference of the above mentioned review missions are to be decided by the Participants.
16. A report on the results of compliance verification measures is to be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from that Participant as well as the report, are to be posted on the restricted access section of an official certification scheme website no later than three weeks after the submission of the report to the Participant concerned. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

COMPLIANCE AND DISPUTE PREVENTION

17. In the event that an issue regarding compliance by a Participant or any other issue regarding the implementation of the certification scheme arises, any concerned Participant may so inform the Chair, who is to inform all Participants without delay about the said concern and enter into dialogue on how to address it. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

MODIFICATIONS

18. This document may be modified by consensus of the Participants.
19. Modifications may be proposed by any Participant. Such proposals should be sent in writing to the Chair, at least ninety days before the next Plenary meeting, unless otherwise agreed.
20. The Chair is to circulate any proposed modification expeditiously to all Participants and Observers and place it on the agenda of the next annual Plenary meeting.

REVIEW MECHANISM

21. Participants intend that the international certification scheme should be subject to periodic review, to allow Participants to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the Participants, and of international organisations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds. The first such review should take place no later than three years after the effective starting date of the certification scheme. The review meeting should normally coincide with the annual Plenary meeting, unless otherwise agreed.

THE START OF THE IMPLEMENTATION OF THE SCHEME

22. The certification scheme **should be established through an international understanding as soon as possible, recognising the urgency of the situation from a humanitarian and security standpoint. Those in a position to issue the Kimberley Process Certificate should do so immediately. All others are encouraged to do so by 1 June 2002. It is the intention of participants to start the full implementation simultaneously by the end of 2002.** For Applicants that decide to join the scheme after this date, it becomes effective upon notification to the Chair pursuant to the provision in Section VI, Paragraph 9.

ANNEX I

Certificates

A. Minimum requirements for Certificates

A Certificate is to meet the following minimum requirements:

- Each Certificate should bear the title “Kimberley Process Certificate”, the Kimberley Process logo and the following statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process international certification scheme for rough diamonds”
- Country of origin for shipment of parcels of unmixed (i.e. from the same) origin
- Certificates may be issued in any language, provided that an English translation is incorporated
- Unique numbering with the Alpha 2 country code, according to ISO 3166-1
- Tamper and forgery resistant
- Date of issuance
- Date of expiry
- Issuing authority
- Identification of exporter and importer
- Carat weight/mass
- Value in US\$
- Number of parcels in shipment
- Relevant Harmonised Commodity Description and Coding System
- Validation of Certificate by the Exporting Authority

B. Optional Certificate Elements

A Certificate may include the following optional features:

- Characteristics of a Certificate (for example as to form, additional data or security elements)
- Quality characteristics of the rough diamonds in the shipment
- A recommended import confirmation part should have the following elements:

Country of destination
 Identification of importer
 Carat/weight and value in US\$
 Relevant Harmonised Commodity Description and Coding System
 Date of receipt by Importing Authority
 Authentication by Importing Authority

C. Optional Procedures

**Rough diamonds may be shipped in transparent security bags.
 The unique Certificate number may be replicated on the container.**

Annex II

Recommendations as provided for in Section IV, paragraph (f)

General Recommendations

1. Participants may appoint an official coordinator(s) to deal with the implementation of the certification scheme.
2. Participants are encouraged to maintain the information and data required by Section V on a computerised database.
3. Participants are encouraged to transmit and receive electronic messages in order to support the certification scheme.
4. Participants that produce diamonds and that have rebel groups suspected of mining diamonds within their territories are encouraged to identify the areas of rebel diamond mining activity and provide this information to all other Participants. This information should be updated on a regular basis.
5. Participants are encouraged to make known the names of individuals or companies convicted of activities relevant to the purposes of the certification scheme to all other Participants through the Chair.
6. Participants are encouraged to ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation.
7. Participants that produce diamonds should analyse their diamond production under the following headings:
 - Characteristics of diamonds produced
 - Actual production

Recommendations for Control over Diamond Mines

8. Participants are encouraged to ensure that all diamond mines are licensed and to allow only those mines so licensed to mine diamonds.
9. Participants are encouraged to ensure that prospecting and mining companies maintain effective security standards to ensure that conflict diamonds do not contaminate legitimate production.

Recommendations for Participants with Small-scale Diamond Mining

10. All artisanal and informal diamond miners should be licensed and only those persons so licensed should be allowed to mine diamonds.

11. Licensing records should contain the following minimum information: name, address, nationality and/or residence status and the area of authorised diamond mining activity.

Recommendations for Rough Diamond Buyers, Sellers and Exporters

12. All diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds should be registered and licensed by each Participant's relevant authorities.
13. Licensing records should contain the following minimum information: name, address and nationality and/or residence status.
14. All rough diamond buyers, sellers and exporters should be required by law to keep for a period of five years daily buying, selling or exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.
15. The information in paragraph 14 above should be entered into a computerised database, to facilitate the presentation of detailed information relating to the activities of individual rough diamond buyers and sellers.

Recommendations for Export Processes

16. An exporter should submit a rough diamond shipment to the relevant Exporting Authority.
17. The Exporting Authority is encouraged, prior to validating a Certificate, to require an exporter to provide a declaration that the rough diamonds being exported are not conflict diamonds.
18. Rough diamonds should be sealed in a tamper proof container together with the Certificate or a duly authenticated copy. The Exporting Authority should then transmit a detailed e-mail message to the relevant Importing Authority containing information on the carat weight, value, country of origin or provenance, importer and the serial number of the Certificate.
19. The Exporting Authority should record all details of rough diamond shipments on a computerised database.

Recommendations for Import Processes

20. The Importing Authority should receive an e-mail message either before or upon arrival of a rough diamond shipment. The message should contain details such as the carat weight, value, country of origin or provenance, exporter and the serial number of the Certificate.
21. The Importing Authority should inspect the shipment of rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the certification scheme.
22. The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.

23. Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to the relevant Exporting Authority.
24. The Importing Authority should record all details of rough diamond shipments on a computerised database.

Recommendations on Shipments to and from Free Trade Zones

25. Shipments of rough diamonds to and from free trade zones should be processed by the designated authorities.

Annex III

Statistics

Recognising that reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the effective implementation of the certification scheme, and particularly for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade, Participants strongly support the following principles:

- (a) to keep and publish promptly on a regular basis statistics on rough diamond production, exports and imports in a standardised format;
- (b) to keep and publish statistics by origin and/or provenance;
- (c) the recognition of the need for the collation and dissemination of the statistical data, which should be contained in the text of the UN General Assembly resolution following the report on progress made by the Kimberley Process on the proposed certification scheme;
- (d) the content, frequency, timing, format and methods of handling and exchanging statistical data is to be developed by an ad hoc working group created for that purpose, and adopted at a Plenary meeting in accordance with the above-mentioned resolution of the UN General Assembly, without prejudice to the current level of statistical data gathering.