

SOLVING THE PROBLEM OF CONFLICT DIAMONDS IN SIERRA LEONE: PROPOSED MARKET THEORIES AND INTERNATIONAL LEGAL REQUIREMENTS FOR CERTIFICATION OF ORIGIN

By Amanda Bryant Banat*

I. INTRODUCTION AND OVERVIEW

Imagine that in your community, every day when you leave home you are surrounded by people with missing limbs. To your left is a woman with no hands; to your right is a man with an ear missing. Perhaps your infant child has had her leg, arms, or hands sliced off brutally for no medical reason and with no anesthesia at all. Many horrors surround you. Perhaps your sister and three of your friends were raped as teenagers, and your neighbor's son was conscripted into the rebel cause that perpetuates these acts. Imagine that these atrocities are so common that you hardly notice any longer that someone has been the victim of such brutality. As you picture the horrible life in that community, you realize that somewhere in the world a young woman has just been given a diamond engagement ring that was used to fund the rebels who have inflicted so much pain upon you and your loved ones.

Terrorism has gained the attention of all United States citizens in recent times for good reason. Yet Americans have not been the only targets of terror in the world, and all innocent victims of such senseless brutality should have their cause heard and not ignored. Such is the case with the citizens of Sierra Leone.

The human rights violations are staggering, with conflict diamonds¹ funding the rebels in Sierra Leone who senselessly hack off the limbs of innocent civilians, including children. They rape women and teenagers, and conscript

* Candidate for J.D., 2003, University of Arizona James E. Rogers College of Law; B.A., 1998, Southern Methodist University.

1. The term "conflict diamonds," by popular definition, are those diamonds smuggled on the black market by rebel groups. The profits raised by the illicit trade are then used to fund the rebels, either through a direct trade for arms or by raising enough money to facilitate the rebel activities. Hence, they are diamonds traded for the purpose of conflict. *See generally* NICOLAS COOK, CONGRESSIONAL RESEARCH SERVICE, DIAMONDS AND CONFLICT: POLICY PROPOSALS AND BACKGROUND, at 22 (2001) [hereinafter CRS REPORT ON CONFLICT DIAMONDS] (examining the connection between contested natural resources and political conflict in the context of conflict diamonds); GLOBAL WITNESS, LTD., CONFLICT DIAMONDS, (2000) *available at* <http://www.fatbeehive.com/globalwitness/campaigns/diamonds/reports.html> (last visited March 14, 2002) (outlining recommendations for a global diamond certification system to end the trade in conflict diamonds).

children into their own army.² Furthermore, this issue has tremendous post-September 11th consequences now that the illicit trade of diamonds in Sierra Leone has been linked to the Al Qaeda terrorist organization, which perpetrates terror against United States citizens and its allies. This note focuses on the work of Non-Governmental Organizations (NGOs), the United States legislature and executive agencies, the United Nations, and members of the World Bank Group in the worldwide struggle to end the problem of conflict diamonds in Sierra Leone. Through the application of economic and market theory, as well as the cooperation of the international community to rebuild the infrastructure of Sierra Leone and ensure the legitimacy of diamonds,³ this reign of terror will end. For Sierra Leone, the effort will be a massive undertaking including the implementation of a certification system, the strengthening of its judiciary, and numerous measures to wipe-out government corruption, both in fact and in popular perception.

A. Statement of Problem: Diamonds as Fuel for Internal Conflict

The Republic of Sierra Leone is a small nation on the West African coast with a population of over four million people.⁴ Formerly a country with a citizenry of strong academic and artistic achievement, as well as entrepreneurial abilities, this nation has experienced a vast decline in the past twenty years.⁵ By 1991, Sierra Leone was ranked the worst place in the world to live, and the situation has only grown worse since then.⁶ Its diverse population is predominantly Muslim, and as a country, its economy could be supported largely the diamond industry⁷ if the trade is legitimized. By some accounts, the value of the country's official diamond exports is less than \$1.5 million a year, in stark

2. NICOLAS COOK, CONGRESSIONAL RESEARCH SERVICE, SIERRA LEONE: A TENTATIVE PEACE? 2 (2001) [hereinafter CRS REPORT ON SIERRA LEONE TENTATIVE PEACE].

3. The concept of a "legitimate" diamond employed in this article is that of a diamond that has not been used to fund rebel sources, but rather is traded from discovery all the way through to its ultimate purchase with all revenues flowing to sources with non-violent intentions. This means that the individual diggers must receive a fair price for the diamond, the revenue therefrom must circulate within Sierra Leone, and the diamond must never appear on the black market at any step of the way. Anything short of this level of legitimacy is an illicit trade, wherein the value of the diamonds will inevitably fund civil conflict and other forms of terrorism.

4. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE., BACKGROUND NOTES: SIERRA LEONE (Peter A. Knecht & Josephine C. Brooks eds., 1994), available at <http://dosfan.lib.uic.edu/ERC/bgnotes/af/sierraleone9406.html> (last visited Oct. 18, 2002).

5. *Id.*

6. Lawrence M. O'Rourke, *Poor Countries Differ Widely on Spending*, ST. LOUIS POST-DISPATCH, May 26, 1991, at 4B.

7. CRS REPORT ON SIERRA LEONE TENTATIVE PEACE, *supra* note 2.

contrast to the \$70 million in real commercial value.⁸ This disparity begs the question – where have the diamonds gone?

The unfortunate answer is that the diamonds are long lost to the illicit and criminal activity of rebels, known as the Revolutionary United Front (RUF), who use the trade in diamonds to fund their civil war.⁹ The RUF hostilities in Sierra Leone are allegedly motivated by two factors: 1) systemic government corruption leading to the failure to attend to the needs of the citizens; and 2) conflicting ideas about who should control the State's mineral resources.¹⁰ In the name of its ambiguous cause, the RUF terrorizes the entire nation, committing the most horrendous human rights violations imaginable. Among these atrocities are the mass rape of women and children, the amputation of the limbs of men, women, children, and infants, and the forcible recruitment of soldiers among the civilian population, including children.¹¹ According to research conducted by "Physicians for Human Rights," (PHR) nearly every town and village in Sierra Leone that is under RUF control has been heavily impacted by the insurgency.¹² According to its representative, "PHR researchers have been informed by local human rights activists that in some communities almost every woman and girl has been raped. Thousands of women and children were abducted by RUF insurgents to serve as sexual slaves or child combatants and hundreds are still in their custody."¹³

Of these women and children, those who manage to escape are often left socially stigmatized to the point of familial rejection.¹⁴ Many have contracted HIV or become pregnant through the commission of these crimes, and they face a bleak future without the medical attention, job training, and general humanitarian assistance they need.¹⁵ Sadly, millions of Sierra Leoneans have fled their country and homes in search of a better life.¹⁶ When U.N. Peacekeepers were attacked in their attempts to disarm combatants in the diamond-mining areas, the international community began to voice their concern for the people of Sierra Leone.¹⁷ For this

8. OFFICE OF TRANSITION INITIATIVES, UNITED STATES AGENCY FOR INT'L DEV., *Diamonds and Armed Conflict in Sierra Leone: Proposal for Implementation of a New Diamond Policy and Operations*, (May 8, 2000), at http://usaid.gov/hum_response/sleone/diamonds.html (last visited March 14, 2002) [hereinafter USAID Working Paper].

9. See generally GLOBAL WITNESS, *supra* note 1, at 2 (providing a brief history of the development of the RUF).

10. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1.

11. *Hearing on Trade in African Diamonds before the Subcommittee on Trade of the House Committee on Ways and Means*, 106th Cong. (2000) (statement of Holly Burkhalter, Advocacy Director, Physicians for Human Rights). PHR is an organization of scientists and medical professionals who research human rights abuses in order to help end them.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

reason, many governments and NGOs are beginning to consider possible actions to take in order to prevent the diamonds from continuing to fund these atrocities.¹⁸ Notably, Sierra Leone is not the only country affected in this way. Angola and the Democratic Republic of Congo are also under similar strains resulting from the funding of rebels through conflict diamonds.¹⁹

B. History of the Conflict in Sierra Leone

Sierra Leone was originally settled by foreigners when the British established Freetown, the current capital of Sierra Leone, as a refuge for freed slaves.²⁰ These freed slaves, who came to be known as Creoles, often chose to remain in Freetown and helped to import British values in trade, culture, and education.²¹ For the most part, the growth of Sierra Leone occurred peacefully, although occasional rebellions resulted as the indigenous peoples revolted against the British influence.²² The country gained independence from British rule in April of 1961, and Sierra Leone adopted a parliamentary government.²³ The first elections were held the same year, and allegations of corruption in the new government soon followed.²⁴ The All People's Congress received the most parliamentary seats. The party leader, Siaka Stevens, was asked by the Governor-General to lead the government.²⁵ However, that very day he was exiled by opposition, who claimed the election was counted improperly. Martial law ensued, but a year later Siaka Stevens returned to the country to lead the newly formed Republic of Sierra Leone as its executive president.²⁶ In establishing a one-party state, he has been accused by many of instituting an oppressive dictatorship in which the country was plagued with debt, inflation, currency devaluation, and food and energy crises, among other problems.²⁷ Stevens handed this regime down to President Joseph Momoh, who filled Stevens' shoes more than

18. See generally CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1 (linking the mining and sales of diamonds as significant factors in fueling armed conflicts in Africa and proposing diplomatic strategies to combat such trade).

19. See generally *id.*

20. CARL EK, CONGRESSIONAL RESEARCH SERVICE, SIERRA LEONE: BACKGROUND AND ISSUES FOR CONGRESS 1 (1998).

21. *Id.*

22. For a general history of Sierra Leone, see generally ELIPHAS G. MUKONOWESHURO, COLONIALISM, CLASS FORMATION, AND UNDERDEVELOPMENT IN SIERRA LEONE (1991).

23. EK, *supra* note 20, at 1.

24. Babafemi Akinrinade, *International Humanitarian Law and the Conflict in Sierra Leone*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 391, 392 (2001).

25. *Id.* at 393.

26. *Id.*

27. See *id.*

adequately.²⁸ The current rebellion began under Momoh when the RUF invaded Sierra Leone from Liberia to the south.²⁹

In 1996, the first multiparty elections in over two years brought Ahmad Tejan Kabbah into the presidency, only to have his term interrupted in 1997 when the Kabbah government was overthrown in a coup led by RUF sympathizers.³⁰ Junior officers of the Sierra Leone Armed Forces freed Major Johnny Paul Koroma, the imprisoned army leader who had previously attempted to overthrow Kabbah,³¹ presumably because he was a powerful leader who could aid their cause. At this time, a coalition formed between the RUF and other forces with the intent to govern in Sierra Leone.³² The Kabbah government was restored in 1998 following measures by the Economic Community of West African States Monitoring Group (ECOMOG), the Nigerian regional military intervention force, but rebel insurgencies have continued.³³

Many outside sources, such as the Ukraine, have assisted the RUF in their uprisings, and the motivations of the RUF clearly remain geared toward the exploitation of the vast mineral resources in the country.³⁴ The Economic Community of West African States (ECOWAS) has accused Burkina Faso, Libya, and Liberia of assisting the RUF.³⁵ The U.S. Department of State urged the Liberian government to cease RUF support.³⁶ Indeed the Liberian government bears much responsibility in the current conflict, as President Charles Taylor reportedly assisted in the operations of the RUF by recruiting citizens of Sierra Leone for the rebel forces, and by supplying their efforts with arms in exchange for smuggled diamonds.³⁷ The Liberian involvement drew attention from international bodies, such as the United Nations, for which the country has received sharp threats.³⁸

President Kabbah entered into negotiations with RUF factions after yielding to considerable foreign and domestic pressures, leading ultimately to the Lomé Peace Accord on July 7, 1999.³⁹ In a strange turn and under the protest of certain NGOs, the agreement granted amnesty to all RUF combatants⁴⁰ and the

28. *Id.* at 394.

29. *Id.*

30. EK, *supra* note 20, at *Summary*; Akinrinade, *supra* note 24, at 401.

31. Akinrinade, *supra* note 24, at 401.

32. *Id.*

33. *Id.* at 402.

34. *Id.* at 406-07.

35. While specific reasons for these alliances are not articulated, the obvious incentive is for foreign governments to gain a share in the diamond wealth. EK, *supra* note 20, at 4.

36. *Id.*

37. See CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 23.

38. See *id.* at 23-25.

39. EK, *supra* note 20, at 6.

40. This amnesty only reaches to the Sierra Leone legal system. As discussed later, a U.N. tribunal will still prosecute some perpetrators.

release of their political prisoners by the Sierra Leone government.⁴¹ The U.N. was among the protesting organizations and refused to submit to a total blanket pardon for “gross human rights violations.” In particular, Koffi Annan spoke out against the pardons, in one breath congratulating the sides on their diplomacy and at the same time condemning the “culture of impunity.”⁴²

The U.N. Security Council has since established the United Nations Mission in Sierra Leone (UNAMSIL), comprised of approximately 17,500 peacekeeping troops, notably with no U.S. troop involvement.⁴³ In May 2000, armed hostilities ensued between RUF and UNAMSIL forces, resulting in a major hostage crisis and the death of at least nine U.N. personnel.⁴⁴ The hostages were released within a few weeks, but the RUF continued attempts to sabotage the U.N. mission through rebel attacks and more human rights violations.⁴⁵ Later that year, following the replacement of RUF leader Sankoh with Issa Sesay, the peace process resumed.⁴⁶ Sierra Leonean elections took place in May of 2002, with the Kabbah government under a cloud of doubt as to its ability to manage the conflict.⁴⁷ However, following mounting pressure on all sides and the sanctions imposed on Liberian President Charles Taylor, the RUF has made some efforts toward disarmament and demobilization.⁴⁸ For example, in May 2001, the RUF released hundreds of abducted and conscripted children, mostly ages ten to fifteen.⁴⁹

C. New Evidence of an Al Qaeda Link

If the grim outlook for citizens of Sierra Leone fails to draw overwhelming American sympathy and support for the cause against the illicit trade, the fact that the trade is used to fund Al Qaeda should do so.⁵⁰ Recently, United States and European intelligence officials, along with two unnamed sources, have stated that the Al Qaeda terrorist network has made millions of dollars in the last three years from smuggled Sierra Leone diamonds.⁵¹ Because

41. EK, *supra* note 20, at 6.

42. *Id.*

43. CRS REPORT ON SIERRA LEONE TENTATIVE PEACE, *supra* note 2, at 5.

44. *Id.* at 6.

45. *Id.*

46. *Id.* at 7.

47. *Id.* at 8.

48. *Id.* at 8-9.

49. Douglas Farah, *Sierra Leone Rebels Free Child Soldiers; Gesture is Sign of Hope in Peace Process*, WASH. POST, May 26, 2001, at A20.

50. Apparently, no direct connections between Al Qaeda and RUF have been mentioned to date.

51. Douglas Farah, *Fighting Terror/Tensions and Profits Money Trail: Qaeda Linked to Diamond Trade*, BOSTON GLOBE, Nov. 4, 2001, at A22 [hereinafter Farah, *Fighting*

diamonds are easy to smuggle, Al Qaeda operatives were able to sink their funding into these gemstones, possibly anticipating the freezing of their bank accounts.⁵² Presumably, they needed to preserve their finances by hardening them in the event that electronic accounting would no longer be feasible.

Both diamond supply and demand rose, leading officials to believe that some organization was attempting to launder money.⁵³ Sierra Leone would be a typical location for terrorists to raise funds, because governments weakened by internal conflict often become “breeding grounds” for all manner of illegal operations, much like bacteria in stale puddles.⁵⁴ Clearly, if the United States government and other countries are honest in their attempts to stamp out global terror, then preventing terrorist networks from gaining access to funds through the channels afforded by illicit trade markets must become a top priority.

II. OVERVIEW OF PROPOSED AND IMPLEMENTED SOLUTIONS

A. General Solutions

A diamond ban or boycott will not solve the problem in Sierra Leone. The blame for the current conflict must be assigned to a complex scheme of international trade that has permitted too many loopholes in the world diamond market. The various players will have specific responsibilities depending upon which of these three main categories describes them: 1) the producing and exporting countries; 2) the trading and importing countries; or 3) the industrial manufacturers, retailers, polishers, and traders.⁵⁵ The fundamental task for members of each of these categories is to use their positions to work toward the cessation of illicit trade through appropriate market conditions, a certification system in compliance with World Trade Organization (WTO) standards, and appropriate penalties for violations.⁵⁶

1. The Role of Producing and Exporting Countries

Sierra Leone and other diamond exporters must take measures against illicit activity before industry leaders and importing countries can be effective in

Terror]; see Douglas Farah, *Al Qaeda Cash Tied to Diamond Trade; Sale of Gems From Sierra Leone Rebels Raised Millions, Sources Say*, WASH. POST, Nov. 2, 2001, at A01.

52. Farah, *Fighting Terror*, *supra* note 51.

53. *Id.*

54. Timothy W. Docking, *Terrorism's Africa Link*, CHRISTIAN SCI. MONITOR, Nov. 14, 2001, at 9.

55. GLOBAL WITNESS, *supra* note 1.

56. *Id.*; USAID Working Paper, *supra* note 8.

their various roles.⁵⁷ First, the country must establish an internal certification system to ensure that exported diamonds are mined and internally traded through legitimate sources.⁵⁸ In order to be considered a legitimate source, the government must license any person or entity seeking to extract diamonds.⁵⁹ Furthermore, a government-controlled central Diamond Office should be responsible for routing all diamonds, documenting all diamond activity, registering traders, and ensuring that only officially registered persons may possess rough diamonds.⁶⁰ Violators must face mandatory prosecution and stiff criminal penalties.

The Government of Sierra Leone must also address the problem of corruption. On the one hand, those diamonds that fail to pass internal standards must be seized as a means of ensuring legitimacy.⁶¹ On the other hand, seizing goods may provide a new channel for laundering large quantities of illegal goods, therefore providing a temptation to officials.⁶² Proposals in Angola have included a sixty percent finders' fee, clearly giving an incentive to cheat.⁶³ Other countries use a system incorporating lower finders' fees to help stem such corruption.⁶⁴ One strong possibility is to prevent government office-holders and their family members from registering to mine or trade diamonds.⁶⁵ With RUF leadership in the Mining Ministry, however, this proposal is unlikely to gain acceptance.

2. The Role of Trading and Importing Countries

Often in a humanitarian crisis, organizations and activists call for a ban on tainted goods. Such a ban would be ineffective in the current crisis because it is damaging to the legitimate diamond industry that props much of the economy in certain African regions. Nothing about a diamond is per se "evil" as some products are. By way of contrast, a fur coat is intrinsically troublesome to an animal rights activist. No one needs to die before a diamond can end up in a retail store. Thus, the role of importing countries must be carefully balanced with the interests of preserving a highly valuable industry for the sake of the development of African regions. The most immediate and potent of actions would be an official declaration that any international scheme of certification must be

57. Of course, Sierra Leone need not implement these measures without worldwide assistance. But since the root of the problem is internal, correcting conditions therein is paramount to the solution.

58. GLOBAL WITNESS, *supra* note 1, at 34.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

observed, and that in the absence of such observation no importation shall occur. Currently, proposed U.S. legislation incorporates a diluted form of such a declaration.

Importing countries might also consider encouraging the science and technology sectors within their countries to refine diamond identification technology so that each diamond can be identified and tracked throughout its route. One method, “geo-chemical” identification, compares trace elements and impurities within diamonds and attempts to categorize the gems according to region.⁶⁶ These methods may ultimately enable “fingerprinting” of diamonds.⁶⁷ Another method is the “tagging” approach, which uses laser and focused ion beam technologies to mark each diamond at the source.⁶⁸ Importing governments can provide incentives to the scientific community through grants for related research, and they should consider subsidies for new technology for developing countries.

3. The Role of the Diamond Industry

The diamond industry has three major policy initiatives attempting to curb the illicit activity: the proposals proffered by the Diamond High Council, the World Diamond Council, and De Beers.⁶⁹ Human rights groups target the diamond industry giant De Beers, best known by the “a diamond is forever” ad campaign, for its involvement in the illegal diamond trade, as well as for poor treatment of black African employees and harsh working conditions.⁷⁰ De Beers controls roughly seventy percent of the world’s diamond sales,⁷¹ and wields so much power over the diamond industry that it can adjust the supply of diamonds in the market to set the price for the gems worldwide.⁷² The company’s monopoly has been the subject of U.S. antitrust investigation for over half a century, leading to an indictment for anti-competitive practices in 1994.⁷³ Indeed, this pursuit by the Justice Department may present problems for diplomatic efforts on the conflict diamond controversy.⁷⁴

66. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 3.

67. *Id.* at 4.

68. *Id.*

69. *Id.* at 4-5.

70. Judith Schoolman, *17.6B Deal in Diamonds, Consumers Not Seen Paying Price*, N.Y. DAILY NEWS, Feb. 16, 2001, at 46.

71. Raymond Bonner, *U.S. May Try to Curb Diamond Trade that Fuels Africa Wars*, N. Y. TIMES, Aug. 8, 1999, at 3.

72. Schoolman, *supra* note 70.

73. See *Conflict Diamonds: The Clean Diamonds Trade Act H.R. 2722 Before the Subcomm. on Oversight of Gov’t Mgmt., Restructuring and the D.C., Comm. on Governmental Affairs, 107th Cong. (2002)* [hereinafter *Testimony of Hall & Wolf*] (testimony of Tony P. Hall and Frank R. Wolf, Members, House of Representatives).

74. *Id.*

De Beers originally employed a two-fold strategy in order to acquire as many diamonds as possible before they entered the market: the company's own mining operations and the purchase of diamonds from other sellers.⁷⁵ Although the company ceased purchasing diamonds in Angola and Sierra Leone, smuggled diamonds that originated in these countries are easily acquired from outside sources.⁷⁶ In response to a changing industry, the company has altered its organizational strategy by joining with the African mining company "Anglo American."⁷⁷ Prior to this move, the De Beers Company operated through two major corporations, De Beers Consolidated Mines Limited and De Beers Centenary AG, under which many subsidiary companies operated.⁷⁸ Under the new corporate structure, De Beers will continue to supply sixty-five percent of rough diamonds for industrial use and jewelry, but will furthermore embark upon a new venture whereby De Beers diamonds will become a brand name of jewelry sold directly to consumers in company-named stores.⁷⁹

Despite its anticipated resistance, De Beers claims to support tighter controls on the industry.⁸⁰ While the company's new organizational regime has improved its relations between the corporation and the United States, American and European officials remain critical and assert that despite extensive legal trade by the company, De Beers dealers continue to buy illicit diamonds.⁸¹

Interestingly, the United States Agency for International Development (USAID) notes that De Beers stands to gain the most from the tightening of controls.⁸² De Beers is most likely to survive in a stricter trade regime, whereas smaller, less-integrated companies may not have the mechanisms and resources to adapt.⁸³ If other companies cannot comply adequately with certification requirements, consumers may resort entirely to the purchase of De Beers diamonds. Moreover, because of its greater ability to comply, De Beers diamonds have the greatest likelihood of ultimate importation.⁸⁴ The company recognizes

75. Lucinda Saunders, *Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds*, 24 *FORDHAM INT'L L.J.* 1402, 1428 (2001).

76. *Id.*

77. Schoolman, *supra* note 70.

78. Saunders, *supra* note 75, at 1429.

79. Schoolman, *supra* note 70.

80. Bonner, *supra* note 71.

81. Bonner, *supra* note 71; Francesco Guerrera & Sathnam Sanghera, *Conflict Diamonds Company Vows Not to Take Advantage of Disruption in Supplies*, *FIN. TIMES* (London), June 9, 2000, at 13.

82. USAID Working Paper, *supra* note 8.

83. *See id.*

84. Stricter certification of origins regimes will require a chain of warranties from the mining stage through the retail purchase phase. If smaller companies are unable to comply with international rules of origin, then diamonds originating therefrom will not survive commerce beyond the level where the companies end compliance. *See* discussion *infra* Part III.

that the system is beneficial to its business, but attributes the benefits to market restabilization rather than its massive infrastructure.⁸⁵

The Diamond High Council (HRD) is headquartered in Antwerp, Belgium, where a large percentage of the world's diamonds are cut.⁸⁶ The organization has taken some action to curb the trade in conflict diamonds by assisting the Angolan and Sierra Leonean governments to develop certification systems.⁸⁷ Some people have criticized the HRD for its apparent conflict of interest as both regulator and promoter of the diamond industry.⁸⁸ To allay these concerns, the Belgian Ministry of Economic Affairs has implemented a governmental plan requiring the licensing of all imported diamonds originating from several countries, including Liberia.⁸⁹ Unfortunately, none of these countries yet has a government-verified certificate of origin system.⁹⁰ Belgium's more stringent approach has merely pushed the diamond market into other regions with weak standards, such as Israel, where a twenty-five percent increase of imported raw diamonds occurred following implementation of the HRD plan.⁹¹

The World Diamond Council is a cooperative organization consisting of the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, the two largest international organizations for the diamond trade.⁹² During the July 2000 World Diamond Congress (WDC), the World Diamond Council called for a uniform exportation system and the establishment of ethical codes for the industry in order to create transparency and compliance with international trade law.⁹³ The WDC meets every two years to discuss industry concerns.⁹⁴ The primary concern at the 2000 meeting was the issue of conflict diamonds.⁹⁵ The WDC members expressed concern regarding the certification requirements of secondary exports.⁹⁶ They believe that if all primary importers of rough diamonds comply with a certification regime, no

85. Bonner, *supra* note 71.

86. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 4. HRD is a formal trade organization for the diamond industry in Belgium.

87. *Id.* at 4-5 (discussing at length the details of certification under the "Kimberley Process" section).

88. Neil Buckley et al., *Between a Rock and a Hard Place*, FIN. TIMES (London), July 12, 2000, at 8.

89. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 5.

90. *Id.*

91. Buckley et al., *supra* note 88.

92. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 5.

93. *Id.*

94. *The World Diamond Congress*, at <http://www.diamond-key.com/calendar/jul2000/16jul2000.html> (last visited Mar. 14, 2002) [hereinafter *WDC*].

95. *Id.*

96. "Secondary exports" are those diamonds that have been exported initially into countries for polishing or other transformations, and then subsequently exported out of those countries for ultimate purchase or further refinement.

diamonds can leave their borders without legitimacy.⁹⁷ The response is that requiring secondary certificates of origin helps importing countries know that rough diamond importers are complying, as a form of checks and balances. Therefore, the system places the onus equally upon all diamond players throughout the entire process.

The WDC members expressed discontent with the Kimberley proposals,⁹⁸ contending that they create excessive bureaucracy.⁹⁹ The members also disagree with the imposition of sanctions against countries not in compliance with any certification regime, claiming that they will be ineffective.¹⁰⁰ Rather, the World Diamond Council proposes to place the bulk of the burden on exporting countries to create official certificates of export origin placed in transparent security bags.¹⁰¹ The information on all of the diamonds would be recorded in a government database.¹⁰² Importing countries would only permit entry of diamonds from export countries that comply with these regulations, and all sealed containers would be subject to inspection by authorities.¹⁰³

Although the WDC is partially correct in that increasing the control by exporting countries is a necessary part of the overall legitimization process, its scaled-down model for compliance is naïve. Wealthier importers are in a better position to insist on worldwide cooperation in this effort. Without sanctions, the only punishment left will be the diversion of diamonds improperly certified away from the importing borders to the markets of other countries with less stringent standards. This approach will not eradicate the problem of illicit trading. If the industry is concerned that sanctions against non-compliant countries will penalize the citizens of those countries and fail to bring about reform, perhaps the industry itself should be willing to bear the force of sanctions.

B. United Nations and Other International Involvement

The U.N. has proposed a Special Court for Sierra Leone (hereinafter *Special Court*) in order to prosecute at least twenty to twenty-five persons.¹⁰⁴ These individuals are believed responsible for “the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the

97. *WDC, supra* note 94.

98. The Kimberley Process is a multilateral effort aimed at proscribing illicit diamond trading. *See* discussion *infra* Part II.D.

99. *WDC, supra* note 94.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. CRS REPORT ON SIERRA LEONE TENTATIVE PEACE, *supra* note 2, at 10.

territory of Sierra Leone.”¹⁰⁵ The court is scheduled to begin operating sometime in the Fall of 2002, with hopes to return some indictments by the end of the year.¹⁰⁶ The Secretary-General of the U.N. Security Council reports that the allotted budget for the *Special Court* is short \$1.4 million for the first year and \$19.6 million for the two subsequent years.¹⁰⁷ The U.N. did not want to establish the Court until enough contributions to sustain the effort for three years are in place.¹⁰⁸ However, the Secretary-General believed that the commitment for justice in Sierra Leone among the Member States was sufficient to justify preparations for the establishment of Court.¹⁰⁹

One of the major criticisms of the Court is that its structure limits jurisdiction to Sierra Leone, creating concerns that potential defendants may flee the country and subsequently escape justice.¹¹⁰ Additionally, similar attempts at an ad hoc tribunal in Rwanda have yielded only modest results while imposing huge costs.¹¹¹ Proponents of the Court counter that the tribunal mixes both Sierra Leonean and international jurisdiction, and that cost concerns are minimized by the smaller scope of the Court in contrast to the International Criminal Tribunal for Rwanda.¹¹² Further, the implementation of the tribunal aids the employment of the rule of law in Sierra Leone and ends impunity for those rebels whose extreme human rights violations simply cannot be endorsed.¹¹³

Nevertheless, it remains to be seen whether the tribunal’s jurisdiction will be expansive enough to serve justice adequately. Amnesty International (AI) pushed for a greater temporal jurisdiction of the tribunal, to extend as far back as 1991.¹¹⁴ Currently, the jurisdiction will extend only to those crimes committed beginning November 30, 1996, the date when a previous peace agreement, which is no longer in effect, occurred between the rebels and the Sierra Leone government.¹¹⁵ The U.N. Secretary-General expressed concern that any extension of jurisdiction would over-burden the Court, thus delaying or preventing the administration of justice for those crimes committed more recently.¹¹⁶ AI

105. *Id.*

106. Christopher S. Wren, *Sierra Leone War Crimes Court to Begin Deliberations in Fall*, N.Y. TIMES, Mar. 21, 2002, at A13.

107. *Twelfth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, at U.N. SCOR, ¶ 70, U.N. Doc. S/2001/1195 (2001) [hereinafter *12th U.N. Report*].

108. *Id.* ¶ 71.

109. *Id.*

110. CRS REPORT ON SIERRA LEONE TENTATIVE PEACE, *supra* note 2, at 10-11.

111. *Id.* at 10.

112. *Id.* at 11.

113. *Id.*

114. 1991 is the date of the conflict’s inception. Amnesty International On-line, *Sierra Leone, Renewed Commitment Needed to End Impunity*, at <http://www.web.amnesty.org/ai.nsf/print/AFR510072001?OpenDocument> (last visited Mar. 17, 2002) [hereinafter Amnesty International].

115. *Id.*

116. *Id.*

counters that these concerns are more easily addressed through the mechanism of prosecutorial discretion.¹¹⁷ In other words, allow those responsible for indicting the criminals to rank who has committed the most severe atrocities, and prosecute in that order. In one recent U.N. progress report on Sierra Leone, the Secretary-General reports that while the Government of Sierra Leone sought to extend the Court's temporal jurisdiction to 1991, the government has now agreed to drop the issue and confirm the agreement.¹¹⁸ This concession could promote impunity, because under the Lomé Peace Accord, amnesty in the Sierra Leone judicial system will ostensibly prevent certain aggressors from ever facing justice.¹¹⁹ The *Special Court* is the only remaining proper place for such prosecution, and its limited jurisdiction is a step backwards for justice.

In addition to the *Special Court*, the United Nations is working to establish a Truth and Reconciliation Commission (TRC) as well as a Human Rights Commission (HRC) in Sierra Leone in order to bring attention to the suffering of the innocent victims.¹²⁰ The Lomé Peace Accord incorporated these commissions.¹²¹ The purpose of truth commissions is to investigate and document human rights abuses as a means of acknowledging these crimes.¹²² Generally, proponents hope that recognizing these violations of human rights in an official record will create a more open discussion in order to prevent recurrences.¹²³

The two proposed commissions for Sierra Leone have distinct tasks. The HRC will deal directly with providing remedies to victims in Sierra Leone.¹²⁴ The TRC addresses violations committed since the conflict's inception in 1991.¹²⁵ With the TRC, perpetrators and victims alike will have a forum through which they may discuss their personal stories as a means to heal and reconcile

117. *Id.*

118. *12th U.N. Report, supra* note 107, ¶ 69.

119. *See* Amnesty International, *supra* note 114.

120. *Sixth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, U.N. SCOR, ¶ 64, U.N. Doc. S/1999/645 (1999), [hereinafter *6th U.N. Report*].

121. *Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, U.N. SCOR, ¶ 17, U.N. Doc. S/1999/836 (1999), [hereinafter *7th U.N. Report*].

122. Truth commissions should be considered for broad use worldwide because they provide a low-risk means of healing for oppressed peoples. Their application is most illustrative in developing nations like Sierra Leone and for indigenous people worldwide. Rose Weston, Note, *Facing the Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States*, 18 ARIZ. J. INT'L & COMP. L. 1017, 1018 (2001) (advocating the application of a truth commission model to the issue of poor treatment of Native Americans by the United States government, as a means to facilitate reconciliation and prevent revisionism in historical accounts; notably, the United States has never undertaken a truth commission on this issue).

123. *Id.* at 1019.

124. *7th U.N. Report, supra* note 121, ¶ 18.

125. *Id.*

differences.¹²⁶ The TRC will also focus on recommending restorative measures for the victims of the conflict.¹²⁷ Essentially, the HRC seems to address issues of law, whereas the TRC addresses the psychological and historical aspects of the conflict as a means of preventing future abuses and promoting the healing process of the general population.

The current status of the Truth and Reconciliation Commission, as reported by the Secretary-General, is that the United Nations High Commissioner for Human Rights and the Special Representative to the Secretary General have selected four national and three international members to sit on the TRC panel. President Kabbah's approval of these members is pending.¹²⁸ The United Nations will take special measures to ensure the protection of children, who were victims, witnesses, and forced perpetrators of the atrocities.¹²⁹ Parties to the establishment are discussing the proper relationship between the TRC, the *Special Court*, and traditional forms of conflict resolution.¹³⁰ Further, UNAMSIL radio and other sources of communication are airing a public awareness campaign regarding the Commission's establishment.¹³¹ The Secretary-General estimates the budget for the project at \$8.5 million, and expects it to operate for fifteen months.¹³²

AI provides a persuasive theory regarding the relationship between the *Special Court* and the TRC. The two bodies should be mutually beneficial, and the agreements establishing both the TRC and the *Special Court* must clarify the distinct capacities of each.¹³³ The TRC should be able to make recommendations to investigate events and allegations by individuals, as presumably discussions by victims and perpetrators will bring new facts to light.¹³⁴ AI also insists that the TRC, while important to the cause of human rights, must not become a substitute for the prosecution of those who have committed serious crimes.¹³⁵

Although AI correctly insists on full prosecution of those persons accused of these heinous crimes, perhaps the process needs a measure of caution to encourage perpetrators to participate fully in the TRC. The prosecutor for the *Special Court* should remember that many perpetrators have been victims of the war themselves, kidnapped and brainwashed to follow a terrible cause. Therefore, the interest of justice is better served by allowing them to participate fully in the TRC. Plea-bargain types of arrangements could provide an option whereby judicial economy is achieved while the focus nevertheless is on the full

126. *Id.*

127. *Id.*

128. *12th U.N. Report*, *supra* note 107, ¶ 67.

129. *Ninth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, ¶ 52, U.N. SCOR, U.N. Doc. S/2001/228 (2001) [hereinafter *9th U.N. Report*].

130. *Id.*

131. *Id.*

132. *12th U.N. Report*, *supra* note 107, ¶ 68.

133. Amnesty International, *supra* note 114.

134. *See id.*

135. *Id.*

prosecution of those whose war crimes and crimes against humanity are most serious. Additionally, the U.N. should strongly consider extending the Court's temporal jurisdiction back to 1991 from 1996.

Another important measure is creating an international effort to strengthen Sierra Leone's legal system.¹³⁶ Sierra Leone requested U.N. support to ensure its elections on May 14, 2002 were fair and secure.¹³⁷ The government required all voters to be registered by the National Electoral Commission (hereinafter NEC).¹³⁸ The NEC recommended that Sierra Leonean refugees should register to vote in their countries of asylum, which presented concerns about feasibility and willingness by the countries of refuge.¹³⁹ The U.N. took an active role in the elections by establishing a UNAMSIL electoral component of their mission to monitor the election process.¹⁴⁰ This group sought the realignment of the military sector boundaries along the electoral district lines, the patrolling of polling places as a confidence-boosting measure, and responding to any public disorder during the polling process.¹⁴¹ UNAMSIL also deployed civilian police to serve as support for the Sierra Leone police force during the election.¹⁴² Furthermore, the UNAMSIL Public Information Section worked with the NEC to design a public information and education strategy, including the use of UNAMSIL radio, and printing posters, pamphlets, and stickers.¹⁴³

In the 2002 election, President Kabbah won a resounding seventy percent of the vote, with the maligned Johnny Paul Koroma coming in third with only three percent of the vote.¹⁴⁴ President Kabbah's Sierra Leone People's Party also won the majority of parliamentary seats.¹⁴⁵ On the whole, the voting process was peacefully executed, despite a clash between the Sierra Leone People's Party and the RUF occurring on the last campaign day.¹⁴⁶ UNAMSIL soldiers aided in dispersing the fight.¹⁴⁷

UNAMSIL will continue to remain a security force in Sierra Leone, although the U.N. is working on a long-term plan for downsizing and ultimately removing those forces from the country.¹⁴⁸ Although controversy regarding the

136. *Id.*

137. *12th U.N. Report, supra* note 107, ¶ 32.

138. *Id.* ¶ 36.

139. *Id.* ¶ 40.

140. *Id.* ¶ 49.

141. *Id.* ¶¶ 53-54.

142. *Id.* ¶ 56.

143. *Id.* ¶¶ 58-59.

144. *Fourteenth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, ¶ 3, U.N. SCOR, U.N. Doc. S/2002/679 (2002) [hereinafter *14th U.N. Report*].

145. *Id.* ¶ 4.

146. *Id.* ¶ 6.

147. *Id.*

148. *Id.* ¶ 16.

election was inevitable, a large international consensus is clear in one broad aspect. Fairness, both actual and perceived, in this election and all future elections can only help to dissuade popular sentiment against the government and neutralize fears of corruption. The impact of an open and fair election was best illustrated this year in Sierra Leone, when the amputated victims mutilated by the RUF came to the polling places and, quite literally, voted with their feet.¹⁴⁹

The country's judiciary also needs restructuring and strengthening. AI urges the international community to provide monetary assistance to increase salaries for judges as an incentive to lure more experienced legal practitioners to the bench.¹⁵⁰ The physical infrastructure needs modernization, ranging from the use of information technology for legal documentation to physical improvements of court facilities.¹⁵¹ To emphasize human rights matters, AI presses for libraries to feature materials regarding international human rights law so that students and practitioners may gain access to such information.¹⁵² Moreover, prosecutors, judges, and government officials should be trained in human rights law to ensure a more competent judiciary for all future matters before the courts.¹⁵³ Local NGOs, the UNAMSIL human rights section, and the international community generally must all participate in these ventures.¹⁵⁴ Improvements in the judiciary will not necessarily aid in preventing the illicit diamond trade, but will help the overall problem of civil war that conflict diamonds fuel.

C. Proposed U.S. Legislation (107th Congress)

The role of the United States in the conflict is indirect but nonetheless highly important.¹⁵⁵ The U.S. is by far the largest diamond importer in the world,¹⁵⁶ and a significant percentage of these diamonds presumably comes from the illicit trade in Sierra Leone. U.S. efforts have been led by U.S. House Representatives Tony Hall (retired during the 107th Congress) and Frank Wolf, as

149. See Tim Butcher, *Amputees Literally Vote with Feet*, CHI. SUN-TIMES, May 14, 2002, at 23.

150. Amnesty International, *supra* note 114.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Press Release, Remarks of U.S. Rep. Tony P. Hall Before the Trade Subcomm. of the U.S. House Ways and Means Comm. (Oct. 10, 2001) (on file with Arizona Journal of International and Comparative Law.). Representative Tony Hall, an Ohio Democrat, has accepted President Bush's nomination to serve as ambassador to the Rome-based United Nations organizations that deal with international hunger relief. Mr. Hall deserves much gratitude for his efforts to end the atrocities driven by conflict diamonds, as well as best wishes for success in his efforts to stamp out hunger worldwide.

156. *See id.*

well as Senator Mike DeWine.¹⁵⁷ Representative Hall makes clear that passage of the Clean Diamonds Act is not a barrier to free or fair trade, because the Act reigns in trade in stolen goods.¹⁵⁸

The Clean Diamonds Act recently passed the U.S. House of Representatives, and went to committee at the Senate.¹⁵⁹ The Act recognizes that 6.5 million people have lost their homes and 3.5 million others have been killed as a result of conflict diamonds.¹⁶⁰ Acknowledging the work of many parties, including nations involved in the Kimberley Process – the multilateral effort aimed at curing the problem of wars fueled by diamond trading – the Act authorizes the executive branch to prohibit the imports of rough diamonds.¹⁶¹ The bill states “the sanction *may* be imposed” (emphasis added) against countries that do not comply with the system implemented by the UN or the Kimberley Process members.¹⁶² The President may also act against the importing of polished diamonds and jewelry from countries not in compliance.¹⁶³

The Clean Diamonds Act is a compromise, shifting from a proposal that would automatically trigger sanctions to a system of executive discretion.¹⁶⁴ The Act requires the President to report to Congress biannually regarding any countries in violation against which sanctions have not yet operated.¹⁶⁵ The focus of the Act also shifted from diamonds in general, to rough or “uncut” diamonds.¹⁶⁶ The original proposal treated diamonds the same way, regardless of their form.¹⁶⁷ The compromise focuses on rough diamonds, but provides the President with authority to block and seize shipments of jewelry and polished gems if he has credible evidence they were made with conflict diamonds.¹⁶⁸ Additionally, the compromise doubles the funds allocated to \$10 million for an additional year, through the fiscal year 2003.¹⁶⁹

The Senate companion bill to the Act was S. 1084.¹⁷⁰ However, this bill faced strong opposition because it was considerably diluted as it passed in the house.¹⁷¹ As a result, Senators Durbin, DeWine, and Feingold proposed new

156. *Id.*

158. *Id.*

159. See Clean Diamond Trade Act, HR 2722, 107th Cong. (2001).

160. *Id.*

161. *Id.* The Kimberley Process is discussed in depth *infra* Part II.D.

162. *Id.*

163. *Id.*

164. See *Changes from HR 2722 to Compromise HR 2722*, available at <http://house.gov/tonyhall/pr251.html> (last visited Mar. 14, 2002).

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. See *Testimony of Hall & Wolf*, *supra* note 73.

171. PARTNERSHIP AFRICA CANADA, *Other Facets: News and Views on the International Effort to End Conflict Diamonds*, 3 (May, 2002), available at

legislation, S. 2027, entitled the Clean Diamond Trade Act.¹⁷² The new legislation goes further to require the President to prohibit importation of diamonds from countries that do not comply with the multilateral effort.¹⁷³ Further, the President may also prevent the entry of cut and polished jewelry if the origins of the diamonds therein are unknown.¹⁷⁴ In sum, the bill revives the important components compromised in the Act that passed the House.

One probable result of such legislation is that pressure will be imposed on countries to join in the fight against conflict diamonds by shaming those that do too little; another result will likely be the protection of the image of diamonds as a precious and valuable commodity that is worthy of trade.¹⁷⁵ Further, the biannual reports to Congress will enable NGOs, journalists, and the general public to gain access to vital information regarding the problem of conflict diamonds in order to further educate the world regarding these tragedies.¹⁷⁶ Some people express disappointment regarding the government's over-extension of deference to the World Trade Organization (WTO), despite the persuasive role of the United States within that body.¹⁷⁷

D. The Kimberley Process

Although the legislation currently in Congress is a promising first step toward a system whereby only legitimate diamonds are traded, the most important measure needed is a stronger multilateral effort to proscribe illicit trading. This effort began in May of 2000, when representatives from NGOs, diamond industry leaders, and approximately forty governments instituted the "Kimberley Process."¹⁷⁸ Kimberley, South Africa, is the site of top diamond producer De Beers' first mine.¹⁷⁹ The Department of State has been the leader for the United States in the Kimberley Process.¹⁸⁰

<http://www.partnershipafricacanada.org/index.shtml> (last visited Sept. 12, 2002) [hereinafter *Other Facets*].

172. *Id.*

173. *Id.*

174. *Id.*

175. Press Release, Breakthrough Compromise on Clean Diamonds Clears the Way for House Action Tuesday, (Nov. 27, 2001) (on file with Arizona Journal of International and Comparative Law.).

176. *Testimony of Hall & Wolf, supra* note 73.

177. *Id.* In the interests of free trade, WTO regulations often require open trade with all Member States in order to assure equal access to all markets.

178. Craig Mellow, *Diamond Industry Seeks to Stem Trade in Gems from War Zones*, BLOOMBERG NEWS (London), Sept. 11, 2001.

179. *Id.*

180. *Illicit Diamonds, Conflict and Terrorism: The Role of U.S. Agencies in Fighting the Conflict Diamond Trade Before U.S. S. Subcomm. on Gov't Affairs*, 107th Cong. (2002)

The aim of the Kimberley Process is “to track every export, import and re-export transaction” through a certification system which would help to identify legitimate diamonds as opposed to those used to fund war and terrorism.¹⁸¹ On November 29, 2001, the Kimberley Process arrived at a tentative agreement for a certification system that will keep track of the origins of diamonds at every step of the way.¹⁸² Despite this achievement, the issue of whether the certification agreement could serve to bar participating countries from trading diamonds with non-participating countries remained undecided.¹⁸³ The United States, along with Canada and Japan, argued that the bar, deemed essential by many negotiators, would violate WTO rules.¹⁸⁴ Still, others argue that the United States has a right to ignore WTO rules in this circumstance.¹⁸⁵ For example, the General Agreement On Tariffs and Trade (GATT) contains a provision allowing any contracting party to ignore GATT rules when “essential security interests” are at stake.¹⁸⁶ An alternative proposal is to bypass the WTO through a UN Security Council resolution, which would essentially make the Kimberley Agreement international law.¹⁸⁷

Some critics of the United States’ role in the Kimberley Process and in its own regulations claim that the U.S. is afraid to offend other countries, particularly its allies, that may be involved in the illicit diamond trade.¹⁸⁸ By way of example, Tony Hall and Frank Wolf testified “diamonds account for more than twenty-five percent of Israel’s merchandise exports – and seventy percent of these are exported to the United States.”¹⁸⁹ Other allies include Belgium, South Africa, and India.¹⁹⁰ Concerns over offending allies should be moot post-September 11th.

(statement of Timothy Skud, Acting Deputy Assistant Sec’y Regulatory, Tariff, and Trade Enforcement, U.S. Treasury).

181. Holly Burkhalter, *Blood on the Diamonds*, WASH. POST, Nov. 6, 2001, at A23; Robert I. Rotberg, “Conflict” *Diamonds Aren’t Forever*, CHRISTIAN SCI. MONITOR, Oct. 25, 2001, at 9.

182. *International News: Conflict-Diamond Accord Reached*, FACTS ON FILE WORLD NEWS DIGEST, Nov. 29, 2001, at 948E3.

183. *Id.*

184. *Id.*

185. *Sell Diamonds for Love, Not War*, CHI. TRIB., Dec. 15, 2001, at 26.

186. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat.A5, T.I.A.S. No. 1700, 55 U.N.T.S. 187 art. XXI.

Nothing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment.

Id.

187. *Sell Diamonds for Love, Not War*, *supra* note 185.

188. *See id.*; *Testimony of Hall & Wolf*, *supra* note 73.

189. *Testimony of Hall and Wolf*, *supra* note 73.

190. *Id.*; Burkhalter, *supra* note 181.

The world is on notice of U.S. efforts to stamp out terrorism world-wide. As one source succinctly stated, “[i]f other countries cheat, even U.S. allies in the war on terror, Bush should stand up to them. Bush’s view is that anyone who aids a terrorist is a terrorist. Our allies should remember that.”¹⁹¹

A finalized working paper was issued in March 2002, and has been criticized as seriously flawed in one critical aspect: the voluntary nature of compliance.¹⁹² Moreover, no independent monitoring system is proposed by the Kimberley Process,¹⁹³ a flaw the United States General Accounting Office (GAO) further condemns.¹⁹⁴ The GAO analyzed the working paper using several criteria: control environment, risk assessment, control activities, information and communications, and monitoring.¹⁹⁵ Another part of the problem that the GAO reveals is that the Kimberley Proposals are not based on a risk assessment.¹⁹⁶ For example, the proposals merely “recommend” measures for the period between extraction and the first export, when most diamonds are lost.¹⁹⁷ Another high-risk period spans from the diamonds’ arrival at foreign ports to the final point of sale.¹⁹⁸ For this period, the proposals call for the diamond industry to regulate itself.¹⁹⁹

Despite these flaws, the Kimberley Process has gone farther than any other proposal or agreement to stem the trade, and should be implemented without delay. The kinks can be hammered out later. Particularly, the “Minimum Requirements for Certificates” contained in Annex 1 should be implemented immediately, with the “Optional Certificate Elements” clarified as soon as possible.²⁰⁰ The minimum requirements articulated by the working paper are as

191. *Sell Diamonds for Love Not War*, *supra* note 185.

192. *See* 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, Mar. 20, 2002, Kimberley Process Working Document nr 1/2002 [hereinafter *The Kimberley Process*].

193. Christian Dietrich, *Hard Currency: The Criminalized Diamond Economy of the Democratic Republic of Congo and its Neighbors*, PARTNERSHIP AFRICA CANADA (Occasional Paper No. 4, Diamonds and Human Security Project) (June 2002), available at <http://www.partnershipafricacanada.org/index.shtml> (last visited Sept. 12, 2002) [hereinafter *Hard Currency*].

194. *Other Facets*, *supra* note 171, at 1.

195. *International Trade: Significant Challenges Remain in Deterring Trade in Conflict Diamonds Before the Subcomm. on Oversight of Gov’t Mgmt.*, 107th Cong. (2002) 3 (statement of Loren Yager, Dir., Int’l Affairs and Trade), available at <http://www.gao.gov/new.items/d02425t.pdf> (last visited Sept. 13, 2002).

196. *Id.*

197. *Id.*

198. *Id.*

199. *See* *The Kimberley Process*, *supra* note 192, § IV. This fact is yet another reason why industry proposals to limit certification schemes to the countries of original export are insufficient.

200. *Id.* annex 1(A)-(B).

follows. First, “[e]ach 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.’”²⁰¹

Second, the country of origin must be labeled on parcels of unmixed diamonds.²⁰² Third, the document must be forgery and tamper resistant. Fourth, various identifications must be included, such as dates of issuance/expiration, the issuing authority, the identity of the exporter and importer, carat weight, U.S. dollar value, and the number of parcels in the shipment.²⁰³ Finally, the harmonized commodity description and validation indicia should be contained therein.²⁰⁴ The most important optional elements for certificates are listing the quality characteristics of the rough diamonds that are contained in the shipment²⁰⁵ and an import confirmation part listing similar elements as the certificate.²⁰⁶

III. LEGITIMIZING THE DIAMOND TRADE THROUGH CHAINS OF WARRANTIES, TAGGING, AND IDENTIFICATION

Diamond mining in Sierra Leone is mostly alluvial, carried out by itinerants in poor, rural areas.²⁰⁷ The other main form of diamond mining is Kimberlite mining, largely performed in South Africa.²⁰⁸ Typically, the stones will pass through five stages of processing before arriving on the consumer’s finger.²⁰⁹ The first stage is the mining and purchasing of rough diamonds followed by the second stage, the sorting of stones in diamond centers and subsequent sale to manufacturers.²¹⁰ Third, the diamonds are cut and polished.²¹¹ The fourth and fifth stages are the manufacturing and marketing of jewelry to consumers.²¹² The problem of conflict diamonds typically occurs in the first three stages, when the origins of diamonds are lost.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* Improving diamond identification technology will enable labeling of even more characteristics. See discussion *infra* Part III.

206. *Id.*

207. LOUIS GOREUX, CONFLICT DIAMONDS 3 (Afr. Region Working Paper Series No. 13, 2001). Mr. Goreux is the Africa Region Consultant to the World Bank.

208. Kimberlite is a type of rock where diamonds are found. Kimberlite and alluvial diamonds are identical in their crystalline structures, but their surface characteristics differ. GLOBAL WITNESS, *supra* note 1, at 8.

209. GOREUX, *supra* note 207, at 2.

210. *Id.*

211. *Id.*

212. *Id.*

A. Basic Practices of Origin Certification

The issue of origin certification arises in the area of imports and exports. In the United States, customs laws require that each article of import must be marked with the English name of its country of origin such that the “ultimate purchaser” will be able to identify that country.²¹³ The “ultimate purchaser” is defined as “the last person in the United States who will receive the article in the form in which it was imported.”²¹⁴ In the case of cut diamonds, the ultimate purchaser most often is the purchaser of a jewelry item, the private consumer. However, if an article of import will be processed by manufacturers in such a way that changes the name, character, or usage of that article, then the “ultimate purchaser” is that manufacturer.²¹⁵ Thus, when importing rough diamonds, the manufacturer who intends to create a cut diamond will become the ultimate purchaser.

Of course, certain items, like diamonds, are intrinsically difficult to mark. Although such articles are exempted from being marked with their country of origin, the outermost containers (wrapping/packaging/containers holding diamonds) of such articles must indicate the country of origin²¹⁶ to the ultimate purchaser.²¹⁷

The problem with the current U.S. certification system as it applies to diamond trading is the “substantial transformation” rule. The U.S. Supreme Court, in 1908, articulated a definition for “substantial transformation.”²¹⁸ The court held that in order for a country of origin to change, “there must be transformation; a new and different article must emerge ‘having a distinctive name, character, or use.’”²¹⁹ The court in *United States v. Murray* discussed this issue further, holding that “transformation” is a fundamental change, while “substantial” indicates a “very great change in the article’s ‘real worth, value.’”²²⁰ As stated by Michael Maxwell, this test is often difficult to apply:

In determining whether merchandise has emerged from a manufacturing process with a new name, character, or use, the courts consider (1) the value added to the merchandise at each stage of manufacture, (2) the degree and type of processing that occurred in each country, (3) the effect of processing on the article, (4) the markets in which the article was sold at each stage of

213. RAJ BHALA, INTERNATIONAL TRADE LAW: THEORY AND PRACTICE 333 (2d ed. 2001).

214. *Id.*

215. *Id.* at 334.

216. *Id.* at 336.

217. *Id.*

218. *Anheuser-Busch Brewing Ass’n v. United States*, 207 U.S. 556 (1908).

219. *Id.* at 562.

220. *United States v. Murray*, 621 F.2d 1163, 1169 (1st Cir. 1980).

production, (5) the capital costs of the processing, (6) the manner in which the article was used before and after processing, (7) the durability of the article before and after processing, (8) the lines of distribution in which the article was sold, (9) the article's name or identity in commerce before and after processing, and (10) the tariff classification of the merchandise before and after processing.²²¹

Essentially, the article of import will change countries of origin for markings and other purposes when that article enters a second country and undergoes a fundamental change that greatly alters the article's economic value.²²²

When a diamond is mined in Sierra Leone, it is in rough, uncut form.²²³ Other countries, such as Belgium, Israel, and India, then polish these rough diamonds.²²⁴ At that point, the diamonds from Sierra Leone have undergone a "substantial transformation" becoming a polished diamond from that second country.²²⁵ The identity of the diamond's origin is then tragically lost. At this point, governments no longer have a means by which to identify and thus prevent importation of those diamonds that entered the market via illicit trading.²²⁶

The practice of mixing diamonds is another method for conflict diamonds to enter legal markets. A parcel of diamonds from the same origin can be more easily traced, as the technological ability to identify diamonds based upon individual characteristics remains embryonic in its development. (See subpart C, herein).²²⁷ If diamonds from a particular location are kept together, their origins are thus easier to trace than single stones or mixed stones from varying origins.²²⁸ USAID places the onus on the industry to stop the practice of mixing diamonds from various origins.²²⁹ As stated in the agency working paper, "[i]f there were any intention of identifying origin during marketing, then clearly the industry would have ways of keeping stones in separate 'parcels' for that purpose . . . The diamond industry practice of mixing rough stones makes it conveniently difficult to trace origin."²³⁰

The conscientious activists of the world have no means to enter a jewelry store and demand to see a diamond's certification. This inability may urge certain

221. Michael P. Maxwell, *Formulating Rules of Origin for Imported Merchandise: Transforming the Substantial Transformation Test*, 23 GEO. WASH. J. INT'L & ECON. 669, 673 (1990).

222. *See Murray*, 621 F.2d at 1169.

223. *See generally* GLOBAL WITNESS, *supra* note 1.

224. USAID Working Paper, *supra* note 8.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

consumers to boycott the industry altogether, a choice that may further impede the economy of Sierra Leone and other nations whose dominant source of economic gain derives from the diamond trade. For these reasons, the first step is to develop a “chain of warranties” that major importing countries, such as the United States, can enforce through sanctions.

B. The Problem of Foreign Trade Zones

Foreign trade zones (or free trade zones, hereinafter FTZs) present another problem for origin identification. FTZs are enclosed areas adjacent to ports of entry in the United States, most visibly but by no means exclusively, duty-free zones in airports.²³¹ The items cost less within the FTZ, because customs duties are levied, and there are no time constraints for entry into the United States customs areas or for re-exportation.²³² Many countries around the world, in addition to the United States, have foreign trade zones, easing the burden upon those bent on smuggling.²³³ As the Bloomberg News reported, “Free Trade Zones around the world disguise diamonds’ origins for tax purposes. The U.K. in 1999 imported forty-four million pounds (\$64 million) worth of rough diamonds that could be traced no further than duty-free zones in Swiss airports . . .”²³⁴ Considering the grave consequences illicit trade has on human rights and national security, the entry of diamonds into foreign trade zones should be regulated by U.S. customs, to ensure proper certification, or else prevented entirely.

FTZs provide several advantages to traders. The most obvious advantage is minimizing tariff liability.²³⁵ Another benefit is the expedition and encouragement of foreign commerce by providing a means for importers to wait at the threshold of United States territory for favorable market conditions without compromising availability of the commodity, as though the commodity originated from a nearby or adjacent country.²³⁶ FTZs also facilitate marketing by providing an opportunity for importers to view merchandise prior to purchase.²³⁷ FTZs provide job opportunities for importing countries by promoting assembly and manufacturing operations within the United States.²³⁸ This phenomenon increased following the 1996 amendments by Congress, which permitted all production

231. See BHALA, *supra* note 213, at 358. Airport duty-free zones do not appear to be the real problem for diamond tracking, however. More likely, it is warehouses and other FTZs that present the problem.

232. *Id.*

233. Vladimir Todres, *Diamond Industry, NGOs Fail to Move on “Conflict” Gems Control*, BLOOMBERG NEWS (London), Sept. 13, 2001.

234. *Id.*

235. BHALA, *supra* note 213, at 360.

236. *Id.*

237. *Id.*

238. *Id.*

materials to enter FTZs without owing tariffs on the materials until after production is complete.²³⁹ The obvious counter-argument is that assembly jobs are taken away from the countries of export, which may be developing countries in need of more opportunities. A final incentive to utilize FTZs is the minimized risk to manufacturers of products containing both foreign and domestic components, including minimizing risks such as damage or delay.²⁴⁰ Although these objectives are worthy of consideration under general free market theory, the free market should stand aside when it impinges on people's fundamental rights as humans.

Currently, no rough diamonds that originate in Sierra Leone or Liberia are permitted entry into the United States.²⁴¹ This prohibition extends to those diamonds imported into or released from bonded warehouses or foreign trade zones, unless the diamonds were imported into the bonded warehouses or FTZs prior to the effective date of the regulation.²⁴² The exception to the prohibition lies with rough diamonds that carry an official Certificate of Origin from the Sierra Leone government, provided the diamonds did not physically route through Liberia along the way.²⁴³ Upon codification of the Certificate of Origins regime of the Kimberley Process, national regulations should be changed to require more stringent standards, that no diamond, whether rough or polished, may enter a U.S. FTZ or the boundaries of the United States Customs territory without the requisite chain of warranties. Furthermore, Congress should authorize the President to impose sanctions against those governments that do not similarly regulate their FTZs.

National Customs agencies have the capability to regulate this trade, as evidenced by the fact that U.S. Customs regulates other imported materials within FTZs in the United States. For example, Customs must inspect tobacco products entering FTZs at the point of entry for grade and quality.²⁴⁴ In fact, flue-cured and burley tobacco must carry certification proving that the products are free of prohibited pesticide residues to avoid denial of entry.²⁴⁵ Another example comes from *Arbor Foods Incorporated v. United States*, in which the Customs Service would not admit sealed containers of sugar syrup into an FTZ.²⁴⁶ Due to policy concerns, the Foreign Trade Zones Board (FTZB) restricted sugar blending operations in FTZs, negatively affecting Arbor's business practices.²⁴⁷ The Court of International Trade held that public policy concerns are a valid reason for the

239. *Id.*

240. *Id.* at 361.

241. 31 C.F.R. § 591.201 (2002).

242. 31 C.F.R. § 591.406 (2002).

243. 31 C.F.R. § 591.202 (2002).

244. 7 C.F.R. § 29.400(a) (2002).

245. 7 C.F.R. § 29.400(b) (2002).

246. *Arbor Foods, Inc. v. United States*, 885 F.Supp. 281 (Ct. Int'l Trade 1995).

247. *Id.* at 282-83.

FTZB to restrict FTZ activity.²⁴⁸ In *Arbor Foods*, the public policy concern was the interference with domestic price supports.²⁴⁹ The problem of conflict diamonds is more serious because it concerns human rights violations, not economic matters. Thus, the United States government must regulate the FTZs, for reasons of public policy. Governments worldwide should follow suit.

C. Diamond Identification Capabilities

If diamonds are easy to identify, the natural result is that they are easier to track from the mine to the finger. Both forms of diamonds, Kimberlite and alluvial, contain the same crystalline structure, but with different surface characteristics, such as patterns of chips and scratches.²⁵⁰ The scientific element of diamond identification comes from either “geo-chemical” identification, whereby the diamonds are comparatively analyzed to determine the regional characteristics of the gems, or tagging diamonds, such that laser technology is used to demarcate diamonds at the source.²⁵¹ Diamond traders, such as De Beers, admit to having the capability to identify diamonds. In fact, De Beers has a GeoScience department aimed at identification capabilities.²⁵²

In the area of geo-physical identification, experts examine surface features to determine regional differences.²⁵³ The various features that can be examined include growth patterns and patterns of scratches on the crystal. Experts can identify more than seventy different forms of surface textures on diamonds, but problems arise because they lack knowledge regarding differences in these features based upon region.²⁵⁴ Mineral inclusions within diamonds have also been researched, such that four main types are identifiable: highly refractive grains, irregular blocks, black plates, and black dust.²⁵⁵ Research on inclusions should be collected into a single database so that the studies may be compared to strengthen identification methods.²⁵⁶

A similar method of identification based upon naturally-occurring physical characteristics addresses the problem from an individual-diamond approach rather than a regional approach.²⁵⁷ The development of technology in this area might enable governments to “fingerprint” each diamond via X-ray or

248. *Id.* at 287.

249. *Id.* at 282-83.

250. GLOBAL WITNESS, *supra* note 1, at 8.

251. CRS REPORT ON CONFLICT DIAMONDS, *supra* note 1, at 4.

252. GLOBAL WITNESS, *supra* note 1, at 9.

253. *Id.* at 10.

254. *Id.*

255. *Id.* at 12.

256. *See id.* at 13.

257. *Id.*

optical scanning while the diamond is still in rough form.²⁵⁸ Current surface profiling techniques aim to provide better information for achieving the most aesthetically pleasing “cut” from the diamond.²⁵⁹ However, with greater ability to implement information technology in this field, the technology could be improved to scan multiple diamonds simultaneously, transfer data instantly to various governmental agencies, and certify their origin.²⁶⁰

The most effective way to use this technology is to maintain facilities to house the scanners in close proximity to mining regions. In the alluvial mining beds of Sierra Leone, the largely itinerant population creates uncertainty as to where miners will find diamonds. However, if a central diamond office is established with satellite offices, then scanners, paper certification, and official trading papers could be housed under one roof. No unlicensed person would be able to gain access to the building, and hence no diamonds that are mined from unlicensed persons will be certified. If a central database is created, then all information about diamonds will instantaneously transfer to ports of entry worldwide.²⁶¹ The extinction of a paper certification system altogether might ultimately result from development of single diamond identification databases. The main obstacles are getting the technology and determining who will control the databases.

IV. PROPOSED ECONOMIC AND MARKET SOLUTIONS TO THE ILLICIT TRADE

A. Economic Causes of Rebellion

The concept that poverty causes war is intrinsic to much of this analysis.²⁶² According to Paul Collier of the World Bank Group, from an economic perspective, rebellions are the manifestations of organized crime.²⁶³ Perceived grievances by rebel factions are only peripheral to their success at civil

258. *Id.*

259. *Id.*

260. *Id.*

261. *See id.* at 14. However, certain issues of practicality will arise in the context of individual persons who by chance locate a diamond without ever intending to mine. Rather than only enabling gray market channels for trading these chance diamonds, a local cooperative (as discussed herein) may provide a means for these finders to sell their diamonds legally to licensed persons.

262. USAID Working Paper, *supra* note 8.

263. PAUL COLLIER, *Economic Causes of Civil Conflict and Their Implications for Policy*, June 15, 2000, at <http://www.worldbank.org/research/conflict/papers/civilconflict.htm> (last visited Mar. 14, 2002) [forthcoming in *MANAGING GLOBAL CHAOS* (Chester A. Crocker et al. eds.)]. Mr. Collier is the Director of the Development Research Group for the World Bank.

war, and in many cases public relations firms are hired by larger organizations to promote their cause.²⁶⁴ Collier characterizes internal conflict as the “use of force to extort goods or money from their legitimate owners.”²⁶⁵ Further, he argues, “groups are capable of perceiving that they have grievances more or less regardless of their objective circumstances, a social phenomenon known as relative deprivation.”²⁶⁶ In other words, “objective grievances do not generate violent conflict, violent conflict generates subjective grievances.”²⁶⁷ Thus, from an economic standpoint, the political grievances of rebels are irrelevant to the resolution of their conflict.

Collier asserts that rebellions occur in countries experiencing three economic circumstances: 1) countries that are dependent upon primary commodity exports, because they are highly lootable and usually heavily taxed; 2) low average income countries; and 3) those countries with slow economic growth, particularly when population growth is high.²⁶⁸ The risk of rebellion is higher in countries with lower incomes, not necessarily because poor people have little to lose and thus can be cheaply recruited, but rather because of the government’s inability to tax enough to spend adequately on defense.²⁶⁹ Slow growth perpetuates rebellion because young people face unemployment and inadequate educational opportunities.²⁷⁰

The solution to civil conflict, he believes, is not to address the policy objectives proffered by the rebels, but to view rebel groups as rational economic agents that will respond to economic incentives and pressures.²⁷¹ In some countries, the conditions are ripe for rebellion, but have yet to decay into actual conflict.²⁷² In that case, it is more helpful to identify and reduce major risk factors, rather than to attempt to correct societal injustices.²⁷³ The goal is to prevent the establishment of rebel organizations.²⁷⁴ Certain functions might include diversifying the economy such that reliance on a primary commodity is reduced.²⁷⁵ Presumably, if rebel factions seize one commodity for their own funding, the economy will stand because the government will not be at a total loss

264. *Id.* at 2-4.

265. *Id.* at 4.

266. *Id.*

267. *Id.* at 21.

268. *Id.* at 9-11.

269. *Id.* at 10.

270. *Id.* at 11.

271. *Id.* at 15, 20.

272. *Id.* at 15 (calling these countries “pre-conflict” states, as opposed to “post-conflict” states wherein the measures will be somewhat different). Perhaps Sierra Leone is best thought of as a *mid-conflict* state, requiring a bit of both approaches that Collier asserts.

273. *Id.*

274. *Id.*

275. *Id.* at 16.

of revenue to fund the needs of its citizens. The country should also aim to reduce the popularity of rebel factions by using the funds from these commodities for public services, such as health care and education.²⁷⁶ If the popular citizenry finds itself without these services, public sentiment should turn away from the rebel causes.²⁷⁷ Unfortunately, Collier recognizes that this solution would not work in Sierra Leone: “[M]any of the youths who fought for the rebel movement in Sierra Leone are so unpopular that they dare not return to their communities, but this did not stop them from joining a rebellion. The rebels deliberately targeted drug addicts and children for recruitment and so had an unusually dependent labor force.”²⁷⁸

The international community must take an active role to ensure that rebel commodities do not enter the legitimate market. Since low income and economic decline are risk factors for rebellion,²⁷⁹ hijacking primary commodities will doubly strengthen the rebel cause. First, rebel groups will be in a better position to recruit individuals because they will have the ability to use these funds to gain publicity. Second, the rebel factions increase their membership by depriving the country of its own economic resources, driving up discontent with the government and leading citizens to seek out alternatives to supporting the current government.

Countries in a pre-conflict state should also recognize that ethnic dominance, even in a democracy, may serve to perpetuate violence.²⁸⁰ Collier believes that the best approach to ensuring minority rights is building a constitution around an ideal of non-discrimination.²⁸¹ The Constitution of Sierra Leone addresses this issue in Chapter III, entitled “The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual.”²⁸² The chapter recognizes that:

Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following—
a. life, liberty, security of person, the enjoyment of property, and the protection of law;

276. *Id.*

277. The natural criticism of this approach is that it is hard-hearted because it forces the innocent civilians to go without important needs in the interim. The only way that this approach will work is if the funded need is so vital to the economy that rebel factions will gain no support and thus will disband very quickly.

278. *Id.*

279. *Id.*

280. *Id.* at 17.

281. *Id.*

282. SIERRA LEONE CONST. ch. III.

- b. freedom of conscience, of expression and of assembly and association;
- c. respect for private and family life, and;
- d. protection from deprivation of property without compensation.²⁸³

Section 27 deals with discrimination more deeply, proscribing the enactment of discriminatory laws.²⁸⁴ In fact, the Sierra Leone Constitution contains a similar provision to 42 U.S.C. § 1983,²⁸⁵ stating “no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the function of any public office or any public authority.”²⁸⁶ Nevertheless, even these provisions ensuring fundamental human rights did not prevent the current conflict. Collier may have missed the important distinction between a constitution founded upon civil liberties and a society founded thereon.

At any rate, Sierra Leone is not in a pure state of pre-conflict, but is in the middle of the conflict. Thus, Collier’s proposals for a “post-conflict” state are also relevant. Countries that are in a post-conflict period are at an increased risk for further rebellion, partially because rebel groups are better prepared for war.²⁸⁷ These countries or regions must take peace-building measures as well as effectuating all similar methods as those countries in “pre-conflict” standing.²⁸⁸ To accomplish peace, political grievances, either real or perceived, must be addressed or else the military aspect of political conflict must be made impracticable.²⁸⁹ Another problem is that members of the marginalized group living in the diaspora typically continue their connection to the rebels, and often have money to fund their contacts by virtue of relocating to wealthier countries.²⁹⁰ Thus, the peace process should include these members in the diaspora by giving them a role in the reconstruction of their country.²⁹¹ Furthermore, the new governments of these people may place restrictions on the activities of the diaspora organizations to help prevent the encouragement of conflict.²⁹²

283. SIERRA LEONE CONST. ch. III, § 15.

284. SIERRA LEONE CONST. ch. III, § 27.

285. 42 U.S.C. § 1983 (1984) states “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .”

286. SIERRA LEONE CONST. ch. III, § 27.

287. COLLIER, *supra* note 263, at 17-18.

288. *Id.* at 17.

289. *Id.* at 18.

290. *Id.* at 19. No evidence of this phenomenon has been found with Sierra Leoneans in the diaspora. However, proposals based on the notion that this may occur can only help and should be considered.

291. *Id.*

292. *Id.*

Collier's theories are sound, with some caveats. The first problem is the idea that grievances articulated by rebels are merely masks of rhetoric used to justify a form of organized crime. This theory, if applied too broadly, is hasty. Certainly some rebellions have been fought for truly noble causes. Many Americans would take offense at the notion that, for example, taxation without representation was provoked or a justified response to insurgency. The notion that revolution worked well for the foundations of the United States, but that rebellion is no longer justifiable under any circumstances is ethnocentric at best. Surely true oppression still occurs in the world, and the uprising of the oppressed is inevitable. Truly noble causes have not devolved entirely. To suggest otherwise would give carte blanche to any government merely on the basis that it has seized power and established its statehood.

Second, Collier may have too much faith in the rationality of the rebels. Although the flimsiness of the professed grievances by the rebels helps to support this conclusion, others suggest that one very real grievance among general African populations may be at the root of all current rebellion throughout the continent. Although addressing the problem of conflict diamonds in Central Africa, some sentiment expressed by Partnership Africa Canada (PAC) can be extrapolated to include Sierra Leone.²⁹³ PAC believes that the problems of poverty, social unrest, and wars resulted from colonial domination in tandem with corruption in the governments following independence.²⁹⁴ Under that theory, the approach to stemming the trade will require broader social reforms than a certificate of origin.

Nonetheless, on its face, Collier's strict economic view of rebellion applies fairly well to Sierra Leone. His analysis focuses on situations where countries have a low national income and a dependence upon primary commodity exports.²⁹⁵ The diamonds, a highly lootable and easily smuggled source, drive the Sierra Leonean economy.²⁹⁶ Sometimes the solution to primary commodity dependence in a mid- to post-conflict country is to mitigate the risks of conflict recurring by forming agreements to share the commodity revenues with the rebels.²⁹⁷ The Government of Sierra Leone may have intended this when it brought the rebel leader into government as Minister of Mining.²⁹⁸ Collier warns, however, that buying off one group does not prevent primary commodities from becoming profitable to other would-be rebel groups.²⁹⁹

293. See *Hard Currency*, *supra* note 193, at 1.

294. *Id.*

295. COLLIER, *supra* note 263, at 2.

296. BUREAU OF PUBLIC AFFIARS, U.S. DEP'T ST., BACKGROUND NOTES, *supra* note 4.

297. COLLIER, *supra* note 263, at 19.

298. *Id.*

299. *Id.*

B. Proposals for Market Conditioning in the Diamond Trade

The USAID Office of Transition Initiatives (hereinafter USAID) has proposed several methods for legitimizing the diamond trade. USAID emphasizes four economic consequences of the illicit activities, above and beyond the basic human rights violations and recent disclosures of international security concerns.³⁰⁰ First, the payments to Sierra Leoneans for the diamonds are lower than the fair market value should suggest, due to the gray or black market.³⁰¹ These minimal purchase prices indicate illegitimate buyers.³⁰²

Second, the valuation of the commodity is distributed inequitably throughout the chain of trade. Third, because the full value of the diamonds fails to recirculate in Sierra Leone, the country generates no new wealth based on its own natural resources.³⁰³ This failure is termed the “loss of multiplier” effect.³⁰⁴ Finally, along the lines of the loss of multiplier effect, the illicit trade leads to a lack of reinvestment by would-be entrepreneurs.³⁰⁵ The remedies presented by USAID follow.

1. Sierra Leone must attract legitimate buyers through the use of convertible currency in the diamond trade and through the enforcement of export taxation.

USAID advocates the creation of favorable conditions to introduce market-based pressures to steer the trade into legitimate waters.³⁰⁶ First, the implementation of a system for origin certification, as discussed, must occur before any economic benefits can be derived from stabilized market conditions. The agency’s working paper states a simple and rather circular proposition: diamonds are smuggled from Sierra Leone because of an absence of legitimate buyers.³⁰⁷ To encourage legitimate buyers to conduct business in the country, diamond traders must be free to trade in “hard” currency, such as dollars. Although the use of hard currency will pose concerns regarding the sovereignty of the country’s own monetary policy, this fear can be countered with the system of free trade zones, wherein traders openly exchange in dollars or other freely convertible currencies.³⁰⁸ If adjacent countries have not compromised their sovereignty through the free trade zones, neither will Sierra Leone by using hard

300. USAID Working Paper, *supra* note 8.

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *See id.*

307. *See id.*

308. *Id.*

currency for the diamond industry.³⁰⁹ In addition, the enforcement of export tax payments will help level the playing field to further encourage legitimate buyers in the country.³¹⁰

2. Given that collusion and price leadership will occur without any imposed restrictions on diamond trading, measures must be taken to disrupt the market's imperfections.

Fair analysis cannot accurately depict the current diamond trade as operating under a free market.³¹¹ USAID argues that these inconsistencies may be addressed through heightened transparency and other methods, as follows: 1) "Price disclosure and price discovery (by periodic, random, surprise audits of parcels;" 2) "Periodic auctions of randomly selected parcels to establish benchmarks and price parameters;" 3) "Definition and prosecution of financial crimes that can distort normal market operations;" 4) "Enforcement of fair trade practices locally;" 5) "Stiff penalties for violations (such as revoking residency for foreigners, mandatory jail sentences for financial crimes);" 6) "Mandatory disclosure of sales information;" and 7) "Engagement of community stakeholders to monitor full disclosure."³¹²

Transparency in the diamond market is essential. Louis Goreux, the Africa Region Consultant to the World Bank, encourages the World Bank and the International Monetary Fund to provide assistance to the Sierra Leone Government to discuss policy changes aimed at reducing incentives and ability to smuggle through transparent and fair licensing.³¹³ Part of the necessary initiative is to ensure that the cost of smuggling mimics the cost of trading through legitimate channels.³¹⁴ Export taxes should be minimized to reflect the minimal cost of smuggling operations.³¹⁵ Additionally, the government can facilitate transparency in pricing by requiring the immediate publication of prices to

309. *Id.*

310. *Id.*

311. *Id.* In fact, I would argue that it neither could, nor should, operate as such. If a free market drives down the price of a diamond so as to reflect its abundance, then the entire purpose of a non-industrial diamond is lost. Diamonds are meant to be expensive, and making them "cheap" would not only ruin the industry, but also deprive exporting countries of potentially lucrative opportunities. This fact may be the reason why some of DeBeers' monopolization of the industry has been tolerated.

312. *Id.*

313. GOREUX, *supra* note 207, at 11.

314. *Id.*

315. *Id.* The government of Sierra Leone may be reluctant since its revenue from export taxes will decrease in the short-term. In the long-term, though, the ability to collect export taxes on all of the exported diamonds, rather than losing them to black markets, will lead to increased revenues from export collections.

importing countries, and cross-checking this information with the information of the treasury and central bank to discover discrepancies.³¹⁶ Workshops in mining regions regarding valuation of diamonds can provide a helpful tool to miners who do not grasp the actual value of their stones in order to heighten their ability to bargain.³¹⁷ Transparency in the income of government officials must also occur to remove the “shroud of mystery” that permeates the diamond industry of Sierra Leone with a sense of corruption.³¹⁸

3. International institutions and the Government of Sierra Leone must establish a system of crediting, whereby individual diggers may become more self-sufficient.

This proposal theorizes that by enabling the diggers as individuals to become more independent of the diamond dealers, surely more of the wealth will remain in their own pockets, and the multiplier effect will increase.³¹⁹ As the multiplier effect increases, poverty decreases, and the country stabilizes. Currently, the diggers in Sierra Leone and other countries face a lack of micro-finance facilities, meaning they have to borrow from local “godfathers” to acquire the necessary equipment and supplies to support their mining.³²⁰ The remedy is the provision of micro-finance institutions that can provide more adequate funding at lower repayment rates.³²¹

Such institutions, quite correctly, fear that individuals will be unable to repay their loans due to the unpredictability of the mining trade.³²² Typically, after months of digging without success, a miner will make a valuable find.³²³ To mitigate this problem, cooperatives comprised of families borrowing money as a unit can be formed.³²⁴ Through the pooling of resources, groups of diggers who have earned each other’s trust can buy better equipment, leading to deeper holes and higher productivity.³²⁵ Women may also become involved by managing household credit.³²⁶ The problem with this approach is the mobility of artisan miners, although the existence of micro-finance institutions might promote more settlement that can evolve into greater economic stability as well.³²⁷

316. *Id.* at 11-12.

317. *Id.* at 12.

318. USAID Working Paper, *supra* note 8.

319. *Id.*

320. GOREUX, *supra* note 207, at 13.

321. *See id.*

322. *See id.*

323. *Id.*

324. *Id.*; *see* USAID Working Paper, *supra* note 8.

325. GOREUX, *supra* note 207, at 13.

326. USAID Working paper, *supra* note 8.

327. *See* GOREUX, *supra* note 207, at 13.

V. CONCLUSIONS

Many lives and limbs are long lost to the conflict in Sierra Leone. The world must immediately implement policies to end the illicit diamond trade that fuels the brutality. All countries must participate in the development and implementation of a diamond certification process. Particularly, the United States, as the largest importer of cut diamonds, owes a duty of reform to the citizens of Sierra Leone. The new legislation is a promising first step, but it does not go far enough. Sanctions should be mandated, not discretionary. Additionally, importers must heavily regulate diamonds at the ports of entry, especially in foreign trade zones. Other countries must equally regulate their foreign trade zones or face sanctions.

The U.N. should take a broader approach with the *Special Court*, and extend temporal jurisdiction to 1991, the beginning of this conflict, in order to end the culture of impunity. Judicial economy concerns may be curbed through prosecutorial discretion, as well as agreements that persons accused of lesser or fewer crimes may be granted amnesty by the *Special Court* for full participation in the TRC. Finally, market conditions should be created such that Sierra Leone, a poor country so full of riches, may begin to bear the fruit of its own labor. Every delay may cost the life or limb of another innocent victim.