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Diamonds and Conflict: Background, Policy, and Legislation

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Diamonds and Conflict: Background and Policy Responses

Summary

In several diamond-rich countries affected by armed conflict, notably in Africa, belligerents have funded their military activities by mining and selling diamonds, and competition over the use and control of diamond wealth has contributed significantly to the depth and extended duration of these conflicts. Diamonds used in this fashion, labeled “conflict diamonds,” were estimated to have comprised an estimated 3.7 % to 15% of the value of the global diamond trade in 2000. The present volume of such trade appears is difficult to estimate. Several diamond-related conflicts have ended, but others have burgeoned. Policy makers’ attention has also increasingly focused on the possible role that diamonds may play in the financing of terrorist operations.

In response to public pressure to halt trade in conflict diamonds, and due to the persistence of several diamond-related conflicts, governments and multilateral organizations have pursued efforts to end such trade. Several international policy forums, national legislatures, and diverse private parties have proposed various reforms and legislation to achieve such goals. Effective regulation of the diamond trade is difficult. Diamonds are a highly fungible, concentrated form of wealth, and the global diamond industry is historically insular and self-regulating. The illicit diamond trade exploits these factors. Proposals to end illicit trading generally center on legally identifying the origin of diamonds and requiring the registration, identification, and monitoring of cross-border trade in diamond, as is common for trade in other goods. Methods for achieving such ends include the cataloging of unique physical diamond features; the “tagging” of diamonds with minute markings; and the creation of certification-of-origin laws to document the origin of diamonds.

The Clinton Administration worked to create a certificates of origin-based international diamond trade regime, but sought to ensure that such efforts would not negatively affect the legitimate industry. It also backed marketing reforms and regulatory capacity building in diamond-rich African countries, consulted with the diamond industry, pushed for U.N. sanctions to end the conflict diamond trade, and created an inter-agency group on conflict diamonds. The Bush Administration has pursued policies that broadly mirror those of its predecessor.

The United States participates in the Kimberley Process Certification Scheme, a global diamond trade regulation framework. The Administration began implementing the Scheme in the United States with voluntary interim compliance measures, prior to the passage of H.R. 1584 (see below). Several congressional hearings have addressed trade in conflict diamonds. Potential links between terrorism financing and trade in diamonds have garnered increasing congressional attention. The 106th and 107th Congresses considered several diamond-related bills. The 108th Congress passed H.J.Res. 2 in February 2003; it contained several conflict diamond-related provisions. Other conflict diamond bills introduced in the 108th Congress include H.Con.Res. 239 (Watson); S. 760 (Grassley), H.R. 1415 (Houghton), and H.R. 1584 (Houghton). The latter three bills shared many goals in common with H.R. 1584, an amended version of which was passed by both chambers and signed into law by President Bush, becoming P.L. 108-19.

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Diamonds and Conflict: Background, Policy, and Legislation

Recent Developments

On April 11, 2003, an amended version of H.R. 1584 (Houghton, introduced April 3, 2003), received from the Senate, was passed by the House. President Bush has approved the bill, which was designated P.L. 108-19. The intent of H.R. 1584, entitled the Clean Diamond Trade Act, is to implement the Kimberley Process Certification Scheme (“the Scheme” or “KPCS” hereafter) in the United States. The Scheme is a consensus-negotiated text that defines a diamond trade control and tracking system based on the use of import/export certificates that establish the legal origin of internationally traded rough diamonds. Its purpose is to curtail trade in illegally exported rough diamonds, in order to end international trading in “conflict diamonds,” which are further discussed below. The Scheme is a “work in progress”; the KPCS calls for participants to meet in Plenary session annually to review the status of the Scheme implementation, which officially began in January 2003. The first post-implementation plenary session of the Kimberley Process is convene in Johannesburg, South Africa, from April 28 to 30, 2003.

The Clean Diamond Trade Act was passed following the issuance of a provisional World Trade Organization waiver exempting the KPCS from certain WTO rules. Some had feared that such rules might enable non-Kimberley participants to challenge the Kimberley Process as an unfair constraint on international trade.¹ Approval of H.R. 1584 will enable the United States to fulfill its stated intention to implement the Scheme on a permanent basis, which it had signified by endorsing the Interlaken Declaration, a November 2002 joint statement of intent by Kimberley Process participants to implement the Scheme beginning in 2003. Prior to the passage of H.R. 1584, the Bush Administration had begun to put the Scheme into effect in the United States “with the voluntary issuance by the U.S. diamond industry of Kimberley certificates to accompany rough-diamond export shipments,” beginning on January 1, 2003.²

Background

Issue Definition. In several diamond-rich countries affected by armed conflict, notably in Africa, belligerents have funded their military and related

¹ Daniel Pruzin, “WTO Members Approve Waiver For ‘Blood Diamonds’ Agreement,” *International Trade Reporter*, March 6, 2003, *inter alia*.

² Philip T. Reeker, “Kimberley Process,” Press Statement, Department of State, December 31, 2002.

political activities through the mining and sale of diamonds.³ All of the conflicts in which diamonds have played a role have been characterized by severe human rights abuses, massive internal population displacements, and the destabilization of internationally-recognized governments. Diamonds used in this manner have been labeled “conflict diamonds” or “blood diamonds.” In several conflicts, diamond wealth appears not only to have been used to pay for military resources, but to have itself become a focal point for further conflict, thus contributing significantly to the depth and extended duration of hostilities. Diamonds have also led to the internationalization of these conflicts, and added significantly to their complexity. The possibility of gaining access to diamonds and other natural resources has also motivated diverse foreign actors, including governments, private security-cum-mining firms, armed non-state groups, and mercenaries, to become party to several conflicts.

Geographic Context. The persistence of conflicts in Sierra Leone and Angola in the late 1990s and the first years of the present decade was attributed, in part, to the role of diamonds in funding the activities of parties to these conflicts. Wars in these two countries, which long represented the most prominent diamond-related conflicts, have now ended. However, both countries continue to be affected by local diamond-related political tensions and occasional armed conflict. In the larger Mano River region (Sierra Leone, Liberia, and Guinea), a historically politically volatile area, diamonds continue to present a potential motivating factor for future conflict, or for a regional broadening of instability related to the current armed insurgency in Liberia. In the Democratic Republic of the Congo (DRC), an emergent peace process is taking hold, but significant levels of conflict, aggravated by contention over control of diamonds and other natural resources, and related illicit activities, continue. Both state and non-state actors that have been party to the DRC conflict appear to have active interests in diamond extraction and trade activities in the DRC.⁴ In the Central African Republic (CAR), diamonds appear to have indirect links to political violence that has repeatedly affected the country, most recently after a rebel attack beginning in October 2002.⁵

³ Some definitions, such as that used by the Kimberley Process Certification Scheme, categorize conflict diamonds as those used by rebel movements or their allies to undermine legitimate governments; other definitions are more broad, and categorize conflict diamonds as those that are used to fund armed conflict by a variety of other armed actors — especially in cases, as in the Democratic Republic of the Congo, where competition over natural resources appears to have become an increasingly central cause of continued conflict.

⁴ See U.N. Security Council, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2002/1146, October 16, 2002, the most recent of several reports by the panel. Other analyses, among others, include Amnesty International, “Making a Killing: the Diamond Trade in Government-controlled DRC,” *AFR 62/017/2002*, October 22, 2002; Christian Dietrich, “Hard Currency: The Criminalized Diamond Economy of the Democratic Republic of the Congo and its Neighbours,” *Occasional Paper #4*, The Diamonds and Human Security Project, June 2002; and Africa Confidential, “The Congo Factor,” 43: 23, November 2002.

⁵ Lucy Jones, “Libya goes for gold in Central Africa,” *BBC News*, September 12, 2002; BBC News, “CAR rebels gain ground,” October 29, 2002; Lucy Jones, “Mixed blessing of (continued...)”

A long, drawn-out peace process appears to have diminished the conflict to a limited extent. Still, many observers believe that current and former parties to the DRC conflict continue to engage in diamond-based commerce that employs business assets, such as mining concessions or production marketing rights, trade and transport networks, and enterprises, that were established during or as a direct result of their involvement in the DRC conflict.⁶ In the Central African Republic (CAR), a rebel group called the Movement for the Liberation of Congo (MLC), intervened on behalf of the recently ousted government of President Ange-Felix Patasse, after it was attacked in late October 2002 by its opponents. The MLC has been involved in the DRC conflict and has reportedly engaged in extensive diamond trading in CAR. Libya, which supported the Patasse government militarily after an armed attack on it in 2001, had reportedly obtained mineral exploitation rights in the country. Those rights are now in question, as is the continued influence of the MLC in the CAR. The newly proclaimed government of Francois Bozize currently has no relations with the MLC, which fought the armed supporters of Bozize prior to the ouster of Patasse in late March 2003.

Similarly, actors involved in the on-going civil conflict in Liberia have reportedly financed their activities, in part, by mining and trading diamonds, and unregulated artisanal mining has also reportedly increased in some parts of Liberia. These activities have reportedly contributed to on-going smuggling of diamonds into neighboring countries. No official exports of diamonds from Liberia have been made since the Liberian government officially banned the export of diamonds in May 2001, in compliance with U.N. sanctions related to the recently ended conflict in Sierra Leone. A U.N. sanctions monitoring committee has found little evidence to bolster accusations that Liberia has violated diamond-related measures of the sanctions regime imposed on it, and has found that few, if any diamonds are being exported from Liberia.⁷

Rise of Conflict Diamonds as a Policy Issue. As several diamond-related wars continued or burgeoned in the late 1990s, the role of diamonds and other natural resources in the financing of armed conflict increasingly drew the attention of journalists, analysts, and policy makers. The problem of conflict diamonds also focused increased analytic attention on the general connections between armed conflict and control of natural resources.⁸ The World Bank, for instance, sponsored

⁵ (...continued)

diamonds in CAR,” *BBC News*, February 4, 2002; and Christian Dietrich, “Hard Currency.”

⁶ See U.N. Security Council, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, in S/2002/1146, October 16, 2002, and previous Panel of Experts reports on the DRC.

⁷ See U.N. Security Council, *Report of Panel of Experts on Liberia Appointed Pursuant to Security Council Resolution 1408 (2002), Paragraph 16, Concerning Liberia*, in S/2002/1115, October 25, 2002, and previous U.N. sanction panel reports on Liberia.

⁸ See, for instance, Michael T. Klare. 2001. *Resource Wars: The New Landscape of Global Conflict*, 1st ed. New York: Metropolitan Books; Michael Renner, “The Anatomy of Resource Wars,” *Worldwatch Paper* 162, October 2002; and David Keen, “The Economic Functions of Violence in Civil Wars,” *Adelphi Paper*, Vol. 320, International Institute for (continued...)

several conferences and studies on causal connections between natural resources, demographic characteristics, and the occurrence of conflict. Research associated with the Bank study series portrayed diamonds as a particularly concentrated example of what it termed “lootable” commodities, which analyses sponsored by the Bank indicated are important factors driving conflict.⁹

The release of a U.N. sanctions monitoring panel in March 2000, in particular, was instrumental in motivating widespread concern and recognition of the connection between conflict and the illicit diamond trade among policy makers. The report was popularly known as the *Fowler Report*, after the then-chairman of the U.N. Security Council’s Committee on Angola Sanctions, Ambassador Robert Fowler of Canada. It described the status of the implementation of U.N. sanctions, including a ban on the export and sale of Angolan conflict diamonds, against the former Angolan rebel Union for the Total Independence of Angola (UNITA).¹⁰ Multiple subsequent U.N. Security Council reports, on Angola and several other African countries in conflict, have included substantial coverage of conflict diamond trade.¹¹

As the number of press reports and research studies focusing on the issue grew, non-governmental organizations (NGOs) working on such issues as natural resource exploitation, human rights, and conflict resolution began to call for policies that would halt the use of diamonds in the funding of conflict. To bring pressure on the diamond industry and governments to initiate such policies and to educate the broader public about the conflict diamonds issue, NGOs initiated a series of advocacy campaigns, both as individual entities and in coalitions, such as the international *Fatal Transactions International Diamond Campaign* the U.S. *Campaign to Eliminate Conflict Diamonds*.¹²

In response to these diverse developments, national governments and international governmental organizations (IGOs) undertook a variety of legal, diplomatic, and military actions aimed at halting trade in conflict diamonds. Among the IGOs that have acted to address the problem are the United Nations (U.N.), the European Union (EU), the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC). Several international conferences were held that included participation by governments, multilateral organizations, and a variety of private groups focused on solutions to the

⁸ (...continued)
Strategic Studies, July 1998.

⁹ Online documents of the World Bank project, *The Economics of Civil War, Crime, and Violence*, are available online; see [<http://www.worldbank.org/research/conflict>].

¹⁰ U.N. Security Council, “Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA,” in S/2000/203, March 10, 2000.

¹¹ Most, but not all, sanction committee reports are available online. See [<http://www.un.org/Docs/sc/committees/INTRO.htm>].

¹² On the *Fatal Transactions Campaign*, see the following Web sites: [<http://www.fataltransactions.org>] and [<http://www.niza.nl/fataltransactions>]. Materials on the *Campaign to Eliminate Conflict Diamonds* are at [<http://www.phrusa.org/campaigns/>].

conflict diamond problem. One outcome of these efforts was the South African-led Kimberley Process, which is discussed below.

Conflict diamonds received increasingly extensive coverage throughout 2000 and 2001 in the U.S. and international press, as well as in popular U.S. electronic media. Several U.S. network TV news magazines and evening news shows, and at least one prime time TV drama, covered the issue.¹³ Media coverage of conflict diamonds diminished somewhat in 2002, and the Kimberley Process increasingly became the focus of such reporting.

Conflict Diamonds: Public Debate

Publicity and Advocacy Campaigns. The majority of NGOs advocating increased regulation of the diamond trade agree that the great majority of diamonds are legitimately produced and generate crucial socio-economic benefits. Most have not called for a general consumer boycott of diamonds; they have, instead, urged consumers to assess the ethics of purchasing diamonds that could not be independently verified as being conflict-free and to demand such verification.¹⁴ Periodically, beginning in 2000, activists have mounted publicity campaigns and demonstrations in which major diamond retailers have been picketed. In congressional hearings, press conferences, and in TV and online commercials, activists have used graphic images to explicitly link and contrast amputations of limbs and social disintegration — human rights abuses associated with conflict diamonds — with the image of diamonds as a symbol of love and the social union of marriage.

Industry Concern and Responses. Concern over increased negative publicity about conflict diamonds grew among some in the diamond industry. Some governments and major diamond industry groups in diamond producing and consuming nations worried that the conflict diamond issue might undermine the diamond market generally. They were concerned that the diamond-consuming public, cognizant of a link between diamonds and conflict but lacking the means to differentiate conflict diamonds from legitimate ones, might begin to associate all diamonds with conflict and human rights abuses, and decrease their purchases as a result. Such a trend, it was feared, might undermine not only the wholesale and retail diamond industries but also the socio-economic development of stable and prosperous democratic African states, such as South Africa, Botswana and Namibia, to which the legitimate production of diamonds contributes substantially.

¹³ See, for instance, Dateline, “Diamonds of Conflict,” *NBC News*, July 1, 2001; Bob Simon, “Diamonds: A War’s Best Friend,” *CBS News*, June 14, 2001; Law & Order, “Soldier of Fortune,” *NBC.com Episode Guide*, October 24, 2001; John Martin, “Dirty Diamonds Dilemma,” *ABCNews.com*, N.D.; and National Geographic, *Diamonds of War*, special presentation, February 2003. The plot of a recent James Bond film, *Die Another Day*, focuses substantially on conflict diamonds.

¹⁴ A minority of activists, however, have used the threat of such a boycott, which they have compared in its potential to the economically significant consumer boycotts of fur in the 1980s and 1990s, to argue for the rapid implementation of diamond trading reforms.

To counter the threat posed by possible consumer rejection of diamonds, some diamond producing countries and industry trade groups mounted their own public education and legislative lobbying campaigns. They sought to ensure that the legitimate diamond industry was not tarnished by conflict diamonds, and endeavored to influence the passage of conflict diamond-related legislation that would not restrict or decrease trade in legitimate diamonds.¹⁵ Such efforts included the following initiatives:

- **Debswana.** In March 2001, Debswana, a diamond producing firm owned in equal share by the Botswana Government and De Beers, reportedly hired the lobbying firm Hill and Knowlton to influence conflict diamond-related legislation and to undertake public affairs programming promoting the positive role played by diamonds.¹⁶ This effort was linked to a public diplomacy campaign by the Botswana government entitled *Diamonds for Development*. Diamonds account for about 79% of Botswana's total export earnings, just over 40% of its gross domestic product, and reportedly over half of government revenues.¹⁷
- **De Beers/DTC.** In early 2000, the De Beers/Diamond Trading Company (DTC) began to issue commercial guarantees that it would not buy or sell diamonds from conflict zones. It later issued a set of Best Practice Principles. These included a statement of professional and ethical standards that committed the company to preventing "the buying and trading of rough diamonds from areas where this would encourage or support conflict and human suffering," and the use of child labor. De Beers asserted that it was no longer buying diamonds from Angola, Guinea, Congo, Sierra Leone, or Liberia.¹⁸ Recent press reports indicate that De Beers/DTC may resume operations in the DRC and Angola.
- **World Diamond Council.** In 2000, the World Diamond Council (see below) published a website outlining its contributions to policy making, legislation, and public debate on conflict diamonds. The WDC has been an active in the Kimberley Process.

¹⁵ Greg Mills, "From Conflict to Prosperity Diamonds?: The Role of Diamonds as a Development Asset in Africa," International Ministerial Diamond Conference, [<http://www.24hourdiamondnews.com/gov.htm>].

¹⁶ Political Finance & Lobby Reporter, "Lobby registrations: Lawyers & consultants: International Trade," March 28, 2001; Bruce Alpert and Bill Walsh, "Headline: On The Hill; News from the Louisiana Delegation in the Nation's Capital," *The Times-Picayune* (New Orleans), April 8, 2001, page 8.

¹⁷ See [<http://www.diamondsfordevelopment.com>]. Data derived from World Development Indicators Database and World Bank, "Botswana at a Glance," September 27, 2001; and SDI Magazine, "Why Gems must Cover the Cost of Progress," May/June, 2001.

¹⁸ De Beers, "De Beers Guarantees the Source of its Rough Diamonds," February 29, 2000 and De Beers, "DTC Diamond Best Practice Principles," July 12, 2000, [<http://www.debeerscanada.com/conflict/>]; and DTC specimen guarantee.

- **Jewelers of America.** The Jewelers of America (JA) trade group, often in co-ordination with the Jewelers Vigilance Committee, has actively countered possible negative effects of consumer perceptions of diamonds as a result of publicity about the conflict diamond trade, and has contributed to the formulation of policies to end it. Matthew Runci, JA president and CEO, has testified in Congressional hearings several times about his group's efforts to end trade in conflict diamonds, and has participated in the Kimberley Process meetings. JA has urged its members "to the best of your ability... [to] undertake reasonable measures to help prevent the sale of illicit diamonds" while acknowledging that "it is not currently possible for retail jewelers to verify the country of origin of diamonds."¹⁹

Possible Role of Diamonds in Terrorist Financing

Press reports, evidence in court cases, policy analyses, and U.N. reports have revealed information suggesting that international terrorist groups may have used diamonds and other precious commodities, principally gold and various types of gemstones, to fund terrorist operations around the world. U.S. lawmakers have discussed this possibility in a variety of fora, including several hearings on conflict diamonds (see "Congressional Role" section, below).

Al Qaeda and the Diamond Trade. During the trial of four defendants who were later convicted of participating in the bombings of the U.S. embassies in Kenya and Tanzania in August 1998, witnesses offered testimony that described trading in diamonds, tanzanite, rubies, and sapphires during the mid-1990s by business associates of Osama bin Laden, the leader of the Al Qaeda terrorist network. Court testimony suggested that the proceeds from such trading were used to fund Al Qaeda attacks.²⁰

A November 2, 2001, *Washington Post* report by Douglas Farah described a series of alleged Al Qaeda-related diamond purchasing activities that appear to be separate from those noted in the earlier court case. The report alleged that "[d]iamond dealers working directly with men named by the FBI as key operatives in bin Laden's al Qaeda network," purchased diamonds from members of the Revolutionary United Front (RUF), a Sierra Leone rebel group with links to the government of Liberian President Charles Taylor.²¹ The Liberian government has consistently denied such

¹⁹ Jewelers of America, "JA Takes Initiative on African Diamond Controversy," June 19, 2000.

²⁰ See transcripts of court proceedings in *United States of America v. Usama Bin Laden, et al.*, S(7) 98 Cr. 1023, [<http://cryptome2.org/usa-v-ubl-dt.htm>]; the *Al Qaeda Files* court document compilation [<http://www.ccc.de:8080/mirrors/jya.com/alqfiles.htm>]; and Judy Aita, "FBI Agent Recounts Confession of Bombing Trial Defendant," *Washington File*, U.S. Department of State, March 1, 2001. Congressional readers can access multiple CRS reports on terrorism and terrorist groups on the CRS Web site; see [<http://www.crs.gov>].

²¹ See Douglas Farah, "Al Qaeda Cash Tied to Diamond Trade Sale of Gems From Sierra (continued...)"

reports. The *Washington Post* account also tied sales of RUF diamonds to the funding of the southern Lebanese Hizballah militia movement. It noted that a minority of diamond traders in the Lebanese diaspora in Africa had long been believed by analysts to be involved in such activities, as have other published reports, both prior to and following the *Washington Post* account.²² Subsequent reporting by the *Washington Post* indicated that some of the same diamond brokers active in Sierra Leone that were alleged to have had ties to Al Qaeda were also active in the Democratic Republic of the Congo diamond trade.²³

A December 2002 *Washington Post* report by Farah contained a detailed account of how the West African Al Qaeda diamond trading activities that he had earlier reported had functioned.²⁴ Reportedly based on a military intelligence summary, other documents and sources, and information from Belgian police and senior European intelligence sources, the report revealed in substantial detail the findings of “an aggressive year-long European investigation into al Qaeda financing.” Farah also reported that “senior European intelligence sources said they have been baffled by the lack of U.S. interest, particularly by the CIA, in their recent findings” but that the U.S. Defense Intelligence Agency had tried to monitor the Al Qaeda operatives supervising the diamond trading, who appeared on the FBI’s Most Wanted list of terrorists. Farah reported that in November 2001, a small Special Forces team had been deployed to Guinea, a country adjacent to Liberia, to abduct and forcibly extradite the operatives from Camp Gbatala, a Liberian military facility. The operation was aborted because the operatives’ identity could not be verified.

Much of the information cited by Farah reportedly flowed from Samih Osailly, the cousin of Aziz Nassour, a Lebanese diamond merchant allegedly involved in the

²¹ (...continued)

Leone Rebels Raised Millions, Sources Say,” *Washington Post*, November 2, 2001. Many of the allegations in the *Post* report were reflected in the findings of a U.N. panel of experts monitoring compliance with U.N. sanctions banning Liberian diamond exports. See U.N. Security Council, *Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, in S/2001/1015, October 26, 2001.

²² See *Panafrican News Agency*, “Belgium Accused Continuing Sale of UNITA Diamonds,” April 24, 2001; and *Agence France Presse*, “Belgian diamond traders dealing with Angolan rebels: press,” April 23, 2001; and Lansana Gberie, “War and Peace in Sierra Leone: Diamonds, Corruption and the Lebanese Connection,” *Occasional Paper #6*, Diamonds and Human Security Project, November 2002.

²³ Douglas Farah, “Digging Up Congo’s Dirty Gems; Officials Say Diamond Trade Funds Radical Islamic Groups,” *Washington Post*, December 30, 2001, A1. See also Susan Schmidt and Douglas Farah, “Al Qaeda’s New Leaders; Six Militants Emerge From Ranks to Fill Void,” *Washington Post*, October 29, 2002. Another firm, Oryx Natural Resources, which U.N. reports [S/2002/1146, S/2001/1072, S/2001/357] have described as having entered into business with Zimbabwean military interests engaged in diamond mining in the DRC, won an \$800,000 libel suit against the BBC. The BBC falsely reported that Oryx had ties to Al Qaeda. See BBC News, “BBC pays damages for Bin Laden libel,” November 22, 2002 and BBC News, “Oryx Natural Resources: An apology,” November 19, 2001.

²⁴ Douglas Farah, “Report Says Africans Harbored Al Qaeda Terror Assets Hidden In Gem-Buying Spree,” *Washington Post*, December 29, 2002.

diamond deals at issue. Osailly was arrested by Belgian police on charges related to diamond smuggling and illegal weapons sales charges. Farah's account asserted that the investigations had established that the governments of Liberia and Burkina Faso had hosted and facilitated the activities of terrorist operatives who directed a \$20 million diamond-purchasing and export operation and that President Charles Taylor of Liberia had received large sums in compensation for this assistance. The two governments, as in the past, have denied the charges.

Farah also reported that European and Latin American investigators had found evidence establishing that persons involved in the diamond transactions had attempted to purchase weapons during the period that the diamond transactions were under way. These weapons reportedly included 20 SA-8 surface-to-air missiles, 200 BM-21 multiple rocket launcher munitions, assault rifles, ammunition, and rocket-propelled grenades. The arms were to have been acquired from or via a Guatemala-based Russian arms merchant or an Israeli arms dealer based in Panama, Simon Yelnik, who was reportedly imprisoned in Panama on separate charges related to sales of weapons to Colombian paramilitary forces. The weapons were allegedly to have been obtained from the Nicaraguan army and a Bulgarian company. Related purchase request documents queried the cost of the weapons "with or without an end-user certificate. Destination, Liberia." Another possible weapons sale inquiry directed to Yelnik by the same diamond traders allegedly referred to a possible deal involving arms that would have been accompanied by an existing end-user certificate from Ivory Coast. The certificate, dated January 8, 2001, and signed by Ivorian Defense Minister Moise Lida Kouassi, reflected an order to the Bulgarian firm Nataco Holding PLC for more than "10 million rounds of ammunition, 10,000 sniper rifles, night vision equipment and grenade launchers" (*Ibid.*).

Multiple press accounts published since the first *Washington Post* story was published have suggested a link between diamonds and terrorism financing, and international authorities have become concerned about possible links between diamonds and financing of terrorism.²⁵ In late April 2003, Global Witness, a non-profit research and advocacy group, published a report documenting alleged links between the diamond trade and actions and operations undertaken by global terrorist groups including Al Qaeda.²⁶

Further allegations that Al Qaeda was — and purportedly is — active in West Africa were made in mid-May 2003 by David Crane, the prosecutor for the Special Court on Sierra Leone. He stated that Al Qaeda operatives are "moving about" in West Africa, where he said they "rest, relax, refit and refinance" because "no one is bothering them" and "no one is checking on them." He stated that such operatives

²⁵ See, among others, Partnership Africa Canada, et al., "Terrorist Threat Real: Canadian Police Report," *Other Facets*, No. 7, September 2002; David Leppard and Adam Nathan, "Al-Qaeda tried to sell gems in UK," *Sunday Times* (London), January 5, 2003; Gberie, "War and Peace in Sierra Leone"; and U.N. Security Council, "Report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolution 1390 (2002), in S/2002/541, May 15, 2002.

²⁶ Global Witness, *For a Few Dollars More: How Al Qaeda Moved into the Diamond Trade*, April 2003.

are actively “trading in diamonds [and] washing money,” and that Charles Taylor “is harboring terrorists from the Middle East, including al Qaeda and Hezbollah, and has been for years.” He called on the United States to “start looking more closely at West Africa” with regard to the activities of international terrorist activities, asserting that “we have ignored [such activities] and now we may be ruing the day.”²⁷

The Al Qaeda network has also been linked to trade in other precious gems, and possibly other natural resources, mined in Africa.²⁸ On November 16, 2001, the *Wall Street Journal* reported that the Tanzanian government was investigating an illicit tanzanite trading and smuggling network with alleged links to Osama bin Laden’s Al Qaeda network.²⁹ The *Wall Street Journal* account describes the rise in Mererani, Tanzania, the source of tanzanite, of a radical, fundamentalist Islamic group — one of several in Tanzania, a country where tolerant, moderate forms of Islam predominate — centered on an imam known as Shaikh Omari. According to the account, Omari had opened the Taqwa mosque and urged his followers, many of whom are reportedly active in the tanzanite trade, to use their commercial activities to promote Islamic militancy. The gems were described as having been illicitly exported by associates of Omari to Dubai, which had been identified by U.S. investigators as a key operational locus of Al Qaeda financial dealings, and to Hong Kong. Al Qaeda also reportedly held substantial amounts of gold, which it allegedly shipped through Pakistan and other nearby countries after the fall of the Taliban regime in Afghanistan.³⁰

²⁷ Sue Pleming, “S.Leone war crimes chief sees al Qaeda presence,” Reuters, May 16, 2003 and Douglas Farah, “Liberian Is Accused of Harboring Al Qaeda,” *Washington Post*, May 15, 2003.

²⁸ A shipment of uranium that may have been mined in the DRC was intercepted in November 2002 in Tanzania; see Mike Mande and Joseph Mwamunyange, “Tanzania, US to Investigate Source of Illegal Uranium,” *The East African*, November 18, 2002.

²⁹ Tanzanite is a rare blue gemstone found only at one, small site in Tanzania. See Robert Block and Daniel Pearl, “Much-Smuggled Gem Called Tanzanite Helps Bin Laden Supporters,” *Wall Street Journal*, November 16, 2001, A1,A8. A similar account appeared in *Africa Confidential*, “Gems for the Martyrs,” 42:23, November 23, 2001, page 3.

³⁰ See, for instance, Douglas Farah, “Al Qaeda’s Road Paved With Gold; Secret Shipments Traced Through a Lax System In United Arab Emirates,” *Washington Post*, February 17, 2002; Edward Alden and Mark Turner, “US freezes more of bin Laden’s financing: Bush issues new blacklist headed by two groups said to be main funders of al-Qaeda terror network,” *Financial Times* (London), November 8, 2001; David S. Hilzenrath and John Mintz, “European Bank Regulators Help Track al Qaeda Assets; Reports Solicited on Contact With Banks Tied to Bin Laden,” *Washington Post*, September 29, 2001, page A19; Glenn R Simpson, “U.S. Intensifies Financial War On Terrorists,” *Wall Street Journal*, November 8, 2001, page A3; Warren Hoge, “In Emirates, An Effort To Examine Bank System,” *New York Times*, October 15, 2001, page B6; and Agence France Presse, “US Says Gulf Bank Laundered Money For Bin Laden,” July 8, 1999.

Policies to Halt Trade in Conflict Diamonds

Regulatory Challenges

Effective policing of the illicit diamond trade faces difficult challenges. The world diamond trade is large, diamonds are a highly fungible and concentrated form of wealth, and the legitimate international diamond industry is historically insular, self-regulating, and lacks transparency. The trade in conflict diamonds takes advantage of these factors. Observers have concluded that conflict diamonds regularly enter into the legitimate international market through illicit trading practices and actors.³¹ The illicit diamond trade, of which conflict diamonds are part, is also difficult to regulate for reasons similar to those that make illegal drugs and arms smuggling difficult to control. Illicit diamond trading has been linked to covert and sometimes violent business transactions, and is reportedly associated with international criminal activities, such as money laundering, smuggling, commercial fraud, and arms trafficking.

Magnitude of the Global Diamond Market

Trade in conflict diamonds, and regulatory proposals to end trade in such gems, are associated primarily with the rough diamond market. In 2001, world-wide diamond mine output, that is, production of rough diamonds, was estimated to be worth \$7.885 billion, compared to \$7.86 billion in 2000 and between \$6.857 and \$7.25 billion in 1999.³² An industry trade group has reported that world exports of rough diamonds rose by 25.32% in carat terms and 20.8% in price in the first 8 months of 2002.³³ In most years, more rough diamonds — a mix of new production plus pre-existing inventories — are sold on world markets than are produced during a given year. In 2000, a total of nearly \$9 billion of rough diamonds was estimated to have come to market globally, of which \$5.67 billion was reportedly sold by the De Beers Diamond Trading Company (DTC, formerly called the Central Selling Organization).³⁴

³¹ Ian Smillie, Lansana Gberie and Ralph Hazleton describe and cite a range of illegal and gray-market operations associated with diamond trading. See *The Heart of the Matter: Sierra Leone, Diamonds and Human Security*, Partnership Africa Canada, January 2000, online at [<http://www.partnershipafricacanada.org/english/esierra.html>]. Multiple press accounts also describe illicit acts associated with diamond trading.

³² Bram Janse, "Mining Annual Review: Diamonds," *The Mining Journal*, October, 2002; Luc Rombouts, "Mining Annual Review: Diamonds" *The Mining Journal*, October 2001; and previous annual *Mining Journal* estimates. These estimates, based on data provided by Dr. Dr. Luc Rombouts, are considered by many leading gemologists to be among the most authoritative, but in general, diamond-related statistics should be treated as rough estimates. Many industry actors do not publicly reveal data about their business transaction volumes, or related production and price levels.

³³ *Mining & Metals Report*, "World Rough Diamond Exports Up 21%," September 26, 2002.

³⁴ No similar, aggregated estimate for 2001 was unavailable in published sources. There are indications, however, that rough diamond exports have risen in 2002, by as much as 25%

(continued...)

U.S. Diamond Imports and Trade. U.S. market demand for diamonds is the largest in the world, and the vast majority of diamonds sold in the United States are imported. The value of rough diamonds imported into the United States totaled \$597.38 million in 2001, \$815.96 million in 2000, and \$754.6 million in 1999. The value of worked but unmounted diamonds imported into the United States is exponentially larger than that of rough diamonds, amounting to approximately \$9.17 billion in 1999, \$11.28 billion in 2000, and \$10.06 billion in 2001.³⁵

U.S. diamond imports bolster a large U.S. diamond retail jewelry market. Estimates of the total size of the jewelry market vary widely; one published source estimates that the total U.S. retail market for diamond jewelry was worth \$11.71 billion in 2001 and \$11.54 billion in 2000. The same source estimated the aggregate market value for all U.S. retail jewelry sales as being worth \$39.53 billion in 2001 and \$39.8 billion in 2000.³⁶ Other sources suggest that the U.S. jewelry market may be smaller, worth an estimated \$26 billion in 2000, an increase of about 6% over 1999, representing about 48% of a global \$57.5 diamond jewelry retail market in 2000, which had itself grown from an estimated \$56 billion in 1999.³⁷

Conflict Diamonds in Global Diamond Markets. De Beers/DTC, a large diamond mining and marketing business group, estimated that conflict diamonds comprised approximately 3.7% of world diamond production in 1999.³⁸ That figure was often rounded up to 4% in press reports. Other estimates, cited by human rights and natural resource activist groups, suggest that the conflict diamond trade might have comprised as much as 15% of the world trade in recent years. Some analysts, however, dispute such figures, asserting that they include illicitly traded diamonds that are not associated with the funding of conflict.

³⁴ (...continued)

in carats and 21% in cost terms, increasingly as a result of production increases from sources outside of Africa. See *Mining & Metals Report*, "World Rough Diamond Exports Up 21%," September 26, 2002.

³⁵ CRS calculations of U.S. imports of unsorted, unworked or simply sawn, cleaved or bruted diamonds based on tariff and trade data from the U.S. International Trade Commission *Interactive Tariff and Trade DataWeb*. The value of annual U.S. diamond imports is not equivalent to the total annual market value of the U.S. diamond market, but the above import figures give an indication of its large size. Some observers believe that federal import data may exaggerate the value of diamond imports, because traders may have tax and tariff-related incentives to report non-market values for gems being imported or exported.

³⁶ See EPM Communications, "Mass Merchants Sold More Jewelry than Dept. Stores in 2001; Bauble Report," *Research Alert*, October 18, 2002, citing Pamela Danziger/Unity Marketing, "Jewelry Report 2002: The Market, The Competitors, The Trends," N.D.

³⁷ *The Diamond Registry*, "2000 U.S. Diamond Jewelry Retail Sales Increase - May, 2001." Other retail market estimates range from \$27.6 to \$30 billion. Andrew Coxon, De Beers LV; and Holly Burkhalter, "Blood On the Diamonds," *Washington Post*, November 6, 2001.

³⁸ U.S. Congress. House. Committee on International Relations. Subcommittee on Africa. *Africa's Diamonds: Precious, Perilous Too?* Hearing, May 9, 2000. 106th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 2000. Serial No. 106 — 142, page 102.

Some press accounts in 2002 have continued to cite estimates that indicate that about 4% of diamonds are conflict diamonds, but such references do not appear to be based on new or independently obtained and verifiable data. The current proportion of the world diamond market comprised of conflict-related stones is difficult to reliably estimate, but it may be smaller than it was in 2000 or 2001. In an April 2002 presentation, Rory More O’Ferrall, Director Public & Corporate Affairs for the De Beers Group of Companies, stated that “conflict diamonds account for less than 2% of world rough diamond production.”³⁹ The hypothesized decrease in the volume of trade in conflict diamonds may be attributable to the termination of wars in Angola and Sierra Leone, formerly two of the key sources of such gems. In addition, in the Democratic Republic of the Congo (DRC) an on-going war appears to be waning, and to the extent that this conflict was fueled by diamond wealth, trade in conflict diamonds from the DRC may also be diminishing.

Reliability of Conflict Diamond Statistics: Discussion. As previously noted, many aggregate diamond trade statistics are merely approximations, based on assumptions about mining methods, rates of extraction, trade volume trends, and other market factors. Some estimates take into account only official production figures, which ordinarily reflect state-reported or sales and production, and which may or may not take into account — or may erroneously estimate — artisanal and unofficial production.⁴⁰ Estimates of annual diamond production and trade value in countries where conflict diamonds are mined, in particular, vary widely because credible or detailed data during periods and in sites of conflict are often unavailable. The volumes and value of unreported or unofficial trade and production from conflict-affected areas are particularly difficult to estimate, and as a proportion of such categories that comprised of diamonds that directly fund military or associated activities is especially difficult to measure. Differentiating conflict diamonds from other types of illicitly-traded diamonds is extremely difficult; both varieties tend to be traded in a covert manner, and many of the same market actors may engage in unofficial or illicit transactions involving both conflict and non-conflict diamonds.⁴¹

Conflict Diamonds as a Current Policy Challenge. Despite the paucity of current, independently verifiable data about the present extent of the conflict diamond trade, advocates of diamond trade regulation maintain that regulatory efforts remain necessary regardless of the current level of such trade. They stress that the regions that have been affected by diamond-related political unrest and conflict over the last decade remain volatile. Observers note that many of the same actors who

³⁹ Rory More O’Ferrall, “Conflict Diamonds,” De Beers Group of Companies/Speech to the Israel Diamond Institute, April 5, 2002.

⁴⁰ Estimates that do attempt to account for unofficial trade and production, employ such proxy measurements as relative increases in exports from regions bordering production countries, field reports of artisanal production and small-scale trade, and confidential information from traders in international diamond trading and processing centers.

⁴¹ The December 2000 report of the United Nations sanctions committee on Sierra Leone contains extensive discussions of disparities between production, trade, and conflict diamond statistics. See, particularly, paragraphs 112 to 150; U.N. Security Council, *Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), Paragraph 19, in Relation to Sierra Leone*, in S/2000/1195, December, 20 2000.

were accused of being responsible for conflicts involving diamonds remain associated with diamond extraction and marketing operations. In addition, they note that diamonds continue to be the source of localized conflicts over control of mining or trading rights. Advocates argue that bolstering states' ability to regulate the diamond trade may prevent future diamond-related conflict and, in addition, may enable countries to more effectively use their diamond wealth to fund national development efforts. Some industry representatives broadly agree with such views.⁴²

Regulatory Policy Proposals

Most proposals for curtailing the trade in conflict diamonds center around implementing systems to identify the origin of diamonds to ensure that diamonds sold by illicit sellers do not enter legitimate international commerce.⁴³ Such proposals provide the basis for laws and international actions, such as U.N. Security Council sanctions, that ban trade in conflict diamonds. Three primary approaches for determining the origin of diamonds have been proposed.⁴⁴

1. Physical or “Geo-Chemical” Identification of Diamonds. Research on geo-chemical methods for identifying diamonds by type or as individual units focuses on the comparative analysis of trace elements and impurities within diamonds. Such information would be used to establish common characteristics of diamonds from similar areas or to pinpoint unique characteristics, in a manner analogous to fingerprinting, of individual diamonds. This research employs plasma mass spectrometry and related technologies.

A related approach for purposes of tracking is to classify diamonds by their place of origin, and possibly on an individual stone-specific basis, by correlating surface, crystalline, and other structure-related features of rough diamonds. Such identification would be based on visual assessments and on the use of spectral refraction methods or optical, laser, x-ray, and other scanning technologies.

Geo-chemical and automated physical characteristic identification technologies have not yet been perfected, according to many experts, many of whom also assert that such technologies are likely to remain prohibitively expensive in the short to medium term. Another limitation of such technologies is that some of the physical characteristics upon which identification methods depend are permanently altered or

⁴² Rory More O’Ferrall, “Conflict Diamonds.”

⁴³ The *origin* of a diamond refers to its physical origin, or place where it was mined. A diamond’s *provenance* refers to the place from where it was last imported. In published accounts describing the diamond industry, the two terms have sometimes been conflated.

⁴⁴ Comprehensive treatment of technical and policy issues related to conflict diamonds is contained in Global Witness, *Conflict Diamonds: Possibilities for the Identification, Certification and Control of Diamonds*, May 2000, which is also available online at [<http://www.globalwitness.org/campaigns/diamonds/reports.html>]. Also see statement of William E. Boyajian, President, Gemological Institute of America, and on behalf of the World Diamond Council, *Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means Hearing on Trade in African Diamonds*, September 13, 2000, Online at [<http://waysandmeans.house.gov/trade/106cong/9-13-00/9-13boya.htm>].

destroyed when diamonds are cut or polished. A third challenge is that alluvial (surface) diamonds are often carried far from their points of origin by water or movements of geologic elements. This means, in many cases, that diamonds from a particular country or sub-region cannot be physically differentiated from those found in neighboring countries or regions.

2. Tagging of Diamonds. This approach seeks to use laser and focused ion beam technologies to inscribe on individual diamonds identifying information, such as microscopic bar codes, which can then be used to register and track stones. Several firms market such technology. Other firms offer technology that use laser scanning technologies to identify unique spectral features of individual, cut diamonds. The costs of tagging technology currently represent a barrier to their widespread use in diamond commerce, but expert opinion suggests that these prices may fall in the near to medium future. Critics point out that it may be possible to cut off or otherwise physically alter or obliterate identifying marks that are cut onto diamond surfaces.

3. Certificate of Origin Laws. This approach seeks to create a legally-binding chain of warranties from the point of mining origin to the country of importation or, in some proposals, to the retail level. The objective is to create trade documentation that, based upon verification by the authorities of an exporting country, validates the legal origin of diamonds. Such documentation would form the basis for findings of legal fact in efforts to track and monitor the diamond trade, and in determining the legitimacy of commercial diamond transactions. The approach relies on diamond importing countries to implement effective administrative processes and law enforcement procedures and adhere to shared regulatory procedures. This regulatory approach underlies the Kimberley Process Certification Scheme.

Industry Policy Initiatives

Diamond High Council. The Diamond High Council (HRD) is a formal trade organization representing the Belgian diamond industry. Antwerp, Belgium, where the HRD is headquartered, is one of the leading international diamond cutting centers, and is a major destination for exports of rough diamonds from Africa. The HRD has close working ties with the Belgian government. Beginning in late 1999, it assisted the Angolan government in designing a forgery-proof certificate of origin documentation system, and later entered into a joint export control regime and technical assistance agreement with the Angolan government. It later pursued similar efforts with the Sierra Leonean government, and has provided several other African governments with similar certificate of origin-related advice.

In addition to the Angola and Sierra Leone arrangements, the Belgian Ministry of Economic Affairs has since February 2, 2000, according to the HRD, required that diamond imports from Liberia, Ivory Coast, Uganda, Central African Republic, Ghana, Guinea, Namibia, Congo (Brazzaville), Mali, and Zambia be licenced under the name of individual diamond dealers. Government certificate of origin systems of varying sophistication exists in several of these countries, according to the HRD and

other sources.⁴⁵ The HRD has stated that if probable cause exists indicating that diamonds imported to Belgium do not originate in the country of export, Belgian government officials will attempt to determine the source of such stones.

World Diamond Council. In July 2000, during the World Diamond Congress in Antwerp, Belgium, the two largest international diamond trade organizations, the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA), jointly issued a resolution calling for:

- A uniform, global export certification system, underpinned by national legislation in participating countries, establishing a range of export control mechanisms aimed at ensuring the legitimate origin of internationally traded diamonds. Such legislation would require a system of seals and registration for the export of diamond parcels, controlled and maintained by national, internationally accredited export agencies; criminal penalties for illicit diamond trading; and a system for monitoring compliance with the system.
- The mandatory establishment by diamond trade organizations of ethical codes of business practice aimed at ensuring transparency and adherence to legal requirements in diamond commerce; and cooperation in monitoring compliance with such codes and germane trade law.

Acting under the Antwerp Resolution, which called for the creation of the World Diamond Council (WDC), the WFDB and IDMA chartered this organization. In September 2000 in Tel Aviv, Israel, the WDC held an inaugural policy planning meeting. According to testimony by Matthew A. Runci, President and Chief Executive Officer of the Jewelers of America, Inc., speaking on behalf of World Diamond Council before the House Committee on Ways and Means Subcommittee on Trade hearing on *Trade in African Diamonds*, September 13, 2000,⁴⁶ outlined a plan based on government regulation of diamond trading, an international rough diamond import/export certification system, and industry-wide ethical codes of conduct and trade standards that prohibit the trade in conflict diamonds.

The WDC called upon governments of diamond exporting and importing countries to enact legislation that would support the WDC's goals. Many elements contained in WDC policy proposals are reflected in the recently negotiated Kimberley Process system. The WDC also attempted to influence the course of proposed legislation in Congress. In November 2000, the WDC reportedly hired a law and lobbying firm, Akin, Gump, Strauss, Hauer & Feld, to draft model

⁴⁵ HRD, "Guinea First Country not in Conflict to Adopt Certification Scheme," May 2, 2001; and HRD, "D.R. Congo to Set Up Certification Scheme for Diamonds," April 27, 2001. [<http://www.conflictdiamonds.com/pages/Interface/newsframe.html>].

⁴⁶ Online at [<http://waysandmeans.house.gov/trade/106cong/9-13-00/9-13runc.htm>].

legislation on behalf of the WDC.⁴⁷ The WDC has since continued to be active in seeking to influence proposed congressional legislation in Congress.

De Beers. As of March 27, 2000, under the trademark initials DTC (for the Diamond Trading Company Limited, the gem-quality diamond sales arm of the De Beers group of companies), De Beers guarantees that it does not purchase or sell conflict diamonds (see above).⁴⁸ DTC also introduced formal rules for its 125 “sight” holders, the trade term for its wholesale rough diamond buyers, replacing a reported system of informal, unwritten criteria with which sight holders were previously required to comply. The system reportedly includes provisions requiring that sight holders who are discovered to be purchasing diamonds not guaranteed as being “conflict-free” lose their right to purchase from De Beers, which reportedly controls a large proportion of the world rough diamond market. In 2000, a De Beers representative reportedly stated that its efforts and those of the industry at large had caused an approximate 30% price drop for conflict stones.⁴⁹

Conflict Diamonds and the U.N. General Assembly

On December 12, 2000, the 55th Session of the U.N. General Assembly (UNGA) adopted a resolution titled “The role of diamonds in fueling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts.”⁵⁰ It was sponsored by 50 countries, including the United States. It called for measures to end the conflict diamond trade. The resolution recommended that a simple and workable international certification scheme for rough diamonds be created. Such a scheme, it stated, should be transparent, consistent with international law, and based “primarily on national certification schemes,” that “meet internationally agreed minimum standards,” and should not “impede...legitimate trade in diamonds or impose an undue burden on Governments or industry...” or compromise nations’ sovereignty. UNGA also requested that Kimberley Process participants submit to the 56th UNGA session a report on progress made. Following receipt of the requested report, and a subsequent progress report, UNGA in March 2002 adopted a second resolution that expressed

⁴⁷ Judy Sarasohn, “\$2 Million Assist Costs University Nothing,” *Washington Post*, November 2, 2000, page A27; and World Diamond Council, “WDC to Offer Model Statute to Curb Conflict Diamonds,” *Diamonds.net*, [<http://www.diamonds.net/news>].

⁴⁸ Some observers raised questions about the legitimacy of the De Beers/DTC guarantees. See Action for Southern Africa, *Waiting on Empty Promises: The Human Cost of International Inaction on Angolan Sanctions*, April 2000, available online at [http://www.actsa.org/Angola/waiting_on_empty.htm]; and paragraph 149, U.N. Security Council, Report of the Panel of Experts Appointed Pursuant to Un Security Council Resolution 1306 (2000), Paragraph 19 in Relation to Sierra Leone, in S/2000/1195, December 2000.

⁴⁹ “WDC Outlines Action Plan,” *The Mining Journal*, September 15, 2000; Sharad Mistry, “De Beers to Market Branded Diamonds as Competition Hots Up,” *Financial Express*, May 29, 2000; Francesco Guerrera and Andrew Parker, “De Beers Seeks Curbs on Rebel Diamonds,” *Financial Times*, July 7, 2000; and Francesco Guerrera and Andrew Parker, “De Beers: All that Glitters is Not Sold,” *Financial Times*, July 7, 2000.

⁵⁰ U.N. document A/RES/55/56.

support for the Kimberley Process and placed the conflict diamonds issue on the agenda for the UNGA 57th session.⁵¹ Observers expected a similar draft resolution, A/57/L.76, to be passed by the 57th UNGA session on April 11, 2003.

Kimberley Process

The Kimberley Process is an intergovernmental forum that was formed in order to create a mechanism or process that would prevent trade in conflict diamonds. For over 2 years, through consensus-based negotiation, Process participants worked to create an import/export certification system designed to govern the international trade in rough diamonds. These participants included representatives of the diamond industry and non-governmental organizations. A secondary objective of the Process is to help governments of diamond-producing countries to more effectively channel diamond-related state revenue into national socio-economic development efforts by improving their ability to regulate diamond production and commerce and to collect taxes related to these activities.

The main product of the Process, the Kimberley Process Working Document, was finalized in November 2002 as the Kimberley Process Certification Scheme, by the signing of the Interlaken Declaration.⁵² Named after the Swiss town where the final meeting of the Kimberley Process was held prior to implementation of the Scheme, the Declaration committed signatories, including the United States and 47 other participating governments, “to the simultaneous launch of the Certification Scheme beginning on 1 January 2003.”⁵³ The Certification Scheme defines a diamond trade control and tracking system based on the use of import/export certificates that establish the legal origin of internationally traded rough diamonds. The purpose of the Scheme is to curtail trade in “conflict diamonds” and other illegally exported diamonds. In January 2003, the U.N. Security Council passed a resolution endorsing the Kimberley Process and the Interlaken Declaration.⁵⁴

Background. First sponsored by South Africa, the Kimberley Process began as the Technical Forum on Diamonds, which met in May 2000 in Kimberley, South Africa. Several technical and ministerial meetings followed in 2000. At a meeting in Pretoria, South Africa in September 2000, the forum considered the interim findings of its Technical Working Group. It determined that a practical, reliable, and cost effective technical system for physically identifying the origin of individual diamonds did not exist. As a result, it recommended the establishment of an international export control regime, consisting of a system of sealed, registered diamond export

⁵¹ The report and the resolution are contained, respectively, in U.N. documents A/56/775 and A/RES/56/263.

⁵² For online texts of the Kimberley Process Certification Scheme and the Interlaken Declaration, see [<http://www.kimberleyprocess.com/bulletinboard.asp>].

⁵³ *Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme for Rough Diamonds.*

⁵⁴ United Nations Security Council, S/RES/1459 (2003), January 28 2003.

parcels accompanied by forgery-proof certificates of origin, to be issued by exporting state authorities.

Early proposals by Process participants suggested that the system might be overseen by a inter-governmental authority charged with monitoring and compliance, accreditation of national export regimes, and standard-setting, and possibly could be organized under U.N. auspices. It would also require the implementation of legal sanctions and penalties for violations of national-level legal export controls. Participants noted a need for flexibility in any proposed system, especially vis-a-vis alluvial diamond mining and small scale production and trading. It also recommended that participating nations ensure that domestic diamond marketing and production operate on the basis of open market competition governed by a national system of transparency, disclosure and oversight of all diamond operations. Several early proposals, such as extensive Kimberley Process scheme compliance monitoring requirements and the creation of an inter-governmental authority were rejected by participants. Many key issues, such as the definition of “conflict diamond,” remained unsettled until the scheme was finalized.⁵⁵

Kimberley-Plus. In 2001, the Process, dubbed the “expanded” Kimberley Process or “Kimberley-Plus,” continued. At a meeting in Windhoek, Namibia, the initial technical and legal findings of the 2000 Kimberley meetings were reviewed and a ‘roadmap’ defining the future focus and schedule of the Process was produced, and a Task Force was created to coordinate and track the work and meetings of the Process.⁵⁶ These objectives were pursued throughout the year, with further meetings in Belgium, Russia, the United Kingdom, Angola, and Botswana. The findings and formal recommendations of the Kimberley-Plus Process were presented in a report to the 56th Session of the U.N. General Assembly, which endorsed the Kimberley process and requested that the Kimberley Process present to the General Assembly, a progress report at the General Assembly’s 57th session.⁵⁷ Further Kimberley Process meetings and negotiations over the proposed Process scheme followed in 2002, culminating in the Interlaken Declaration in November 2002.

Kimberley Process: Key Issues. The Kimberley Process brought together many competing commercial and political entities, and the negotiations that produced the Certification Scheme reflected their diverse interests and views. Key issues of debate during the negotiations included:

- The degree to which various elements of the scheme would be binding or voluntary on participating nations.

⁵⁵ The Kimberley Process negotiations are described in Ingrid J. Tamm, “Diamonds in Peace and War: Severing the Conflict Diamond Connection”, *Report No. 30*, World Peace Foundation, 2002 and Tracey Michelle Price, “The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate,” *Minnesota Journal of Global Trade*, 12:1, Winter, 2003, *inter alia*.

⁵⁶ “Final Communique,” Kimberley Process Meeting and Technical Workshop, Windhoek, Namibia, February 13 — 16 2001.

⁵⁷ U.N. General Assembly, *The Role of Diamonds in Fueling Conflict*, A/56/L.72, March 5, 2002.

- How to define “conflict diamond” for regulatory purposes.
- How trade and production statistics, for use in “identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade,” would be compiled, and how such statistics would be treated. According to non-governmental organizations that participated in the Kimberley Process, the Interlaken Declaration and the finalized scheme do not provide for an adequate “system of collation and dissemination” for production and trade statistics.⁵⁸
- The degree to which monitoring of Process participants’ compliance with the scheme would be necessary. Topics of debate included questions over what standards, if any, would be used to assess compliance, and whether compliance monitoring would need be necessary, and if so, whether it would be undertaken by an independent audit organization, by governments participating in the Process, or by industry actors. Non-governmental organizations involved in Process consultations believe that the scheme adopted under the Interlaken Declaration does not provide an adequate system for regular, independent monitoring of the diamond trade control systems of Interlaken signatory nations. They maintain that “the overall system remains open to abuse.”⁵⁹
- The degree to which the scheme would comply with World Trade Organization rules and other relevant international trade law and agreements.
- Whether a permanent administrative organization would need to be established to assist in the administration and implementation of the Scheme.

Implementation. Successful implementation of the KPCS, which officially began January 1, 2003, will require that individual signatory nations enforce existing or prospective regulatory processes and legislation that comply with the Scheme, and that private actors involved in the trade comply with the scheme and national regulatory frameworks. At the World Diamond Congress in October 2002, the International Diamond Manufacturers Association (IDMA) and the World Federation of Diamond Bourses (WFDB) adopted a resolution that described an “Industry

⁵⁸ Partnership Africa Canada, et al., “Kimberley Certification Scheme Agreed,” *Other Facets*, Number 8, November 2002. NGO concerns about the scheme are described in detail in Ian Smillie, “The Kimberley Process: The Case for Proper Monitoring,” *Occasional Paper #5*, Diamonds and Human Security Project, September 2002, and in NGO press releases, such as Global Witness, “World Diamond Cop-Out: NGOs Call on the Diamond Industry to Clean Up Its Act,” October 25, 2002 and Global Witness, “NGOs Cautiously Welcome the Launch of Kimberley Process,” November 5, 2002.

⁵⁹ *Ibid.*

System of Self Regulation,” that would comply with requirements of the Kimberley Process.

The first post-implementation plenary session of the Kimberley Process is scheduled to convene in Johannesburg, South Africa, from April 28 to 30, 2003. Key issues likely to be the subject of further negotiation or debate include:

- Whether, and in what manner, if at all, the Kimberley Process would need to establish an independent monitoring system to ensure that participating states are living up to their commitments and whether the whole Process is transparent and effective.
- Whether there could, or should, be a system or basis for deciding on whether countries wishing to join the Kimberley Process actually qualify to do so. One idea is to establish a “credentialing Committee” within the Process, even though it is presently open to all states that meet certain minimal qualifications. Some observers fear that certain applicant states might only implement in a nominal fashion the basic requirements required of participants. Such states might, meanwhile, engage in prohibited practices, or simply lack the resources to implement in practice the required processes that they have committed to establishing.
- How implementation of the Process as a whole will work in practice, and how, and to what extent, the national laws and authorities of participating countries are inter-operable and compatible.
- How and if a uniform system of statistical reporting of rough diamond import and export figures might be established, and how such statistics will be used and distributed.
- How, if, and in what fashion technical assistance might be provided to states lacking the organizational, financial, or other resources to meet the requirements of the Kimberley Process.

U.S. Policy

Executive Branch

Executive branch efforts to end trade in conflict diamonds commenced during the Clinton Administration. Its efforts centered on the creation of a multi-lateral diamond trade regime backed by international sanctions aimed at curtailing such commerce. Clinton Administration officials proposed a regime based on formal working partnerships between legitimate diamond producing states; those that import, trade, and consume diamonds; the international diamond industry; and a range of non-governmental organizations. The Clinton Administration also sought to ensure that the industries of legitimate diamond producing African democratic states, particularly Namibia, Botswana, and South Africa, would not be harmed by efforts to curtail the trade in conflict diamonds. Many of the Clinton Administration’s

policy goals were encompassed by the policy making meeting that later became known as the Kimberly Process, which increasingly became a key focal point of U.S. efforts to combat the conflict diamonds trade.

International and Multilateral Policy. Both prior to and after the formal establishment of the Kimberly Process, the Clinton Administration sponsored conferences focusing on the war economies of conflict diamond-producing states, and held unilateral policy dialogues with these and non-conflict producing states, such as Botswana. It also consulted with members of the American diamond industry. The Clinton Administration used U.S. membership on the U.N. Security Council to push for international sanctions banning the illicit trading of diamonds from Angola and Sierra Leone, and for the appointment of panels of experts to monitor compliance with these sanctions. The Security Council also appointed a panel of experts to examine the illicit exploitation of natural resources in the Congo. The Clinton Administration took unilateral actions to isolate and penalize governments that abet the trade in conflict diamonds or violate related U.N. resolutions. These included a October 10, 2000 presidential proclamation denying entry into the United States of persons who assist or profit from the armed activities of the Revolutionary United Front (RUF) rebels fighting the government of Sierra Leone. The restrictions applied to President Charles Taylor, senior members of the Liberian government, their supporters, and their families, and represented an explicit sanction against the Liberian government for its failure to end its trafficking in arms and illicit diamonds with the RUF, thus fueling the Sierra Leonean conflict.

The Clinton Administration also participated in multi-lateral diplomatic and policy-focused coordination initiatives, both at the inter-governmental level, and in forums involving participation from governments of producing and consuming nations, NGOs, and the international diamond industry. One result of government-to-government dialogue was a major policy statement in July 2000 by the Group of Eight (G8) on Illicit Trade in Diamonds.⁶⁰ U.S. efforts to encourage the July 2000 G8 joint statement were preceded by Secretary of State Madeleine Albright's December 1999 G8 Berlin Ministerial presentation, in which she highlighted the connection between arms and diamond trading.

On January 10, 2001, the White House Office of Science and Technology Assessment, in conjunction with the National Security Council, the State Department, the National Science Foundation, and the Treasury Department, held a White House Diamond Conference entitled *Technologies for Identification and Certification*. Nearly one hundred and fifty policy makers, scientists, engineers, and representatives of the world diamond industry and NGOs participated in the forum. They assessed the technical methods of determining the origin of rough diamonds; technologies to support an origin certification regime; and associated policy issues.

Africa-Focused and Bilateral Policy. In addition to its multi-lateral efforts, the Clinton Administration encouraged diamond marketing reform and the

⁶⁰ Ministry of Foreign Affairs of Japan, "G8 Miyazaki Initiatives for Conflict Prevention: 3. Illicit Trade in Diamonds," July 2000.

development of regulatory capacity in African diamond producing countries through unilateral dialogue and joint U.S.-African policy planning exercises. These efforts sought to assist African states to create sound legal and administrative mechanisms in order to better regulate their domestic diamond industries and to integrate these mechanisms with similar regulatory regimes in consuming and importing countries. The Office of Transition Initiatives of the Agency for International Development provided technical assistance to Sierra Leone, in partnership with other donor governments and industry officials, to develop an effective certificate of origin export system in Sierra Leone. It also encouraged increased transparency, competition, and participation-broadening reforms based on free market principles within Sierra Leone's domestic diamond industry.

Criticisms of Clinton Administration Policy. Those who criticized Clinton Administration policy on conflict diamonds generally charged that it had been too slow to implement measures to curtail the conflict diamond trade, which many critics saw as a pressing and immediate problem. In a statement before the House International Relations Committee Subcommittee on Africa during a May 9, 2000 hearing entitled *Africa's Diamonds: Precious, Perilous Too?*, Representative Wolf stated that “[w]hile the West lets the problem of conflict diamonds fester, conditions where this illicit trade occurs, continue to worsen. ... I have written to the Administration several times about the problems in Sierra Leone and about the issue of conflict diamonds. ... To date, the Administration has done little or nothing on any of these recommendations ...”⁶¹ During a September 13, 2000 hearing of the Trade Subcommittee of the House Ways and Means Committee entitled *Trade in African Diamonds*, several Members called for more active Administration engagement to curtail the trade in conflict diamonds. Representative Hall stated that “there is apparently not the sustained commitment from senior [Clinton] Administration officials [that] this issue merits.”⁶² At the same hearing, Representative Cynthia McKinney stated that the United States “must show leadership and act more swiftly against all the countries mentioned in the *Fowler Report*.”⁶³ The tone of critics' statements generally became more muted as the Kimberley Process progressed, and as representatives of diamond industry trade groups, human rights and natural resource-focused activists, and interested congressional offices focused their attention on crafting mutually acceptable legislation to end the conflict diamonds trade.

⁶¹ “Statement by Frank R. Wolf,” Testimony before the Subcommittee on Africa of the House International Relations Committee hearing on *Sierra Leone and Conflict Diamonds*, May 9, 2000 [http://www.house.gov/international_relations/af/diamond/wolf.htm].

⁶² “Statement of the Honorable Tony P. Hall, M.C., Ohio,” Testimony before the Subcommittee on Trade of the House Committee on Ways and Means, Hearing on *Trade in African Diamonds*, September 13, 2000. Online at [<http://waysandmeans.house.gov/trade/106cong/9-13-00/9-13hall.htm>].

⁶³ See Appendix, below, for more details on the *Fowler Report* and diamonds in Angola. See “Statement of the Honorable Cynthia McKinney, M.C., Georgia,” Testimony before the Subcommittee on Trade of the House Committee on Ways and Means Hearing on *Trade in African Diamonds*, September 13, 2000, online at [<http://waysandmeans.house.gov/trade/106cong/9-13-00/9-13mcki.htm>].

Clinton Administration Response. Clinton Administration officials responded to their critics by maintaining that they had actively worked to curtail the conflict diamond trade, but also maintained that international consensus on how to halt the trade in conflict diamonds — which it saw as a prerequisite for successful policy making — had not emerged. Testifying before the House Ways and Means Subcommittee on Trade on September 13, 2000, William Wood, Principal Deputy Assistant Secretary of State for International Organization Affairs, cited Clinton Administration U.S. participation in the Kimberley Process and other policy forums, such as the G8. He noted that since 1998 the Clinton Administration had supported U.N. sanctions to prevent the trade in conflict diamonds, and described U.S. efforts to assist Sierra Leone and Angola to improve their diamond export certification systems. He welcomed legislation expressing a sense of the Congress in support of administration efforts to curtail the conflict diamond trade, but cautioned against legislation that would mandate specific policies which, he stated, might not conform with the regulatory regime that was being produced through the Kimberley Process. Clinton Administration officials also highlighted their support for Resolution 56 of the 55th Session of the U.N. General Assembly.⁶⁴

Bush Administration Policy on Conflict Diamonds. The Bush Administration has pursued policies to stem the flow of conflict diamonds that are broadly similar to those of the Clinton Administration, and has participated in the Kimberley Process. On January 25, 2001, in a statement to the U.N. Security Council during a review of the Panel of Experts Report on Sierra Leone Diamonds and Arms, Acting U.S. Representative to the U.N., Ambassador James B. Cunningham, stated that:

Controlling the flow of conflict diamonds and illicit arms is essential to end the fighting and destabilization in Sierra Leone and its neighbors. We are intent on ending the illicit trade in arms-for-diamonds that has caused so much devastation and human suffering in Sierra Leone and throughout West Africa. We welcome the upcoming visit of ECOWAS ministers. We will work hard with Council Members, the UN and countries in the region to bring panel recommendations into being and to deal firmly with illegal trade and with sanctions violators.⁶⁵

The Bush Administration has supported U.N. Security Council resolutions that, among other measures, have prohibited the import of all rough diamonds from or through Liberia. In addition to U.N.-focused efforts, an Administration inter-agency group has reportedly met periodically to coordinate the development of U.S. policy on conflict diamonds. In testimony delivered during hearings before the House Committee on Ways and Means Subcommittee on Trade, in October 2001, and before the Senate Governmental Affairs Committee Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, on February 13, 2002, Bush Administration officials described Bush Administration policy approaches to controlling conflict diamonds. Administration witnesses at these two

⁶⁴ U.N. General Assembly, document number A/RES/55/56.

⁶⁵ Ambassador James B. Cunningham, Acting United States Representative to the United Nations, “Statement in the Security Council on the Panel of Experts Report on Sierra Leone Diamonds and Arms,” January 25, 2001, *USUN PRESS RELEASE # 11 (01)*.

hearings expressed the Bush Administration's commitment to working with the Congress to craft a legislative response to help end the conflict diamond trade, as did U.S. Trade Representative Robert B. Zoellick in testimony before the Senate Committee On Finance on February 6, 2002.⁶⁶

On November 5, 2002, the Bush Administration signed the Interlaken Declaration. In doing so, the Administration agreed that the United States would abide by and implement the Kimberley Process Certification Scheme. Administration officials are now initiating a consultation process with relevant congressional committees in support of that goal.

Congressional Role

Members of the 107th Congress showed interest in ending the conflict diamond trade, as had some in the 106th Congress. Members' interest centered on the reported link between diamonds, human rights abuses, and threats to peace and security in affected regions and — increasingly — on potential threats that the trade may pose to U.S. national security interests, especially in relation to the possible role of diamonds in terrorist financing. Congressional policy makers' legislative initiatives generally sought to curtail the ability of rebel groups fighting established governments to fund their armed activities through diamond export sales. Allegations that diamonds may play a role in financing of international terrorist groups have also drawn congressional attention. Several congressional committees have held hearings that have assessed the reported connection between diamonds and financing of terrorist groups.

Several hearings in both the House and Senate have directly addressed the conflict diamond trade. These hearings include:

- *Africa's Diamonds: Precious, Perilous Too?*, hearing held before the House Committee on International Relations, Subcommittee on Africa on May 9, 2000.
- *Trade in African Diamonds*, hearing held before the House Ways and Means Committee, Trade Subcommittee on September 13, 2000.
- *Conflict Diamonds*, hearing held before the House Committee on Ways and Means, Subcommittee on Trade on October 10, 2001.
- *Illicit Diamonds, Conflict and Terrorism: The Role of U.S. Agencies in Fighting the Conflict Diamond Trade*, hearing held before the

⁶⁶ "Statement of Robert B. Zoellick, U.S. Trade Representative" in U.S. Congress, Senate Committee On Finance, "Ongoing U.S. Trade Negotiations," Senate Hearing 107 — 625, 107th Congress, 2d Session, February 6, 2002, (Washington: GPO, 2002). See also United States Trade Representative, "Overview of the 2002 Agenda," *2002 Trade Policy Agenda and 2001 Annual Report of the President of the United States on the Trade Agreements Program*, March 19, 2002, p. 9.

Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia on February 13, 2002.

Conflict diamonds have also been addressed in the context of hearings on U.S. policy on Sierra Leone, Angola, the Democratic Republic of the Congo, and with regard to U.N. activities in Africa and to terrorism financing. During a September 19, 2002 hearing on terrorist financing and implementation of the USA PATRIOT Act before the House Committee on Financial Services, for instance, Robert Mueller, Director of the Federal Bureau of Investigation, called for legislation that would allow for the pre-trial freezing of fungible assets linked to alleged criminal offense, including diamonds, gold and other precious metals, “without requiring strict tracing to the offense.”⁶⁷

In addition to addressing human rights and conflict-related concerns, conflict diamond hearings in the 106th and 107th Congresses highlighted congressional interest in ensuring that proposals to regulate international trade in diamonds and any U.S. legislation to implement such proposals be consistent with relevant World Trade Organization trade rules. Hearing witnesses called for legislative solutions that would not penalize legitimate producers of diamonds, such as Botswana and South Africa. Some witnesses expressed concern that a failure to enact legislation to curtail the conflict diamond trade and to introduce methods of separating legitimate diamonds from illicit diamonds might lead to a consumer-driven decrease in market demand for all diamonds, thus damaging the revenue base of legitimate diamond producing nations. In the October 2001 hearing before the Subcommittee on Trade of the House Committee on Ways and Means, industry and non-governmental representatives described growing consensus between their respective interest groups on the need to finalize the Kimberley Process.

Legislation: 107th Congress. As in the 106th Congress, several conflict diamond-related bills were introduced in the 107th Congress. These included H.R. 918 (Hall); H.R. 2500 (Wolf); H.R. 2722 (Houghton); H.R. 5410 (Kolbe); H.Con.Res. 410 (Hall); S. 787 (Gregg); S. 1084 (Durbin); S. 1215 (Hollings); and S. 2027 (Durbin). Among these bills, H.R. 2506 (Kolbe) [P.L. 107-115] was the only one in which diamond-related provisions were included in the final version of legislation signed into law. It prohibited certain OPIC and Ex-Im Bank diamond-related projects in countries not implementing a system of rough diamond export and import controls, as defined in the Act. It also prohibited the use of funds appropriated by the Act to assist countries that the Secretary of State determines, according to criteria outlined in the Act, to have actively destabilized the democratically elected government of Sierra Leone or aided or abetted illicit trade in Sierra Leonean diamonds.

108th Congress. The 108th Congress, like the past two Congresses, has demonstrated continuing interest in ending the conflict diamond trade.

⁶⁷ Committee on Financial Services, “Statement for the Record of Robert S. Mueller, III, Director Federal Bureau of Investigation,” U.S. House of Representatives, September 19, 2002.

H.J.Res. 2. Several conflict diamond-related provisions were included in H.J.Res. 2, the Consolidated Appropriations Resolution, 2003 (P.L. 108-7). These include Section 570, which imposes restrictions on assistance to governments destabilizing Sierra Leone, and Section 583, which imposes conflict diamond-related restrictions on the use of Overseas Private Investment Corporation and Export-Import Bank funding allocations. Section 583 prohibits the use of such funds in connection with any project involving the mining, polishing or other processing, or sale of diamonds in a country that fails to implement the Kimberley Process recommendations, obligations or requirements, or fails to undertake other measures to effectively prevent and eliminate trade in conflict diamonds. The Resolution also recommended that “\$2,000,000 should be made available for assistance for countries to implement and enforce the Kimberley Process Implementation Scheme” from allocated Economic Support funds.

The committee of conference managers’ Joint Explanatory Statement for H.J.Res. 2 (see conference report, H.Rept. 108-10) also contains two provisions related to conflict diamonds. First, conferees stated their expectation that of funds provided to the Council of American Overseas Research Centers, “necessary funds” would be granted for research to develop a diamond fingerprinting technology to facilitate monitoring of the international trade in conflict diamonds. Second, the Statement, reflecting the language of the Joint Resolution, as passed, recommended the \$2,000,000 technical assistance, and noted that the Senate amendment to H.J.Res. 2 would have provided \$3,500,000 for such a purpose, but that the House bill did not address this matter. They also stated their support for the Kimberley Process and urged the diamond industry and non-governmental organizations to help implement the certification scheme with financial assistance and expertise.

U.S. Kimberley Process Scheme Implementation Legislation. In early January 2003, Representative Thomas, chairman of the House Ways and Means Committee, announced that he would seek “to enact legislation as soon as possible that meets the Kimberley Process goals, is administrable, and complies with our World Trade Organization (WTO) obligations.”⁶⁸ Senator Grassley also announced his intention to sponsor Kimberley Process implementing legislation.⁶⁹

Representative Thomas later tied the introduction of such legislation to receipt of an understanding from the European Union (EU) that it would not oppose a WTO waiver for the Kimberley Process. According to *Inside U.S. Trade*, EU policy makers did not see a need for a WTO waiver for the Kimberley Process, a position that reflected a “broad interpretation of which trade restrictions require a waiver from WTO obligations.”⁷⁰ An *Inside U.S. Trade* source postulated that if a broad

⁶⁸ Christopher S. Rugaber, “Bush Administration, Representative Thomas Pledge Support for ‘Conflict Diamond’ Legislation,” *International Trade Reporter*, January 9, 2003, *inter alia*.

⁶⁹ *Inside US Trade*, “Grassley Sees Byrd Repeal as Tougher than Passing FSC Fix in Congress,” January 31, 2003; and Chuck Grassley, “Conflict Diamonds Trade,” press release via Federal Document Clearing House, January 23, 2003

⁷⁰ *Inside US Trade*, “FSC Repeal Bill Likely to Slip in Light of Other Congressional (continued...)”

interpretation were upheld “the EU would be free to invoke certain trade restrictions of its own without first getting a waiver, which has become increasingly difficult.”⁷¹ Pending indications from the EU that it would not oppose U.S. Kimberley Process legislation, Representative Thomas stated that he would not move U.S. legislation intended to bring the United States into compliance with a ruling by the WTO on certain provisions of U.S. export tax laws relating to U.S. Foreign Sales Corporation (FSC) export tax benefits and related extraterritorial income replacement provisions.⁷² The concerns raised by Representative Thomas appear to have been resolved by the issuance of a February 26, 2003 WTO waiver for the Kimberley Process (see below), following which he again stated his intention to introduce supporting legislation.⁷³

In early February 2003, the Steering Committee of the Campaign to Eliminate Conflict Diamonds circulated on Capitol Hill a memorandum, entitled “Draft Proposals for Diamond Legislation for the 108th Congress” that suggests a range of policy issues that the group maintains should be incorporated into U.S. Kimberley implementing legislation. The Campaign is a coalition of non-profit groups that have advocated strong regulation of the trade in conflict diamonds and have participated in the Kimberley Process.⁷⁴

H.R. 1415 and H.R. 1584. To prevent conflict diamonds from entering or exiting the United States, and to provide authority to implement the Kimberley Process in this country, Representative Houghton introduced two bills, H.R. 1415, on March 25, 2003, and H.R. 1584, on April 3, 2003. Both bills were entitled the Clean Diamond Trade Act and were broadly similar, but differed on certain points, primarily relating to provisions specifying which agencies would have the duty and authority to administer the law, if passed.

Among other provisions, both bills would have required the President to prohibit the import or export to or from the United States of “any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme.” Both would have allowed a waiver of such a prohibition for up to a year if the President determines and reports to Congress that a rough diamond exporting or importing country is taking effective steps to implement the Kimberley Process Certification Scheme or the President determines that such a waiver is in the national interests of the United States, and reports such a determination and the

⁷⁰ (...continued)

Priorities,” January 31, 2003; see also Gary G. Yerkey, “Representative Thomas Says No...”

⁷¹ *Ibid.*

⁷² Gary G. Yerkey, “Representative Thomas Says No FSC/ETI Legislation Without EU Movement on ‘Conflict Diamonds’,” *International Trade Reporter*, January 30, 2003.

⁷³ Gary G. Yerkey and Christopher S. Rugaber, “Representative Thomas Plans to Introduce Legislation On ‘Conflict Diamond [Sic]’ Following WTO Waiver,” *International Trade Reporter*, March 6, 2003.

⁷⁴ See Steering Committee of the Campaign to Eliminate Conflict Diamonds, “Draft Proposals for Diamond Legislation for the 108th Congress,” Memorandum, February 6, 2003.

reasons for it to Congress. Both bills also included a range of enforcement provisions and policy recommendations, some in “sense of Congress” language, as well as reporting requirements.

H.R. 1584, as introduced, differed from H.R. 1415 primarily in that it specified additional reporting requirements and references the U.S. Trade Representative in a statement of policy. It also authorized the President to direct the Bureau of Customs and Border Security, among other potential agencies, to assist countries seeking to export rough diamonds to the United States by providing them with technical assistance related to compliance with U.S. trade laws.

On April 8, 2003, an amended version of H.R. 1584 was passed by the House. Key amendments to the bill included changes to the specification of appropriate committees of jurisdiction (*viz.* Section 3 of the bill) and to related reporting requirements. A statement of policy removed reference to particular agencies and instead expressed support for “the policy that the President shall take”; similarly, another provision on potential technical assistance to third countries seeking to implement the Scheme removed reference to the Bureau of Customs and Border Security. Expedient Senate consideration of the amended bill was expected by some observers.

On April 9, 2003, H.R. 1584, as amended, was received in the Senate. During Senate consideration of the measure on April 10, Senator Hatch proposed a substitute amendment to H.R. 1584, S.Amdt. 529, on behalf of Senator Grassley. The Senate then by unanimous consent passed S.Amdt. 529, which reflected the language of S. 760, as reported on April 9, 2003 by Senator Grassley (see below), and the measure was sent to the House. The two chambers’ versions of H.R. 1584, which were largely similar, differed with regard to the wording of a shared provision, Section 11, that deals with the establishment of a proposed Kimberley Process Implementation Coordinating Committee. On April 11, 2003, Representative Thomas, speaking in favor of the bill, asked unanimous consent that the House agree to the Senate amendment, which was agreed to without objection. The enrolled bill was signed into law by President Bush on April 25, 2003, and became P.L. 108-19.

When President Bush signed H.R. 1584 into law, he did so after referring to several significant caveats relating to the manner in which he stated that he will construe the duties that the law gives discretion to the president to carry out. Some may view these caveats as lending a novel interpretation to the effective date on which the law is to take effect, and the manner in which it is to be implemented. President Bush stated that:

Although under this Act I have discretion to issue regulations consistent with future changes to the KPCS, under the Constitution, the President cannot be bound to accept or follow changes that might be made to the KPCS at some future date absent subsequent legislation. I will construe this Act accordingly. [...] If section 15 imposed a mandatory duty on the President to certify to the Congress whether either of the two specified events has occurred and whether either remains in effect, a serious question would exist as to whether section 15 unconstitutionally delegated legislative power to international bodies. In order to avoid this constitutional question, I will construe the certification process set forth in section 15 as conferring broad discretion on the President. Specifically,

I will construe section 15 as giving the President broad discretion whether to certify to the Congress that an applicable waiver or decision is in effect. Similarly, I will construe section 15 as imposing no obligation on the President to withdraw an existing certification in response to any particular event. Rather, I will construe section 15 as giving the President the discretion to determine when a certification that an applicable waiver or decision is no longer in effect is warranted.⁷⁵

S. 760. On April 1, 2003, Senator Grassley introduced S. 760, entitled the Clean Diamond Trade Act. The bill was referred to the Committee on Finance, which on April 2 ordered it reported out favorably with an amendment (S.Rept. 108-36) offered by Senator Baucus. On April 9, 2003, S. 760 was reported by Senator Grassley with amendments (see S.Rept. 108-36) and placed on Senate Legislative Calendar under General Orders, Calendar No. 62. S. 760 appears to be a companion bill to H.R. 1415 and H.R. 1584; most of its language is identical to that of the House bills, particularly H.R. 1584, though some of its provisions are distinct and different. In particular, it specifically requires the Secretary of State to publish in the *Federal Register* certain information pertaining to countries and foreign authorities responsible for regulating trade in rough diamonds. The version of the bill passed out of the Finance Committee also amended Section 10 (c) of the bill as introduced, which reflected the language in H.R. 1584, by requiring the establishment by the President of a U.S. Kimberley Process [interagency] Coordinating Committee and by specifying the officials and agencies that would comprise that panel. The version of H.R. 1584 enacted into law (see discussion above) is virtually identical to S. 760.

H.Con.Res. 239. On June 26, 2003, following the enactment of P.L. 108-19, Representative Watson introduced H.Con.Res. 239, the *Conflict Diamonds Resolution*, for herself, Representative Lantos, and Representative Payne. H.Con.Res. 239 proposes, in “sense of the Congress” language, that the international diamond industry, “as represented by the World Diamond Council,” should provide “transition development assistance” to communities and specific groups in Sierra Leone, Angola, and the Democratic Republic of Congo. Specific groups that it proposes be assisted include ex-combatants, female victims of war-related sexual and gender-based violence, war-injured amputees, and African diamond industry workers. It proposes that an international diamond industry fund be set up to finance initiatives in these countries to assist these groups, as well as programs in support of HIV/AIDS programs, economic development, social service provision, and political reconciliation processes in these countries. It also lays out a number of steps that the international diamond industry should be encouraged to continue to take in support of the development and implementation of the Kimberley Process. These include the development and implementation of “a comprehensive, reliable, standardized, and auditable chain of warranty system to support the Kimberley Process.”

Discussion. In contrast to some bills introduced in the 107th Congress, H.R. 1415, H.R. 1584, and S. 760 did not attempt to regulate trade in polished diamond or jewelry provisions, primarily because these bills appear to be intended solely to

⁷⁵ George W. Bush, “Statement by the President,” April 25, 2003.

provide authority to implement the Kimberley Process Certification Scheme (KPCS), which pertains only to rough diamonds.

Some groups who have sought a strict and more comprehensive regulation of the international diamond trade have criticized the KPCS for not including measures to control diamonds that have been rudimentarily processed, polished, or made into jewelry. They see the omission of such requirements in the KPCS as a “loophole,” and assert that unscrupulous diamond traders might skirt the spirit of the KPCS by:

- Superficially altering a diamond to make it meet minimal standards qualifying it as polished or otherwise processed, and thus not subject to KPCS regulations or;
- Setting a diamond in a temporary mounting, for purposes of export or import, thus qualifying it as jewelry.

To prevent the potential use of such alleged loopholes, these policy advocates generally call for all rough and loose polished diamonds, as well as mounted diamonds (i.e., diamond jewelry), to be accompanied by a certificate of origin, in order to offer a consumers a more robust guarantee that a diamond being purchased is legitimate and not of conflict-related origin.⁷⁶

Some in the diamond trade have generally argued against a more extensive certificate regime. They assert that the financial, administrative, and logistical costs of such an approach would outweigh the benefits and might negate what are often described as marginal profit margins in the diamond industry generally. Some have also argued that the imposition of such costs might also sharply cut revenues earned by developing nations, such as Botswana, Namibia, and South Africa, which rely significantly on diamonds to fund socio-economic development. Proponents of more extensive certification approaches have generally maintained that the kinds of administrative and other overhead costs cited by the diamond industry are minimal and marginal when weighed against the social costs — lost human lives, mutilated limbs, emotional damage, and social disintegration — of not enacting strong laws to end the conflict diamonds trade.

Issues for Congress

Kimberley Process: U.S. Implementation. The Administration signified its intent to implement the KPCS by signing on to the Interlaken Declaration (see section on Kimberley Process). President Bush’s approval of the Clean Diamond Trade Act enacted that stated intention into law. The 108th and future Congresses are likely to closely evaluate the relative success of U.S. implementation of the KPCS; the reporting requirements that H.R. 1584 imposes on the executive branch will likely play an important role in such oversight activities. Both the legislative and

⁷⁶ Examples of groups advocating such views include Partnership Africa Canada, World Vision, Global Witness, Oxfam, Amnesty International, One Sky, Catholic Relief Services, Physicians for Human Rights, and many other groups, primarily non-governmental organizations, many of which have joined together in a variety of lobbying coalitions.

executive branch policymakers are also likely to periodically assess the efficacy of the KPCS in general.

WTO. A second area of potential future congressional concern is the possibility that the KPCS might be found to conflict with World Trade Organization rules on trade.⁷⁷ That possibility had drawn substantial attention during the negotiation process that produced the KPCS, and such debate had persisted after the signing of the Interlaken Declaration.

In late February 2003, the Council for Trade in Goods of the World Trade Organization issued a draft waiver decision for the Kimberley Process. The issuance of the draft waiver appears to have provided adequate safeguards allowing for the establishment of the KPCS in the view of some policy makers who may have worried that the KPCS would conflict with WTO rules. Following the release of the waiver, Representative Thomas stated his intention to introduce U.S. KPCS implementation legislation (see above).⁷⁸

The waiver that was issued, however, contained certain caveats that could, in theory, provide the basis for a possible future challenge to the legitimacy of the KPCS under WTO rules. The draft waiver gave WTO members the right to bring before the WTO General Council for review potential future concerns related to “any benefit accruing ... under the GATT 1994” that is “impaired unduly,” as well as concerns related to a member’s potential allegation that the KPCS was being “applied inconsistently.” The waiver also noted that its issuance would “not preclude the right of affected Members to have recourse to Articles XXII and XXIII of the GATT 1994.”

⁷⁷ For extended discussions of these issues, see Tamm, “Diamonds in Peace and War” and Price, “The Kimberley Process,” both previously cited.

⁷⁸ Council for Trade in Goods, “Waiver Concerning Kimberley Process Certification Scheme for Rough Diamonds,” World Trade Organization, G/C/W/432/Rev.1, February 24, 2003.

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