

# Conflict Diamonds: U.S. Responsibility and Response

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## I. INTRODUCTION

The most compact form of wealth known to man lies tucked away in various corners of Africa. Diamonds, despite their beauty, have been complicit in some of the greatest human tragedies of this century. Mined

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in conflict areas of the Democratic Republic of Congo (DRC), Sierra Leone, and Angola, the mining and sale of “conflict diamonds” have provided significant funds to a number of murderous organizations, including the Revolutionary United Front (RUF) in Sierra Leone and Al Qaeda in Afghanistan. As diamonds flow out of African war zones into Western markets, weapons and cash flow in, displacing millions of individuals and killing thousands of others. The migration of these gems, from alluvial field to engagement ring, follows a crooked route that leaves displacement, destruction and death in its wake.

The movement of these illicit gems and the disastrous wake it leaves behind has only recently begun to receive the worldwide attention it deserves. However, little is being done to effectively stem the tide of these conflict diamonds. International efforts have proven ineffective due to limited oversight and ineffective international trade regulations. The United States, as the largest consumer of diamonds in the world and the leader in the fight against terrorism, has a distinct responsibility for heading international efforts to curb the market in conflict diamonds. Surprisingly, despite this unique position, the United States has failed to take adequate steps to halt the conflict diamond trade.

In the wake of September 11 and revelations that Al Qaeda laundered money through conflict diamonds, the United States passed the Clean Diamond Trade Act (CTDA) in order to stop the movement of conflict diamonds. However, this legislation, bereft of strong oversight and significant penalties for offenders, will not deter foreign nations and corporations from continuing to deal in conflict diamonds. The United States, due to its unique position in the diamond pipeline, must enact compelling legislation that will encourage both foreign countries and corporations to cease dealing in conflict diamonds.

This article will examine U.S. and international efforts to combat the trade in conflict diamonds. Specifically, this article will detail their failures and examine the need for U.S. backed legislation to prevent the conflict diamond trade more effectively. This article proceeds as follows: Part I will examine the effect of the conflict diamond trade on those caught in the grip of civil war and terrorism.<sup>1</sup> Part II will analyze international efforts to curtail conflict diamonds trade, specifically examining international support of the Kimberley Process.<sup>2</sup> Part III and IV will examine the United States’ efforts to regulate conflict diamonds and the inherent flaws in the CTDA.<sup>3</sup> Part V will suggest a proposal for more appropriate U.S.

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1. See *infra* Part I (discussing how the trade in conflict diamonds affects international human rights and national security).

2. See *infra* Part II (discussing the relevant U.N. actions taken to curb the illicit diamond trade and the resulting provisions of the Kimberley Process).

3. See *infra* Part III and Part IV (discussing the development of the Clean

legislation.<sup>4</sup> In conclusion, this article will assert that the migration of conflict diamonds out of Africa and into Western markets has buttressed the tragic movement of weapons and cash into the hands of dangerous rebel armies and terrorist organizations. Without strong support from the United States, the conflict diamond trade will continue to fund rebel groups and terrorist organizations.

## II. THE EFFECT OF DIAMOND MIGRATION ON HUMAN RIGHTS AND NATIONAL SECURITY

### *A. Conflict Diamonds and Human Rights*

Internationally, the movement of conflict diamonds has created some of the most serious human rights issues of the twentieth and twenty-first centuries. Conflict diamonds are “[d]iamonds that originate from areas under the control of forces that are in opposition to elected and internationally recognized governments, or are in any way connected to those groups.”<sup>5</sup> Before the end of the Cold War, rebel armies in parts of Africa relied on funds from various Cold War players such as the U.S.S.R., Cuba, China and the United States.<sup>6</sup> After the fall of the Berlin Wall, rebels fighting in Angola, Sierra Leone, Liberia, and the DRC emerged without adequate funds to maintain militaries or political regimes.<sup>7</sup> These rebel groups then turned to commodities such as diamonds that were accessible and had an ample international market.<sup>8</sup> The trade in diamonds was successful for the rebels: in Angola, for example, the rebel group UNITA amassed \$3.7 billion through its control of conflict diamonds in the 1990s, a sum

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Diamond Trade Act and relevant provisions).

4. See *infra* Part V (proposing new legislation based on legislation such as the Helms-Burton Act).

5. GLOBAL WITNESS, *CONFLICT DIAMONDS: POSSIBILITIES FOR THE IDENTIFICATION, CERTIFICATION AND CONTROL OF DIAMONDS*, at 1 (May 2000), available at <http://www.globalwitness.org/reports> [hereinafter GLOBAL WITNESS, *CONFLICT DIAMONDS*].

6. See GREG CAMPBELL, *BLOOD DIAMONDS* 98 (2002).

7. GLOBAL WITNESS, *CONFLICT DIAMONDS*, *supra* note 5, at 2.

8. Due to this funding [UNITA was] able to maintain a sophisticated military operation which effectively ensured that no peace process in Angola would work. In Sierra Leone the Revolutionary United Front was transformed into a well-equipped and lethal fighting force due to the control and sale of high-value gem diamonds.

*Id.*

that far exceeds the amount given to UNITA by its partners during the entire Cold War period.<sup>9</sup>

Although exceedingly successful for rebel groups, the trade in conflict diamonds invigorated civil wars that proved disastrous for innocent civilians. In 1996 alone, fourteen African countries were engulfed in conflict, “accounting for more than half of all war-related deaths worldwide and resulting in more than eight million refugees, returnees and displaced persons.”<sup>10</sup> Human rights abuses in Sierra Leone have been exceptionally devastating. Fueled by the trade in conflict diamonds, Revolutionary United Front (RUF) rebels targeted civilians and children, burning them alive or amputating their limbs<sup>11</sup> and recruited thousands of child soldiers to commit further atrocities against their fellow countrymen.<sup>12</sup> The RUF’s diamond war led to the deaths of approximately 75,000 people and mutilated another 20,000.<sup>13</sup> The RUF’s brutal tactics served the military objective of inducing “tectonic population shifts away from the diamond areas.”<sup>14</sup> During this conflict, combat displaced 30% of the country’s 4.6 million people.<sup>15</sup>

Diamond sales funded the ammunition and weapons used in these conflicts, which, in Sierra Leone, gave the RUF millions of dollars a year.<sup>16</sup> As diamonds flowed out of areas like Sierra Leone, weapons flowed in from sympathetic governments or weapon smugglers.<sup>17</sup> The trade of diamonds for weapons has resulted in six million war-related

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9. *Id.*

10. Muna Ndulo, *The Democratization Process and Structural Adjustment in Africa*, 10 *IND. J. GLOBAL LEGAL STUD.* 315, 315 (2003).

11. Margo Kaplan, Note, *Carats and Sticks: Pursuing War and Peace Through the Diamond Trade*, 35 *N.Y.U. J. INT’L L. & POL.* 559, 571 (2003); see also Jim Hoagland, *The Trouble With Africa Is . . . : The Developed World Has Long Abandoned Africa to a Fate Outside the New Global Era*, *CHI. TRIB.*, May 12, 2000, at N27. Describing an RUF leader,

Sierra Leone has become the world’s heart of horror, put on the news map by Mr. Sankoh’s use of amputations, gang rape and forcing children to massacre their own families. Not even the Nazis refined mass terror tactics so thoroughly and indiscriminately as has this disgruntled ex-corporal.

*Id.*

12. See Kaplan, *supra* note 11, at 571.

13. CAMPBELL, *supra* note 6, at 31.

14. *Id.* at 72.

15. Kaplan, *supra* note 11, at 571 (citing *Conflict Diamonds: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 107th Cong. 48 (2001)); see also Paula R. Newberg, *Chaos Fills a State the West Ignores: Sierra Leone*, *L.A. TIMES*, May 14, 2000, at M2.

16. CAMPBELL, *supra* note 6, at 81.

17. *Id.* at 63.

fatalities in Africa over the last fifty years, mostly by small arms and light weapons.<sup>18</sup>

Although Angola and Sierra Leone have signed peace accords, the trade of diamonds by the RUF and UNITA continues to threaten the security of both countries.<sup>19</sup> Moreover, there is concern that neither of the newly formed governments will be able to control its respective nation's resources responsibly.<sup>20</sup>

In Sierra Leone, diamonds were not the sole cause of the civil war. The government's corrupt use of the diamond mines and its inability to control its natural resources also contributed to the outbreak of civil war.<sup>21</sup> Another significant source of conflict diamonds, the DRC, remains mired in a civil war that is "characterized by ongoing violence and armed conflict, which has created a humanitarian disaster and contributed to civilian deaths."<sup>22</sup> By some estimates, about \$600 million in diamonds are exported from the Congo on an annual basis.<sup>23</sup> Less than a third are exported legally.<sup>24</sup> Therefore, as long as illegal diamonds and refugees migrate out of these conflict zones, cash and weapons will continue to migrate back in to further fuel conflict and instability.

### *B. Conflict Diamonds and National Security*

The trade in conflict diamonds has devastated not only African nations, but the global community as well. Strong evidence indicates that Al Qaeda and other terrorist groups use conflict diamonds for financing and money laundering.<sup>25</sup> To date, the terrorist network headed by

18. Harold Hongju Koh, *A World Drowning in Guns*, 71 *FORDHAM L. REV.* 2333, 2338 (2003) (detailing the ease with which small arms can be traded for commodities such as diamonds and the resulting destruction the illicit trade of weapons can have on nations).

19. Kaplan, *supra* note 11, at 572–77.

20. *Id.*

21. *Id.* at 573.

22. U.S. DEP'T OF STATE, *Background Note: Democratic Republic of Congo*, Jan. 2005, <http://www.state.gov/r/pa/ei/bgn/2823.htm>.

23. Douglas Farah, *Digging Up Congo's Dirty Gems: Officials Say Diamond Trade Funds Radical Islamic Groups*, *WASH. POST*, Dec. 30, 2001, at A1 [hereinafter Farah, *Dirty Gems*].

24. *Id.*

25. See GLOBAL WITNESS, *FOR A FEW DOLLARS MORE: HOW AL QAEDA MOVED INTO THE DIAMOND TRADE* 13–15 (2003), available at <http://www.globalwitness.org/reports/show.php/en.00041.html>; see also Douglas Farah, *Al Qaeda Cash Tied to Diamond Trade*, *WASH. POST*, Nov. 2, 2001, at A1; see generally *Trade in African Diamonds: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 106th Cong. 2 (2001).

Osama bin Laden has gained millions of dollars from the sale of conflict diamonds originating out of Sierra Leone.<sup>26</sup> Following the bombings of U.S. Embassies in Nairobi, Kenya and Dar-es-Salaam, Tanzania in 1998, the United States attempted to freeze Al Qaeda and Taliban bank accounts.<sup>27</sup> Financially susceptible, Al Qaeda sought out more liquid and fungible resources.<sup>28</sup>

From 1998 to 2000, Al Qaeda aides met with RUF leaders in Sierra Leone in order to purchase rebel-controlled diamonds.<sup>29</sup> Al Qaeda bought the gems in order to convert cash into a more liquid asset prior to the September 11 attacks in the United States.<sup>30</sup> Doing so allowed the organization to hold several million dollars of assets in “the most compact form of wealth known to man.”<sup>31</sup>

Additionally, radical Islamic organizations have turned to Central Africa in order to fund their movements.<sup>32</sup> Specifically, the Lebanon-based movement, Hezbollah, has funneled millions of dollars through the DRC to its organization.<sup>33</sup> Hezbollah and other groups buy diamonds in the DRC at a fraction of their value, smuggle them out of Africa and sell them abroad for a sizable profit.<sup>34</sup> Some of these diamonds are sold in Antwerp, Belgium’s diamond marketing hub, which has become the financial headquarters for radical Islamic groups.<sup>35</sup> U.S. officials, also investigating terrorist links to the diamond trade, have focused on the gold and uranium trade in areas like the DRC, where the borders are almost completely uncontrolled.<sup>36</sup> Therefore, to disrupt terrorist funds and laundering activities, it is imperative to disconnect the conflict diamond pipeline, which accounts for millions and perhaps tens of millions of dollars in profits and money laundering.<sup>37</sup>

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26. Farah, *Dirty Gems*, *supra* note 23, at A1.

27. Douglas Farah, *African Nations Hosted Terror Chiefs*, Hous. Chron., Dec. 29, 2002, at A29; Michael Maggi, *The Currency of Terrorism: An Alternative Way to Combat Terrorism and End the Trade of Conflict Diamonds*, 15 PACE INT’L L. REV. 513, 536 (2003).

28. Maggi, *supra* note 27, at 536.

29. CAMPBELL, *supra* note 6, at 186–88.

30. *Id.* at 187.

31. *Id.* at 188.

32. Farah, *Dirty Gems*, *supra* note 23, at A2.

33. *Id.* Hezbollah has been linked to the 1983 bombings of U.S. marine barracks and the U.S. Embassy in Beirut and for the kidnapping of Americans in Lebanon. See generally Matthew Levitt, *Hezbollah Finances: Funding the Party of God*, (Feb. 2005), <http://www.washingtoninstitute.org/templateC06.php?CID=772>.

34. Farah, *Dirty Gems*, *supra* note 23, at A2.

35. *Id.*

36. *Id.*

37. See *id.* at A1–A2.

Notably, the financing provided by diamonds sales also aids the mobility of terrorists.<sup>38</sup> "Terrorist networks have been very creative in their financial sources and in their infiltration into different areas where funding can be found."<sup>39</sup> Terrorist mobility depends on maintaining a complex network of financial support and access to arms.<sup>40</sup>

The mobility of terrorists, their ability to cross borders, to acquire resources in one state to use against another state, to find asylum in foreign sanctuaries, to commit a crime in one state with weapons from another state against the citizen of a third state and flee to yet a fourth state, has meant that a unilateral terrorist policy is problematic.<sup>41</sup>

Cutting off links to resources, such as diamonds, would prevent terrorist networks from passing between borders.<sup>42</sup> The regulation of such financial markets is essential to curtail the migration of both diamonds and the terrorists they fund.<sup>43</sup> Interrupting this ability to relocate is as important as reducing terrorist sources of funding.<sup>44</sup> Therefore, inhibiting terrorist funding, through sources like diamonds will not only decrease terrorist organizations' ability to operate but will also hinder their ability to migrate from country to country.

### III. INTERNATIONAL EFFORTS TO HALT THE CONFLICT DIAMOND TRADE

#### A. *The United Nations in Sierra Leone and Angola*

In response to the serious human rights abuses occurring in Sierra Leone and Angola, international organizations have taken the first steps

38. James J. Savage, *Executive Use of the International Emergency Economic Powers Act—Evolution through the Terrorist and Taliban Sanctions*, 10 CURRENTS: INT'L TRADE L.J. 28, 37, 41 (2001).

39. *Id.* at 41.

40. Christopher J. Fenton, Note, *U.S. Policy Towards Foreign Direct Investment Post-September 11: Exon-Florio in the Age of Transnational Security*, 41 COLUM. J. TRANSNAT'L L. 195, 230 (2002); see also Savage, *supra* note 38, at 37.

41. Jacqueline Ann Carberry, Comment, *Terrorism: A Global Phenomenon Mandating a Unified International Response*, 6 IND. J. GLOBAL LEG. STUD. 685, 712 (1999) (quoting Martha Crenshaw, *Unintended Consequences: How Democracies Respond to Terrorism*, 21 FLETCHER F. WORLD AFF. 153, 155 (1997)).

42. Savage, *supra* note 38, at 37 (discussing President Bush's use of the IEEPA to restrict the financial resources of targeted terror organizations).

43. *Id.*

44. National Commission on Terrorist Attacks Upon the United States, Entry of the 9/11 Hijackers Into the United States, Staff Statement No. 1, 10, <http://news.findlaw.com/hdocs/docs/terrorism/911comm-ss1.pdf> (last visited Nov. 6, 2005) (on file with author).

towards halting the conflict diamond trade. The United Nations (U.N.) first imposed sanctions and embargoes against Angola and Sierra Leone in the 1990's.<sup>45</sup> In 1997, the United Nations imposed an arms embargo on Sierra Leone and established UNAMSIL, a peacekeeping operation.<sup>46</sup> Despite the embargo, the RUF still managed to obtain weapons and continue its trade in illicit diamonds.<sup>47</sup> In fact, there have been suggestions that some UNAMSIL forces may have cooperated with the RUF and taken part in the plundering of diamonds.<sup>48</sup> By the year 2000, U.N. forces pulled out of Sierra Leone due to constant attacks and kidnappings.<sup>49</sup> The U.N. attempt to quell RUF forces has been described as "doomed from the start."<sup>50</sup>

Beyond military intervention, the United Nations also passed Security Council Resolution 1306 (Resolution) on July 5, 2000.<sup>51</sup> The Resolution essentially made the purchase of conflict diamonds from Sierra Leone illegal and encouraged Sierra Leone's government to establish a certification scheme for diamonds leaving its borders.<sup>52</sup> Remarkably, the Resolution called on diamond industry leaders and other representatives in the diamond industry to assist the government in creating a well-regulated diamond trade.<sup>53</sup>

Similarly, the United Nations imposed sanctions against UNITA in Angola.<sup>54</sup> These sanctions included the prohibition of arms sales and the purchase of UNITA-mined diamonds, freezing UNITA finances and restricting the travel of UNITA leaders.<sup>55</sup> U.N. action, along with the death of UNITA leader Jonas Savimbi, served to decrease the trade in conflict diamonds.<sup>56</sup> However, only when these U.N. efforts were coupled with

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45. United Nations, *Conflict Diamonds: Sanctions and War* (2001), <http://www.un.org/peace/africa/Diamond.html>.

46. Ian Martinez, *Conflict Resolution in Africa: Sierra Leone's "Conflict Diamonds": The Legacy of Imperial Mining Laws and Policy*, 10 U. MIAMI INT'L & COMP. L. REV. 217, 235 (2002).

47. *Id.* at 236.

48. CAMPBELL, *supra* note 6, at 92; *see also* New York Times News Service, *Africa Peace Unit Linked To Atrocities*, CHI. TRIB., Feb. 12, 1999, at N-18 ("forces bombed civilian targets, shot at 'human shields' formed by the rebels and mistreated the staffs of the Red Cross and similar groups.").

49. *See* Martinez, *supra* note 46, at 237.

50. CAMPBELL, *supra* note 6, at 95 (quoting John Bolton's testimony before the International Relations Committee, U.S. House of Rep., Oct. 11, 2001).

51. *See* S.C. Res. 1306, U.N. Doc. S/RES/1306 (July 5, 2000).

52. *Id.* at 5-6.

53. *Id.* at 10-11; Laura Forest, Note, *Sierra Leone and Conflict Diamonds: Establishing a Legal Diamond Trade and Ending Rebel Control over the Country's Diamond Resources*, 11 IND. INT'L & COMP. L. REV. 633, 645 (2001).

54. Maggi, *supra* note 27, at 527.

55. *Id.* at 527-28.

56. *Id.* at 529.



the movements of non-governmental organizations was a truly effective multilateral effort established.<sup>57</sup>

### B. The Kimberley Process

In response to insufficient attempts by the United Nations to halt the trade in conflict diamonds through sanctions and military efforts, diamond-producing countries convened in May 2000 to establish normative trade standards to prevent the conflict diamond trade.<sup>58</sup> In December of the same year, the U.N. General Assembly adopted a resolution supporting the formation of an international certification scheme for rough diamonds.<sup>59</sup> The aim of this international body<sup>60</sup> was to stem the tide of conflict diamonds while preserving markets for legitimate rough diamonds.<sup>61</sup> In 2002, after two years of negotiations, these international efforts culminated in the creation of the Kimberley Process Certification Scheme (KPCS). The KPCS summarizes the provisions by which, "the trade in rough diamonds is to be regulated by countries, regional economic integration organizations and rough diamond-trading entities."<sup>62</sup>

Currently, the Kimberley Process consists of states and regional economic integration organizations eligible to trade in rough diamonds under the provisions of the KPCS.<sup>63</sup> As of April 30, 2004, there were 43 "Participants,"<sup>64</sup> representing all major rough diamond producing, exporting and importing countries.<sup>65</sup> These Participants receive reports and recommendations from the World Diamond Council (WDC)<sup>66</sup> in order to

57. *Id.*

58. Tracey Michelle Price, *The Kimberley Process: Conflict Diamonds, WTO Obligations and the Universality Debate*, 12 MINN. J. GLOBAL TRADE 1, 34 (2003).

59. See Kimberley Process: Background, <http://www.kimberleyprocess.com:8080/site/?name=background> (last visited Nov. 6, 2005) [hereinafter Kimberley Process: Background].

60. This international body consisted of diamond industry insiders, NGOs and governments. See *id.*

61. Kimberley Process: Frequently Asked Questions, <http://www.Kimberleyprocess.com:8080/site/?name=faq> (last visited Nov. 6, 2005) [hereinafter Kimberley Process, FAQs].

62. Kimberley Process, Background, *supra* note 59.

63. Kimberley Process, FAQs, *supra* note 61.

64. A "Participant" is defined as "a state or a regional economic integration organisation for which the Certification Scheme is effective." Kimberley Process Certification Scheme, <http://www.kimberleyprocess.com:8080/> (click KPCS hyperlink) (last visited Nov. 6, 2005) [hereinafter Kimberley Process Certification Scheme].

65. See Kimberley Process, FAQs, *supra* note 61.

66. See *Trade in African Diamonds: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways & Means*, 106th Cong. 39 (2000). Statement of Matthew A. Runci,

develop a comprehensive method to stem the flow of conflict diamonds while minimizing the impact on the legitimate trade.<sup>67</sup>

The fundamental aspects of the Kimberley Process are as follows: 1) each Participant must ensure that each export or import of rough diamonds be accompanied by a Kimberley Process certificate and is therefore tamper and forgery resistant; 2) each Participant must guarantee that no shipment of rough diamonds is imported from or exported to a non-participant; 3) each Participant is required to establish a system of internal controls designed to remove conflict diamonds from shipments coming in and out of its territory;<sup>68</sup> and 4) each Participant is required to provide the others with information on their relevant laws, regulations, rules, procedures and practices.<sup>69</sup>

Despite these attempts at control, the Kimberley Process may be too vague in terms of internal controls to ensure that states effectively carry out its agenda.<sup>70</sup> The document does not specifically state what constitutes an “appropriate” law or what action should be taken against transgressors.<sup>71</sup> Moreover, the “[Kimberley Process]” narrow definition of conflict diamonds does not include polished stones and jewelry and could exclude diamonds originating from recognized governments such as the Democratic Republic of Congo.<sup>72</sup> It is this certification scheme that forms the backbone of U.S. attempts to halt the trade in illicit diamonds.<sup>73</sup>

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Ph.D., President and Chief Executive Officer, Jewelers of America, Inc. and spoke on behalf of the World Diamond Council:

[t]he World Diamond Council (WDC) is the international body chartered in Antwerp in July by the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, solely for the purpose of rapidly developing and implementing a comprehensive plan to curtail trade in conflict diamonds while minimizing impact on the legitimate diamond industry. Membership of the Council is comprised of all segments of the international diamond industry—producers, manufacturers, traders, and retailers—as well as financial institutions, governments and relevant international and civil society organizations.

*Id.*

67. *Id.*

68. Such controls include the development of Importing and Exporting Authorities, the use of tamper proof containers, the maintenance of dissuasive and proportional penalties for transgressions, and a means for the collection of import and export data. Kimberley Process Certification Scheme, *supra* note 64, at IV.

69. Kimberley Process Certification Scheme, *supra* note 64, at V.

70. Kaplan, *supra* note 11, at 591.

71. See Kimberley Process Certification Scheme, *supra* note 64, at IV(d).

72. Amnesty International, *Conflict Diamonds: Did Somebody Die for That Diamond?*, <http://www.amnestyusa.org/diamonds/index.do> (last visited Nov. 6, 2005).

73. See *infra* Part IV.

IV. U.S. EFFORTS TO HALT THE CONFLICT  
DIAMOND TRADE

The United States is by far the most influential player in the global diamond market.<sup>74</sup> Accounting for over half of global diamond jewelry retail sales, the United States is in a unique position to stem the migration of conflict diamonds, and not only prevent human rights violations, but also ensure its own national security.<sup>75</sup> In 2000, over \$800 million in rough diamonds from fifty-three countries crossed U.S. borders.<sup>76</sup> The diamond jewelry market in the United States was valued at an estimated \$26 billion in 2000.<sup>77</sup>

The current Bush administration was initially resistant to the imposition of trade sanctions involving the trade of conflict diamonds as a matter of "ideological principle."<sup>78</sup> It was not until the September 11 attacks that the White House began to seriously examine the issue of conflict diamonds.<sup>79</sup>

In April 2003, the United States Congress passed the Clean Diamond Trade Act (CDTA or Act).<sup>80</sup> Under the CDTA, rough diamonds may not be imported into the United States unless they are controlled by the Kimberley Process or are otherwise in accord with United Nations Security Council resolutions. However, this requirement can be waived in the event of a threat to national security.<sup>81</sup> Under the CDTA, the President shall prohibit the importation or exportation of rough diamonds that have not been controlled by the Kimberley Process Certification Scheme.<sup>82</sup> Additionally, the CDTA permits the President to prohibit or seize diamond and jewelry shipments if the traders violate or attempt to

74. GLOBAL WITNESS, *BROKEN VOWS: EXPOSING THE "LOUPE" HOLES IN THE DIAMOND INDUSTRY'S EFFORTS TO PREVENT THE TRADE IN CONFLICT DIAMONDS*, Mar. 2004 at 13, available at <http://www.globalwitness.org/reports/show.php/en.00050.html> (hyperlink to PDF) [hereinafter GLOBAL WITNESS, *BROKEN VOWS*].

75. *Id.*

76. Price, *supra* note 58, at 42.

77. *Id.*

78. Daniel L. Feldman, *Conflict Diamonds, International Trade Regulation, and the Nature of Law*, 24 U. PA. J. INT'L ECON. L. 835, 844 (2003) (stating that the administration opposed the Kimberley Process's goal of excluding the diamond trade countries that refused to embrace its principles.). Moreover, the Bush administration, in its initial refusal, was criticized for not wanting to place the safety and security of African nations over the concerns of American business. *See id.* at 864.

79. *Id.* at 853-54; *see also* Maggi, *supra* note 27, at 536-37.

80. Clean Diamond Trade Act, 19 U.S.C. § 3901 (2004) [hereinafter CDTA].

81. *Id.*; *see also* Rough Diamond Control Regulations, 68 Fed. Reg. 45,777 (Aug. 4, 2003) (to be codified at 31 C.F.R. pts. 591 & 592).

82. CDTA, *supra* note 80, § 3903.

violate provisions of the CDTA.<sup>83</sup> As enacted, the CDTA is a compromise from the original Act, which required automatic sanctions against any country that does not implement a system of controls.<sup>84</sup>

The Act's provisions are implemented by an inter-agency working group coordinated by the Departments of State and Treasury.<sup>85</sup> Violators face civil and criminal penalties, including fines and imprisonment of up to ten years.<sup>86</sup> For exports of rough diamonds out of the United States, the Kimberley Process Authority (KPA) was established.<sup>87</sup> The KPA is administered by officials from U.S. trade associations and is responsible for issuing Kimberley Process certificates for all exports.<sup>88</sup> However, it is not clear how the U.S. government oversees and monitors the KPA.<sup>89</sup> As noted by Global Witness, "there must be adequate U.S. government oversight of the diamond trade in order for the system to be effective."<sup>90</sup>

Participation in the Kimberley Process Certificate Scheme (KPCS) is required by the CDTA.<sup>91</sup> The Kimberley Process Certificate certifies that diamonds in a shipment are conflict-free.<sup>92</sup> The KPCS then leaves each country to establish its own system of internal controls.<sup>93</sup> It is vital that countries maintain controls that track diamonds back from their point of export to the location in which they were mined.<sup>94</sup> The U.S. government issues these certificates through the KPA.<sup>95</sup> However, neither the KPA nor U.S. Customs examines the exports physically, except on a random and infrequent basis.<sup>96</sup> Likewise, imports of rough diamonds are rarely checked by U.S. Customs.<sup>97</sup>

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83. *Id.* § 3907.

84. Kaplan, *supra* note 11, at 607–08 (citing World Diamond Council, Changes from HR 2722 to Compromise HR 2722, [http://www.worlddiamondcouncil.com/changes\\_from\\_hr\\_2722\\_to\\_compromi.htm](http://www.worlddiamondcouncil.com/changes_from_hr_2722_to_compromi.htm)) (last visited Nov. 6, 2005); Simon Barber, *U.S. Opposes 'Blood' Diamond Trade*, BUS. DAY (S. Afr.), Nov. 29, 2001.

85. GLOBAL WITNESS, BROKEN VOWS, *supra* note 74, at 14.

86. CDTA, *supra* note 80, § 3907; GLOBAL WITNESS, BROKEN VOWS, *supra* note 74, at 14.

87. GLOBAL WITNESS, BROKEN VOWS, *supra* note 74, at 14.

88. *Id.*

89. *Id.*

90. *Id.*

91. CDTA, *supra* note 80, § 3903; *See generally* GLOBAL WITNESS: THE KEY TO KIMBERLEY: INTERNAL DIAMOND CONTROLS—SEVEN CASE STUDIES, Oct. 2004 at 16, available at <http://www.globalwitness.org/reports/index.php?section=diamonds> (hyperlink to PDF) [hereinafter GLOBAL WITNESS, KEY].

92. GLOBAL WITNESS, KEY, *supra* note 91, at 1.

93. *Id.*

94. *Id.*

95. *Id.* at 17.

96. *Id.*

97. *Id.*

## V. FAILURE OF THE CLEAN DIAMOND TRADE ACT

The Act's reliance on international delegations, the Kimberley Process specifically, creates a serious detriment to U.S. efforts to stem the tide of conflict diamonds. Despite the priority placed by the White House on curtailing sources of funding for terrorist organizations,<sup>98</sup> and the CDTA's stated intention to halt human rights abuses, the Act does not realistically accomplish either goal.<sup>99</sup> The first and most glaring of the CDTA's flaws, as discussed above,<sup>100</sup> lies in the lack of supervision over exports and imports of conflict diamonds. The infrequent examination of diamond parcels increases the chances of diamond smuggling and defeats the purpose of the CDTA.

The CDTA's reliance on international organizations, such as the Kimberley Process, World Trade Organization (WTO), and the U.N. Security Council, to carry out its mission is also problematic. The CDTA mandates that shipments of rough diamonds be controlled through the KPCS.<sup>101</sup> Additionally, the Act's effective date was predicated on permission from the WTO or the U.N. Security Council.<sup>102</sup> This assimilation of an international act proved controversial because it was claimed that the CDTA "unconstitutionally delegated legislative power to international bodies."<sup>103</sup> Such assimilation directs the White House to adhere to lawmaking by international institutions,<sup>104</sup> in this case the Kimberley Process. With the Act's passage, the United States delegated authority over the trade in conflict diamonds to the Kimberley Process, WTO, and Security Council, thus "converting a national principal into an institution's agent."<sup>105</sup> Therefore, the Act's dependence on others can be criticized as an unconstitutional international delegation because of its reliance on

98. Farah, *Dirty Gems*, *supra* note 23, at A1.

99. CDTA, *supra* note 80, § 3901.

100. *See supra* Part III.

101. CDTA, *supra* note 80, § 3903.

102. 19 U.S.C.A. § 3901 (West 2005) (see note on the effective date of section).

103. Edward T. Swaine, *The Constitutionality of International Delegations*, 104 COLUM. L. REV. 1492, 1519–20 (2004).

104. *Id.* at 1519. Other international assimilations include Iran and Libya Sanctions Act of 1996, 50 U.S.C. § 1701, which requires the President to inform Congress when a nation adopts sanctions against Iran or Libya. *See Swaine, supra* note 103, at 1519 n.99. Additionally, the Uruguay Round Agreements Act of 1994, 19 U.S.C. § 3511(b), provides that the President may conform to the Uruguay Round Agreements and enforce article VII of the WTO Agreement once a sufficient number of nations accept the agreement. Swaine, *supra* note 103, at 1519 n.100.

105. Swaine, *supra* note 103, at 1609.

international bodies for the execution of the law.<sup>106</sup> The United States, rather than act as a leader in defeating the illegal diamond cartel, has relegated itself to the position of an agent of the Kimberley Process.

Despite this reliance on international bodies, the Act provides the President with a significant amount of discretion.<sup>107</sup> In order to avoid the appearance that the White House is capitulating to international bodies, Section 15 of the Act states that the Act will take effect once the President has certified that an applicable waiver granted from the WTO or an applicable Security Council resolution is in effect.<sup>108</sup> Further, the Act gives the President the discretion to decide how long the Act will remain in effect.<sup>109</sup> Therefore, should the White House discover that the diamond trade is not linked to terrorism, the discretion provided by the CDTA permits the White House to abandon any further efforts to combat the trade in conflict diamonds.<sup>110</sup> However, as some scholars, including Edward Swaine note, the U.S. Supreme Court has ruled that the President cannot withdraw legislation based on an “independent exercise of policy discretion.”<sup>111</sup> The CDTA imbues the President with discretion, which makes the Act vulnerable not only to the potential imprudence of the President but also to constitutional attacks. Therefore, the future of the CDTA and its ability to stem the tide of conflict diamonds is seriously called into question.

Although the international community has endorsed the Kimberley Process broadly, some Participants believe that the scheme is not an adequate tool for halting the trade in conflict diamonds.<sup>112</sup> The effectiveness of the Kimberley Process, and therefore the CDTA, is entirely reliant on the good faith of participating countries. Participants are only required to enforce the minimum standards outlined by the Kimberley Process<sup>113</sup> and receive broad discretion in implementing internal controls.<sup>114</sup> With this scheme, as long as an exporting country certifies that a shipment is

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106. *Id.* at 1610.

107. Kaplan, *supra* note 11, at 609.

108. Swaine, *supra* note 103, at 1520 (citing Statement on Signing the Clean Diamond Act, 39 WEEKLY COMP. PRES. DOC. 491 (Apr. 25, 2003)).

109. 19 U.S.C. § 3901 (2003).

110. Kaplan, *supra* note 11, at 609.

111. *Id.* at 1610 (analyzing *Clinton v. City of New York*, 524 U.S. 417 (1998), where the U.S. Supreme Court found that the Line Item Veto Act unconstitutionally allowed the President to cancel legislation based on executive discretion); *see also Clinton v. New York*, 524 U.S. 417, 449 (1998) (stating that “[i]f there is to be a new procedure in which the President will play a different role in determining the final text of what may “become a law,” such change must come not by legislation but through the amendment procedures set forth in Article V of the Constitution.”).

112. Price, *supra* note 58, at 4.

113. *Id.* at 36–37.

114. *Id.* at 40.

free of conflict diamonds, the importing country will not require any further assurance.<sup>115</sup> Therefore, the Act relies on the good faith of other Participants, and not on enforcement for its effectiveness.

This good faith assumption on the part of the U.S. Congress is ill placed considering the unpredictable internal diamond controls in many diamond-producing countries.<sup>116</sup> In Angola, for example, there is no guarantee that the nation's internal controls prevent diamonds from being imported or exported illegally.<sup>117</sup> There is no system in place for determining the origin of gems coming from diamond fields, beyond an incomplete paper-based system.<sup>118</sup> Similarly, in the Democratic Republic of Congo,<sup>119</sup> the controls established by the government provide little data regarding the origin of diamonds entering the chain of trade, or "even, potentially, whether they were mined in the DRC."<sup>120</sup> In light of these reports, "the danger is that self-regulation only amounts to a statement on an invoice that is not verifiable" and is not supported by any policies that prevent the purchase of conflict diamonds.<sup>121</sup> Global Witness cites the lack of a systematic, impartial review of Participants' internal controls as one the chief flaws of the Kimberley Process.<sup>122</sup> Due to strong opposition from member governments, regular monitoring was not adopted as part of the Kimberley Process scheme.<sup>123</sup> Thus, the United States, despite its faith in the Kimberley Process, continues to import conflict diamonds and unintentionally supports a system that has created countless refugees and funded terrorist organizations.

Despite the failures of the Kimberley Process and continued doubt over its efficacy, some experts remain idealistic about the Kimberley Process and its ability to disrupt the pipeline of conflict diamonds. Dealers

115. See *id.* at 36–42 (outlining the Certification Scheme and the responsibilities of participating countries).

116. See generally GLOBAL WITNESS, KEY, *supra* note 91. The Global Witness Report outlines seven case studies of countries that are attempting to comply with the Kimberley Process Certification Scheme. The report reveals serious weaknesses in the practices of diamond producing countries, which, if not corrected, could seriously undermine the entire scheme.

117. *Id.* at 7.

118. *Id.* at 6.

119. "Diamonds from the DRC have never been subject to U.N. Security Council Resolutions classifying them as 'Conflict Diamonds,' however the role . . . of diamonds in fuelling the devastating conflict in the DRC has been well-documented." *Id.* at 8.

120. *Id.* at 11.

121. GLOBAL WITNESS, BROKEN VOWS, *supra* note 74, at 13.

122. *Id.* at 9.

123. *Id.*

caught with conflict diamonds face sanctions under the Kimberley Process, which include expulsion from trade associations and the end of the dealer's ability to operate in the diamond industry.<sup>124</sup> Optimistic proponents of the Kimberley Process hope the scheme will ease the movement of "clean" diamonds, thereby making conflict diamonds more expensive to export due to the risk and bribery involved.<sup>125</sup> Eventually, it is reasoned, conflict diamonds will no longer be lucrative for those willing to kill for them.<sup>126</sup>

Despite this optimistic outlook, the Kimberley Process may be an inherently flawed process that will not aid Congress in accomplishing the goals set forth in the CDTA. As reasoned by Greg Campbell, "[t]he documents required by the Kimberley Process and the Clean Diamond Act will not stop the traffic."<sup>127</sup> Diamonds are one of the most concentrated forms of wealth and offer huge returns due to their price and the ease with which they can be smuggled.<sup>128</sup> A certification scheme will not deter diamond traffic so long as officials in diamond producing areas continue to be amenable to bribery.<sup>129</sup> Moreover, with fortunes to be had and a well-established system in place,<sup>130</sup> the trade in conflict diamonds will not be deterred by certificates placed on packages.

## VI. REVISION AND RECOMMENDATIONS

The current legislation designed to combat the trade in conflict diamonds has proven ineffectual in curbing the human rights abuses and terrorism associated with the diamond trade. It places too much confidence on a system of international delegation that has little to no oversight over its participating members. Therefore, the United States must take a more proactive approach in dealing with this catastrophic problem. Rather than trusting this issue to unaccountable countries and diamond industry insiders, the United States must create legislation that can more effectively combat the issue of conflict diamonds.

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124. Feldman, *supra* note 78, at 866.

125. *Id.* at 867.

126. *Id.*

127. CAMPBELL, *supra* note 6, at 202.

128. GLOBAL WITNESS, CONFLICT DIAMONDS, *supra* note 5, at 2; *see also* CAMPBELL, *supra* note 6, at 37 ("diamonds are among the easiest—and by far the most valuable by weight—commodities to smuggle. Three hundred grams of diamonds are equal in value to 40,000 pounds of iron ore . . . Millions of dollars worth of diamonds can be carried almost anywhere in the body or on it. . .").

129. CAMPBELL, *supra* note 6, at 202.

130. *See id.*; *see also* Price, *supra* note 58, at 25 (stating that the trade in conflict diamonds is estimated to be worth approximately \$300 million a year, accounting for three to fifteen percent of the global trade).



Beyond the Clean Diamond Trade Act, the USA PATRIOT Act<sup>131</sup> also has the potential to slow the trade in conflict diamonds. President Bush signed the USA PATRIOT Act on October 26, 2001, with the intent of preventing terrorist acts within the United States.<sup>132</sup> The PATRIOT Act requires financial institutions to establish processes to monitor all transactions and ensure they are legitimate, thereby creating anti-money laundering programs.<sup>133</sup> Thus, the USA PATRIOT Act could effectively deter diamond insiders who want to trade with the United States from dealing in conflict diamonds.<sup>134</sup> The PATRIOT Act places the burden of compliance on dealers to transact only with vendors and customers who are also in compliance.<sup>135</sup>

Although the PATRIOT Act remains untested as tool in combating the trade in conflict diamonds, relying on this legislation is an ill-advised solution. First, civil liberties groups have strongly criticized the PATRIOT Act as undermining rights to free speech and free association by allowing the government unprecedented capability to place surveillance on its citizens.<sup>136</sup> Second, because the PATRIOT ACT is focused on the prevention of terrorism, it may not provide adequate attention to diamonds coming from areas that are funding human rights abuses rather than terrorism.

Rather than relying on legislation not specifically designed to combat conflict diamonds, the United States should take a more concrete approach to combating the conflict diamond cartel. By distancing itself from the Kimberley Process and enacting legislation with greater efficacy, the United States could put an end to conflict diamonds. The United States must enact legislation that provides effective oversight over the cartel and sanctions against countries that produce and trade in

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131. The USA PATRIOT Act is an acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism," Pub. L. No. 107-56 (2001) [hereinafter USA Patriot Act].

132. *Id.*

133. *Id.* § 302(b)(1).

134. See Maggi, *supra* note 27, at 544.

135. Merle Almeida, *India Seminar: Compliance, Compulsions and Consequences*, Rapaport@Diamonds.Net, Jan. 29 2004, <http://www.diamonds.net/news/newsitem.asp?num=9146&type=all&topic=all&searchfor=&author=almeida>.

136. Press Release, American Civil Liberties Union, Patriot Act Fears are Stifling Free Speech, ACLU Says in Challenge to Law (Nov. 3, 2003), available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13255&c=207>; see also Dan Eggen, *Patriot Act Faces New Challenge In Court: Group Says Law Limits Free Speech*, WASH. POST, Aug. 6, 2003, at A08; see also Eric Lichtblau, *Citing Free Speech, Judge Voids Part of Antiterror Act*, WASH. POST, Jan. 27, 2004, at A16.

conflict diamonds. By drafting legislation similar to the Iran and Libya Sanctions Act of 1996 (ILSA), the United States could effectively halt the conflict diamond cartel by providing incentives not only for countries to improve their internal controls but also by providing incentives for the diamond industry to regulate itself more effectively.

The ILSA authorizes the President to penalize foreign companies, foreign individuals and, under certain conditions, foreign nations that invest in or trade with Iran or Libya, nations that the United States purports to be developing weapons of mass destruction and to sponsor terrorism.<sup>137</sup> The ILSA mandates the President impose two or more sanctions, out of a list of six, on any entity that enters into certain types of transactions with either nation.<sup>138</sup> For example, sanctions can be imposed on a “sanctioned person” who invests in or aids Libya’s or Iran’s petroleum resources, aviation capabilities, or in either nation’s ability to acquire weapons of mass destruction.<sup>139</sup>

The ILSA imposes the following sanctions: 1) the denial by the Export-Import Bank to issue any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person; 2) refusal to grant export licenses; 3) the prohibition on all U.S. financial institutions from making loans or providing credit to any sanctioned person; 4) the prohibition of financial institutions from being agents of the U.S. government; 5) the refusal to enter into procurement contracts with sanctioned parties; and 6) the restriction of imports from offending parties.<sup>140</sup>

Unlike other trade sanctions, the ILSA constitutes not only a boycott against the offending nation but also a “secondary boycott.”<sup>141</sup> The ILSA imposes sanctions on nations that fail to abide by the boycott as well as corporations and other foreign persons that trade with Iran or Libya.<sup>142</sup> In short, the ILSA puts the entire trading community on notice, rather than just one or two foreign governments.

Notably, the ILSA *requires* the President to impose sanctions for a period of no less than two years.<sup>143</sup> However, if the President determines and certifies

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137. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104–172, 110 Stat. 1541 (codified at 50 U.S.C. § 1701 (2000)) [hereinafter ILSA]; see also Meghan McCurdy, *Unilateral Sanctions with a Twist: The Iran and Libya Sanctions Act of 1996*, 13 AM. U. INT’L L. REV. 397, 398 (1997); Michael A. Asaro, Comment, *The Iran and Libya Sanctions Act of 1996: A Thorn in the Side of the World Trading System*, 23 BROOK. J. INT’L L. 505, 506–09 (1997).

138. See ILSA, *supra* note 137, § 5(a)–(b).

139. See *id.* § 5(b)(1)(A)–(C).

140. *Id.* § 6(1)–(6).

141. Asaro, *supra* note 137, at 507–08.

142. *Id.*

143. ILSA, *supra* note 137, § 9(b)(1).

to Congress that the sanctioned person is no longer engaging in prohibited activities, then the President may remove the sanctions after one year.<sup>144</sup> In either case, sanctions against foreign corporations and/or nations found to be in violation of the ILSA are mandatory rather than discretionary.

Like the ILSA, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Helms-Burton Act)<sup>145</sup> imposed various sanctions against foreign nationals and corporations that engaged in specific types of trade with Cuba.<sup>146</sup> The Helms-Burton Act's principal purpose is, "to deter nationals of third countries from doing business with and investing in Cuba,"<sup>147</sup> with the goal of encouraging Cuba to install a democratically elected government.<sup>148</sup> The Helms-Burton Act authorizes Congress to deny aid to any country that provides assistance to Cuba in numerous forms, including debt forgiveness.<sup>149</sup>

Applying these types of secondary boycotts to foreign nations and corporations will provide the needed legislative bite to stop the trade in conflict diamonds and thus curb human rights abuses and money laundering by terrorist groups. A piece of legislation similar to the ILSA or Helms-Burton Act should combine elements of both the CDTA and the PATRIOT Act into a single law that targets both nations and corporations not in compliance with the intent of the Kimberley Act.

Andreas Lowenfeld describes a secondary boycott as used in the ILSA and Helms-Burton Act:

State *A* says that if *X*, a national of state *C*, trades with state *B*, *X* may not trade with or invest in *A*. In other words, *X* is required to make a choice between doing business with or in *A*, the boycotting state, and doing business with or in *B*, the target state, although under the law of *C* where *X* is established, trade with both *A* and *C* is permitted.<sup>150</sup>

Applied to the trade in conflict diamonds, Congress could enact legislation barring a foreign corporation or state that trades with a country

144. *Id.* § 9(b)(2).

145. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021–91 (2004) [hereinafter Libertad Act].

146. *See generally id.* §§ 6082–6091.

147. Andreas F. Lowenfeld, *Agora: The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act: Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419, 426 (1996).

148. Libertad Act, *supra* note 145, § 6022.

149. *Id.* § 6032.

150. Lowenfeld, *supra* note 147, at n.56 (stating that a "tertiary boycott occurs if state *A*, the boycotting state, blacklists not only *X*, which traded with state *B*, but also *Y*, which traded with *X*.").

that produces or trades in conflict diamonds from trading or investing in the United States. Such a secondary boycott would provide a significant incentive for corporations and foreign nations to impose internal controls to ensure that diamonds flowing in and out of their countries have been certified as conflict-free. Whereas the Kimberley Process leaves internal controls to the states themselves with little to no oversight,<sup>151</sup> this type of legislation would impose penalties sure to result in increased monitoring and oversight.

Using the ILSA and Helms-Burton Act as guidelines for new conflict diamond legislation would counter the CDTA's permissiveness. Currently, under the CDTA, sanctions include fines between \$10,000 and \$50,000 for individuals and corporations who violate the CDTA and possible imprisonment for ten years.<sup>152</sup> However, under the ILSA, countries and corporations can lose the ability to trade with the United States on any level.<sup>153</sup> The imposition of fines established by the CDTA would not deter a nation or a company like DeBeers<sup>154</sup> that earns billions of dollars selling to diamond merchants in the United States. However, a complete denial of assistance and the loss of the ability to trade with the United States would place appropriate pressure on entities dealing in conflict diamonds. The United States is the world's largest diamond consumer,<sup>155</sup> and entities dealing in diamonds cannot afford to lose access to the U.S. market for any period of time due to trade sanctions.

Similar to the ILSA, new legislation should place the responsibility for implementation, including providing reports concerning foreign states' compliance, on the Secretary of State.<sup>156</sup> The Department of State would

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151. Kaplan, *supra* note 11, at 591.

152. CDTA, *supra* note 80, § 3907.

153. See ILSA, *supra* note 137, § 6(1)–(6).

154. DeBeers is the most dominant corporation in the international diamond trade. DeBeers mines approximately 50% of the world diamond production and controls an estimated 70% of the world's diamond sales. In 2000, DeBeers sold a record \$5.7 billion worth of diamonds and its profits surpassed \$1.2 billion. See GLOBAL WITNESS, CONFLICT DIAMONDS, *supra* note 5, at 3–6; see also CAMPBELL, *supra* note 6, at 137.

155. GLOBAL WITNESS, CONFLICT DIAMONDS, *supra* note 5, at 5 (stating that “[i]n 1998, 33 million pieces of diamond jewelry were sold in the United States, with an average price of \$655 per item, worth \$22 billion”).

156. See Memorandum on Delegation of Responsibilities Under the Iran and Libya Sanctions Act of 1996, 61 Fed. Reg. 64,249 (Nov. 21, 1996). The Memorandum states:

I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Iran and Libya Sanctions Act of 1996 (Public Law 104–72) (“the Act”), such functions to be exercised in consultation with the Departments of the Treasury and Commerce and the United States Trade Representative, and with the Export-Import Bank and Federal Reserve Board and other interested agencies as appropriate: sections 4(c), 5(a), 5(b), 5(c), 5(f), 6(1), 6(2), and 9(c). I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Act: sections 4(a), 4(b), 4(d), 4(e), 5(d), 5(e), 9(a), 9(b), and 10.

be responsible for securing the removal of assistance by foreign countries to those dealing in conflict diamonds.<sup>157</sup> The legislation should authorize the Secretary of State to deny export-import bank assistance or import licenses, or to impose other sanctions on foreign corporations and nations that do not comply with the legislation.<sup>158</sup> Notably, such legislation should also authorize the Secretary of State to engage in multilateral negotiations with international partners to encourage compliance and to impose sanctions where appropriate.<sup>159</sup> Placing the responsibility for oversight on Department of State is appropriate, since it is the governmental entity most adept at studying and reacting to international conditions.

Legislation modeled after the ILSA or the Helms-Burton Act is likely to be controversial. Both acts have been criticized as violating U.S. obligations under the General Agreement on Tariffs and Trade (GATT)<sup>160</sup> and the World Trade Organization (WTO), due to their imposition of trade restrictions for national security reasons.<sup>161</sup> The GATT sets forth major principles of free trade such as: 1) trade based on non-discrimination; 2) the removal of government restraint on the movement of goods; and 3) discussion and agreement on terms and trade conditions among parties.<sup>162</sup> Therefore, it could be argued that a law designed to limit trade in order to curb human rights abuses and terrorism would violate international trade regulations.

Despite this concern, the United States passed both the ILSA and the Helms-Burton Act in order to promote national security and the spread

*Id.*

157. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), § 6. The Executive Order states:

[t]he Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

*Id.*

158. *Cf.* ILSA, *supra* note 137, § 6 (describing various sanctions that can take place under the ILSA).

159. *Cf.* ILSA, *supra* note 137, § 4 (permitting multilateral negotiations to take place).

160. The GATT was established at the end of World War II in order to regulate international economic relations and has been the "principal international multilateral treaty for trade." *See* Asaro, *supra* note 137, at 512.

161. Asaro, *supra* note 137, at 510; *see generally* McCurdy, *supra* note 137.

162. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194, Art. XXII.

of democracy. The passage of the CDTA was met with similar trade concerns,<sup>163</sup> but Congress was not deterred from enacting the legislation. Therefore, the passage of such aggressive legislation would not be without precedent.

Moreover, a newly formulated statute (although potentially unpopular internationally) would actually protect the legitimate diamond industry to a greater extent than a full-blown boycott on diamonds. Countries with legitimate diamond industries like South Africa and Botswana have a huge financial stake in the diamond trade and a boycott on the gems would cause serious harm to their economies.<sup>164</sup> A newly formulated law would protect these economies by imposing sanctions solely on those nations and corporations that deal in conflict diamonds and the legitimate trade in diamonds would continue unabated.

## VII. CONCLUSION

The river of diamonds illicitly flowing out of Africa has created uninvited channels of smuggling, violence, displacement and bloodshed. By damming this source of wealth, both at its source and in midstream, nations can achieve security for themselves and peace for others.

Due to the nature of the conflict diamond trade, a multilateral approach must be applied in order to restrain the movement of the gems out of war zones. Compliance must be achieved by both foreign nations and corporations in order for any real change to take place. As the champion of democracy and the largest consumer of diamonds, the United States must take the lead in combating the trade in illicit diamonds.

By choking off this pipeline with effective legislation, the United States will accomplish two objectives. First, the United States will halt the funneling of money to terrorist organizations and thereby restrict their mobility and activities. Second, the United States will remove a major incentive for conflict in Africa, preventing waves of refugees and bloodshed. Adopting the ILSA and Helms-Burns Act as models, the United States will provide adequate incentives for all parties involved with the trade not to deal in diamonds originating from conflict areas in Africa. The threat of closing the American marketplace would provide sufficient deterrence to create real change in the trade of African conflict diamonds. Strong and uncompromising legislation from the United States would halt both the current trade in conflict diamonds and prevent channels from opening in the future.

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163. See generally Feldman, *supra* note 78.

164. CAMPBELL, *supra* note 6, at 128.