

September 2003

The Currency of Terrorism: An Alternative Way to Combat Terrorism and End the Trade of Conflict Diamonds

Michael Maggi

Follow this and additional works at: <https://digitalcommons.pace.edu/pilr>

Recommended Citation

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 (2003)

DOI: <https://doi.org/10.58948/2331-3536.1186>

Available at: <https://digitalcommons.pace.edu/pilr/vol15/iss2/7>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace International Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

THE CURRENCY OF TERRORISM: AN ALTERNATIVE WAY TO COMBAT TERRORISM AND END THE TRADE OF CONFLICT DIAMONDS

Michael Maggi*

I. Introduction	514
II. Background of Conflict Diamonds	515
a. What are Conflict Diamonds?.....	515
b. The Structure of the World Diamond Market ..	516
i. Selling through the Central Selling Organization (“CSO”)	517
ii. Selling outside of the CSO	520
c. Political and Historical Landscape of Angola ..	521
i. Angola in the Twentieth Century	522
ii. The Role of Diamonds in the Angolan Civil War	525
III. The Global Response to the Conflict Diamond Trade.....	527
a. The U.N. Response	527
i. U.N. Sanctions Against Angola	527
ii. The Kimberley Process.....	530
b. The World Diamond Council’s Response	533
i. Export Controls	533
ii. Import Controls	534
c. The United States’ Response	535
IV. Prosecution under the USA Patriot Act.....	539
V. Conclusion.....	545

* 2004 J.D. Candidate, Pace University School of Law; B.A. in Political Science from the College of the Holy Cross. I would like to thank my Research and Writing Editor, Allison Clifford for all of her comments which helped guide me throughout the writing process. I would also like to thank my editors, Meredith Denecke and Christina Kelly as well as the Associate Candidates for their efforts in bringing this comment to publication.

"'Diamonds are forever' it is often said. But lives are not. We must spare people the ordeal of war, mutilations and death for the sake of conflict diamonds."

—Martin Chungong Ayafor, Chairman of the Sierra Leone Panel of Experts.

I. INTRODUCTION

As the world reacts to and combats terrorism, the notion that the United Nations ("U.N."), United States, and other leading countries of the world should divert resources from the war against terrorism to combat the illicit diamond trade may seem misdirected. However, it has been documented that such terror groups as Al Qaida, Hamas, and Hezbollah are actively involved in, and profit from, the illicit diamond trade.¹ Diamonds provide a fungible commodity that are in demand, extremely liquid, and poorly regulated,² despite the best efforts of the U.N.³ Moving resources or capital away from the war front and investing some of those resources into combating the illegal diamond trade would not only combat terrorism but also help eradicate the human rights atrocities associated with this trade.⁴ This

¹ See Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) (stating that evidence shows that Al-Qaeda international terrorist network and other related groups profit from the conflict diamond trade); see also *Conflict Diamonds: Hearing before the subcomm. on trade of the Comm. on Ways and Means*, 107th Cong. 9 (2001) [hereinafter *Hearings*] (statement of Hon. Mike Dewine, U.S. Senator from Ohio); Holly Burkhalter, *Blood on the Diamonds*, THE WASH. POST, Nov. 6, 2001, at A23; Douglas Farah, *Digging up Congo's Dirty Gems; Officials Say Diamond Trade Funds Radical Islamic Groups*, THE WASH. POST, Dec. 30, 2001, at A1 (stating that radical Islamic organizations, including Osama bin Laden's Al Qaida network deal in diamonds).

² See *Hearings*, *supra* note 1, at 46 (statement by Rory E. Anderson, Government Relations Manager, and Africa Policy Specialist, World Vision United States).

³ For Angola, see U.N. SCOR, 53rd Sess., 3891st mtg. U.N. Doc. S/RES/1173 (1998). ; SC Res. 1176 (June 24, 1998). For Sierra Leone, see SC Res. 1306 (July 5, 2000), SC Res. 1343 (Mar. 7, 2001).

⁴ See Michael Dynes, *West Side Boys are Jungle Brigands*, TIMES (LONDON), Aug. 28, 2000, at 4 (stating that that teenage boys are given cocaine and alcohol to make killing easier); see also Douglas Farah, *Children Forced to kill; Sierra Leone's Ex Fighters Try to Recover Stolen Youth*, THE WASH. POST, Apr. 8, 2000, at A1 (reporting that older rebel fighters cut children's faces and then put cocaine and gunpowder into those cuts to give them courage); Janine di Giovanni, *Girl's Seven Years as Slave of Rebel Forces*, TIMES (LONDON), May 13, 2000, at 4 (describing an 11 year old girl's 7 year ordeal as a forced combatant and sexual slave); Sam Kiley, *In the Heart of Darkness*, TIMES (LONDON), May 10, 2000, at 6-7 (reporting that

comment examines the illicit diamond trade, using Angola as a case study⁵ and suggests that if the controls and regulations already in place lack effective enforcement measures, the United States can prosecute those associated with the illegal diamond trade under the USA Patriot Act.⁶ Part II of this comment defines what “conflict diamonds” are, and describes the structuring of the world diamond market. An analysis of how the conflict diamond crisis affects the citizens of Angola and, in turn, the world diamond industry, will demonstrate the need for stricter controls and regulation. Part III discusses the global response to the conflict diamond trade. By examining and analyzing the various resolutions passed by the U.N., including the adoption of the Kimberley Process, as well as legislation enacted by the World Diamond Council and Congress’s proposed Clean Diamond Trade Act,⁷ it is clear that stricter and more effective controls are needed. Finally, Part IV suggests that the USA Patriot Act provides a legal basis in which the United States can take the lead in eradicating the conflict diamond trade as well as combating terrorism.

II. BACKGROUND OF CONFLICT DIAMONDS

A. *What are Conflict Diamonds?*

Conflict diamonds are “diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund mili-

rebels would ask their victims if they wanted “long sleeve or short sleeve” before cutting off their arms); Barbara Crossette, *In West Africa, a Grisly Extension of Rebel Terror*, N.Y. TIMES, July 30, 1998, at A1 (stating that rebels would amputate civilian hands so that they could not vote); see generally Steve Coll, *The Other War: The Grauitous Cruelties Against Civilians in Sierra Leone last Year Rivalled Those Committed in Kosovo at the Same Time*, WASH. POST. MAG., Jan 9, 200 at W9.

⁵ Please note that although the trade of Angolan conflict diamonds has decreased dramatically in recent years, Angola provides a favorable lens that illustrates what other third world countries that are rich in diamond resources have had to deal with. The Angolan example also illustrates the international reaction to the illegal diamond trade. By way of example, Sierra Leone, Liberia and the Republic of Congo are also countries that share many of the same problems as those facing Angola.

⁶ See *Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272 (2001) [hereinafter USA Patriot Act].

⁷ See *Clean Diamond Trade Act of 2001*, S. 2027, 107th Cong. (2002) [hereinafter CDTA].

tary action in opposition to those governments, or in contravention of the decision of the [U.N.] Security Council.”⁸ Once mined, these diamonds are sold as rough uncut diamonds on the black market and “provide the funding for rebel movements to purchase illicit arms, to support rebel armies, and to prolong civil wars that have terrorized societies and destroyed communities.”⁹

Commentators believe the conflict diamond trade accounts for roughly four percent of the world diamond trade¹⁰ and has been valued at over ten billion dollars during the last decade.¹¹ Once sold, cut, and polished these conflict diamonds become virtually untraceable,¹² eventually reaching a customer who unknowingly has aided the funding and promotion of civil unrest or terrorism. The events of September 11, 2001 and other terrorist acts that have occurred since then, illustrate the need for effective regulation and prosecution in all aspects in the war on terror. This includes the trade of conflict diamonds.

B. *The Structure of the World Diamond Market*

Today the total world production of diamonds is a multi-billion dollar industry.¹³ As of 1999, “\$3.8 billion [of diamonds

⁸ *Conflict Diamonds, Sanctions and War*, at <http://www.un.org/peace/africa/Diamond.html> (last visited Oct. 8, 2002) [hereinafter *Conflict Diamonds*].

⁹ Hearings, *supra* note 1 at 23 (statement of Alan Eastham, Special Negotiator for Conflict Diamonds, U.S. Dept. of State); *see also* *Conflict Diamonds*, *supra* note 6; Lucinda Saunders, Note: *Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds*, 24 *FORDHAM INT'L L.J.* 1402, 1411 (2001).

¹⁰ *See* Hearings, *supra* note 1 at 25 (statement of Alan Eastham, Special Negotiator for Conflict Diamonds, U.S. Dept. of State); *see also* Kelly Kleiman, *Price is Too High for Some Gems, Groups Say*, *CHI. TRIB.*, Feb. 7, 2001, at S1 (stating that De Beers estimates conflict diamond trade as four percent of total diamond trade); Kate Dunn, *Tainted Gems Lose Sparkle as Prices Fall*, *CHRISTIAN SCI. MONITOR*, Oct. 27, 2001 at 1 (claiming that conflict diamonds represent roughly four to fifteen percent of the world diamond trade).

¹¹ *See* Hearings, *supra* note 1 at 10 (statement of Hon. Mike De Wine, U.S. Senator from Ohio).

¹² *See* *Conflict Diamonds*, *supra* note 6; *see also* Hearings, *supra* note 1, at 29 (statement of James Mendenhall, Deputy General Counsel, Office of the United States Trade Representative).

¹³ *See* GLOBAL WITNESS LTD., *CONFLICT DIAMONDS: POSSIBILITIES FOR THE IDENTIFICATION, CERTIFICATION AND CONTROL OF DIAMONDS 2* (2000) [hereinafter *Global Witness Report*]; *see also* GEMOLOGICAL INSTITUTE OF AMERICA Chapter 11 (1994) [hereinafter *G.I.A.*].

came] from countries that were well regulated, namely, South Africa, Namibia, Botswana, Canada, and Australia"¹⁴ while roughly \$3.2 billion have come from countries, mostly in sub-Saharan Africa, where diamond controls regarding extraction and exporting were loosely regulated.¹⁵ It is in these latter countries, where there is a lack of governmental controls in the diamond extraction and export process that the black market for conflict diamonds has flourished.¹⁶ A basic understanding of the structure of the world diamond market and identification of the parties involved will make the need for stricter controls at the point of extraction and export self-evident. Implementing stricter controls will ensure that the citizens of these developing nations will benefit, instead of suffer, from their countries' vast natural resources.

1. *Selling through the Central Selling Organization ("CSO")*

The majority of the world's diamonds are mined by only a handful of companies, the most prominent and historic being DeBeers.¹⁷ DeBeers mines approximately 50% of world production either through its subsidiaries or via joint partnership with a host government in return for financial or technological considerations.¹⁸ The structure of the world diamond market, be-

¹⁴ See Global Witness Report, *supra* note 11, at 3.

¹⁵ See *id.*; see also Hearings, *supra* note 1, at 25 (statement of Alan Eastham, Special Negotiator for Conflict Diamonds, U.S. Dept. of State).

¹⁶ See Hearings, *supra* note 1, at 15 (statement of Hon. Tony P. Hall, Representative from Ohio) (stating that even with U.N. sanctions imposed against Sierra Leon and Angola, UNITA still earns \$100 million each year from selling diamonds); see also G.I.A. *supra* note 8, ch. 11; see generally Global Witness Report, *supra* note 8.

¹⁷ In 1860 the DeBeers brothers bought a farm in South Africa's northern cape province for just 50 pounds, it later became the site of the now famous Kimberley Mine. In 1888, DeBeers Consolidated Mines Limited was established, at the Kimberley Mine, thus beginning the modern diamond industry. Since the establishment of the DeBeers Consolidated Mines Limited, DeBeers has established a conglomerate including Debswana, a joint venture with the country of Botswana which became the countries leading private employer, as well as the Central Selling Organization, and just recently has partnered with LVMH, the luxury goods maker, to open DeBeers stores worldwide. See DeBeers: A History of Diamonds at <http://www.debeers.com/html/index.html> (last visited Jan. 15, 2003).

¹⁸ See Global Witness Report, *supra* note 11, at 3; see also G.I.A., *supra* note 11, ch. 12 at 4. DeBeers through the Central Selling Organization enters formal partnerships with developing countries which lack mining expertise and other technologies and provides financing in return for long term contracts. *Id.* Exam-

cause of its relatively few major players, is unlike anything else in the business world.¹⁹ It seeks to bring together all mined diamonds to a few central locations, namely London and Antwerp, in order to ensure stability of diamond prices.²⁰ Moreover, its business structure has been described as a "cartel," an "incomplete collective monopoly" and a "producer's cooperative."²¹ The world diamond trade can be best understood by visualizing the market as a pipeline.²² Specifically, major diamond producing companies and countries that are properly licensed and regulated sell most of their product to the Central Selling Organization ("CSO").²³ For all intents and purposes the CSO is operated by DeBeers,²⁴ and is believed to buy and market roughly 80% of the world's output of rough diamonds.²⁵ After purchasing the rough stones, the CSO then sorts and grades each stone.²⁶ Once the rough stones have been graded, they are put up for sale at one of ten annual sales. Each sale is commonly referred to as a "sight."²⁷ However, prior to each

ples include the 50-50 partnership between DeBeers with Botswana forming Debswana and Agreement with Angola where it will sell 70-80 percent of its production through the Central Selling Organization in exchange for \$50 million and technical assistance.

¹⁹ See G.I.A., *supra* note 11, ch. 12, at 2. Although there are other mining companies, DeBeers because of its immense wealth, influence and role in the CSO generally allows it to control the sale of the rough diamond market. *See id.* at 5-7.

²⁰ *See id.* ch.12 at 1. Before the CSO, the diamond trade was operated by a group known as the 'Syndicate' which consisted of 10 companies and was the brainchild of Cecil Rhodes, the first chairman of DeBeers. *See G.I.A., supra* note 11, ch. 11, at 14. Mr. Rhodes and the others realized that only by concentrating production through one company could the diamond price and profits remain stable. *See id.* at 11.

²¹ *Id.* ch. 12 at 2.

²² *See id.* ch. 12 at 3 (illustration).

²³ *See id.* ch. 12 at 2-4.

²⁴ *See G.I.A., supra* note 11, ch.12 at 2-4. The CSO is primarily operated by the Diamond Corporation (DiCorp) and the Diamond Trading Company ('DTC'). *See id.* The Diamond Corporation is controlled by one of DeBeers subsidiaries, CDM, and acts as the purchasing arm of the organization and buys over 14 tons of rough diamonds – approximately 650 million stones- each year accounting for roughly 80 percent of the world diamond production. *See id.* *See also* GLOBAL WITNESS LTD., IS THE PRICE OF DIAMONDS TOO HIGH? HOW ANGOLA'S RETURN TO WAR HAS BEEN FUNDED BY THE INTERNATIONAL DIAMOND TRADE (Dec.14, 1998).

²⁵ *See G.I.A. supra* note 11, ch. 12, at 10.

²⁶ *See G.I.A., supra* note 11, ch. 12, at 7. Each stone is graded into over 5,000 different industry known categories. *See id.*

²⁷ *See id.* ch. 12, at 7.

sale, each invited buyer, known as a sightholder,²⁸ consults with an individual broker²⁹ who acts as an intermediary relaying information between the CSO and the sightholder about the particular quantity and quality of diamond sought.³⁰ The CSO then picks out an allotment of diamonds attempting to match each individual sightholder's request with the diamonds on hand and offers them for sale at the sight.³¹ Generally, the sightholder purchases the entire lot even if specifications do not match exactly.³² After the sale, sightholders generally send their stones to Antwerp, a major cutting and trading center,³³ where it is estimated that 80% of rough diamonds and more than 50% of the polished diamonds pass through before diamonds are then again sold to other manufacturers.³⁴ Once the diamonds are sold and cut in Antwerp, these manufacturers then transport their diamonds to the other diamonds centers around the world, namely Tel Aviv, Bombay, New York, Amsterdam, and Johannesburg for technical cutting and eventual sale.³⁵

In theory, the CSO model works well, in that it seems centralized and claims to only conduct business with legally licensed countries and companies. However, a closer examination reveals otherwise. In order to gain more of the market share and thus preserve and promote market stability and price, the CSO purchases rough diamonds from intermedi-

²⁸ See *id.* Today there are roughly 160 sightholders worldwide. Sightholders are generally companies that serve certain markets, meet certain qualifications regarding financial strength, attitude, and other CSO qualifications. Membership is extremely prestigious and new members must demonstrate that they would not crowd the already established field and would serve a new underdeveloped market. See *id.*

²⁹ See G.I.A., *supra* note 11, ch. 12, at 8-9. There are roughly five independent brokerage firms in the world and act to keep the sightholders and informed of CSO policies and pass along sightholder requests. See *id.* at 8.

³⁰ See *id.* at ch. 12, at 9.

³¹ See *id.*

³² See *id.* However, in 1978 all 56 Indian sightholders refused their allotment. *Id.*

³³ See G.I.A., *supra* note 11, ch. 12, at 10-11. Sightholders must pay for their diamonds within 7 days and must pay in cash. See *id.* at ch. 12, at 9.

³⁴ See Global Witness Report, *supra* note 11, at 3; see also Hearings, *supra* note 1 at 5 (statement of Hon. Philip M. Crane, Representative from Illinois) (stating that 85% of the world's rough diamonds pass through Antwerp, and the CSO offices in London); G.I.A., *supra* note 11, ch. 12 at 10-11.

³⁵ See G.I.A., *supra* note 11, ch. 12, at 10-11.

ate dealers and individual exporters, who may be licensed, but will not expect their own sellers to be licensed or follow all applicable laws.³⁶ The CSO also has set up buying offices in the "jungle towns" of Africa, where it pays CSO prices, in order to maintain its overall market presence and to ensure price stability.³⁷ The CSO reasoning for setting up local offices in "jungle towns" is twofold. First, the CSO claims that because mining in these areas of Africa is largely alluvial and done by individual diggers, it makes it difficult to buy on a contractual basis.³⁸ Secondly, setting up these local offices ensures that less developed countries, which could not otherwise provide security and transit of diamonds, get their diamonds to the CSO.³⁹ These offices outside the CSO headquarters ensure that the world diamond market remain stable.⁴⁰ However, there remains a percentage of the rough world diamond market share that does not contract with the CSO.⁴¹

2. *Selling outside of the CSO*

Roughly 20% of the world's rough diamonds come from outside the CSO from diamond centers located in Geneva, South America, the former Soviet Union, and South Africa.⁴² Although separate from the CSO "proper," most rough diamonds sold in these markets eventually end up at the CSO because these outside markets are either controlled by DeBeers though one of its subsidiaries⁴³ or are purchased by the CSO through a buying office located near these other markets.⁴⁴

This model of the world diamond market, although seemingly centralized through the CSO, illustrates that outside those direct sellers in London and Antwerp where regulations and guidelines may be strictly followed, there remains an area

³⁶ See G.I.A., *supra* note 11, ch 12, at 10.

³⁷ See *id.* ch. 12, at 5.

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See G.I.A. *supra* note 11, ch 12, at 10

⁴¹ *Id.*

⁴² See *id.* ch 12, at 10.

⁴³ See G.I.A., *supra* note 13, ch. 12 at 11. For example, "De Beers established a subsidiary, Centenary AG, in Geneva to handle its substantial non-South African interests. [The former Soviet Union,] has also signed a contract with Centenary AG." *Id.*

⁴⁴ See *id.* ch 12, at 10.

where the CSO guidelines are not enforced. In fact, in October of 1997, Gary Ralfe, DeBeers' CEO stated:

Unita . . . has over the recent few years been responsible for most of the production in Angola. One of the essential jobs that we DeBeers [sic] carry out worldwide is to ensure that diamonds coming onto the markets do not threaten the overall price structure . . . there is no doubt that we buy many of those diamonds that emanate from the Unita held areas of Angola.⁴⁵

This statement undoubtedly illustrates that maintaining overall price structure and profitability remains the driving force of the CSO, while the trade of conflict diamonds and the ramifications on those African nations where the diamond trade drives civil unrest and human rights atrocities remains a distant second.

C. *Political and Historical Landscape of Angola*

Although a new government has been appointed in Angola and the prospect of a lasting peace seems realistic,⁴⁶ the Angolan struggle typifies the problems the diamond industry faces when combating the conflict diamond trade. An overview of the Angolan struggle illustrates the central role conflict diamonds play in financing civil unrest, as well as the human rights associated with these insurgencies.⁴⁷

⁴⁵ Global Witness Report, *supra* note 8, at 8.

⁴⁶ See Angola Peace Monitor Published by ACTSA- Action for Southern Africa, Issue no 4. Vol. IX Jan. 8, 2003 available at <http://www.actsa.org/Angola/apm0904.htm> (last visited Jan. 16, 2003).

⁴⁷ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 165 (maintaining UNITA has ability to continue fighting through diamond sales); see also Christopher McDougall, *In Angola, Diamonds are a Struggling Smuggler's Best Friend*, L.A. TIMES, June 13, 1993 at A9 (stating that UNITA and other insurgent groups in Angola control the countries diamond mines); Bob Drogin, *Rebels, Soldiers and Freelancers Rush to Dig Up and Incomparable Treasure, Straining a Fragile Truce*, L.A. TIMES, Mar. 13, 1996 at A1 (reporting that revenue from the diamond trade provide weapons and food to UNITA's soldiers).

1. *Angola in the Twentieth Century*

Prior to gaining its independence in 1975, Angola was a colony of Portugal for most of the Twentieth Century.⁴⁸ Portugal considered Angola an essential part of the Portuguese nation⁴⁹ because it was Portugal's primary source of slaves during the eighteenth and nineteenth centuries.⁵⁰ In later years, Angola provided Portugal with coffee, diamonds, and oil.⁵¹ Although this created a lucrative relationship for Portugal, Angolans viewed colonial rule as a "rigid dictatorship and exploitation of African labor."⁵² As a result of these exploitations, a strong sense of nationalism formed within the population.⁵³

The nationalistic movement was led by three distinct parties, the Popular Movement for the Liberation of Angola ("MPLA"), the National Front of Liberation of Angola ("FNLA"), and the National Union for the Total Independence of Angola ("UNITA").⁵⁴ Each of these three groups drew from separate and distinct segments of the population.

The MPLA was founded in 1956 and drew its support from the cities and professed a strong Marxist ideology.⁵⁵ Whereas

⁴⁸ The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan. 19, 2003).

⁴⁹ *Id.* See also INGE TVEDTEN, *ANGOLA: STRUGGLE FOR PEACE AND RECONSTRUCTION*, 23-26 (1997) (examining Portuguese expansion in Angola and Portuguese Colonial Act of 1930); JOHN MARCUM, *THE ANGOLAN REVOLUTION VOLUME I: THE ANATOMY OF AN EXPLOSION (1950-1962)*, 4 (1969) (claiming that Portuguese controlled Angolan territory gained importance on the national agenda).

⁵⁰ See Saunder *supra* note 9; see also MARCUM, *supra* note 49, at 2 (Portugal exported 3,000,000 Angolans as slaves between 1580 and 1836); TVEDTEN, *supra* note 49, at 18 (noting Angola suffered heavier loss of population due to slave trade than any other African nation).

⁵¹ See The Africa Policy Information Center, *supra* note 48.

⁵² The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan. 19, 2003).

⁵³ See JAMES CIMENT, *ANGOLA AND MOZAMBIQUE, POSTCOLONIAL WARS IN SOUTHERN AFRICA*, 39 (1997) (explaining the origins of the nationalist movement in Angola); See *ANGOLA: A Country Study* 3, 159 (Thomas Collelo ed., 1989); see generally The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan. 19, 2003).

⁵⁴ See Saunder, *supra* note 9, at 39.

⁵⁵ See Ciment *supra* note 53, at 11; see also Tvedten, *supra* note 49, at 44; The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan.

the FNLA was composed of mostly Kikongo or Bakongo people who had significant ties to Zaire.⁵⁶ In contrast, UNITA, the most widely recognized and savage of the three movements, drew its support from the largest ethnic group of Angola, the Ovimbundu people who reside in the majority of the diamond producing areas of Angola.⁵⁷ UNITA was led by Jonas Savimbi whose personal political philosophy changed from Maoist to anti-communist in order to garner the attention of the United States during the Cold War.⁵⁸

Although unified in their struggle for independence, the alliance between MPLA, FNLA, and UNITA soon splintered.⁵⁹ Each of the three nationalistic groups had strongly differing ideologies of how Angola should be run and struggled for control of the capital, Luanda.⁶⁰ In 1975, prior to Portugal officially recognizing Angolan independence, the MPLA gained control of Luanda and became the recognized governing party of Angola.⁶¹ Once the MPLA gained control of Luanda, both UNITA and FNLA, each harboring differing views of how Angola should be

19, 2003); *An End to Angola's 27 years of War*, AFROL NEWS, Mar. 31, 2002, at <http://www.globalpolicy.org/security/sanction/angola/2002/0331peace.htm> (last visited Oct. 8, 2002).

⁵⁶ See Saunder, *supra* note 9; see also Ciment, *supra* note 53, at 12 (asserting that FNLA, whose leader had close ties with the Zairian dictator, drew its support from the Kikongo people, most of whom lived in Zaire); ANGOLA: A COUNTRY STUDY, *supra* note 53, at 27 (claiming that FNLA initially advocated for restoration of Bakongo kingdom, which overlapped with Zaire, but later adopted an Angolan nationalist agenda).

⁵⁷ See Ciment, *supra* note 53, at 12 (stating that Unita was established in central Angola in Ovimbundland because it was not represented in Angolan nationalist movements); see also Lucinda Saunder, Note: *Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds*, 24 FORDHAM INT'L L.J. 1402, 1418 (2001).

⁵⁸ See Ciment, *supra* note 53, at 12 (stating that Unita's agenda has been recognized as generally the expression of Savibi's personal opinions aimed at gaining support from other areas of the world); see also Saunder, *supra* note 58, at 1418.

⁵⁹ See The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan. 19, 2003) (stating that Angola gained its independence from Portugal on Nov. 11, 1975).

⁶⁰ See *id.*; see also Angola: A Country Study, *supra* note 53, at 159 (stating that there was an effort to form a coalition government at the time of independence but it failed and civil war began).

⁶¹ See Saunder, *supra* note 58, at 1419; see also Ciment, *supra* note 53, at 51.

run, recognized that they could not defeat the MPLA alone.⁶² UNITA and FNLA then joined forces and launched a full-scale civil war against the MPLA.⁶³ Besides being a battle of competing political ideologies, the Angolan civil war became a focal point of the Cold War. The United States, following the "containment policy" it espoused in the 1960's and followed throughout the Cold War, supported UNITA and its democratic ideology while the Soviet Union supported the Marxist-orientated MPLA.⁶⁴ However, with the fall of the Berlin Wall and the end of the Cold War, both Western and Eastern support in the Angolan civil war diminished. Eventually, the MPLA distanced itself from its Marxist ideologies and "any support to UNITA was seen as prolonging the unnecessary bloodshed of civilian Angolans."⁶⁵

With the end of the Cold War, Angola was left to its own demise. For Angola, the 1990's can best be characterized as a series of peaceful attempts followed by a return to bloodshed. "[I]n May 1991, after two years of talks, the Angolan government and UNITA signed a treaty providing for a cease-fire, troop demobilization and multi-party elections."⁶⁶ In the September 1992 elections, judged free and fair by UN observers, were held and the MPLA won control of the government.⁶⁷ Unfortunately, General Savimbi and UNITA rejected the election results and war resumed.⁶⁸ In yet another attempt to bring peace to Angola, the 1994 Lusaka Protocol was signed by UNITA and the MPLA, but once again failed three years later. Angola's most recent attempt at peace was signified with the

⁶² See Tvedten, *supra* note 49, at 37 (reporting that the FNLA and UNITA formed an alliance and declared a civil war).

⁶³ See Angola: A Country Study, *supra* note 53, at 40, 162 (stating that both the FNLA and UNITA joined together in an effort to establish a rival government against the MPLA); see also Saunder, *supra* note 58, at 1420.

⁶⁴ See *An End to Angola's 27 years of War*, AFROL NEWS, Mar. 31, 2002, at <http://www.globalpolicy.org/security/sanction/angola/2002/0331peace.htm> (last visited Oct. 8, 2002).

⁶⁵ *Id.*

⁶⁶ The Africa Policy Information Center (APIC), *Background Paper: Angola Paper 001*, Mar. 1995 at <http://www.hartford-hwp.com/archives/37/009.html> (last visited Jan. 19, 2003).

⁶⁷ *Id.* The MPLA won 54% of the vote in legislative race and its leader Jose' Eduardo dos Santos won the presidency receiving just less than 50% of the vote while UNITA leader Jonas Savimbi received only 40% of the vote.

⁶⁸ See Afrol News, *supra* note 55.

signing of the Luena Memorandum. The Luena Memorandum is believed to act as a supplement to the Lusaka Protocol and came about only after the February 2002 death of UNITA leader General Jonas Savimbi.⁶⁹ Since this time, Angola has enjoyed a peace that many believe will be lasting.

2. *The Role of Diamonds in the Angolan Civil War*

Throughout Angola's civil war, UNITA's ability to control the diamond mines financed and prolonged the war.⁷⁰ Specifically, UNITA was able to control the Cuango Valley, Angola's major diamond producing region.⁷¹ Through a complex system of relationships with diamond industrialists and mining companies, UNITA was able to mine and sell diamonds in exchange for weapons and hard currency.⁷² The following excerpt from the Fowler report illustrates this complex system:

UNITA sells diamonds to a smaller diamond trader, who buys African diamonds from a range of countries and who is in contact with UNITA's diamond traders. The trader is the agent of a larger diamond cutter and these diamonds are moved via tax havens from the first trader to the second. By the time they arrive at their destination their origin is thoroughly concealed.⁷³

⁶⁹ AFROL NEWS, *supra* note 64, Mr. Savimbi was killed in battle on February 22, 2002. The new UNITA leader General Paulo Lukamba has negotiated with the Angola government on behalf of UNITA and helped negotiate the most recent cease fire.

⁷⁰ See S/2000/1225 *supra* note 47.

⁷¹ *Id.* at para. . 150.

⁷² See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. s 145-218. UNITA, through its diamond arm the Ministry of National Resources (MIRNA), was able to play on the demand of the world diamond market to forge relationships with both European and African governments including Belgium, South Africa and Democratic Republic of Congo as well as with diamond companies and industrialists. In return for diamonds, or through the sale of diamonds UNITA was able to purchase weapons from east European countries.

⁷³ *Id.* at para. 177. See also S/2000/203 Mar. 10, 2000, Final Report on the U.N. Panel of Experts [hereinafter The Fowler Report]. Each report thoroughly outlines how UNITA violated U.N. sanctions through a series of relationships both in Africa and Europe where agencies seeking to end the violence and atrocities in Angola would act as a front for soliciting funds for the war effort. UNITA also forged relationships with Eastern European countries in order to obtain weapons as well as neighboring African countries, namely Liberia. Liberia would essentially act as an agent for UNITA and sell its diamonds to a third party in exchange for weapons and other supplies which it would pass along to UNITA.

U.N. monitoring reports thoroughly outline how UNITA was able to violate U.N. sanctions.⁷⁴ UNITA was able to maintain funding through various "relief agencies" in Africa and Europe.⁷⁵ These "relief agencies" would publicly solicit funds to end the violence in Angola, but would actually act as a front and solicit funds for the war effort.⁷⁶ UNITA also forged relationships with members of the diamond industry who would buy UNITA diamonds and deliver them to diamond cutting centers.⁷⁷ The major diamond cutting centers, because of a lack of uniformity and security in import/export certificates, would mark the diamonds as being suspicious, but would be unable to thoroughly identify where the diamond originated from.⁷⁸ Once they were allowed into the open market, UNITA's diamonds would be purchased with the resulting funds funneled back to Angola to finance UNITA's military movement and prolong the civil war in Angola.⁷⁹ Through this complex system of relation-

⁷⁴ The U.N. after learning of the human right atrocities associated with the conflict diamond trade passed sanctions, barring members of UNITA from selling diamonds on the open market as well as prohibiting their travel, pursuit of weapons, and oil. See The Fowler Report, *supra* note 73 and accompanying text.

⁷⁵ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 74-110. "The main actors outside Africa are found in France, Portugal, Italy, Belgium, Ireland and Switzerland. One important organization is . . . the 'Commission for Justice, Peace and Reconciliation in Angola' (CJPR) [which] has representatives in three of these countries, Italy, Portugal and Belgium." *Id.* at para. 79. This organization secretly lobbies for UNITA support within these countries and solicit funds for the war effort. *Id.* See also The Fowler Report, *supra* note 73.

⁷⁶ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 74-110. "The main actors outside Africa are found in France, Portugal, Italy, Belgium, Ireland and Switzerland. One important organization is . . . the 'Commission for Justice, Peace and Reconciliation in Angola' (CJPR) [which] has representatives in three of these countries, Italy, Portugal and Belgium." *Id.* at para. 79. This organization secretly lobbies for UNITA support within these countries and solicit funds for the war effort. *Id.* See also The Fowler Report, *supra* note 73.

⁷⁷ See The Fowler Report, *supra* note 73. "Illegal diamonds can be sold and traded on major diamond markets, particularly . . . Antwerp." *Id.* at para. 80. See generally S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions.

⁷⁸ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions. See also The Fowler Report, *supra* note 73.

⁷⁹ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions. See also The Fowler Report, *supra* note 73. "[G]enerally when cash is required by UNITA, the required quantity of diamonds are packaged and either sold for cash or exchanged for the required commodities. In a typical

ships UNITA was able to fund its civil war even with U.N. sanction in place. The trade of conflict diamonds raged.

III. THE GLOBAL RESPONSE TO THE CONFLICT DIAMOND TRADE

With an estimated 500,000 Angolans dead from civil unrest, and millions more displaced,⁸⁰ the international community could no longer ignore the gross human right atrocities taking place in Angola.⁸¹ The following provides a general overview of the global response to the conflict diamond trade. Specifically, the U.N.'s and the World Diamond Council's reaction, as well as the proposed Clean Diamond Act now in front of the United States Congress.⁸²

A. *The U.N. Response*

1. *U.N. Sanctions Against Angola*

As a result of the civil unrest and the human rights atrocities associated with the armed conflict in Angola, the U.N. imposed sanctions against UNITA and its leader Jonas Savimbi.⁸³ These sanctions prohibited the:

arms transaction, UNITA prepares parcels of diamonds (allegedly valued between US\$4 million and US\$5 million), and diamond experts provided by the arms broker and by UNITA agree on the value of each parcel based on number and quality of stones presented. UNITA specifically seeks out arms dealers willing to accept diamond as payment." *Id.* at para. 81.

⁸⁰ See *An End to Angola's 27 years of War*, AFROL NEWS, Mar. 31, 2002, at <http://www.globalpolicy.org/security/sanction/angola/2002/0331peace.htm> (last visited Oct. 8, 2002).

⁸¹ See also Human Rights Watch, *Stop the Use of Child Soldiers*, at <http://www.hrw.org/campaigns/crp/index.htm> (last visited Feb. 7, 2003). Child soldiers were used in Angola. It was not uncommon for rebel forces to abduct children and then force them into participating in beheadings, amputations, rape, and burning people alive. These child soldiers were often given drugs to overcome their fear or reluctance to fight. Girls were also used as soldiers in many parts of the world. In addition to combat duties, girls are subject to sexual abuse and may be taken as "wives" by rebel leaders in Angola. See *id.*

⁸² See generally 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 (2001); Ian Martinez, Note: *Sierra Leone's "Conflict Diamonds": The Legacy of Imperial Mining Laws and Policy*, 10 U. MIAMI INT'L & COMP. L. REV. 217 (2002).

⁸³ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 3. See also S/RES 864 (1993) (establishing an arms embargo and placed petroleum sanctions against UNITA); S.C. Res. 1127, U.N.

sale or delivery of arms and military equipment to UNITA; the provision of petroleum products to UNITA, *and the purchase of diamonds mined in areas controlled by UNITA*, require[d] the freezing of UNITA bank accounts and financial assets and mandate the closing of UNITA representation offices as well as restrictions on travel of senior UNITA officials and adult members of their immediate families.⁸⁴

Realizing the difficulty in monitoring the sanctions from abroad, the U.N. also implemented a Panel of Experts to monitor and report the effects of the sanctions from within Angola.⁸⁵ The sanctions, coupled with the monitoring system, had a positive effect of slowing the trade of conflict diamonds by UNITA; however, the sanctions were not enough.⁸⁶ The monitoring team realized that sanctions would only be successful if they were "taken seriously, [and suggested] the Security Council should consider applying sanctions against any Government found to be intentionally violating them."⁸⁷ Moreover, the monitoring mechanism realized that in order for these sanctions to

Doc. S/RES/1127 (1997) (establishing travel sanctions on senior UNITA officials and their immediate family members); S.C. Res. 1173, U.N. Doc. S/RES 1173 (1998) (requiring member states to prevent the direct or indirect import from Angola to their territories of all diamonds that are not controlled through the Certificate of Origin regime established by the Government of Angola).

⁸⁴ S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 3. (emphasis added).

⁸⁵ See *Id.* at para. 4. The Panel of Experts was mandated to establish how sanctions against UNITA were being violated, who was violating them and what could be done to make the sanctions more effective. The Panel used strict evidentiary standards in its investigations and allowed those parties who had helped UNITA by violating the sanctions reply. The Panel would then report back to both the Security Council and the General Assembly describing their findings and how to better implement the Sanction process. *Id.* See also SC Resolution 864 (1993) (outlining the general framework of the Panel Experts and how to work with the Security Council in reporting its findings).

⁸⁶ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. s 145-238. Here, the report illustrates that although sanctions were implemented against UNITA and did make it more difficult for UNITA to trade conflict diamonds, it was still able to maintain the trade. See also The Fowler Report, *supra* note 73.

⁸⁷ S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. . 224. Other recommendations included that a certification scheme as well as other standardized regulated practices be implemented for the trade of conflict diamonds in order to stop UNITA's ability to fund their armed conflict. See *id.* para. s 235-38. These suggestions were later incorporated in the Kimberley Process.

be truly effective there must be meaningful diamond controls both inside and outside of Angola.⁸⁸

Although the sanctions did decrease the volume of conflict diamonds reaching the market, it was not the single motivating factor.⁸⁹ Arguably, the Angolan trade of conflict diamonds significantly ended with the end of the armed conflict in Angola, which occurred as a result of the assassination of UNITA leader Jonas Savimbi.⁹⁰ After General Savimbi's death, UNITA and the Angolan Army signed the Luena Memorandum and agreed to "put an end to hostilities and restore peace throughout the Angolan territory."⁹¹ Since its signing, the Luena Memorandum has served as the foundation that the new Angolan government has used to help draft a constitution and legitimize its authority.⁹²

As witnessed by the Angolan example, U.N. sanctions only significantly decreased the trade of conflict diamonds within the country with the outbreak of peace. Although U.N. sanctions may have been a motivating factor in bringing about the peace, the U.N. panel of experts monitoring the sanctions stated enforcement would not be effective without cooperation amongst the international community coupled with a strong movement by many nongovernmental organizations such as Amnesty In-

⁸⁸ See The Fowler Report, *supra* note 73, para. s 94-98.

⁸⁹ See generally The Fowler Report, *supra* note 73. See also S/200/1225 Dec. 21, 2000.

⁹⁰ See *An End to Angola's 27 years of War*, AFROL NEWS, Mar. 31, 2002, at <http://www.globalpolicy.org/security/sanction/angola/2002/0331peace.htm> (last visited Oct. 8, 2002). General Savimbi was killed in battle on February 22, 2002. On March 13, 2002 the Angolan Army said it would halt all military operations against UNITA. *Id.*

⁹¹ *Id.* The Luena Memorandum was signed shortly thereafter and acted as a supplement to the previously failed Lusaka Protocol signed in 1994. The signing of the memorandum, coupled with the statements by all factions of UNITA gave General Paulo Lukamba, the new leader of UNITA, a mandate to negotiate with the Angolan government. See *id.*

⁹² See Angola Peace Monitor, Published by ACTSA- Action for Southern Africa. Issue no. 4, Vol. IX, January 8, 2003 available at <http://www.actsa.org/Angola/apm/apm0904.htm>. Generally outlining the new governmental and constitutional changes in the Angolan government as well as the return of millions of refugees to their home.

ternational and Global Witness.⁹³ The latter two helped lead to the development of the recently passed Kimberley Process.⁹⁴

2. *The Kimberley Process*

With the Security Resolutions having only a modicum of success, the U.N. set forth a new initiative that would attempt to end the trade of conflict diamonds by refocusing its energies. The U.N. set forth in a General Assembly Resolution⁹⁵ a "call on the international community to develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards."⁹⁶ This call for an international agreement and certification scheme, led to the "Kimberley Process," the principal international initiative established to respond to illegal conflict diamond trade.⁹⁷

The goals of the Kimberley Process are simply stated - end the trade of conflict diamonds- but difficult in application. Thus, the Kimberley Process' main thrust is to legitimize the governments that rely on the trade of diamonds by setting forth a regulated import and export system that will attempt to stabilize the trade of diamonds in these African countries.⁹⁸ By providing a stable government, it is believed that those who have been severely affected by the ongoing conflicts funded by the trade in rough diamonds will be eliminated.⁹⁹ The drafting and negotiation process was chaired by South Africa, and included about 35 participants involved in producing, process importing and exporting rough diamonds.¹⁰⁰ "These participants account

⁹³ See S/2000/1225 Dec. 21, 2000. Final Report of the Monitoring Mechanism on Angola Sanctions at para. 224. See also Campaign Chronology and NGO initiatives available at http://www.globalwitness.org/campaigns/diamonds/us_ngo_initiatives.html (last visited Feb. 7, 2003).

⁹⁴ See Campaign Chronology and NGO initiatives available at http://www.globalwitness.org/campaigns/diamonds/us_ngo_initiatives.html (last visited Feb. 7, 2003).

⁹⁵ See U.N. General Assembly Resolution 55/56, Dec. 1 (2000).

⁹⁶ U.N. General Assembly Resolution 56/263 (Feb. 6, 2002).

⁹⁷ See Frequently Asked Questions regarding the Kimberley Process at http://mmsd1.mms.nrcan.gc.ca/kimberleyprocess/qa_e.asp#10 (last visited Jan. 15, 2003).

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ See *id.*

for 98% of the global trade in and production of rough diamonds.”¹⁰¹

After two years of debate and negotiation, the Kimberley Process was passed on November 5, 2002 in Interlaken, Switzerland.¹⁰² The declaration, with U.N. approval, calls for “all those involved in the trade of rough diamonds” to implement the process without delay by January 1, 2003.¹⁰³ Signatories to the declaration included all of the world’s leading diamond mining countries, as well as the worlds largest importing and exporting countries.¹⁰⁴

The general framework of the Kimberley Process is as follows: 1) each participant of the agreement will require that each export or import of rough diamonds will be accompanied by a forgery-proof Kimberley Process Certificate; 2) every shipment of rough diamonds must come from a participant of the agreement, if the shipment comes from a country that is not a signatory of the Kimberley Process, that shipment is rejected; 3) each signatory must designate an importing and exporting authority; 4) each party must collect and maintain relevant production, import and export data; and 5) as required, amend and enact appropriate laws to implement enforcement of the certification scheme.¹⁰⁵ Additionally, signatories will meet and discuss on an annual basis in order to discuss the effectiveness of the Certification Scheme and implement new measures to make the

¹⁰¹ *Id.*

¹⁰² See Interlaken Declaration on the Kimberley Process, Nov. 5, 2002 available at <http://www.dfa.gov.za/docs/kby1811a.htm> (last visited Jan. 15, 2003) [hereinafter Interlaken Declaration]; see also Press Release, World Diamond Council, World Diamond Council Kimberley Process Implementation: Diamond Industry Acts to End Conflict (Nov. 5, 2002).

¹⁰³ See Interlaken Declaration, *supra* note 102.

¹⁰⁴ The signatories were Angola, Australia, Botswana, Brazil, Burkina Faso, Canada, Côte d’Ivoire, People’s Republic of China, Cyprus, Czech Republic, Democratic Republic of Congo, the European Community, Gabon, Ghana, Guinea, India, Israel, Japan, Republic of Korea, Lesotho, Malta, Mauritius, Mexico, Namibia, Norway, Philippines, Russian Federation, Sierra Leone, South Africa, Swaziland, Switzerland, Tanzania, Thailand, Ukraine, United Arab Emirates, United States of America and Zimbabwe. Countries intending to join by the end of 2003 include Cyprus, Czech Republic, Japan, Malta, Thailand and Ukraine. See Interlaken Declaration, *supra* note 102.

¹⁰⁵ See Kimberley Process Certification Scheme at <http://www.kimberleyprocess.com/BulletinDisplay.asp?Key=38> (last visited on Jan. 15, 2003) [hereinafter Kimberley Certification Scheme].

process more effective.¹⁰⁶ This scheme is thought to be the answer to stopping the trade of conflict diamonds, however the Kimberley Process goes further and discusses the need for strict control and security measures to be implemented at the point of origin - where the diamond is first mined.¹⁰⁷

Implementing a control scheme at the point of origin is vital to the success of the Kimberley Process. Point of origin recommendations include formally licensing all those in the diamond mining industry, including mines, and miners - both artisanal and informal.¹⁰⁸ It also suggests that all rough diamond buyers, sellers and exporters be licensed and keep extensive records for a period of five years, including a listing of the names of buying and selling clients and their licensing numbers.¹⁰⁹ However, because the Kimberley Process only "recommends" and "suggests" that signatories implement these procedures, it lacks the full force of law. As a result, the very countries (namely Angola, Sierra Leone, and Liberia) that the Kimberley Process is aimed at helping may in fact actually do nothing. These countries face a daily struggle to feed and cloth their citizens and may not be able to enact or enforce these procedures in an effective manner. Punishment for violating these procedures may be ineffective and difficult to enforce. Moreover, because of the relative poverty within the country, the officials in charge of licensing and enforcing may be subject to bribery and coercion. The absence of a mandatory licensing scheme may result in a portion of diamonds mined within these countries being siphoned off into the same hands as before: parties that fund or may fund and promote civil unrest and terrorism.

Ultimately, for the Kimberley Process to be effective, all signatories involved must require that licensing take place in those countries where diamonds are mined. However, this could possibly require an external U.N. sanctioned team to monitor and support these systems and to ensure effective and

¹⁰⁶ See *id.*

¹⁰⁷ See *Kimberley Process Working Document, July 2001. Essential Elements of an International Scheme of Certification for Rough Diamonds* at <http://www.gov.za/reports/2001/kimberley.htm> (last visited Oct. 23, 2002).

¹⁰⁸ See *Kimberley Certification Scheme, supra* note 105, Annex II, 9, 11.

¹⁰⁹ See *id.* at Annex II, 15.

adequate enforcement and punishment for violation of the Kimberley Process.

B. *The World Diamond Council's Response*

The diamond industry, through the World Diamond Council ("WDC"), seeks to comply with the U.N. and other governmental organizations to ensure that conflict diamonds are excluded from the legitimate diamond trade.¹¹⁰ Due to growing external pressures on the diamond trade, on October 17, 2000 the WDC developed a system for international rough diamond controls.¹¹¹ The WDC believes that conflict diamonds, generally traded as rough diamonds, cannot be identified through physical inspection.¹¹² Therefore, the inability to identify rough diamonds suggests that many conflict diamonds pass or are laundered through countries not generally associated with the conflict diamond trade.¹¹³ The WDC suggests that the best way to ensure that conflict diamonds do not reach the market is to set up a system of export and import verifications.¹¹⁴

Similar to the Kimberley Process, the WDC proposes that only those countries that implement strict rough diamond export and import controls should be allowed to market.¹¹⁵ In order for a country to be considered to have such controls, it would have to meet the export and import controls listed below.

1. *Export Controls*

Under the WDC's proposal, all rough diamonds must be packaged for export in a "sealed, transparent, and tamperproof security bag by a government official in the exporting country."¹¹⁶ The security bags would include a visible Certificate of Export Origin along with an Import Confirmation Certificate

¹¹⁰ See World Diamond Council Technical Committee, *A System for International Rough Diamond Export and Import Controls*, (Oct. 17, 2000), available at <http://www.worlddiamondcouncil.com/system.shtml> (on file with Author) [hereinafter WDC].

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ See *id.*

¹¹⁴ See *id.*

¹¹⁵ See WDC, *supra* note 110.

¹¹⁶ See *id.*

and a Security Slip.¹¹⁷ These documents would meet tamper and forgery resistant requirements as set forth by the U.N. and may also include watermarked security paper as well as contain a unique export registration number.¹¹⁸ Each individual security bag would also state the total weight and total export value of the bag.¹¹⁹ Prior to shipping, the shipments data would be recorded in a government controlled database.¹²⁰ If any of these requirements were not met prior to shipment or it had been determined that the shipment had been compromised en route, then that shipment would not be allowed into the country of import.¹²¹

2. *Import Controls*

All rough diamond imports would only be accepted if they arrived in sealed containers and met all export requirements.¹²² The country of import would be able to verify the exporting country's recordation process and enter the required information into its own country's national database.¹²³ The WDC believes that implementing a meticulous recordation process, allowing for rejection of shipments not meeting specifications ensures that diamonds reaching the market would be conflict free.¹²⁴

However, as this process will slow the amount of time it takes for rough diamonds to reach the major cutting and trading centers of the world, the WDC has provided for an exemption. The WDC has proposed to set up Conflict Free Trade Zones ("CFTZ").¹²⁵ In these zones, diamonds may be freely imported and exported between all diamond mining, manufacturing and trading centers that adhere to the rough diamond regulations concerning export and import.¹²⁶ The rationale behind these zones where there are strict import and export con-

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See *id.*

¹²⁰ See WDC, *supra* note 110.

¹²¹ See *id.*

¹²² See *id.*

¹²³ See *id.*

¹²⁴ See *id.*

¹²⁵ See WDC, *supra* note 110.

¹²⁶ See *id.*

trols already in place is that it would allow the diamond industry to operate in an economically efficient manner.¹²⁷ For example, a shipment of rough diamonds to England, which are to be sold at the CSO, would have to meet the requirements set forth by the WDC. However, once these diamonds are sold and then shipped to Antwerp, New York, or Israel, for further processing or selling, the WDC requirements would not apply because those countries already have strict import/export controls in place. It is the WDC's stated intent that their proposal will greatly reduce, if not eradicate, the trade of conflict diamonds worldwide.¹²⁸

Although the WDC proposal basically mirrors the certification scheme set forth in the Kimberley Process, it fails to recognize that many of the diamonds that are mined may be subject to local conflicts, bandits, and bribery. Without addressing the point of origin question, their certification scheme would fail. In many areas of Africa, diamonds are mined by individuals not associated with mining companies, or if associated, only loosely. These miners, because of economic hardship, may then sell their diamonds to the highest bidder or be forced to sell to a local bandit in return for safety. The result would be a loophole in the system where those who wish to continue to finance their illegal activities would be able to exploit the system. Therefore, the WDC, although a worthwhile effort which provides a certification scheme parallel to the Kimberley Process, fails to address the most basic of questions: how to regulate and ensure that freshly mined diamonds will immediately go to officially licensed diamond dealers?

C. *The United States' Response*

The United States' diamond market makes up over half of the world diamond market and correspondingly wields great influence on demand and market price of this global market.¹²⁹

¹²⁷ See *id.*

¹²⁸ See *id.*

¹²⁹ See Global Witness Report, *supra* note 13, at 3 (stating that in 1999 the wholesale market in the United States was 48% (\$6.24 billion) of the market, and accounted for 44% (\$24.6 billion) of retail jewelry sales market); see also Hearings, *supra* note 1, at 12 (statement of Hon. Tony P. Hall, Representative from Ohio) (stating that the United States buys 50% of all the diamonds in the world every year); Hearings, *supra* note 1, at 9 (testimony of Hon. Mike DeWine, U.S. Senator

Therefore, it is argued that the United States bears a proportionate amount of responsibility to ensure that the diamonds reaching the market do not promote civil unrest, human right violations, or terrorism.

The impetus for acting has never been greater as evidence indicates that Al Qaida and other terrorist organizations are using the conflict diamond trade for financing and money laundering.¹³⁰ After the bombing of the U.S. Embassies in 1998, and the resulting actions by the United States to freeze Al Qaida and Taliban bank accounts, Al Qaida recognized its financial vulnerabilities.¹³¹ In turn, Al Qaida saw the fungibility and liquidity the diamond trade would provide.¹³² Thus, by moving into the diamond trade Al Qaida's ability to finance operations would not be hindered.¹³³ A recent yearlong investigation by the F.B.I into Al Qaida financing indicates that three Al Qaida operatives: Aziz Nassour, a Lebanese diamond merchant; Samih Osailly, Mr. Nassour's cousin and fellow diamond merchant; and Ibrahim Bah, a Senegalese soldier of fortune, have trafficked diamonds in exchange for weapons for years.¹³⁴ This investigation coupled with bank records obtained by Belgian authorities stemming from the capture of Mr. Osailly illustrate that prior to September 11th, Mr. Osailly's diamond company enjoyed a sudden surge in business of over \$1 billion dollars.¹³⁵ Also seized during the arrest were phone records that showed numerous phone calls to Afghanistan, Pakistan, Iraq and Iran.¹³⁶ This evidence, coupled with studies conducted for determining the feasibility of the Clean Diamond Act indicate the conflict diamond trade "channel[s] billions of dollars into black market economies turn[ing] it into easy money for

from Ohio) (stating that the United States purchases a majority of the world's diamonds and therefore the U.S. has clout); G.I.A., *supra* note 13, at p. 18.

¹³⁰ See generally *supra* note 1 and accompanying text.

¹³¹ See Douglas Farah, *African Nations Hosted Terror Chiefs*, THE HOUSTON CHRON., Dec. 29, 2002, at A29. Freezing the assets of both Al Qaida and the Taliban after the 1998 bombings resulted in over \$240 million being seized.

¹³² See *id.*

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ See *id.*

terrorists . . . whose cells are involved in a range of money making activities that include diamond trading.”¹³⁷

U.N. sanctions currently in place “are imperfect solution[s] because they do nothing to help block the smuggling of diamonds through other channels . . . UNITA [as of 2001 earned] \$100 million a year selling its diamonds – despite the fact that the U.N. embargo has been in place for three years.”¹³⁸ If the United States does not act and take a proactive approach, it is feared that “the trade in legitimate diamonds faces the threat of a consumer backlash that could damage the economies of countries not involved in the trade [of] conflict diamonds and penalize members of the legitimate trade and the people they employ.”¹³⁹ Such fears were recognized and led to the introduction of the Clean Diamond Trade Act (“CDTA” or “Act”).

The CDTA seeks to implement and abide by all current and future U.N. Security Council resolutions and the standards set forth by the Kimberley Process.¹⁴⁰ It calls for the President of the United States to participate in the negotiations relating to these standards and goals¹⁴¹ in order to ensure that a resolution is met in a reasonable amount of time. If a company or country is found in violation of CDTA or of any prohibition set forth by the Kimberley Process or U.N. Sanctions, the involved diamonds “are subject to seizure and forfeiture laws, and all criminal and civil laws of the United States.”¹⁴²

Also contained in the CDTA are provisions that set forth monitoring procedures which ensure the CDTA accomplishes its goals through a system of status reports and recommendations. The CDTA calls for the President to submit to Congress both

¹³⁷ Hearings, *supra* note 1, at 13 (statement by Hon. Tony Hall, Rep. from Ohio); see also Sarah C. Aird, *Legislative Focus: Ending Military Funding Through the Diamond Trade*, 8 HUM. RTS. BR. 25, 27 (2001) (stating that over the last decade the United States has sent more than \$2 billion in humanitarian aid to help people harmed by diamond related conflicts, yet over the same period rebels and other similar militant parties have benefited from smuggling approximately \$10 billion in diamonds out of the country).

¹³⁸ Aird, *supra* note 137, at 15.

¹³⁹ Clean Diamond Trade Act, S. 2027 Section 2(6), 107th Cong. (2002) [hereinafter CDTA]

¹⁴⁰ See *Id.*, section 4(b).

¹⁴¹ See *Id.*, section 9(a) and (b).

¹⁴² *Id.*, section 6(a).

annual and semiannual reports¹⁴³ and for the General Accounting Office to report the effectiveness of the CDTA within three years after the Act's passage.¹⁴⁴ The annual reports will, in part:

identif[y] those countries that have exported diamonds to the United States during the preceding 12-month period and are not implementing effective measures to stop trade in conflict diamonds and whose failure to do so has significantly increased the likelihood that conflict diamonds are being imported into the United States.¹⁴⁵

The annual reports will also identify countries that are not subject to UN sanctions, but nevertheless thought to be in violation of CDTA for participating in the conflict diamond trade.¹⁴⁶ Finally, the annual report will suggest the appropriate actions the United States should take toward those countries in violation of CDTA.¹⁴⁷

The semiannual reports will act as a supplement to the annual report and focus on the countries identified in the annual report. The semiannual reports will "explain what actions have been taken to ensure that conflict diamonds are not being imported into the United States."¹⁴⁸ These semiannual reports on individual countries will remain in effect until such time as the country has implemented effective measures.¹⁴⁹

The cost of implementing such procedures is minimal in relation to the goal it seeks to achieve. Most of the implementation costs will be handled by private companies involved in the diamond trade, pursuant to the standards set forth by the Kimberley Process, or are already part of the United State's import/export control system. Additionally, the CDTA calls for five million dollars for fiscal year 2002 and 2003 to be appropriated to countries seeking to implement effective import/control measures aimed at ending the trade of conflict diamonds.¹⁵⁰

¹⁴³ See *Id.*, section 7.

¹⁴⁴ See *Id.*, section 8.

¹⁴⁵ CDTA, *supra* note 139, section 7(a).

¹⁴⁶ See *Id.*, section 7(a)(5).

¹⁴⁷ See *Id.*, section 7(a)(4).

¹⁴⁸ *Id.*, section 7(b).

¹⁴⁹ See *Id.*, section 7(b).

¹⁵⁰ See *Id.*, section 10.

The passage of CDTA would convey to the world the necessity of stopping the trade of conflict diamonds. The CDTA would provide the legal framework and a system of punishment directly aimed at the eradication of conflict diamonds in the United States. Although passage of the CDTA would be a noteworthy accomplishment, it faces many obstacles, namely a concerned Senate that is focused on stabilizing the Middle East and Iraq, and a partial unwillingness to implement a procedure which will require additional funding and a concern that CDTA will extend the government's reach and powers to parts of industry that have already made significant concessions with the implementation of the Kimberley Process. It is then suggested that the United States may already be able to take on a leadership role and substantially halt the conflict diamond trade by prosecuting those countries and companies under the USA Patriot Act.

IV. PROSECUTION UNDER THE USA PATRIOT ACT

In the aftermath of September 11, President Bush has announced to the world that the United States is "at war with terrorism."¹⁵¹ President Bush and Congress have also greatly expanded the powers of law enforcement¹⁵² within the United States with the goal of "smoking the terrorists out of their holes" both domestically and abroad.¹⁵³ Prosecuting those who

¹⁵¹ See George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html> (last visited Jan. 15, 2002).

¹⁵² See Exec. Order No. 13224, 66 Fed. Reg. 49079, Sept. 23, 2001 (expanding the power of law enforcement to combat terrorism); see also USA Patriot Act, *supra* note 6.

¹⁵³ See George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010916-2.html> (last visited Jan. 15, 2002). United State citizens have made individual sacrifices that before September 11 were inconceivable, from going to the airport a few hours earlier in order to comply with new security measures, which includes random searches of individual passengers, to waiting in traffic while the National Guard check individual cars for suspicious objects or activity. These procedures have helped make the United States more secure, as witnessed by the recent arrest of war combatant Jose Padilla who was captured flying into Chicago O'Hare airport with plans to detonate a dirty bomb and the arrest of Richard Reid after his attempted shoe bombing while on board a flight from Paris to Miami. See generally Fareed Zakaria, *Freedom vs. Security Delicate Balance: The case for 'smart profiling' as a weapon in the war on terror*, NEWSWEEK, July 8, 2002, at 27 (outlining smart profiling, and infringements upon cer-

profit from the sale of conflict diamonds serves that goal. It has been documented that terrorist groups, including Al Qaida, Hamas, and Hezbollah are actively involved in, and profit from, the illicit diamond trade.¹⁵⁴ From this premise it is suggested that prosecution under the recently passed USA Patriot Act would have a legal basis of ending the trade of conflict diamonds and significantly crippling terrorist funding operations.

As previously mentioned, the recently enacted Kimberley Process as well as the proposed Clean Diamond Act would directly deal with combating the trade of conflict diamonds. However, they lack sufficient enforcement power—meaning that violators will not face substantial criminal prosecution or be subjected to the wave of negative media publicity that accompanies terrorist related activities. The USA Patriot Act, through its money laundering provisions, provides just such an enforcement vehicle.

Prior to the USA Patriot Act, the United States' ability to combat international money laundering was largely ineffective, as the United States "could only issue advisories to its banks and citizens discouraging dealings with banks or citizens of countries with severe money laundering problems."¹⁵⁵ Alternatively, the President could impose sanctions under the International Emergency Economic Powers Act ("IEEPA").¹⁵⁶ The results of such actions would therefore be either a mere warning or "needlessly draconian" if the sanctions were enforced.¹⁵⁷

One of the main purposes of the USA Patriot Act was "to increase the strength of United States measures to prevent, detect and prosecute international money laundering and the fi-

tain individual liberties during times of war while providing historical precedent to such actions).

¹⁵⁴ See generally *supra* notes 1-2 and accompanying text. See also Douglas Farah, *African Nations Hosted Terror Chiefs*, THE HOUSTON CHRON., Dec. 29, 2002, at A29 (relying on a military intelligence report which outlines Al Qaida's secretive business operations in West Africa using diamonds to buy weapons and finance operations) [also discussed in previous section dealing with the United States response to the trade of conflict diamonds].

¹⁵⁵ Andres Rueda, *International Money Laundering Law Enforcement and the USA Patriot Act of 2001*, 10 MICH. ST. J. INT'L L. 141, 144 (2001) [hereinafter Rueda].

¹⁵⁶ See 50 U.S.C. §§ 1701-1706 (1994).

¹⁵⁷ Rueda, *supra* note 155 at 145.

nancing of terrorism.”¹⁵⁸ Money laundering is generally defined “as making the funds used in, or resulting from, criminal activity appear legitimate.”¹⁵⁹ It is from this definition that prosecution of those who trade in conflict diamonds is based. Under the above definition, those who trade in the conflict diamonds *are* acting as a money laundering agent.

Unlike previous money laundering statutes, the USA Patriot Act brings in hundreds of “financial institutions” previously not within the purview of money laundering laws such as pawnbrokers,¹⁶⁰ travel agencies,¹⁶¹ check cashing companies¹⁶² and, most importantly, jewelers.¹⁶³ Moreover, the Act calls for these types of institutions to implement a system of internal policies and controls.¹⁶⁴ Failure to implement effective and reasonable internal controls may result in blockages and boycotts on those financial institutions or jurisdictions, thus significantly hindering those institution’s ability to conduct business.¹⁶⁵ It also expands the list of predicate offenses that may give rise to money laundering charges to include foreign corruption (*i.e.* bribery, misappropriation, theft, or embezzlement of public funds),¹⁶⁶ meaning that funds that are deposited into an account that bears relation to the an United States bank will become subject to the Act.

¹⁵⁸ USA Patriot Act § 302(b)(1) [hereinafter USA Patriot Act]. For a section by section analysis of the money laundering aspects of the USA Patriot Act, *see generally* Betty Santangelo, Tim O’Neal Lorah, and Megan Elizabeth Murray, *Analysis of Anti-Money Laundering Provisions of USA Patriot (2001)*, at <http://www.srz.com/pubtemplate.asp?id=377> (last visited Jan. 18, 2003).

¹⁵⁹ Rueda, *supra* note 155 at 141 (2001).

¹⁶⁰ *See* USA Patriot Act *supra* note 158 at § 5312(a)(2)(o), which broadly defines the term “financial institution” to include “pawnbrokers.”

¹⁶¹ *See Id.* at § 5312(a)(2)(q), which broadly defines the term “financial institution” to include “a travel agency.”

¹⁶² *See Id.* at § 5312(a)(2)(r), which broadly defines the term “financial institution” to include “a licensed sender of money or any other person who engages as a business in . . . the transmission of funds, including any person who engages as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.”

¹⁶³ *See Id.* at § 5312(a)(2)(n), which broadly defines the term “financial institution” to include “a dealer in precious metals, stones or jewels.” For a complete list of definitions *see* 31 U.S.C. § 5312 (a)(2).

¹⁶⁴ *See Id.* at § 5318(h). Internal controls may include implementing compliance officers, pursue ongoing employee training, and conducting independent audits to test effectiveness as well as maintain adequate records.

¹⁶⁵ *See* Rueda, *supra* note 155 at 151.

¹⁶⁶ *See generally* USA Patriot Act, *supra* note 158.

This latter inclusion illustrates that the Act "was designed to have an extraterritorial impact and to strengthen money laundering law enforcement on a global scale."¹⁶⁷ The Act provides for long arm jurisdiction over any money laundered as long as service has been given in accordance with the Federal Rules of Civil Procedure.¹⁶⁸ Once it is believed that a money laundering operation has taken place in a United States financial institution, that account may be frozen.¹⁶⁹ However, should the assets lie abroad in a foreign institution that maintains an "interbank account"¹⁷⁰ with a United States financial institution, authorities may then seize the funds in that account.¹⁷¹ Aside from seizure of assets, criminal penalties for violating the Act range from a fine in the amount of three times the amount seized to imprisonment for not more than fifteen years or both.¹⁷²

Although the United States has not yet applied the Patriot Act to the conflict diamond trade, it has made significant progress in freezing the assets of supposed terrorist fundraising operations. The United States district court for the Northern District of Illinois recently decided *Global Relief Found., Inc. v. O'Neil*¹⁷³ and found the actions taken by the government via the

¹⁶⁷ Rueda, *supra* note 155 at 189. See also *Swiss Banker Criticizes US Legislation against Terror Financing*, Agence France Presse, Jan. 17, 2002 (stating that the recently enacted USA Patriot Act interferes with other countries' ability to conduct business).

¹⁶⁸ See USA Patriot Act, *supra* note 158 at § 317. More importantly the United States can assert jurisdiction if the asset has been laundered through or touched any United States financial institution. *Id.* The offending entity or person then must comply within a 7 day period (after notice has been received) and make available all records regarding the account as managed by the bank. See *id.* at § 319(b); see also Rueda *supra* note 155, at 190.

¹⁶⁹ See USA Patriot Act, *supra* note 158 at § 311.

¹⁷⁰ See generally USA Patriot Act, *supra* note 168 and accompanying text.

¹⁷¹ See USA Patriot Act, *supra* note 158 at § 319. Interbank Accounts. In general "For the purpose of a forfeiture under this section . . . if funds are deposited into an account at a foreign bank, and that foreign bank has an interbank account in the United States with a covered financial institution (as defined in section 5318 (j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited in the to account at the foreign bank, may be restrained, seized or arrested." *Id.*

¹⁷² See USA Patriot Act, *supra* note 158 at § 329.

¹⁷³ See *Global Relief Found., Inc. v. O'Neil*, 207 F. Supp. 2d 779 (N.D. Ill. 2002).

Foreign Intelligence Surveillance Act and the IEEPA as amended by the USA Patriot Act were constitutional.

Global Relief Foundation ("GRF") claimed to be an Islamic charitable organization that provided humanitarian relief throughout the world.¹⁷⁴ Through its operations, GRF allegedly distributed food, funded schools for orphans and provided medical services, primarily to those residing in Iraq, Palestine, Somalia, Pakistan, Lebanon, Afghanistan, and Chechnya.¹⁷⁵ Because of increased contributions that rose from \$431,155 in 1995 to nearly \$3.7 million in 2000, GRF was able to open up regional offices in some of these countries to aid in getting the goods and services to those in need.¹⁷⁶ On December 14, 2001 federal agents froze the financial assets of GRF and seized items in GRF's main U.S. office.¹⁷⁷ Items seized included "computers and servers, modems. . . cassette tapes, and \$13,030 in U.S. Currency."¹⁷⁸ The government believed GRF had a relationship with the terrorists behind the events of September 11th and seized the assets pending further investigation.¹⁷⁹ GRF challenged these actions and argued that the order to freeze its assets was not authorized by "statute, executive order or the constitution"¹⁸⁰ and sought injunctive relief.¹⁸¹ The court after an *in camera* and *ex parte* review, held that the material furnished by the FBI was relevant and an injunction could undermine the investigation.¹⁸² The court found that GRF had not proven a reasonable likelihood of success on the merits of its statutory and constitutional claims and therefore failed the threshold factor for preliminary injunctive relief.¹⁸³ In this ruling, the court effectively held the government's actions constitu-

¹⁷⁴ See *id.* at 785

¹⁷⁵ See *Id.*

¹⁷⁶ See *Id.*

¹⁷⁷ See *Id.*

¹⁷⁸ *Id.* at 786.

¹⁷⁹ See *Id.* at 785-87.

¹⁸⁰ *Id.* at 785. GRF argued that the government violated the Bill of Attainder Clause, the Ex Post Facto Clause, the Fifth Amendment's Taking Clause, the Due Process Clause, the First, Fourth, Fifth, Sixth, and Eighth Amendments of the constitution. *Id.* at 808-09.

¹⁸¹ *Id.*

¹⁸² See *Id.* at 785.

¹⁸³ See *Id.* at 809 (citing *Cox v. City of Chicago*, 868 F.2d 217, 223 (7th Cir. 1989) (citing *Shaffer v. Globe Protection, Inc.* 721 F.2d 1121, 1123 (7th Cir. 1983)).

tional. More importantly, it found the USA Patriot Act and its expanded seizure of assets provision constitutional.¹⁸⁴

Applying the USA Patriot Act to the conflict diamond trade will stop the trade of conflict diamonds and fight the war on terrorism. The USA Patriot Act may work in conjunction with the Kimberley Process. For example, a shipment of rough diamonds may be stopped either at a United States Customs office or abroad because it lacks certain Kimberley requirements or is otherwise suspicious.¹⁸⁵ If the shipment is stopped in United States territory, the United States has jurisdiction over that property.¹⁸⁶ However, even if a shipment is found abroad, the United States may assert jurisdiction via the USA Patriot Act.¹⁸⁷ In both instances, the USA Patriot Act would provide a vehicle for seizing the assets of the company or individual shipping the diamonds. Like the government's actions in *Global Relief Foundation*, all parties involved in the shipment of diamonds may be subject to a full investigation as they would fall within the expanded definition of "financial institution."¹⁸⁸

Freezing the assets of the company while the investigation is ongoing would not only have a materially significant effect on the company's ability to conduct day to day business operations but also acts as a deterrent. Additionally, the negative publicity associated with the seizure of assets of a well-known diamond company or diamond dealer because of a possible connection to terrorism would further the deterrent act as a strong deterrent.

This deterrent rationale does not take into account the possibility of any of the criminal penalties that may be levied for violation of the USA Patriot Act. From the point of seizure, the United States would be able to "start a chain" whereby it would link the seized bank account to other bank accounts of individuals possibly connected to the trade of conflict diamonds and/or terrorism. The net effect of such action would be a significant decrease in the trade of conflict diamonds while also fighting terrorism.

¹⁸⁴ See *id.*

¹⁸⁵ See generally *supra* note 107 and accompanying text.

¹⁸⁶ See generally *supra* notes 168-171 and accompanying text (outlining the jurisdictional boundaries of the USA Patriot Act).

¹⁸⁷ See *id.*

¹⁸⁸ See *supra* note 163-164 and accompanying text outlining the definition financial institution under the USA Patriot Act.

V. CONCLUSION

As indicated, the trade of conflict diamonds still exists, despite the best efforts of the U.N., and has been linked to funding such terrorist groups as Al Qaida. The recent passage of the Kimberley Process, coupled with pledges by the World Diamond Council and the possible passage of the Clean Diamond Act in the United States illustrate a strong desire to stop the trade of conflict diamonds. However, these acts may not be enough. To stop the trade of conflict diamonds, the United States, as the world's leading consumer of diamonds and wealthiest nation, must take the lead. The USA Patriot Act, passed to combat terrorism, provides a legal vehicle that can stop the trade of conflict diamond while fighting terrorism without diverting resources.