

# SIERRA LEONE AND CONFLICT DIAMONDS: ESTABLISHING A LEGAL DIAMOND TRADE AND ENDING REBEL CONTROL OVER THE COUNTRY'S DIAMOND RESOURCES

*"Control of resources has greater weight than uniform administrative control over one's entire corner of the world, especially in places such as Sierra Leone where valuable resources are concentrated and portable."*<sup>1</sup>

## I. INTRODUCTION

Sierra Leone<sup>2</sup> is in the midst of a civil war that began in 1991, when the Revolutionary United Front (RUF) invaded the country from neighboring Liberia.<sup>3</sup> RUF rebels immediately sought control over one of the country's richest resources--diamonds.<sup>4</sup> Since gaining control over the most productive diamond fields, the rebels have at their fingertips an endless supply of wealth with which to fund their insurgencies against the Government of Sierra Leone.<sup>5</sup> The RUF rebels illicitly trade diamonds for arms in open smuggling operations.<sup>6</sup> Diamonds sold by the RUF, in order to fund the rebel group's military action in opposition to Sierra Leone's legitimate and internationally recognized government, are called "conflict diamonds."<sup>7</sup>

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1. WILLIAM RENO, *WARLORD POLITICS AND AFRICAN STATES* 140 (1998).

2. Sierra Leone is located on the west coast of Africa north of Liberia and south of Guinea. The country has 4,900,000 residents, almost all of whom belong to one of 13 native African tribes. *Country: Sierra Leone*, Sept. 3, 2000, available at LEXIS, Kaleidoscope File. One of the primary economic activities in Sierra Leone is mining of its large diamond deposits that are a major source of hard currency. Countries that predominantly import goods from Sierra Leone include Belgium, the United States, and India. Sierra Leone is also a member of the Economic Community of West African States (ECOWAS). *See id.*

3. *See* Ibrahim Abdullah & Patrick Muana, *The Revolutionary United Front of Sierra Leone*, in *AFRICAN GUERRILLAS* 172, 178 (Christopher Clapham ed., 1998).

4. Mineral wealth is the core foundation of economies throughout African states. *See* JOHN READER, *AFRICA: A BIOGRAPHY OF THE CONTINENT* 16-17 (1997). Since gaining independence from the British, Sierra Leone's economic development has been dependent upon the output of its diamond mines. *See id.*

5. *See Conflict Diamonds: Sanctions and War*, at <http://www.un.org/peace/africa/Diamond.html>. (last visited Oct. 14, 2000).

6. *See* READER, *supra* note 4, at 576 (explaining that smuggling is a continent-wide activity of great proportions and accounts for a large share of diamonds mined in Sierra Leone and nearby countries). *See also* NIC CONFERENCE REPORT, *AFRICA: THE ECONOMICS OF INSURGENCY IN ANGOLA, THE DEMOCRATIC REPUBLIC OF THE CONGO, AND SIERRA LEONE* 6 (1999) (statement of a diamond industry expert explaining that smuggling diamonds in Sierra Leone and other African countries is a low-risk, high-return venture because diamonds are small, easily concealed, and extremely valuable).

7. *See Conflict Diamonds: Sanctions and War*, *supra* note 5.

Today, the rebels control nine-tenths of Sierra Leone's diamond mines.<sup>8</sup> The Government of Sierra Leone urgently needs to regain control of these mines and develop a system by which it will be able to legitimately exploit the country's diamond resources.<sup>9</sup> At stake is not only Sierra Leone's fragile democracy, which is continually threatened by RUF attacks, but also the lives of thousands of civilians who are repeatedly subjected to gross human rights abuses committed by the rebels.<sup>10</sup>

This Note analyzes the efforts taken thus far by the international community to develop a sustainable and well-regulated diamond industry in Sierra Leone. Part II explores the political landscape in Sierra Leone from the late eighteenth century to present. Part III outlines the history and current state of Sierra Leone's diamond trade. Part IV examines various international responses to Sierra Leone's illicit diamond trade, including an in-depth analysis of pertinent United Nations resolutions and pending United States legislation on the matter. Part V outlines influential members of the global diamond industry and the steps taken by them and by the industry in general to stop trading in conflict diamonds. Part VI provides specific recommendations for establishing a legitimate diamond industry in Sierra Leone.

## II. POLITICAL LANDSCAPE IN SIERRA LEONE

### A. *Leadership and History*

In the late eighteenth century, 1200 freed slaves founded Freetown,<sup>11</sup> Sierra Leone's capital.<sup>12</sup> The African country gained legal status, through a

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8. *Hearings on Ending the Trade in Conflict Diamonds* (Testimony of Holly Burkhalter, Physicians for Human Rights), *Before the House Ways and Means Subcomm. on Trade* (2000), Sept. 13, 2000, available at [http://www.phrusa.org/research/sierra\\_leone/sierra\\_diamd\\_091400.html](http://www.phrusa.org/research/sierra_leone/sierra_diamd_091400.html). [hereinafter *Holly Burkhalter*]

9. See *Prepared Testimony of Chairman Gooch, Director of Global Witness, Before the Subcomm. on Africa of the House Comm. on Int'l Relations Subcomm. on Africa*, FEDERAL NEWS SERVICE, May 9, 2000, available at LEXIS, Federal News Service File [hereinafter *Chairman Gooch*].

10. See HUMAN RIGHTS WATCH, GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, Vol. 11, No. 3 (A), 9-42, June 1999 (noting that during a three week occupation of Sierra Leone's capital by the RUF rebels in January 1999, 7335 corpses were registered in a single day by the senior government pathologist as a result of the incursion. *Id.* at 9. The report goes on to cite the various types of human rights abuses for which RUF rebels are infamous including burning civilians alive, using civilians as human shields, mass mutilation, and amputations, rape, and abduction). See *id.* at 15, 23-25, 27-40.

11. READER, *supra* note 4, at 379, 426. "Freetown is so named because it was the port at which slaves were set ashore as free men by the English fleet which patrolled the shipping lanes off West Africa and seized slaving vessels after England and America abolished the slave trade in 1807 and 1808 respectively." *Id.* at 379. Sierra Leone abolished slavery in 1896. *Id.* at 426.

12. See Ian Smillie et al., *The Heart of the Matter: Sierra Leone, Diamonds and Human Security*. This study was produced in January 2000 by a non-governmental agency in Canada, known as Partnership Africa Canada, which has been at the forefront in examining the

Royal Charter, as a British colony in 1799.<sup>13</sup> British departure in 1961<sup>14</sup> marked the start of Sierra Leone's independence, as well as the beginning of a "checkered political experience."<sup>15</sup> Politically ambitious military personnel in the 1967 general elections soon overtook the pluralistic political system that Sierra Leoneans established after gaining independence in 1961.<sup>16</sup>

In 1967, the Sierra Leonean Army took power under the title "National Reform Council,"<sup>17</sup> and handed power to Siaka Stevens<sup>18</sup> who was the presumed winner of the general elections.<sup>19</sup> By the end of the 1970s, Stevens declared Sierra Leone a one-party state which he ruled as its dictator until his retirement in 1985, at which time he seeded power to his former army chief Joseph Mamoh.<sup>20</sup> Mamoh, characterized as politically weak,<sup>21</sup> fled the country in 1992 due to a military coup instigated by young officers revolting against poor work conditions, a lackluster economy, and the country's desire to restore multi-party democracy.<sup>22</sup> Twenty-seven year old army captain Valentine Strasser led the military coup that succeeded in ousting President Mamoh's government.<sup>23</sup>

In 1996, another military coup, this time led by Strasser's second in command, Julius Maada Bio, expelled Strasser from power.<sup>24</sup> Bio's reign was even more short-lived than his predecessor's however; as within three months, democratically elected Ahmed Tejan Kabbah, head of the same Sierra Leone People's Party that led the country to independence in 1961, replaced Bio.<sup>25</sup>

relationship between diamonds and guns in Sierra Leone. *See id.* at 1. The study includes excellent background information on Sierra Leone's development as a country in relation to its diamond resources. *See id.* at 4-7. The section entitled "Key Events in Sierra Leone's History," provides a chronology of important historical events from 1787 to 1999. *See id.* at 14-16.

13. *See id.*

14. *See* RENO, *supra* note 1, at 69.

15. Alahji Bah, *Exploring the Dynamics of the Sierra Leone Conflict*, PEACE KEEPING AND INTERNATIONAL RELATIONS, Jan.-Apr. 2000, at 1.

16. *See id.*

17. *See* Smillie et al., *supra* note 12, at 14.

18. After becoming Prime Minister in 1968, Siaka Stevens immediately turned diamonds into a political issue. *See id.* at 5. He encouraged illegal mining, at times involving himself in criminal activities. Three years into his reign of power, Stevens nationalized the Sierra Leone Selection Trust (SLST) through his creation of the National Diamond Mining Company (NDMC). *See id.*

19. *See* Bah, *supra* note 15, at 1.

20. *See* Smillie et al., *supra* note 12, at 15.

21. *See* RENO, *supra* note 1, at 116.

22. *See* Abdullah & Muana, *supra* note 3, at 181. The revolting military officers took the name "National Provisional Ruling Council" (NPRC). The young officers soon became seduced by their positions of power in the government and started neglecting their duties as soldiers. *See id.* Some officers abandoned important posts outside Freetown, which allowed the RUF to strengthen its recruits and to capture from the government the main town in Sierra Leone's rich diamond district, Kono. *See id.* at 182.

23. *See* RENO, *supra* note 1, at 174.

24. *See* Smillie et al., *supra* note 12, at 15. *See also* RENO, *supra* note 1, at 221 (noting that Bio was, ironically, Strasser's "anti-insurgency military commander").

25. RENO, *supra* note 1, at 134. *See also* Jeremy Levitt, *Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone*, 12

In May 1997, a group of military officers known as the Armed Forces Revolutionary Council (AFRC) overthrew President Kabbah's fourteen-month old civilian government.<sup>26</sup> Shortly thereafter, the AFRC allied itself with the country's dominant rebel forces, the RUF, in an alliance that is commonly referred to as the junta.<sup>27</sup> Both the Foreign Ministers of the Economic Community of West African States (ECOWAS)<sup>28</sup> and the United Nations Security Council condemned the coup, which resulted in the imposition of embargoes<sup>29</sup> on arms and oil entering Sierra Leone.<sup>30</sup> In February 1998, the ECOWAS monitoring group ECOMOG launched a military offensive that expelled the RUF from Freetown.<sup>31</sup> President Kabbah finally regained power in March 1998, when he signed a cease-fire agreement with the AFRC and the RUF.<sup>32</sup> Despite their expulsion from Freetown, the RUF rebels were able to maintain control over Sierra Leone's diamond rich Kono District.<sup>33</sup>

### B. *The Revolutionary United Front*

Rebel forces wield as much, and often times more, political power in Sierra Leone than the official government. The RUF is the dominant rebel group in Sierra Leone and is responsible for waging an almost decade-long civil war that is regarded as one of the most violent<sup>34</sup> conflicts in African

TEMP. INT'L & COMP. L.J. 333, 364-65 (1998). President Kabbah was elected in the midst of civil war. The election was the first of its kind in 30 years. Sierra Leone also held parliamentary elections during this tumultuous time. The RUF contested President Kabbah's election and continued fighting the government. *See id.*

26. *See* Karsten Nowrot & Emily W. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321, 325 (1998).

27. *See* Sheryl Dickey, Note, *Sierra Leone: Diamonds for Arms*, 7 HUM. RTS. BRIEF 9 (2000).

28. *See* ERIC G. BERMAN & KATIE E. SAMS, PEARSON PAPERS: AFRICAN PEACEKEEPERS: PARTNERS OR PROXIES? (3rd ed. 1998). ECOWAS was established in 1975, and is comprised of 16 member states: Benin, Burkina Faso, Cape Verde, Côte d' Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone, and Togo. *See id.* at 11 n. 41. ECOWAS also has a Cease-fire Monitoring Group known as ECOMOG, which deployed in Sierra Leone, following the 1997 coup in support of that country's democratically elected government led by President Kabbah. *See id.* at 11.

29. *See id.* *See also* S.C. Res. 1132, U.N. SCOR, U.N. Doc. S/RES/1132 (1997). The prohibitions imposed by paragraphs 5 and 6 of Resolution 1132 (1997) were later repealed by Resolution 1171 (1998).

30. *See* Dickey, *supra* note 27, at 9.

31. *See* BERMAN & SAMS, *supra* note 28, at 11.

32. *See* Dickey, *supra* note 27, at 10.

33. *See id.*

34. *See* BUREAU OF DEMOCRACY, HUM. RTS. AND LAB., U.S. DEPT. OF STATE, SIERRA LEONE: 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2000). [hereinafter BUREAU OF DEMOCRACY]. According to this report:

The rebels [have] continued the particularly vicious practice of cutting off the ears, noses, hands, arms, and legs of noncombatants as a deliberate terror tactic and to punish those unwilling to cooperate with the insurgents. The victims

history.<sup>35</sup> To date, 2,400,000<sup>36</sup> people in Sierra Leone have been displaced, and 75,000<sup>37</sup> people have been killed since the RUF invaded the country in 1991.<sup>38</sup>

At the time the RUF invaded Sierra Leone in March 1991, a motley crew of 100-150 fighters comprised the rebel group.<sup>39</sup> While there was no official leadership of the RUF at its inception in the late 1980's, Foday Sankoh eventually emerged as the rebel group's leader.<sup>40</sup> In 1988, Sankoh aligned himself with Charles Taylor, who is the current president of Liberia and leader of the National Patriotic Front of Liberia (NPFL), that country's predominant rebel group.<sup>41</sup> When the RUF invaded Sierra Leone in 1991, it entered from Liberia with offensive support from members of President Taylor's NPFL.<sup>42</sup>

The civil population was not supportive of the RUF invasion or revolution as the rebels would refer to it.<sup>43</sup> Instead, the civilian response to the RUF's initial offensive was wholly unsympathetic. Such a reaction was understandable given that the rebels initially kidnapped scores of village children for the purpose of guerilla training to support the RUF.<sup>44</sup> In one year alone, families in Sierra Leone registered more than 3,800 children as missing

[range] from small children to elderly women; in some cases, one limb was cut off, in others two limbs, typically two hands or arms. Many died from their wounds before they could obtain any form of medical treatment. Rebel forces abducted civilians, missionaries, aid workers from nongovernmental agencies, U.N. personnel, and journalists; ambushed humanitarian relief convoys; raided refugee sites; and extorted and stole food. Junta forces continued the longstanding practice of abducting villagers (including women and children) and using them as forced laborers, as sex slaves, and as human shields during skirmishes with government and ECOMOG forces. Boys were forced to become child soldiers. Rebel forces used rape as a terror tactic against women. Rebel atrocities prompted the internal displacement of hundreds of thousands of civilians. . . .

*Id.*

35. See Bah, *supra* note 15, at 1.

36. *Id.*

37. Dickey, *supra* note 27, at 9.

38. See *id.*

39. Abdullah & Muana, *supra* note 3, at 178.

40. See *id.* at 177.

41. See *id.*

42. See *id.* at 178. Liberians comprised the majority of the RUF's "special forces" unit, which was an integral part of the initial 1991 invasion. See *id.* at 180, 188.

43. See *id.* at 178-79. Here was a reserve army of fighting men who were attracted by the simplistic 'emancipatory' rhetoric of the RUF's ill-defined ideas, and motivated by the acquisition of wealth through looting, and of authority by wresting control from both the local and the national political authorities whom they blamed for their predicament and the agony of the nation as a whole. . . . On the other hand, the apprehension of a settled civil population was reinforced by testimonies of brutality from the Liberian crisis, [referring to violent acts committed against civilians in Liberia by the NPFL] and flight from RUF fighters became the ultimate security option for self-preservation.

*Id.*

44. See *id.* at 179.

or abducted.<sup>45</sup> Thus far, according to United Nations estimates, there are approximately 20,000 persons recorded as kidnapped in Sierra Leone from 1991-1999.<sup>46</sup>

The Government of Sierra Leone attempted to defend itself against the rebel soldiers in a variety of ways. In 1995, the military government under Strasser hired a private military company called Executive Outcomes (EO).<sup>47</sup> In addition to government efforts, a mass civil defense movement, known as Kamajo forces, began to chip away at rebel power.<sup>48</sup> So devastating was the Kamajo offensive that the RUF admitted that at one point its enemy was the Kamajo, not the Sierra Leone Army.<sup>49</sup> The combined efforts of the Kamajo forces and the EO mercenaries forced the RUF to the negotiating table by the latter half of 1996, resulting in a peace agreement<sup>50</sup> in November of that year.<sup>51</sup>

The RUF rebuilt its forces after signing the 1996 peace accord.<sup>52</sup> In 1997, less than a year after agreeing with the Government of Sierra Leone to end the civil war, the RUF resumed its offensive.<sup>53</sup> The RUF formed an alliance with the AFRC and succeeded in ousting President Kabbah from power.<sup>54</sup> President Kabbah was not restored to power until March 1998.<sup>55</sup> Ten months later in January 1999, the RUF launched another military campaign to take control of Sierra Leone's capital city.<sup>56</sup> The RUF rebels retreated after

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45. BUREAU OF DEMOCRACY, *supra* note 34.

46. *Id.*

47. *See* Bah, *supra* note 15, at 4. Bah provides a detailed overview of the role mercenary groups, like EO, played in Sierra Leone as a means of protecting civilians from the rebels. *See also* RENO, *supra* note 1, at 138 (explaining that following his election in 1996, President Kabbah refused to renew EO's contract past January 1997). Shortly after the hired soldiers left Sierra Leone, the country's security worsened significantly culminating in the May 1997 coup by the AFRC that forced Kabbah from power. *See id.*

48. *See* Abdullah & Muana, *supra* note 3, at 185.

49. *See id.* at 186.

50. *See* Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front (RUF/SL), Nov. 30, 1996 [hereinafter Abidjan Accord]. Article 1 provides that "[t]he armed conflict between the Government of Sierra Leone and the RUF/SL is hereby ended with immediate effect. Accordingly, the two foes will ensure that a total cessation of hostilities is observed forthwith." *Id.*

51. *See* Abdullah & Muana, *supra* note 3, at 187.

52. *See* 146 CONG. REC. E633 (May 4, 2000). (Representative Tony Hall of Ohio discusses the RUF's influence in Sierra Leone). The once rag-tag rebel group that counted 100-150 among its ranks at the start of the civil war in 1991, has grown into a formidable guerrilla force 25,000 members strong. *Id.*

53. *See* Dickey, *supra* note 27, at 9.

54. *See id.*

55. *Id.* at 10.

56. *See id.*

three weeks of inflicting gross human rights abuses and causing mass destruction throughout Freetown and nearby villages.<sup>57</sup>

On July 7, 1999, Jesse Jackson<sup>58</sup> helped broker the Lome Peace Accord,<sup>59</sup> which the Government of Sierra Leone and the RUF leader signed. The Accord made the RUF leader at the time, Foday Sankoh, vice president, placed him in charge of a new commission to oversee the country's diamonds, and granted complete amnesty for any crime committed by Sankoh and his fellow rebels during their eight year insurgency.<sup>60</sup>

57. See *World Report 1999: Sierra Leone*, at <http://www.hrw.org/wr2k/Africa-09.htm> (last visited Oct. 12, 2000). According to this report:

More than 3,000 children and 570 adults were reported missing following the January offensive. Hundreds more were abducted as they moved through the villages around Masiaka. The abductees were often subjected to hard labor, forcibly recruited into the military, and compelled to become sexual partners to male combatants.

...

The RUF also systematically set urban dwellings and entire villages on fire as they withdrew. In Freetown, entire city blocks, embassies, government buildings, factories, churches, mosques, and historical landmarks were set alight: housing authorities registered the destruction of 5,788 homes and residential buildings.

*Id.*

58. See 146 CONG. REC. H6399, H6420 (July 18, 2000). Jesse Jackson was appointed "Special Envoy for the President and the Secretary of State for the Promotion of Democracy in Africa" in October 1997. See *id.*

59. Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), July 7, 1999 [hereinafter Lome Accord].

60. See *id.* art. V ¶ 2, art. IX ¶¶ 1-3. Article V ¶ 2 mandates:

The Chairmanship of the Board of the Commission for the Management of Strategic Resources, National Reconstruction and Development (CMRRD) as provided for in Article VII of the present Agreement shall be offered to the leader of the RUF/SL, Corporal Foday Sankoh. For this purpose he shall enjoy the status of Vice President and shall therefore be answerable only to the President of Sierra Leone.

*Id.*

Article IX mandates:

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.
2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.
3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ... in respect of anything done by them in pursuit of their objectives as members of those organisations [sic], since March 1991, up to the time of the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall

The violence initially subsided after signing the Lome Accord.<sup>61</sup> However, recent reports indicate violations of the peace agreement on behalf of the rebels.<sup>62</sup> While President Kabbah's government remains intact, the rebels continue to control much of the Sierra Leonean countryside, including the wealthy diamond district Kono.<sup>63</sup>

From the start of the RUF's initial invasion in 1991, the rebels sought to conquer the country's economically valuable areas, which necessitated gaining control over rich mining areas.<sup>64</sup> "In 1992, the RUF gained control of the diamond-rich Kono District in the eastern part of the country, near the Guinean and Liberian borders."<sup>65</sup> The RUF continues to maintain control of the Kono District, and uses profits from the illicit trade of diamonds from that area to purchase sophisticated guns to further its stronghold over the country.<sup>66</sup>

The RUF's continued control over Sierra Leone's diamond mines threatens the country's democratically elected government by providing the rebels the means with which to purchase more guns to enhance their military capability.<sup>67</sup> The stronger the RUF's military capability, the greater the threat that the group will keep Sierra Leone hostage, both economically and politically, as it has throughout the almost decade-long civil war.<sup>68</sup> The rebel group will continue to thrive in the absence of law and order that would otherwise reclaim the wealth of Sierra Leone's resources for the benefit of the many, not just the rebel few.<sup>69</sup>

### III. OVERVIEW OF SIERRA LEONE'S DIAMOND TRADE

Diamonds were first discovered in Sierra Leone in 1930.<sup>70</sup> Diamond fields in Sierra Leone cover a 7700 square mile radius in the southeastern part of the country.<sup>71</sup> The most important fields in that area are located at Kono, Tongo, and the Sierra Valley.<sup>72</sup> Sierra Leone has a high proportion of exceptionally high quality diamonds.<sup>73</sup> Almost all of the country's diamonds

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be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

*Id.*

61. See Dickey, *supra* note 27, at 10.

62. See *id.*

63. See *id.*

64. See RENO, *supra* note 1, at 123.

65. Dickey, *supra* note 27, at 9.

66. See 146 CONG. REC. H6654, H6657 (July 20, 2000).

67. See Dickey, *supra* note 27, at 9.

68. *Id.* at 10.

69. See *infra* notes 211-13 and accompanying text.

70. Smillie et al., *supra* note 12, at 4.

71. PETER GREENHALG, WEST AFRICAN DIAMONDS 1919-1983: AN ECONOMIC HISTORY 16 (1985).

72. See *id.*

73. See Dickey, *supra* note 27, at 9.



are octahedral,<sup>74</sup> which accounts for their high value.<sup>75</sup> According to a recent study, Sierra Leone officially mined 55,000,000 carats<sup>76</sup> of diamonds from 1930-1998.<sup>77</sup> In 1996, the average price per carat was US\$270.<sup>78</sup>

In 1956, legislation was enacted to implement a way to legally market diamond production in Sierra Leone.<sup>79</sup> The legislation became necessary due to widespread smuggling of diamonds through neighboring Liberia, which challenged not only the Government of Sierra Leone's ability to govern, but also resulted in substantial revenue losses.<sup>80</sup> In an effort to gain greater control over the country's diamond resources, the Government of Sierra Leone granted a monopoly to De Beers' marketing arm, which is referred to as the Central Selling Organization (CSO).<sup>81</sup>

Affiliation with a CSO is supposed to provide stability for a diamond market by curbing smuggling and illicit diamond mining, however the opposite has proved true for the diamond market in Sierra Leone.<sup>82</sup> "From a high of over two million carats in 1970, legitimate diamond exports dropped to 595,000 carats in 1980 and then to only 48,000 in 1988."<sup>83</sup> The Bank of Sierra Leone recently reported that revenue from diamond exports totaling US\$20,600,000 in 1991, fell to US\$800,000 by 1995.<sup>84</sup>

Illegal diamond traders, namely members of the RUF, are responsible for the country's decreased official diamond exports.<sup>85</sup> The RUF smuggles diamonds out of Sierra Leone and sells them in order to buy arms from other African states.<sup>86</sup> Sierra Leone's neighboring country on its southeastern border, Liberia, is notorious for acting as a partner to the RUF rebels in their smuggling pursuits.<sup>87</sup> "Liberia has been the principal route for the smuggling

74. Octahedral describes a diamond that has eight plane faces. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 817 (1991).

75. See Dickey *supra* note 27, at 9.

76. A carat is defined as a unit of diamond measurement; one carat is equivalent to 0.2 gram (200 milligrammes). *Conflict Diamonds, infra* note 167, at 52.

77. Smillie et al., *supra* note 12, at 4.

78. *Id.*

79. See GREENHALGH, *supra* note 71, at 246.

80. *See id.*

81. *See id.* A CSO, like De Beers' which is currently based in London, offers greater stability, guaranteed purchases, larger financial resources, and expert knowledge of diamonds. *See id.* De Beers' CSO continues to dominate Sierra Leone's diamond marketing. *See id.* at 268.

82. *See* Smillie et al., *supra* note 12, at 5.

83. *Id.*

84. RENO, *supra* note 1, at 127.

85. *See* Dickey, *supra* note 27, at 9.

86. *See id.*

87. *See* Smillie et al., *supra* note 12, at 11. According to this study:

Liberia has become a major criminal entrepot for diamonds, guns, money laundering, terror and other forms of organized crime. The astoundingly high levels of its diamond exports bear no relationship to its own limited resource base. By accepting Liberian exports as legitimate, the international diamond

of Sierra Leonean diamonds on to the world markets,<sup>88</sup> a refuge for RUF fighters, a diplomatic supporter of the RUF, and an alleged transit point for arms shipments.”<sup>89</sup>

The heart of the world's diamond market is located in Antwerp, Belgium.<sup>90</sup> Approximately 90% of the world's rough diamonds are traded there.<sup>91</sup> De Beers is the most influential international diamond industry, mining 50% and controlling 70-80% of world diamond sales.<sup>92</sup> The United States purchases 65% of the world's gem-quality diamonds traded in Antwerp.<sup>93</sup>

The Hoge Raad voor Diamant (HRD)-the Diamond High Council, which is located in Belgium, is another pivotal actor in the international diamond industry.<sup>94</sup> The HRD is an industry umbrella group responsible for structuring the formal trading of diamonds, which monitors diamond imports and exports for the Belgian government.<sup>95</sup> Significantly, upon import the HRD records a diamond's origin as that of the country from which the diamond was last exported.<sup>96</sup> Therefore, Sierra Leonean diamonds can be officially imported and designated as originating from any country that smuggles them in, and then exports them.<sup>97</sup> Liberia, the primary smuggling route for Sierra Leonean diamonds, is the most infamous benefactor of the HRD's loose tracking policy.<sup>98</sup> Ultimately, knowing the true origin of a diamond is precluded by the

industry actively colludes in crimes committed or permitted by the Liberian government.

*Id.*

88. See *Holly Burkhalter*, *supra* note 8, (noting that while Sierra Leonean diamonds illegally enter the world market from several different countries, Liberia is by far the greatest offender).

89. *Sierra Leone One Year After the Peace Accord: the Search for Peace, Justice and Sustainable Development*, Ottawa: Partnership Africa Canada, August 8, 2000 (summary report of policy symposium held on June 21-23, 2000).

90. See *Dickey*, *supra* note 27, at 9.

91. *Id.*

92. *Id.*

93. *Id.* See also *Conflict Diamonds*, *infra* note 167, at 53 (defining a gem-quality diamond as the highest quality of diamond that commands top prices and is usually in high demand).

94. See *Dickey*, *supra* note 27, at 9.

95. See *id.*

96. See *id.*

97. See *id.*

98. See *Smillie et al.*, *supra* note 12, at 4. Partnership Africa Canada outlines the basic discrepancies between Sierra Leonean diamond exports with respect to the HRD's import records, and Liberia's role in the matter as follows:

-While the Government of Sierra Leone recorded exports of only 8,500 carats in 1998, the HRD records imports of 770,000 carats;

-annual Liberian diamond mining capacity is between 100,000 and 150,000 carats, but the HRD records Liberian imports into Belgium of over 31 million carats between 1994 and 1998- an average of over six million carats a year....

*Id.*

HRD's recordation method, which facilitates opaqueness in the diamond industry and mass smuggling from weak African states like Sierra Leone.<sup>99</sup>

#### IV. INTERNATIONAL RESPONSE

##### A. *The United Nations*

The international community is increasing its efforts to help demobilize and disarm the RUF rebels who continue to hold Sierra Leone economically hostage through their control over the country's diamond mines.<sup>100</sup> The United Nations maintains peacekeeping forces in the war torn country and recently enacted a global embargo on the import of conflict diamonds from the rebels.<sup>101</sup> With respect to peacekeeping forces, in Resolution 1270 of October 1999, the Security Council established the United Nations Mission in Sierra Leone (UNAMSIL)<sup>102</sup> to facilitate conditions by which the Lome Accord<sup>103</sup> could be implemented. Approximately seven months after the creation of

99. *See id.* There have been several judicial inquiries into the HRD's system in recent years. *See id.* The way in which the HRD monitors diamond imports and exports on behalf of the Belgian Government has been criticized as violating "almost any definition of neutrality, and is an invitation to corruption. Cases of fraud in the Antwerp diamond trade are legendary and Antwerp has become one of the primary world centres for Russian organized crime." *Id.*

100. *See infra* notes 107-10 and accompanying text.

101. *See infra* notes 111-12 and accompanying text.

102. S.C. Res. 1270, U.N. Doc. S/RES/1270 (1999), ¶ 8:

The Security Council, 8. Decides to establish the United Nations Mission in Sierra Leone (UNAMSIL) with immediate effect for an initial period of six months and with the following mandate:

1. To cooperate with the Government of Sierra Leone and the other parties to the Peace Agreement in the implementation of the Agreement;
2. To assist the Government of Sierra Leone in the implementation of the disarmament, demobilization and reintegration plan;
3. To that end, to establish a presence at key locations throughout the territory of Sierra Leone, including at disarmament/reception centres and demobilization centres;
4. To ensure the security and freedom of movement of United Nations personnel;
5. To monitor adherence to the ceasefire in accordance with the ceasefire agreement of 18 May 1999...through the structures provided for therein;
6. To encourage the parties to create confidence-building mechanisms and support their functioning;
7. To facilitate the delivery of humanitarian assistance;
8. To support the operations of United Nations civilian officials, including the Special Representative of the Secretary-General and his staff, human rights officers and civil affairs officers;
9. To provide support, as requested, to the elections, which are to be held in accordance with the present constitution of Sierra Leone; ....

*Id.* *See also* S.C. Res. 1321, U.N. Doc. S/RES/1321 (2000). Resolution 1321 is UNAMSIL's current mandate, which extends until December 31, 2000.

103. *See generally* Lome Accord, *supra* note 59.

UNAMSIL, international peacekeepers began deploying in Sierra Leone.<sup>104</sup> Within a matter of days however, RUF rebels disarmed and took hostage nearly 500 of those peacekeepers deployed in RUF-controlled areas.<sup>105</sup> The rebels held the hostages for several weeks, eventually releasing them by July 18, 2000.<sup>106</sup>

The weaknesses exposed in the UNAMSIL hostage crisis spurred UN Secretary General Kofi Annan to request an increase in the size and mandate of the peacekeeping forces.<sup>107</sup> As a result, the military component of UNAMSIL originally not intended to exceed 6000<sup>108</sup> ballooned to 13,000, with Mr. Annan recently requesting an additional increase to 20,500 military personnel.<sup>109</sup> UNAMSIL is currently the largest peacekeeping force deployed by the United Nations.<sup>110</sup>

In addition to military intervention by UN peacekeepers to reclaim Sierra Leone's rebel-controlled areas, especially the diamond mines, the UN has also imposed a worldwide ban on the purchase of rough diamonds from Sierra Leone.<sup>111</sup> The United Nations Security Council adopted Resolution 1306 on July 5, 2000.<sup>112</sup> Key provisions of Resolution 1306 include paragraphs one through six, which establish the framework for the ban.<sup>113</sup> The embargo,

104. See Michael Fleshman, *Sierra Leone: Peacekeeping Under Fire*, AFRICA RECOVERY ONLINE, at <http://www.un.org/ecosocdev/geninfo/afrec/vol14no2/sierral.htm> (last visited Oct. 21, 2000).

105. *Id.*

106. See 146 CONG. REC. H6399, H6421 (July 18, 2000).

107. See *Sierra Leone: After African Trip, Security Council Team Urges Stronger UN Mission in Sierra Leone*, AFRICA NEWS, Oct. 19, 2000, available at LEXIS, Africa News File.

108. S.C. Res. 1270, *supra* note 102. Paragraph 9 provides that "the military component of UNAMSIL shall comprise a maximum of 6,000 military personnel...." *Id.* However, this provision goes on to explain that the determination of the number of UNAMSIL military personnel, along with other military observers, would be subject to review in light of conditions on the ground and any success made in the peace process. See *id.*

109. *Sierra Leone*, *supra* note 107.

110. See *Conflict Diamonds: Sanctions and War*, *supra* note 5.

111. See S.C. Res. 1306, U.N. Doc. S/RES/1306 (2000).

112. *Id.*

113. See *id.* ¶¶ 1-6. These provisions are as follows:

The Security Council,

1. Decides that all States shall take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory;
2. Requests the Government of Sierra Leone to ensure, as a matter of urgency, that an effective Certificate of Origin regime for trade in diamonds is in operation in Sierra Leone;
3. Also requests States, relevant international organizations and other bodies in a position to do so to offer assistance to the Government of Sierra Leone to facilitate the full operation of an effective Certificate of Origin regime for Sierra Leone rough diamonds;
4. Further requests the Government of Sierra Leone to notify the Committee established by resolution 1132 (1997) ('the Committee') of the details of such a Certificate of Origin regime when it is fully in operation;

designed to last for at least eighteen months, makes it illegal to buy Sierra Leonean diamonds whose origin is not officially certified by the Government of Sierra Leone.<sup>114</sup> The Resolution also calls on the Government of Sierra Leone to develop an effective certificate of origin scheme in order to track the country's rough diamond exports.<sup>115</sup> Resolution 1306 also provides for the establishment of a panel of experts to investigate the link between diamonds and arms.<sup>116</sup>

Notably, the resolution calls upon influential members of the diamond industry and relevant international organizations to assist the Government of Sierra Leone in establishing a well-regulated diamond industry.<sup>117</sup> The resolution does not however, provide for sanctions against those individuals, companies, or groups that refuse to assist the Government of Sierra Leone in developing a sustainable diamond trade.<sup>118</sup>

Resolution 1306 is a critical step towards ensuring that the exploitation of diamonds benefits the people of Sierra Leone and the country's

5. Decides that rough diamonds controlled by the Government of Sierra Leone through the Certificate of Origin regime shall be exempt from the measures imposed in paragraph 1 above when the Committee has reported to the Council, taking into account expert advice obtained at the request of the Committee through the Secretary-General, that an effective regime is fully in operation;
6. Decides that the measures referred to in paragraph 1 above are established for an initial period of 18 months and affirms that, at the end of this period, it will review the situation in Sierra Leone, including the extent of the Government's authority over the diamond-producing areas, in order to decide whether to extend these measures for a further period and, if necessary, to modify them or adopt further measures; ....

*Id.*

114. *See id.* ¶¶ 1, 5-6.

115. *See id.*

116. S.C. Res. 1306, *supra* note 111, ¶ 19. The Chairman of the Sierra Leone Sanctions Committee, Anwarul Chowdhury, announced the names of the five-member panel in a press briefing on August 1, 2000. The five experts are: Chairman, Martin Chungong Ayafor (Cameroon); Diamond Expert, Ian Smillie (Canada); Expert on Arms and Transportation, Johan Peleman (Belgium); Expert from Interpol, Harjit Singh Sandu; and Expert from the International Civil Aviation Organization (ICAO), Atabou Bodian (Senegal). *See id.*

117. *See id.* ¶¶ 10-11. These provisions are as follows:

10. [The Security Council] Encourages the International Diamond Manufacturers Association, the World Federation of Diamond Bourses, the Diamond High Council and all other representatives of the diamond industry to work with the Government of Sierra Leone and the Committee to develop methods and working practices to facilitate the effective implementation of this resolution;
11. Invites States, international organizations, members of the diamond industry and other relevant entities in a position to do so to offer assistance to the Government of Sierra Leone to contribute to the further development of a well-structured and well-regulated diamond industry that provides for the identification of the provenance of rough diamonds; ....

*Id.*

118. *See id.*

development as a democratic state, rather than the coffers of RUF rebels.<sup>119</sup> Following the Security Council's adoption of Resolution 1306, Sierra Leone's ambassador, Ibrahim M. Kamara, praised the Council's action.<sup>120</sup> He noted that for the first time the Council went to the root of the conflict in Sierra Leone, which in his opinion was and remains diamonds.<sup>121</sup> The United Kingdom's ambassador, Sir Jeremy Greenstock,<sup>122</sup> noted the diamond industry's crucial role in the success or failure of Resolution 1306.<sup>123</sup> Sir Jeremy made similar remarks with respect to the importance of Sierra Leone's neighboring countries' adherence to the terms of the Resolution.<sup>124</sup>

In addition to praising the Security Council's action in adopting Resolution 1306, the United States ambassador voiced sharp criticism for the Resolution's eighteen-month time limit.<sup>125</sup> U.S. ambassador Nancy Soderberg declared:

The use of time limits in the resolution or any other undermined the incentive for sanctioned States or entities to comply with the demands of the Security Council, encouraging them to believe that if they could simply outlast the patience of the Council or somehow divide its members, sanctions would be lifted without compliance or would just simply expire.<sup>126</sup>

Despite criticisms however, Resolution 1306 has already begun to have an impact on the development of a legitimate diamond trade in Sierra Leone.<sup>127</sup> Pursuant to paragraph two of the resolution, the Government of Sierra Leone implemented a diamond certification system.<sup>128</sup> The United Nations sanctions committee approved the government's certification regime September 29, 2000.<sup>129</sup> Sierra Leone subsequently resumed legal diamond exports October 12, 2000, three months after imposition of the embargo by the United Nations.<sup>130</sup>

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119. See S.C. Res. 1306, Doc. SC/6886 (July 5, 2000). (statement of Nancy Soderberg).

120. See *id.* (statement of Ibrahim M. Kamara).

121. See *id.*

122. See Richard Beeston, *UN Delays British Call to Ban Rebel Diamond Sales*, THE TIMES (London), July 1, 2000, available at LEXIS, The Times File (explaining Britain's role in the adoption of Resolution 1306, in that Sir Jeremy drafted the Resolution).

123. See U.N. Doc. SC/6886, *supra* note 119. (statement of Sir Jeremy Greenstock).

124. See *id.*

125. See S.C. Res. 1306, *supra* note 111, ¶ 6.

126. U.N. Doc. SC/6886, *supra* note 119. (statement of Nancy Soderberg).

127. Carola Hoyas, *UN Backs Diamond Scheme*, FINANCIAL TIMES (London), Sept. 30, 2000, at 7, available at LEXIS, The Financial Times File.

128. See *id.*

129. *Id.*

130. See *Sierra Leone Expected to Resume "Legal" Diamond Exports on 12th October*, BBC WORLDWIDE MONITORING, Oct. 13, 2000, available at LEXIS, BBC Monitoring Africa-Political File.

The government's plan provides for the control of diamond exports by both the use of certificates of origin and electronic monitoring of tamper-proof containers.<sup>131</sup> The certificate of origin provides the weight of the diamond in carats and its dollar value, it also verifies the legality of the exports, and it states the name of the purchaser -- who would have to belong to the World Diamond Council.<sup>132</sup> The government's new system also mandates the sale of diamonds seized for noncompliance, with the proceeds going to the government.<sup>133</sup>

Shortly after the Security Council adopted Resolution 1306, the Council started work on another resolution intended to hold accountable those who violated international humanitarian law in Sierra Leone.<sup>134</sup> On August 14, 2000, the Security Council adopted Resolution 1315, which calls for the Secretary General to negotiate with the Government of Sierra Leone to create an independent special court.<sup>135</sup>

Overall, the United Nations has gone to great lengths to facilitate the return of law and order to Sierra Leone in general, and to the diamond industry in particular.<sup>136</sup> From providing peacekeeping troops under UNAMSIL, to adopting Resolutions 1306 and 1315, the UN continues to demonstrate its steadfastness in facilitating the development of a peaceable democracy in Sierra Leone, in which the country's resources are used to achieve that end.<sup>137</sup>

131. *See id.*

132. *See id.*

133. *See id.*

134. GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, *supra* note 10, at 4. In this report, Human Rights Watch workers assert that the rebels have "grossly and systematically" violated fundamental guarantees of the laws of war under the 1949 Geneva Conventions and their Protocols. *See id.* The following acts, prohibited by the laws of war, are what RUF rebels have been accused of committing:

- a) violence to the life, health, and physical or mental well-being of persons, particularly murder, torture of all kinds, whether physical or mental, corporal punishment, and mutilation;
- b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, rape, and any form of indecent assault;
- c) the taking of hostages;
- d) collective punishments;
- e) threats to commit any of the foregoing acts.

*Id.*

135. *See* S.C. Res. 1315, U.N. Doc. SC/6910 (Aug. 14, 2000). (providing that "persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law"... .) *See also* Minh T. Vo, *War-Torn Sierra Leone Gets Help from the West*, CHRISTIAN SCI. MONITOR, Aug. 10, 2000, at 7. (noting that the issue of the court's jurisdiction is a point of controversy between Sierra Leone's government and the UN. In particular, the Government of Sierra Leone wants to limit jurisdiction to crimes committed after the Lome Accord, while the UN insists that jurisdiction should be broader.)

136. *See generally* S.C. Res. 1306, *supra* note 111.

137. *See id.* *See generally* S.C. Res. 1315, *supra* note 135; S.C. Res. 1270, *supra* note 102.

## B. *The United States*

In conjunction with the United Nations, the United States is taking steps to end the RUF's illegal diamond trade in Sierra Leone. Various members of Congress have sponsored legislation designed to use the leverage the United States has as consumer of over sixty-five percent of the world's diamonds in preventing the diamond industry from dealing in conflict diamonds.<sup>138</sup> Representative Tony Hall (D-Ohio) is the leading proponent of legislation that calls for the disclosure of a diamond's country of origin so that American consumers will know whether or not they are purchasing diamonds from conflict areas like Sierra Leone.<sup>139</sup>

On November 1, 1999, Representative Hall introduced the Consumer Access to a Responsible Accounting of Trade (CARAT) Act of 2000.<sup>140</sup> As introduced in 1999, the CARAT Act did not block the import of diamonds from conflict zones; rather, it focused on changing traditional diamond industry practice by requiring that a certificate stating the country where such diamonds were mined accompany all diamond imports into the United States.<sup>141</sup> Following the adoption of UN Security Council Resolution 1306, Representative Hall revamped the CARAT Act to incorporate the resolution's explicit embargo on all diamonds from Sierra Leone not certified by the government.<sup>142</sup>

Representative Hall's revised CARAT Act went even further than Resolution 1306 by requiring certificates of origin from a range of diamond importing countries in Africa other than Sierra Leone, including Liberia, the notorious conduit for illicit Sierra Leonean diamonds reaching the world market.<sup>143</sup> The September 2000 CARAT Act also provided for stricter civil penalties than were set out in the Act's original 1999 form. The revised act increased the penalty for a first time offense from a possible US\$5,000 fine to US\$50,000.<sup>144</sup> Moreover, the September 2000 CARAT Act calls for the

138. Dickey, *supra* note 27, at 9.

139. See H.R. 3188, 106th Cong. (1999).

140. *Id.*

141. *Id.* § 3(a)(1) and (2). See also 146 CONG. REC. H6654, H6658 (July 20, 2000) (explaining that under current United States law, no certification at all is required).

142. H.R. 5147, 106th Cong. (2000). Rep. Hall introduced this bill on September 12, 2000. See *id.* The prohibition on Sierra Leonean diamonds is found in § 101, which provides: No diamonds that have been mined in or exported from the Republic of Sierra Leone, the Republic of Liberia, Burkina Faso, the Republic of Cote d'Ivoire, the Republic of Angola, Guinea, Togo, or Ukraine may be imported into the United States, except for diamonds—

(1) the country of origin of which has been certified as the Republic of Sierra Leone by the internationally recognized government of that country, in accordance with United Nations Security Council Resolution 1306 July 5, 2000;

....

*Id.*

143. See *id.*

144. Compare H.R. 3188, *supra* note 139, § 4 (a), with H.R. 5147, *supra* note 142, § 202 (a).



appointment of a Special Representative on Conflict Diamonds.<sup>145</sup> A final distinction between the November 1999 and the September 2000 version of the Act is that the latter does not restrict itself to gem-quality<sup>146</sup> diamonds; instead, it prohibits the import of all diamonds lacking required country-of-origin certification.<sup>147</sup>

The CARAT Act provides a way in which American consumers may exercise their purchasing power wisely, by refusing to accept a diamond whose country of origin is not declared at the time of purchase.<sup>148</sup> The fact that Americans buy over 65 % of gem-quality diamonds worldwide affords them a powerful voice in the global diamond market.<sup>149</sup> Representative Hall urges that enacting legislation informing consumers of the original source of the diamond they buy will "encourage countries and businesses in Africa to use their influence to end the wars that wreak so much havoc on that continent before those wars give diamonds a bad name."<sup>150</sup> He further added "[a]nd it will help protect the democratic nations that are using their diamond revenues for the good of their people."<sup>151</sup>

Representative Hall has also proposed non-legislative solutions for restoring legitimacy to Sierra Leone's diamond trade.<sup>152</sup> Speaking before the

145. H.R. 5147, *supra* note 142, § 401. § 401. Special Representative on Conflict Diamonds.

(a) Appointment. The president shall...appoint a Special Representative on Conflict Diamonds. The Special Representatives [sic] on Conflict Diamonds shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(b) Functions. The Special Representative on Conflict Diamonds shall have the following functions:

(1) To serve as chairperson of an interagency working group established by the President to address the issues relating to the use of proceeds from the sale of diamonds mined in certain regions in Africa to support armed conflict in the countries in these regions. The interagency group shall include representatives of the Department of the Treasury (including the Customs Service), the Policy and Planning Staff and the Bureau of Democracy, Human Rights, and Labor of the Department of State, the Office of the United States Trade Representative, and the Department of Commerce.

(2) To represent the United States at international meetings on the issues described in paragraph (1).

*Id.*

146. See H.R. 3188, *supra* note 139, § 7. The term "gem-quality diamond" in this Act refers to any diamond whose retail value is at least US\$100. *Id.*

147. See H.R. 5147, *supra* note 142, § 101.

148. For an argument against Representative Hall's proposed CARAT Act, see Michael Lane, *Danger in a Diamond Embargo: American Jewellery Imports May Help to Finance African Wars*, FINANCIAL TIMES, Aug. 29, 2000, at 17, available at LEXIS, Financial Times File. In this article a former United States Customs Service official criticizes the proposed legislation on the basis that it would be unenforceable by U.S. Customs and that it would ultimately have damaging effects. See *id.*

149. Dickey, *supra* note 27, at 9.

150. 145 CONG. REC. E2232 (Nov. 1, 1999).

151. See *id.*

152. See *infra* notes 155-57 and accompanying text.

World Diamond Congress<sup>153</sup> on July 17, 2000, he asserted that while a certification scheme is necessary, it alone probably would not be enough given the public's current scrutiny of the diamond industry.<sup>154</sup> The Congressman proposed that the industry make charitable contributions to atone for past injustices and to fulfill its corporate responsibility to those Africans whose resources have been exploited at the expense of improving the industry's image.<sup>155</sup> He also proposed possible reparations and investment plans.<sup>156</sup> Representative Hall suggested that the diamond industry invest in a so-called Sparkle Fund, designed to provide loans to the poor for savings and entrepreneurship opportunities.<sup>157</sup>

Former President Bill Clinton played a recent role in stopping Sierra Leone's illicit diamond trade by focusing on diplomatic steps by which to deal with the issue of conflict diamonds.<sup>158</sup> On October 11, 2000, President Clinton signed a proclamation "suspending the entry into the United States, as immigrants and non-immigrants, of all persons - who plan, engage in, or benefit from activities that support the Revolutionary United Front (RUF), or that otherwise impede the peace process in Sierra Leone."<sup>159</sup>

In his statement, President Clinton noted that visa restrictions are applicable to Liberian President Charles Taylor, senior members of the Liberian government, as well as to supporters and family members of these government officials.<sup>160</sup> He called on the Liberian government to end its illicit traffic in arms and diamonds with the RUF, and instead to use its influence over the rebels to restore peace to the country.<sup>161</sup> President Clinton concluded his statement by noting that visa restrictions will continue until Liberia stopped participating in activities that support the RUF.<sup>162</sup>

Representative Hall's proposed CARAT Act suggests an economic approach to curbing illicit diamond trade in Sierra Leone via the implementation of a strict regulatory scheme on diamond imports into the

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153. The World Federation of Bourses (WFDB) decided in 1947 to create a worldwide network of diamond clubs, which subsequently led to the creation of the World Diamond Congress. See *The World Diamond Congress*, at <http://www.diamond-key.com/calendar/jul2000/16jul2000.html> (last visited Sept. 3, 2000). The World Diamond Congress meets every two years, at which time delegates from affiliated bourses discuss issues facing the industry. The 29th World Diamond Congress was held this year in Antwerp, Belgium from July 16th to the 19th. *Id.*

154. See Representative Tony Hall, *Address to the World Diamond Congress* (July 17, 2000), available at <http://www.house.gov/tonyhall/pr152.html>.

155. *See id.*

156. *See id.*

157. *See id.*

158. *The White House: Office of the Press Secretary-Statement by the President*, M2 PRESSWIRE, Oct. 12, 2000, available at LEXIS, M2 Presswire File.

159. *Id.*

160. *See id.*

161. *See id.*

162. *See id.*

United States.<sup>163</sup> President Clinton's diplomatic approach of imposing visa restrictions on Liberians who are known to support the RUF complements Hall's pending legislation by focusing on the country known to be the rebel's most notorious smuggling connection.<sup>164</sup> However, these approaches will be meaningless in the absence of a commitment by the diamond industry to halt illicit trading in conflict diamonds.<sup>165</sup>

#### PART V. INDUSTRY RESPONSE

The diamond industry produces an estimated US\$6,800,000,000 worth of rough gems each year, which results in almost US\$60,000,000,000 in retail sales.<sup>166</sup> South African based De Beers dominates the international diamond industry.<sup>167</sup> De Beers is one of the most vocal industry respondents regarding the issue of conflict diamonds.<sup>168</sup> The company has good reason to be at the forefront of this issue, given the effect that a negative image of diamonds could have on a business whose life's blood depends on the consumer's belief that "a diamond is forever."<sup>169</sup>

De Beers insists that it is appalled by the link between diamonds and the funding of weapons purchases by rebel armies in Africa.<sup>170</sup> However the company's buying practices in years past call the veracity of this assertion into question.<sup>171</sup> De Beers also disputes the percentage of conflict diamonds reportedly on the market, which it estimates to be only a small 3.7%.<sup>172</sup> However, the actual sincerity of De Beers' outrage regarding conflict

163. See *supra* notes 149-51 and accompanying text.

164. See *supra* notes 160-62 and accompanying text.

165. See *infra* notes 174-76 and accompanying text.

166. *Diamond Action Plan*, MINING, July 21, 2000, available at LEXIS.

167. See *Conflict Diamonds: Possibilities for the Identification, Certification and Control of Diamonds*, at [http://oneworld.org/globalwitness/press/pr\\_20000620.html](http://oneworld.org/globalwitness/press/pr_20000620.html) (last visited Oct. 27, 2000) (explaining that De Beers mines approximately 50% of world diamond production, and controls an estimated 70% of the world's diamond sales). See generally STEFAN KANFER, *THE LAST EMPIRE: DE BEERS, DIAMONDS, AND THE WORLD* (1993) (provides an extensive history of De Beers' development as an industry giant, starting from its founding by Cecil Rhodes in 1888, to its modern day status under the leadership of the Oppenheimer family).

168. See *infra* notes 174-76 and accompanying text.

169. See Smillie et al., *supra* note 12, at 13.

170. See *Hearings into the Issue of "Conflict Diamonds" Before the Subcomm. On Africa of the House Comm. on International Relations*, (2000) (Written Testimony by De Beers Consolidated Mines Ltd. & De Beers Centenary AG) [hereinafter De Beers' Written Testimony].

171. See *Conflict Diamonds*, *supra* note 167, at 13 (explaining that international attitudes have radically shifted with respect to conflict diamonds. The report notes that it is well known and widely reported that diamonds from conflict areas like Sierra Leone were being sold on the open market. The report goes on to state that dealing in smuggled diamonds was not only accepted business practice, but also promoted by De Beers who credited itself as the stabilizing force in world diamond prices during the 1990s).

172. De Beers' Written Testimony, *supra* note 170.

diamonds is secondary to the industry's greatest fear at the moment: A consumer boycott.<sup>173</sup>

Recently, De Beers took steps to disassociate itself from the controversial topic of conflict diamonds.<sup>174</sup> In February 2000, De Beers began guaranteeing the source of its rough diamonds in response to a UN embargo on Angolan diamonds.<sup>175</sup> At the same time, De Beers also began including guarantees on its sales invoices claiming that the purchased diamond was not procured from an area in Africa controlled by rebel forces.<sup>176</sup>

Aside from guarantees, De Beers also supports documentation indicating a diamond's origin rather than a mere declaration of provenance, which is provided for in both UN Resolution 1306 and the CARAT Act.<sup>177</sup> However, De Beers does not use the phrase "certificate of origin" with respect to such

173. See Smillic et al., *supra* note 12, at 13. In November 1999, De Beers Chairman Nicky Oppenheimer remarked on the negative impact that a consumer boycott would have on African countries that have legitimate diamond industries like South Africa, Botswana, and Namibia. *See id.* He said,

"[d]amage to the diamond market will not on its own deprive the warlords of their treasuries, but it will kill prosperity and encourage poverty in other well regulated African countries...damage the market and you undermine orderly mining regimes and ensure instead that there will be more...Sierra Leone." *Id.*

174. *See De Beers Guarantees the Source of its Rough Diamonds*, available at <http://www.debeers.ca/conflict/29feb0.html> (last visited Oct. 8, 2000). According to the guarantee, De Beers proclaims that it has:

1. Operated in strict compliance with UN Resolution 1173 relating to the sale of diamonds by the UNITA rebel movement in Angola
2. Ceased buying diamonds in Angola from the informal sector of the economy
3. Withdrawn its buyers from its buying offices in the Congo and Guinea (it has had no offices in Sierra Leone and Liberia for more than fifteen years)
4. Instructed its buying offices in Antwerp and Tel Aviv not to buy any diamonds imported from Africa and
5. Consistently and publicly urged the trade to avoid buying any diamonds originating from areas controlled by rebel movements.

*Id.*

175. *See id.*

176. *See id.* The guarantee on De Beers sales invoices reads as follows:

- (a) No diamonds in this box have been purchased in breach of UN Resolution 1173.
- (b) The intake of diamonds being purchased by De Beers and its associated companies and being sold into the market through the Sight system does not include any diamonds which come from any area in Africa controlled by forces rebelling against the legitimate and internationally recognised [sic] government of the relevant country.

*Id.*

177. *See De Beers' Written Testimony*, *supra* note 170. According to Part VII, paragraph 9 of the testimony, "origin" refers to the actual country in which a diamond was procured, whereas "provenance" refers to the country that last exported the stone. *See id.*

documentation; rather, it prefers to refer to such documents as "standard export/import forms."<sup>178</sup>

Unlike De Beers, the Diamond Dealers Club (DDC), an association of roughly 2000 American diamond dealers, does not support the use of certificates of origin or standard documentation that affects the same purpose.<sup>179</sup> The DDC opposes Representative Hall's CARAT Act,<sup>180</sup> which calls for certificates of origin.<sup>181</sup> Eli Haas, the President of DDC, testified before Congress stating that while Representative Hall's proposed legislation is well intentioned, it "would neither lead to the successful implementation of the UN sanctions nor end the ongoing civil wars and the concomitant deaths of innocent civilians. Rather, it would harm the diamond industry worldwide...."<sup>182</sup> The DDC President also criticized the legislation as being overly burdensome because it requires the issuance of tens of millions of certificates annually.<sup>183</sup>

The world diamond industry struck a compromise between De Beers' commitment to certificates of origin and the DDC's opposition to them at its 29th World Diamond Congress<sup>184</sup> held in Belgium last year.<sup>185</sup> While in Belgium, the industry formally announced a nine-step resolution calling for the creation of a global certification plan designed to assure interested parties that the industry does not deal in conflict diamonds.<sup>186</sup> The proposed scheme,

178. *Id.* See also *De Beers Calls for Firm Diamond Industry Action on 'Conflict Diamonds,'* at <http://www.debeers.ca/conflict/nfogm.html> (last visited June 14, 2000). Aside from the introduction of standard documentation, De Beers has also recommended the following: governments enact laws to empower diamond import control offices to deny entry of wrongly documented rough diamonds, diamond import offices obtain alluvial samples from each diamond producing country to help officers identify the true origin of imported rough diamond parcels, that banks that serve the diamond industry cut off services to clients who deal in conflict diamonds, there be an exchange in staff between diamond producing/exporting countries and diamond cutting centers to harmonize paperwork, and finally the start of a mandatory publication of the yearly import/export statistics of rough diamonds by all countries that deal in them. *See id.*

179. *Prepared Testimony of Eli Haas President Diamond Dealers Club Before the Subcomm. on Africa of the House Subcomm. on International Relations, FEDERAL NEWS SERVICE, May 9, 2000, available at LEXIS, Federal News Service File [hereinafter *Eli Haas*].*

180. *See generally* H.R. 5147, *supra* note 142.

181. *Eli Haas, supra* note 179.

182. *Id.*

183. *See id.*

184. *See supra* note 153.

185. *See Robert Weldon, Conflict Diamonds: A Resolution, PROF. JEWELER MAG., July 19, 2000, at http://www.professionaljeweler.com/archives/news/2000/071900story.html* (last visited Oct. 26, 2000).

186. *See id.* The nine provisions of the resolution are as follows:

1. Each accredited rough diamond importing country...should enact "redline" legislation. As such, no parcel of diamond rough could be imported unless it has been sealed and registered in a universally standardized manner by an accredited export authority from the exporting country.
2. Each exporting country...should establish accredited export offices or a diamond board that seals parcels of rough diamonds to be exported and

commonly referred to as "Rough Controls," requires country-of-origin certification up until the time rough diamonds reach the cutting and polishing process, but such certification is not provided after the diamond completes the process.<sup>187</sup> As a result, countries that import polished gems are not told where the diamonds were mined, because it will be presumed that all stones in legitimate cutting centers are themselves legitimate.<sup>188</sup>

In general, Rough Controls are intended to create a certification and delivery system for legitimate exports, instead of attempting to exclude all conflict diamonds from international trade.<sup>189</sup> Countries will only be permitted to import diamonds in universal tamper-proof packaging, accompanied by a forgery-proof certificate-of-origin granted by the government.<sup>190</sup> Rough diamond exports are then supposed to be entered into an international computer database both when they leave a country and when they enter one.<sup>191</sup> The resolution also calls for the creation of an International Diamond Council

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registered in an international database. If the country is a producer, it should be accredited only if it has control mechanisms to determine the flow and legitimate ownership of the rough to be exported.

3. Polished-diamond-consuming countries should enact legislation forbidding the importation of polished diamonds from any manufacturing/dealing country that has no redline legislation of rough.
4. As part of the diamond net, every country...should enact legislation calling for criminal penalties against any person or company proven to be knowingly involved in illegal rough diamonds
5. Every diamond organization should adopt an ethical code of conduct on conflict diamonds, labor practices and good business practices. Failure to adhere to this code would lead to expulsion from WFDB, IDMA and other relevant organizations.
6. As a positive measure of compliance, all relevant and interested parties should promote adherence to the code in the consumer marketplace.
7. The trade should enlist the support of banks, insurance and shipping companies and other pertinent providers of goods and services to expose and cease business relations with anyone found knowingly violating these principals.
8. The trade should conduct continual analysis of relevant technologies - and invest in developing them - for implementation leading to greater compliance.
9. Compliance should be monitored and controlled by an International Diamond Council, composed of producers, manufacturers, traders, governments and relevant international organizations. This process would be fully verified and audited.

*Id.*

187. See Holly Burkhalter, *Deadly Diamonds*, LEGAL TIMES, Sept. 11, 2000, at 74, available at LEXIS, Legal Times File.

188. *See id.*

189. *See id.*

190. *See id.*

191. *See id.*

that is expected to oversee the entire system, and expel<sup>192</sup> anyone dealing in conflict diamonds.<sup>193</sup>

A criticism of Rough Controls is that there is nothing to stop a country from packaging and sealing diamonds smuggled from rebel areas as their own and then exporting them as legitimate.<sup>194</sup> In a similar vein, another critic of the resolution argues that it will not effectively reach conflict diamonds because diamonds sold from rebel-controlled areas have never gone through an organized system in the first place.<sup>195</sup> However, the resolution's provisions for criminal liability and expulsion for non-compliance with the guidelines provide a strong incentive for industry representatives to cooperate.<sup>196</sup>

## VI. RECOMMENDATIONS

There is no single recommendation that, if implemented, would stop illicit diamond trade in Sierra Leone.<sup>197</sup> However, the international community has taken vital steps toward helping Sierra Leone develop a legitimate diamond industry.<sup>198</sup> The United Nations' adoption of Resolution 1306 illustrates the willingness of its member states to help Sierra Leone create a legitimate diamond trade by implementing a global embargo on diamonds not officially certified by the Government of Sierra Leone.<sup>199</sup> The United States has also offered its support by attempting to affect change in the world diamond industry through legislative action and diplomatic measures.<sup>200</sup> In addition, with its recent approval of "Rough Controls" the world diamond

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192. See *United Nations Takes Unprecedented Steps to Cut Off Illicit Diamond Trade in Effort to End Murderous Campaigns in Angola, Sierra Leone and the Congo*, NATIONAL PUBLIC RADIO SHOW: WEEKEND EDITION SATURDAY, Aug. 12, 2000, available at LEXIS, National Public Radio File. President of the World Diamond Congress, Ely Isakoff, said the following in an interview about the industry's understanding of the expulsion provision in "Rough Controls":

Expulsion means that his picture is posted throughout the world in the trading floor and this man is a pariah, like the list of the FBI Most Wanted. He cannot do any business, and he may well forget about being in the industry. We have here a moral question above business question that we must rid ourselves of conflict diamond [sic], regardless of any business consideration, first of all. I believe we're going to get every diamond dealer throughout the world cooperating.

*Id.*

193. See Weldon, *supra* note 185, ¶ 5.

194. See Burkhalter, *Deadly Diamonds*, *supra* note 187.

195. See *Sierra Leone: Shipping Gems Under UN Plan*, CHIC. TRIB., Oct. 28, 2000, at N17, available at LEXIS, Chicago Tribune File.

196. See Weldon, *supra* note 185, ¶¶ 4-5.

197. See Smillie et al., *supra* note 12, at 8.

198. See *supra* notes 136-39, 158-59, 185-86 and accompanying text.

199. See generally S.C. Res. 1306, *supra* note 111.

200. See generally H.R. 5147, *supra* note 142. See also *Office of the Press Secretary-Statement by the President*, *supra* note 158.

industry is finally acknowledging its critical role in stopping rebel trade in conflict diamonds in Sierra Leone and other African states.<sup>201</sup>

While these actions lay the foundation for developing a sustainable and well-regulated diamond industry in Sierra Leone, they are by no means a stopping point. The following recommendations are directed to the RUF, the Government of Sierra Leone, the diamond industry, and the international community.<sup>202</sup> It is important to note from the outset that the establishment of a sustainable diamond trade in Sierra Leone cannot rely solely on diamond-specific recommendations.<sup>203</sup> Accordingly, the following recommendations also focus on state building and human rights issues.<sup>204</sup>

*Recommendations to the RUF:*

- 1) Immediately refrain from inflicting additional human rights abuses.<sup>205</sup> This necessarily dictates that rebel soldiers release all civilian abductees and prisoners of war.<sup>206</sup>

201. See generally Weldon, *supra* note 185.

202. See *infra* notes 205-50, and accompanying text.

203. See Smillie et al., *supra* note 12, at 8.

According to this report, the establishment of sustainable peace in Sierra Leone will also require major investment by the government of Sierra Leone and by donors in long-term basic human development and the creation of democratic institutions. Diamond-specific initiatives must be integrated into wider programmes aimed at building fundamental human security and democracy, involving parliamentarians, journalists, teachers and a broad cross-section of civil society.

*Id.*

204. See THE ECONOMICS OF INSURGENCY IN ANGOLA, THE DEMOCRATIC REPUBLIC OF THE CONGO, AND SIERRA LEONE, *supra* note 6, at 4-5. The National Intelligence Council emphasized the importance of state building by noting the following in a recent conference report:

[E]stablishing the fundamentals of a state is essential in countries trying to construct normalcy out of anarchy. Diamonds can finance insurgency when no state exists. Illicit trade in diamonds can flourish where state institutions have been degraded...The lack of institutions allows criminal activity to bring about such degradation. Buttressing state governance must go hand-in-hand with gaining control of the illicit diamond trade. . . .

*Id.*

205. See GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, *supra* note 10, at 4.

206. See Lome Accord, *supra* note 59, art. XXI. This article mandates "[a]ll political prisoners of war as well as all non-combatants shall be released immediately and unconditionally by both parties, in accordance with the Statement of June 2, 1999, which is contained in Annex 3 and constitutes an integral part of the present Agreement." *Id.* Annex 3 notes that the parties agreed to have the UN establish a Committee to handle the release of all prisoners of war and non-combatants. The parties also agreed that the UN Chief Military Observer in Sierra Leone chair the committee, and that committee members should include representatives of the International Red Cross, UNICEF, and other relevant UN agencies and non-governmental organizations. See *id.*



- 2) Immediately abide by the first and foremost provision of the Lome Accord, which calls for the permanent cessation of hostilities between the Government of Sierra Leone and the RUF.<sup>207</sup>
- 3) Provide education to all RUF members on the standards of international humanitarian law and the rules of war.<sup>208</sup>
- 4) Peacefully relinquish control of the country's diamond mines to the Government of Sierra Leone, and begin disbanding rebel forces according to the encampment, disarmament, and demobilization process explained in the Lome Accord.<sup>209</sup>
- 5) Address human rights violations committed since 1991, via the Truth and Reconciliation Commission provided in the Lome Accord.<sup>210</sup>

*Recommendations to the Government of Sierra Leone:*

- 1) Establish law and order throughout the country to facilitate the legal exploitation of Sierra Leone's mineral resources.<sup>211</sup> This requires the total disarmament, demobilization, and reintegration of rebel forces.<sup>212</sup> The Government of Sierra Leone also needs to work swiftly with the United Nations to create an independent special court in which to try offenders of international humanitarian law.<sup>213</sup>
- 2) Create an autonomous governmental body solely responsible for the management of Sierra Leone's strategic resources.<sup>214</sup> This body should

207. See *id.* art. I.

208. See GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, *supra* note 10, at 5. See also Lome Accord, *supra* note 59, art. XXV ¶ 2. According to this provision of the cease-fire agreement, the RUF pledged to promote Human Rights education throughout Sierra Leonean society; including the schools, the media, the police, the military, and the religious community. See *id.*

209. See Lome Accord, *supra* note 59, art. XVI. A neutral force of UN and ECOMOG peacekeepers is supposed to oversee this process. See *id.* ¶ 1.

210. See *id.* art. XXVI. Art. XXVI ¶ 1 mandates "[a] Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation." *Id.* Art. XXVI ¶ 2 provides "[in] the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991. This commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations." *Id.*

211. See Smillie et al., *supra* note 12, at 9.

212. See Lome Accord, *supra* note 59, art. XVI. See also Abidjan Accord, *supra* note 50, art. 9. According to this 1996 peace agreement between the RUF and the Government of Sierra Leone, the RUF would disband and its members would be permitted to join the country's sanctioned military which would become Sierra Leone's new unified armed forces. See *id.*

213. See generally S.C. Res. 1315, *supra* note 135.

214. See Lome Accord, *supra* note 59, art. VII. Art. VII ¶ 1 provides:

Given the emergency situation facing the country, the parties agree that the Government [of Sierra Leone] shall exercise full control over the exploitation of gold, diamonds and other resources, for the benefit of the people of Sierra Leone.

- be responsible for all exploitation, sale, and export of the country's diamonds.<sup>215</sup> This government-run diamond commission would also be responsible for issuing all mining licenses.<sup>216</sup>
- 3) Enlist the help of outside observers, such as a team of UN inspectors, who would have the authority to monitor the government-run diamond commission.<sup>217</sup> This team of inspectors should provide feedback to the Government of Sierra Leone on any strengths or weaknesses the government commission on strategic resources might have.<sup>218</sup>
  - 4) The Government of Sierra Leone should encourage complete transparency with respect to its management of diamonds through its officially sanctioned commission in charge of strategic resources.<sup>219</sup> Complete transparency would necessitate full public disclosure of all records and business transactions related to the government's exploitation of diamond resources.<sup>220</sup> To this end, the government should publish monthly reports disclosing the details of any and all transactions related to its resource management, including budgetary matters and the issuance of mining licenses.<sup>221</sup>
  - 5) Pursuant to an agreed term in the Lome Accord, the Government of Sierra Leone should amend its Constitution to make the exploitation of

Accordingly, a Commission for the Management of Strategic Resources, National Reconstruction and Development (hereinafter termed the CMRRD) shall be established and charged with the responsibility of securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds, and other resources that are determined to be of strategic importance for national security and welfare....

*Id.*

*See also supra* note 60 and accompanying text (explaining that the Lome Accord put Foday Sankoh, the RUF's leader, in charge of the CMRRD, which ultimately enhanced rebel control over Sierra Leone's diamond mines).

215. *See* Lome Accord, *supra* note 59, art. VII ¶ 2.

216. *See id.* ¶ 3. *See also Conflict Diamonds, supra* note 167. This report recommends that a government issued license should be required for all extraction; whether it is by a large company, an alluvial digger, or a village co-operative. *See id.* at 46. Alluvial refers to the name of a type of diamond and the type of shallow mine from which a diamond is extracted. *See id.* at 52. An alluvial digger is someone who extracts alluvial diamonds from riverbeds and shallow deposits. *See id.*

217. *See* Smillie et al., *supra* note 12, at 9.

218. *See id.*

219. *See id.* "The Government of Sierra Leone must ensure full transparency, high standards and rigorous probity in the implementation of its diamond purchasing, valuation and oversight activities. Corruption and conflicts of interest must be dealt with quickly and decisively. . . ." *Id.*

220. *See* Lome Accord, *supra* note 59, art. VII ¶ 10. According to this section of the peace accord, all agreements and transactions by the Commission for the Management of Strategic Resources, National Reconstruction and Development would be subject to full public disclosure. The agreement also provides that all records of matters related to the exploitation and management of strategic resources, as well as records of all correspondence, negotiations, and business transactions shall be deemed public documents. *See id.*

221. *See id.* art. VII ¶ 11.

diamonds the legitimate province of the people.<sup>222</sup> The amendment should mandate that all proceeds from the sale of diamonds by the government be used for state building activities in Sierra Leone such as those related to public education and health, as well as infrastructure development.<sup>223</sup>

- 6) The Government of Sierra Leone should immediately begin investigating the gross human rights abuses committed by RUF rebels since their 1991 invasion.<sup>224</sup> The government should prosecute all rebels who have violated international law.<sup>225</sup>

*Recommendations to the Diamond Industry:*

- 1) The international diamond industry should establish a diamond task force responsible for coordinating various proposals and ideas outlining ways that the industry may prevent conflict diamonds from entering the global market.<sup>226</sup> The task force should have a balanced membership, including large and small companies, and experts within the industry.<sup>227</sup>

222. *See id.* art. VII ¶ 14.

223. *See id.*

224. *See GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, supra* note 10, at 5. This Human Rights Watch report highlights several other steps the Government of Sierra Leone should take with respect to human rights abuses in the country. *See id.* One recommendation is that the government create a task force to do the following:

1. develop a concrete plan for meeting the needs of abused women and deal specifically with violations inflicted on women during conflict, with the aim of improving the social, medical, and legal response to women's needs.
2. deal with the effects of war on children: child victims, witnesses, and perpetrators. A key function of this task-force would be the development of a concrete plan for meeting the long-term needs of those who were adversely affected by the war. This task force should determine how best to reintegrate children into their communities, provide education and vocational training suitable for older children, and rehabilitate children who have been victims of atrocities, have witnessed atrocities (sometimes against their own parents), or have themselves taken part in atrocities.
3. address the special physical, psychological, and social needs of the thousands of victims of limb amputation and other mutilation.

*Id.*

225. *See supra* note 134 and accompanying text. *See also* Dickey, *supra* note 27, at 10. The RUF has committed egregious violations of humanitarian law in Sierra Leone. *See id.* The international humanitarian law that governs the conduct of all combatants in war is set out in the Geneva Conventions and the subsequent 1977 Protocols. The rapes, abductions, and murders committed by RUF rebels violate Common Article 3 of the Geneva Conventions, which prohibits parties in a conflict from inflicting violence to the life of a person; including mutilation, cruel treatment, torture and outrages upon personal dignity, taking hostages, and summary executions. Sierra Leone has ratified the Geneva Conventions and the 1977 Protocols. *See id.* *See also* GETTING AWAY WITH MURDER, MUTILATION, AND RAPE: NEW TESTIMONY FROM SIERRA LEONE, *supra* note 10, at 5.

226. *See Conflict Diamonds, supra* note 167, at 50.

227. *See id.*

The task force should work closely with importing and exporting countries to create an international diamond committee.<sup>228</sup> In order to ensure the integrity of the international diamond committee, membership should be equally balanced between non-governmental organizations, governments, and industry representatives.<sup>229</sup>

- 2) The task force should study and research various marking technologies that can be applied to polished and rough diamonds.<sup>230</sup>
- 3) The industry as a whole should only trade in diamonds with a verifiable audit trail.<sup>231</sup> This would require a provable chain of custody documenting a diamond's entire movement from mine to purchaser.<sup>232</sup>

228. *See id.* *See also* Weldon, *supra* note 185, ¶ 9. In its recently adopted resolution at the World Diamond Congress in July 2000, the industry advocated the establishment of a similar international body, which it termed the "International Diamond Council." This international body would be comprised of members from every level of the diamond industry, international organizations, and governments. *See id.* The council would be charged with monitoring and controlling industry non-compliance with respect to dealing in conflict diamonds. *See id.*

229. *See Conflict Diamonds, supra* note 167, at 50.

230. *See id.* at 31. Technology currently exists in the diamond industry for branding and grading cut diamonds. *See id.* Such technology relies on sampling and recording the properties of individual diamonds, or marking a diamond with a bar code or logo for purposes of identification. So-called fingerprinting methodology also exists whereby a laser may scan the unique optical signature of a diamond, which could be stored on a database for recall at a later date. *See id.* A standardized bar code system might prove particularly useful in helping the industry develop a chain of custody for a diamond, as a single bar code could store the entire history of a stone including its country of origin, its original weight, and where it was cut. *See id.* at 33.

*See also* De Beers' Written Testimony, *supra* note 170. In written testimony before the U.S. Congress in May 2000, a De Beers spokesman stated the following criticism of current diamond identification methodologies:

While the identification of rough diamond parcels can be extremely difficult, marking a rough diamond so that its identity will remain secure throughout the cutting and polishing process is completely impractical, because more than fifty percent of a diamond's weight is lost in the polishing process. Moreover, the overwhelming majority of diamonds are of a size and quality such that the cost of marking would so erode the margin to the manufacturer as to make it economically unfeasible...It is simply not technically possible, nor is it economically feasible, to mark a stone in such a way that the mark will survive from rough to polished, even with advanced laser techniques. Those who offer this as an easy solution are instead offering a golden opportunity to counterfeiters and fraudsters to pass off conflict or illegal diamonds. This in itself could have the perverse effect of undermining legitimate attempts to curtail the trade in diamonds from conflict areas.

*Id.*

*See also* Weldon, *supra* note 185, ¶ 8. In its adoption of "Rough Controls," the industry proposed that it keep itself abreast of relevant technologies in the industry, however it did not specifically reference technologies for the purpose of marking or identifying a particular diamond. *See id.*

231. *See Conflict Diamonds, supra* note 167, at 50.

232. *See* H.R. 5147, *supra* note 142, at § 201. This section of the CARAT Act mandates that a certificate of origin, stating the English name of the country in which the diamond was mined, must accompany products made in whole or in part from diamonds. *See id.* at § 201 (B).

- Certificates of origin would be the key element in such a chain of custody because they would accompany a diamond from extraction to purchase.<sup>233</sup>
- 4) Create a register of companies and individuals in the diamond industry that have pledged not to deal in conflict diamonds.<sup>234</sup> Members listed on the register caught dealing in conflict diamonds would be subject to criminal liability as well as lifetime expulsion from influential trade groups.<sup>235</sup> Only diamonds bought and sold from registered members would be considered legitimate.<sup>236</sup>
  - 5) Manufacturers<sup>237</sup> and retailers should only purchase diamonds from registered members of the international diamond committee, who would necessarily provide a verifiable audit trail for each and every diamond product, showing that the product in question is conflict free.<sup>238</sup>

*See also* S.C. Res. 1306, *supra* note 111, ¶ 2 (mandating that the Government of Sierra Leone develop an effective Certificate of Origin scheme).

233. *See id.* *See also supra* note 187 and accompanying text (noting that the diamond industry's proposed 'Rough Controls' would only require a certificate of origin up until the time of the cutting and polishing process, but not after because diamonds that have undergone the process will be presumed legitimate).

234. *See Conflict Diamonds, supra* note 167, at 50.

235. *See id.* *See also* Weldon, *supra* note 185, ¶ 5. According to this provision of the industry's newly adopted 'Rough Controls,' industry representatives should adopt an ethical code of conduct on conflict diamonds. *See id.* Failure to abide by the code would result in expulsion from two influential trade organizations: the World Federation of Diamond Bourses and the International Diamond Manufacturers Association. *See id.* Paragraph four of the Resolution calls on relevant countries to enact legislation that would impose criminal penalties on anyone knowingly involved with conflict diamonds. *See id.* *See also* H.R. 5147, *supra* note 142, at § 202. The CARAT Act provides a good model for countries that would like some guidance in how to structure criminal penalties for those dealing in conflict diamonds. Section 202 subsection (b), entitled "Criminal Penalties," mandates that any person who willfully or with intent to defraud violates the provisions of the CARAT Act requiring diamonds and products made from diamonds to be accompanied with country of origin documentation upon import to the U.S. shall be subject to the following criminal penalties:

- (1) upon conviction for the first violation...be fined not more than \$100,000, or imprisoned for not more than one year, or both; and
- (2) upon conviction for the second or any subsequent violation...be fined not more than \$250,000, or imprisoned for not more than 1 year, or both. *Id.*

236. *See Conflict Diamonds, supra* note 167, at 51.

237. The world's major diamond manufacturing centers are located in Israel, Belgium, India (Mumbai and Surat), and New York; cutting and polishing also occurs in South Africa, Botswana, Russia, China, Sri Lanka, Thailand, Vietnam, and Mauritius. *See Centers and Bourses, at* <http://www.diamond-key.com/bourses> (last visited Nov. 6, 2000).

238. *See Conflict Diamonds, supra* note 167, at 51. This report emphasizes the critical role that retailers play in maintaining consumer confidence in diamond purchases by noting, "[r]etailers are the public face of the diamond industry as far as consumers are concerned. This places a special responsibility upon them and they must ensure that they co-operate fully with the rest of the industry." *Id.* The report also explains that a verifiable audit trail would provide an added benefit to consumers because it would show that the diamond product has not been treated and is not synthetic. *See id.*

*Recommendations to the International Community:*

- 1) Given that the majority of rough diamonds are traded on the world diamond market in Antwerp, the Belgian Government should take immediate steps to prevent conflict diamonds from entering Belgium.<sup>239</sup> The Government of Belgium must take direct responsibility for customs, valuation, and statistical procedures of imported diamonds, rather than delegating these duties to the Diamond High Council as it has in the past.<sup>240</sup> The Belgian Government should not only prohibit the import of Sierra Leonean diamonds in accordance with UN Resolution 1306, but also, on its own initiative, ban the import of all diamonds from Liberia.<sup>241</sup>
- 2) All UN member states should enact legislation implementing Resolution 1306.<sup>242</sup> Countries should also enact legislation banning the import or export of a diamond or parcel<sup>243</sup> of diamonds unless it is registered in accordance with the rules of the international diamond committee, which would require certificate of origin documentation.<sup>244</sup> States should also pass legislation imposing strict criminal penalties on anyone knowingly involved with conflict diamonds.<sup>245</sup>
- 3) The UN should impose an embargo on all diamonds from Liberia.<sup>246</sup> An embargo of this sort should not be given an arbitrary time period, but rather should last as long as Liberia's leadership continues to be complicit with the RUF's illicit trade in Sierra Leonean diamonds.<sup>247</sup> The UN should also consider imposing a full embargo on diamonds from Guinea, which is the country that borders Sierra Leone to the north.<sup>248</sup>
- 4) All states that import, export, or act as a transit point for diamonds, along with relevant international organizations, should offer the Government of Sierra Leone assistance in developing a well-regulated

239. See Dickey, *supra* note 27, at 9. Nearly 90% of the world's rough diamonds are traded in Antwerp. See *id.*

240. See Smillie et al., *supra* note 12, at 10.

241. See *id.* at 11.

242. See S.C. Res. 1306, *supra* note 111, ¶ 1.

243. See *Conflict Diamonds*, *supra* note 167, at 54. A parcel is defined as a quantity of diamonds that can vary from 10 carats up to thousands of carats. See *id.*

244. See Weldon, *supra* note 185, ¶¶ 1-3. The diamond industry has proposed that countries enact so-called redline legislation of the rough, which would prohibit the import of rough diamonds that do not meet universally recognized standards for legitimacy. See *id.*

245. See H.R. 5147, *supra* note 142, at § 202.

246. See Smillie et al., *supra* note 12, at 11.

247. See *supra* notes 86-89 and accompanying text (explaining the major role that Liberia plays in Sierra Leone's illicit diamond trade in that it provides a conduit through which the RUF may smuggle diamonds out of Sierra Leone and trade them for sophisticated weaponry).

248. See Smillie et al., *supra* note 12, at 11.

diamond industry.<sup>249</sup> This assistance may simply entail adherence to Resolution 1306, or may also include the imposition of visa restrictions on persons from Liberia who benefit or support in any way the actions of the RUF or who otherwise impede the peace process in Sierra Leone.<sup>250</sup>

## VII. CONCLUSION

Ravaged by almost a decade of war, Sierra Leone could not be in a worse situation today than if it had no diamonds at all. The RUF's illicit exploitation of the country's diamond resources must immediately cease. The end of unlawful diamond trading by the rebels is ever more likely as the Government of Sierra Leone slowly begins to reassert its authority over the country's diamond mines.<sup>251</sup> The sooner Sierra Leone is able to establish a legitimate, government-controlled diamond trade, the sooner it will be able to join in the prosperity and development that other African states now enjoy as a result of their rich diamond resources.<sup>252</sup>

The widespread human rights abuses<sup>253</sup> suffered by Sierra Leoneans during the RUF's rampage are a direct consequence of the country's illegal diamond trade, and are likely to continue in the absence of law and order in Sierra Leone's diamond industry and civil society. The United Nations' efforts thus far in embargoing diamonds not certified by the government, deploying peacekeeping forces, and attempting to establish an independent special court in which to try violators of international humanitarian law have been instrumental in restoring peace in the war-torn country. However, the United Nations' actions alone cannot restore stability to Sierra Leone.

Only a concerted effort by all relevant international actors, including countries that deal with the import or export of diamonds, along with diamond industry representatives, will succeed in preventing conflict diamonds from entering the world market. States must immediately abide by the terms of Resolution 1306 in order to help the Government of Sierra Leone establish a sustainable and well-regulated diamond trade. The United States plays a

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249. See S.C. Res. 1306, *supra* note 111, ¶ 11.

250. See *The White House: Office of the Press Secretary-Statement by the President*, *supra* note 158.

251. See *supra* notes 128-30 and accompanying text.

252. See Ravi Nessman, *Botswana's Diamond Mines Fuel a More Livable Lifestyle*, INDIANAPOLIS STAR, Nov. 12, 2000, at A24. While diamonds have fueled brutal conflicts in Sierra Leone and other parts of Africa, they have been nothing but a salvation to Botswana where they were discovered in 1967, one year after the country gained its independence from Britain. Botswana's economy has steadily soared as a result of the country's diamond profits, growing at an unprecedented rate of seven percent a year. Overall, salaries have increased, along with education and healthcare standards. Diamond profits are used to invest in the government and to encourage democratic institutions. See *id.*

253. See *supra* note 10; notes 34-38 and accompanying text; note 134; notes 224-25.

critical role in achieving this goal because of its enormous share of the global diamond market. By enacting Representative Hall's proposed CARAT Act and continuing visa restrictions on Liberians who support the RUF, the United States would be a model for other countries to follow in supporting the industry's latest push to rid itself of conflict diamonds. Of ultimate import in Sierra Leone are the thousands of innocent civilian lives subjected to rape, mutilation, and death at the hands of RUF rebels supported by profits from conflict diamonds. Time is of the essence in establishing a legal diamond trade in Sierra Leone.

*Laura Forest\**

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