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Blood Diamonds and Non-State Actors

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I. WAR

During the 1990s and into the 2000s, rebel armies in several African countries—bereft of the great-power backing that proliferated during the Cold War—began to finance their efforts through the illegal exploitation of natural resources.[1] While he controlled the Port

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1. *See* Mats Berdal & David M. Malone, *Introduction to* GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS 3–9 (Mats Berdal & David M. Malone

of Buchanan, for example, Liberian warlord Charles Taylor sold tropical hardwood and even iron ore to eager and unprincipled international buyers.[2] In the Democratic Republic of Congo (DRC), rebel armies are still looting gold, tantalum, tin, and tungsten.[3] Diamonds, however, were central to the funding of the most brutal and protracted wars in a generation.

In Angola, *União Nacional para a Independência Total de Angola* (UNITA), thwarted in the run-up to independence in 1974, fought a brutal war against the government for almost two decades thereafter. Almost half a million people died, and half the population was displaced.[4] Until the fall of the Berlin Wall, this was a proxy war, with nearly a thousand Russian officers and 45,000 Cuban troops backing the government against the South African forces and American money supporting UNITA.[5] But by 1991, the game had changed, and UNITA turned more industriously to an asset that it had dipped into in the past—diamonds. By the mid-1990s, UNITA was said to be exporting over a million dollars a day worth of diamonds to pay for weapons, ammunition, and heavy armor.[6]

Between 1991 and 2002, a terrible war took place in Sierra Leone, lasting as long as the First and Second World Wars combined. While the Revolutionary United Front (RUF) claimed it was fighting for justice and democracy, it waged its war almost entirely against civilians, chopping the limbs off innocent children and adults who happened to get in its way.[7] The brutality, often characterized as unfathomably mindless, had a clear objective. Once bitten and twice shy, terrorized civilians fled from towns and villages if they heard the RUF were coming, allowing the rebels to forage with impunity.[8] More importantly, the country's diamond fields were abandoned to the RUF giving it access to the resources required for a protracted conflict.[9] Sierra Leone's war was closely allied with Charles Taylor's rampage

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eds., 2000) ("In many of these cases, the benefits of war are closely linked to the presence of an access to natural resources in the area of conflict.").

2. STEPHEN ELLIS, THE MASK OF ANARCHY: THE DESTRUCTION OF LIBERIA AND THE RELIGIOUS DIMENSION OF AN AFRICAN CIVIL WAR 90–91 (1999).

3. *See* Pete Jones & David Smith, *Congo's Army Accused of Rape and Looting as M23 Rebels Win Image War*, THE GUARDIAN (Nov. 26, 2012, 7:10 AM), http://www.theguardian.com/world/2012/nov/26/drc-army-accused-rape-murder-congo (discussing the continued looting activities of rebel armies in the DRC).

4. LESLIE ALAN HORVITZ & CHRISTOPHER CATHERWOOD, ENCYCLOPAEDIA OF WAR CRIMES & GENOCIDE 19 (2006).

5. IAN SMILLIE, BLOOD ON THE STONE: GREED, CORRUPTION AND WAR IN THE GLOBAL DIAMOND TRADE 65 (2010).

6. *Id.* at 66.

7. *See* LANSANA GBERIE, A DIRTY WAR IN WEST AFRICA: THE RUF AND THE DESTRUCTION OF SIERRA LEONE 153 (2005) (describing the perpetration of atrocities against civilians, in particular, mass amputations by the RUF).

8. *See id.* at 64 (discussing the scare tactics employed by the RUF).

9. *See id.* at 153 (characterizing diamonds as the "mainstay of the warlord economy").

to power in Liberia and with the additional conflicts he helped foment in Guinea and Côte d'Ivoire.[10]

In the DRC, a country rich in mineral resources, diamonds played a central role in sustaining the venal government of Mobutu Sese Seko for three decades through the mid-1990s.[11] Over the following decade, diamonds sustained his successor, Laurent Kabila, and a series of warlords, rebel factions, and marauding armies from neighboring countries.[12] The International Rescue Committee has conducted detailed studies in the DRC and estimates that 5.4 million *more* people died between 1998 and 2007 than would have if there had been no conflict.[13] To make matters even worse, with the breakdown in law and order, rape became a common terror tactic. According to a recent study, as many as 1.8 million Congolese women have been raped during their lifetimes.[14]

Diamonds did not cause this carnage. The rebel armies and their leaders were much less interested in wealth than in power. Diamonds were simply the means to an end, but without them the wars would not have lasted as long as they did, and the human cost would not have been nearly so high.

There are three aspects to diamonds that have made them so attractive to warlords. The first is their very high weight-to-value ratio. Diamonds are tiny, and a small pouch of quality stones could finance a rebel army for days if not weeks. The second is that, unlike the deeply buried diamonds of Canada, Botswana, and Russia, those of Angola, Congo, and West Africa are mostly alluvial in nature, found very close to the surface, and scattered over hundreds of square miles.[15] These diamonds are as easy to mine as they are difficult to

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10. *See id.* at 151 (explaining the roles Liberian mercenaries and Charles Taylor played in the violent campaigns that took place in Sierra Leone).

11. CHRISTIAN DIETRICH, HARD CURRENCY: THE CRIMINALIZED DIAMOND ECONOMY OF THE DEMOCRATIC REPUBLIC OF THE CONGO AND ITS NEIGHBOURS 7 (Ian Smillie ed., Int'l Peace Info. Serv. 2002), *available at* http://www.africaportal.org/dspace/articles/hard-currency-criminalized-diamond-economy-democratic-republic-congo-and-its.

12. *See id.* at 9–13 (describing Kabila's employment of "destructive financial policies"—primarily focused within the diamond sector—"aimed at generating revenue for his friends and supporters").

13. BENJAMIN COGHLAN ET AL., MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO: AN ONGOING CRISIS 9 (Int'l Rescue Comm. 2007), *available at* http://www.rescue.org/sites/default/files/migrated/resources/2007/2006-7_congomortalitysurvey.pdf.

14. Amber Peterman et al., *Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo*, 101 AM. J. PUB. HEALTH 1060, 1063 (June 2011).

15. Ian Smillie, *Conflict Diamonds: The Kimberley Process and the South American Challenge*, *in* GOVERNANCE ECOSYSTEMS: CSR IN THE LATIN AMERICAN MINING SECTOR 102, 103 (Julie Sagebien & Nicole Marie Lindsay eds., 2011) (explaining that alluvial diamonds "are often available to individual diggers with little more than shovels, sieves, and a source of water for straining gravel").

police, and with appropriate terror tactics, rebel armies had no difficulty in gaining access to them.

The third part of the mix has to do with regulation. Rough diamonds were, in most countries, completely unregulated during the better part of the twentieth century.[16] De Beers had a lock on much of the world's production, and it controlled or influenced most of the rest, giving it effective management over as much as 90 percent of all rough diamond distribution.[17] But this was not public regulation, and it was not transparent. It was regulation by cash register, with few questions asked about provenance or any of the darker issues that might lurk in a diamond's background.[18] Governments were only tangentially involved. Most were satisfied with mining royalties, license fees, and export taxes, and beyond these basics, they asked few questions.[19] The most glaring example of governmental apathy took place in Belgium. The city of Antwerp is the center of the world's diamond trade, and either before or after De Beers handles them, some 90 percent of the world's diamonds pass through the city on their way to India, Israel, or China for cutting and polishing.[20] Many pass through Antwerp again, on their way to the showrooms of New York, Paris, and London.[21] During the 1990s, Belgian customs recorded the importation of *billions* of dollars' worth of rough diamonds from Liberia, a country with a negligible diamond resource of its own, and a country wracked by civil war.[22] Hundreds of millions of dollars' worth of diamonds were being imported from countries with no diamond mining whatsoever: Gambia, Burkina Faso, Zambia, and others.[23] Whatever a Belgian importer wrote on an invoice was dutifully recorded as fact by Belgian authorities.[24] Although nobody with knowledge of diamonds would have believed the statistics, they were never questioned.

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16. *See* SMILLIE, *supra* note 5, at 18–19 (noting the symbiotic relationship between the secrecy of the diamond trade and its lack of regulation).

17. *Id.* at 39.

18. *See id.* at 20 (explaining how De Beers's "control over the [diamond] market" required the company to have "a wide array of strange and incompatible bed fellows").

19. *See id.* at 18 (highlighting a general lack of governmental involvement within the diamond trade).

20. *Id.* at 23, 37 ("[M]ore than 80 percent of the world's rough diamonds pass through Antwerp every year.").

21. *Id.* at 55–58.

22. *See* IAN SMILLIE ET AL., THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS & HUMAN SECURITY 10 (P'ship Africa Canada 2000) (highlighting the disparity between Liberia's dearth of diamond resources and its large diamond exportation); *see also* SMILLIE, *supra* note 5, at 85 (noting that the more than 31 million carats recorded at Belgian customs equaled "enough to pay off most of the Liberian national debt").

23. SMILLIE, *supra* note 5, at 23–24.

24. SMILLIE ET AL., THE HEART OF THE MATTER, *supra* note 22, at 3–4.

Therefore, it was a simple matter for warlords to sell their ill-gotten diamonds into the legitimate trade. And it was as simple, in a post–Cold War world awash in illicit weapons, for them to find gunrunners and fly-by-night airlines willing to accept diamonds in payment.[25]

II. ACTIVISM

By the middle of 1998, the humanitarian situation in Angola was dire. Four UN peacekeeping missions had ended in failure,[26] and all that remained was a toothless United Nations Security Council Resolution prohibiting the purchase of Angolan diamonds not controlled by the Angolan government.[27]

This is where the civil society campaign against conflict diamonds began—at the lowest ebb of UN authority in Angola, at the worst point in the diamond-fueled wars that were raging across Africa, and at the zenith of the diamond industry's apathy toward its own responsibility. A small, newly formed British nongovernmental organization (NGO), Global Witness, produced a report at the end of 1998 called *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict.* It detailed the death and destruction of the ongoing civil war, and estimated that UNITA had generated $3.7 billion in diamond sales between 1992 and 1998 to pay for it.[28] It described the worthlessness of UN sanctions. In addition, the report chastised De Beers for its indiscriminate purchase of rough diamonds, quoting De Beers Chairman Nicky Oppenheimer who had written about "the increasing outflow of Angolan diamonds to the major cutting centres, much of which De Beers was able to purchase through its outside buying offices."[29]

A year later another NGO, Partnership Africa Canada (PAC), produced a similar report: *The Heart of the Matter: Sierra Leone,*

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25. Panel of Experts on Sierra Leone Diamonds and Arms, Rep., transmitted by letter dated Dec. 19, 2000 from the Chairman of the Security Council Comm. established pursuant to resolution 1132 (1997) concerning Sierra Leone addressed to the President of the Security Council, ¶ 19, U.N. Doc. S/2000/1195 (Dec. 20, 2000) (describing the region as awash in small arms); Panel of Experts on Violations of Security Council Sanctions Against UNITA, Rep., transmitted by letter dated Feb. 28, 2000 from the Chairman of the Security Council Comm. established pursuant to resolution 864 (1993) concerning the situation in Angola addressed to the President of the Security Council, ¶ ¶ 15–16, U.N. Doc. S/2000/203 (Mar. 10, 2000) [hereinafter UN UNITA Report] (highlighting the regular use of arms brokers).

26. UN UNITA Report, *supra* note 25, at ¶¶ 2–4.

27. *See id.* ("[T]he Council imposed sanctions prohibiting the purchase of diamonds from UNITA or from UNITA controlled areas.").

28. A ROUGH TRADE: THE ROLE OF COMPANIES AND GOVERNMENTS IN THE ANGOLAN CONFLICT 4 (Global Witness 1998).

29. *Id.* at 8.

Diamonds and Human Security.[30] PAC, which had come to the issue independently of Global Witness, built on what the British NGO had found by detailing the open scandal in Belgian import statistics and adding more details to the diamond industry story.[31] Human Rights Watch and several American NGOs began to take up the issue, finding strength in the common cause and shared research with Global Witness and PAC.[32]

In 1999 the Government of Canada accepted the chairmanship of the UN Security Council Sanctions Committee on Angola and decided to get to the bottom of UNITA's ability to circumvent the diamond embargo.[33] Canada's UN ambassador, Robert Fowler, convened a first-ever independent "panel of experts" to look into sanctions-busting of diamonds, oil, and weapons.[34] The panel leaned heavily on the work that NGOs had done. When the Fowler Report was released in March 2000, it confirmed what the NGOs had already written, adding even more detail to the international calumny behind conflict diamonds.[35]

With several countries enflamed by diamond-fueled conflict, the media—driven by a growing NGO voice that now played on the mystique created by diamond advertising—began to pick up on the story. Diamonds, NGOs said, might be a girl's best friend, but not an African girl's.[36] A new slogan, "diamonds are a guerrilla's best friend," became commonplace, and in a play on the famous advertising slogan, diamonds were said to be more "forever" for those killed in the diamond wars than for those who wore diamonds on their fingers.[37] In the United States, two American congressmen—a Democrat, Tony Hall, and a Republican, Frank Wolfe—cosponsored a bill called the Consumer Access to a Responsible Accounting for

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30. SMILLIE ET AL., THE HEART OF THE MATTER, *supra* note 22.

31. *See id.* at 3–4 (calling attention to the "lack of interest and information on the true source of diamonds entering [Belgium]").

32. *See* SMILLIE, *supra* note 5, at 176 (highlighting the many NGOs that united around the common call).

33. Robert Fowler & David Angell, *Case Study: Angola Sanctions, in* HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE 190–91 (Robert Grant McRae & Don Hubert eds., 2001).

34. *Id.* at 193–94.

35. *See id.* at 194 (noting that the report "named names, including heads of government, and so caused a furore").

36. *See* SMILLIE, *supra* note 5, at 172 (noting the alarm that grew within the diamond industry as a result of the increasing attention); *see also* Annie Kelly, *Workshop: Case Study – ActionAid Tackles Conflict Diamonds*, THIRD SECTOR (Mar. 26, 2003), http://www.thirdsector.co.uk/news/612093/ (highlighting a "publicity stunt" organized by ActionAid to "draw attention to the abductions, mutilations and deaths that follow the trade in conflict diamonds").

37. *See, e.g.*, yoshitora2001, *Diamonds Are Forever*, YOUTUBE (Mar. 17, 2007), http://www.youtube.com/watch?v=JsfwEj6yqSAhttp://www.youtube.com/watch?v=JsfwEj6yqSA (utilizing themes from a famous De Beers commercial to raise awareness of the horrors associated with conflict diamonds).

Trade Bill (CARAT), which aimed to require forgery-proof certificates of origin for any diamond entering the United States worth more than $100.[38] They were backed by a powerful group of American NGOs, including Physicians for Human Rights, World Vision, and Oxfam America. And in Europe another coalition called Fatal Transactions was forming.[39]

Alarmed by the growing clamor from civil society, the industry began to move from denial to engagement. Nicky Oppenheimer spoke out about the disastrous cost a boycott would inflict on conflict-free diamond producing countries in the developing world—countries such as Botswana, Namibia, and South Africa.[40] Nelson Mandela said the same thing: "We would be concerned that an international campaign . . . does not damage this vital industry. Rather than boycotts . . . it is preferable that through our own initiatives the industry takes a progressive stance on human rights issues."[41] However, no NGO involved in the campaign ever used the word *boycott*. That word came almost exclusively from an industry that feared, quite correctly, what might happen if there was no change, and what the imagery of blood diamonds could do to a product sold on the basis of love, beauty, and foreverness.

In May of 2000, eighteen months after the Global Witness Report, five months after the PAC report, and two months after the Fowler Report, South Africa's Minister of Minerals and Energy, Phumzile Mlambo-Ngcuka, convened a meeting in an attempt to deal with the problem.[42] The meeting was held in Kimberley, where South African diamonds had been discovered in the 1860s, and Mlambo-Ngcuka was careful to invite all of the main protagonists: the governments of countries with an economic stake in the diamond industry, those suffering from the conflict diamond problem, key

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38. SMILLIE, *supra* note 5, at 172–73; *see Urgent Action: Import Restrictions on Conflict Diamonds*, THE FED'N OF AM. SCIENTISTS: ARMS SALES MONITORING PROJECT (Aug. 9, 2000), *available at* http://www.fas.org/asmp/campaigns/alerts/caratact.htm (calling for constituent support of the Carat Act).

39. FATAL TRANSACTIONS, http://www.bicc.de/fataltransactions (last visited Sept. 19, 2013); *see also International Campaign Fatal Transactions*, MEDICO INTERNATIONAL (Mar. 25, 2009), http://www.medico.de/en/themes/campaigns/documents/international-campaign-fatal-transactions/1133/ ("For decades, the value of the diamond was exclusively determined by the four Cs—Cut, Color, Clarity, and Carat. Only when non-governmental organizations drew public and international attention to the issue with the Fatal Transactions campaign and other initiatives, was the fifth C added to the four others: Conflict.").

40. George Trefgarne, *De Beers Warns on 'Conflict Diamonds,'* THE TELEGRAPH (June 15, 2000, 12:00 AM), http://www.telegraph.co.uk/finance/4454524/De-Beers-warns-on-conflict-diamonds.html.

41. *Southern Africa: Mandela Concerned at Diamond Boycott*, IRIN NEWS (Nov. 17, 1999), http://www.irinnews.org/report/10604/southern-africa-mandela-concerned-at-diamond-boycott.

42. SMILLIE, *supra* note 5, at 178.

industry players, and the civil society organizations leading the charge.[43]

A nine-point plan aimed at keeping conflict diamonds out of the legitimate trade was sketched out in only two days, and there was enough agreement that Mlambo-Ngcuka declared victory and proposed a "working group" meeting in Angola to sort out the details, to be followed two months later by a wider ministerial meeting to wrap things up.[44] It would not be quite that simple. More governments appeared at the next meeting, and the complications became more evident. The proposed regulatory system would be based on a wholesaling approach rather than the marking and tracking of each diamond—an impossibility in countries with limited capacity and in an industry based on the production and movement of twenty or more tons of diamonds each year.[45] The idea was that governments—all governments—would certify that the diamonds in each parcel leaving their countries were clean.[46] This bulk certification required the creation of internal controls, a chain of custody system, the development of tracking and monitoring systems, and the creation of an international database.[47]

Geographically, diamonds have been scattered very democratically. By value, approximately 60 percent are produced in Africa, but Russia and Canada are among the top four diamond-producing countries.[48] Australia is a significant player, and diamonds are also found in Guyana, Brazil, and Venezuela.[49] Furthermore, 60 percent of the world's diamonds by value are cut and polished in India, while Antwerp, London, and Dubai are major trading centers.[50] In a given year, almost half of the world's diamond jewelry is sold in the United States.[51] So in addition to the complexity of whatever system might be developed, agreement had to be reached among forty or more governments.

Named for the town where the first meeting took place, the Kimberley Process (KP) required a dozen formal meetings and many smaller, less formal gatherings to negotiate and hammer out the

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43. *Id.* (highlighting the fact that the KP meeting was actually the first time such key players were brought together).

44. *Id.* at 179.

45. *See id.* at 180–82 (explaining why registration and tracing technologies formally available to the diamond industry are not practicable).

46. *Id.* at 189.

47. *See generally Kimberley Process Certification Scheme Core Document*, KIMBERLEY PROCESS, [hereinafter *Kimberley Process Certification Scheme*] *available at* http://www.kimberleyprocess.com/en/kpcs-core-document (providing for an "international certification scheme for rough diamonds").

48. SMILLIE, *supra* note 5, at 33.

49. *Id.* at 30–33.

50. *Id.* at 41, 55–57.

51. *Id.* at 59.

details.[52] Although some government delegations questioned the participation of industry and civil society, others understood that they had to be actively involved in whatever agreement was reached.[53] For industry, it was important that the system be as inexpensive as possible and that it take into account the unique aspects of the diamond trade. A regulatory system designed by bureaucrats and NGOs might, not surprisingly, become an expensive and unworkable nightmare. For civil society, the system had to go to the roots of the problem, it had to be open and comprehensive, and it would require teeth in its implementation. Most governments and industry representatives knew that civil society had to be party to whatever evolved because excluding the NGOs might send them back to the barricades, resuming their attacks on an industry based on only one vulnerable luxury product.

Governments brought diverse perspectives to the table. For some it was a mining issue, for others trade, for others employment, and for some it was all of those and an issue of international humanitarian—and therefore political—concern.[54] While they understood the urgency in halting the phenomenon of conflict diamonds, many—if not most governments and industry representatives—had a lowest-common-denominator outlook: a minimalist approach based on how little, rather than how much, needed to go into an agreement.[55]

The active participation of civil society organizations in the negotiations might have been necessary, but it was not always amicable. NGOs helped to keep industry and governmental focus on what they saw as an optimum rather than a minimalist scenario. By 2001, the civil society coalition had grown to more than two hundred NGOs around the world.[56] Only a handful were active participants in actual KP meetings, but all were busy on their home turf and all could be counted on to sign petitions, to lobby their governments, and—most importantly—to work with the media.[57] Global Witness and PAC found themselves in leadership roles, in part because they had pioneered the issue, but also because they devoted more staff time to it than others, and as the negotiations moved forward they

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52. *See id.* at 178–79 (providing insight into the three year negotiation process that ultimately resulted in the ratification of the Kimberley Process Certification Scheme).

53. *See id.* at 179 (recognizing that the adoption and implementation of a global solution would require broad engagement).

54. *See id.* at 185–87 (explaining that the Russians were concerned with divulging "strategic mineral" details, "[t]he Israelis and others fretted about the sanctity of commercial confidentiality," and the "Chinese spoke of 'national sovereignty'").

55. *See id.* at 184–86 (noting that "[s]ome delegates came, it seemed, only to thank the host government for its hospitality").

56. *Id.* at 185.

57. *See id.* at 184–89 (describing the direct and indirect engagement of NGOs throughout the KP).

produced a series of detailed investigations on conflict diamonds, the industry, and the roles various governments played.[58] In London, ActionAid staged an effective example of street theater outside a hotel where a major industry meeting was taking place.[59] At the time, the industry was backpedaling on difficult negotiating points, and ActionAid hired four actors for their demonstration.[60] A blonde in a sequined dress and three men in top hats and tails acted out the scene from *Gentlemen Prefer Blondes,* the film in which Marilyn Monroe sang about diamonds being a girl's best friend.[61] Here, however, the actors called for regulation of the diamond industry.[62] The media attention was enormous, the photographs went viral, and the industry—embarrassed and angry—was obliged to become more accommodating.[63]

In the United States, World Vision ran a fifteen-second advertisement during the credits at the end of the second season of the popular television program *The West Wing.*[64] The advertisement showed a Sierra Leonean child whose hands had been hacked off by the RUF.[65] In a voice-over, actor Martin Sheen, who played the U.S. president in the drama, asked viewers if they understood what diamonds were contributing to in Africa.[66] American industry opposition to a tough agreement came to an immediate end.[67]

III. REGULATION

The agreement that was finally reached at the end of 2002 was not perfect, but it was remarkable nevertheless. More than forty governments plus all members of the European Union agreed that the Kimberley Process Certification Scheme (KPCS) would take effect

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58. *Id.* at 188.

59. *See* Kelly, *supra* note 36 (discussing the public demonstration ActionAid put on to kick off its Dying for Diamonds campaign).

60. *Id.*

61. *Id.*

62. *See id.* (hoping "to draw attention to the abductions, mutilations and deaths that follow the trade in conflict diamonds").

63. *See id.* ("Following the demonstration, the [World Diamond] Congress named conflict diamonds as being one of the main issues on the official agenda. By the end of December, the industry had produced a written system of self-certification.").

64. Rob Bates, *Martin Sheen Does Conflict Diamonds Ad*, JCK MAGAZINE (July 2001), *available at* http://connection.ebscohost.com/c/articles/4792588/martin-sheen-does-conflict-diamonds-ad.

65. *Id.*

66. *Id.*

67. *See* SMILLIE, *supra* note 5, at 187–88 (noting that within days of the advertisements airing, an industry-backed bill was taken off the table and "the US industry made peace with NGOs and [congressmen Tony Hall and Frank Wolf's] Clean Diamond Bill").

on January 1, 2003.[68] Each government agreed to pass legislation and regulations meeting KPCS standards.[69] Each member state agreed that no rough diamonds would be exported without a government-authorized KP certificate stating that the diamonds were conflict free.[70] To back this up, each producing country had to implement internal controls allowing diamonds to be tracked back to the place where they were mined.[71] And each trading country that re-exported rough diamonds had to be able to trace them back to the point of import.[72] KP members agreed that they would not trade with non-KP members.[73] This meant that while the agreement was voluntary, common commercial sense obliged every country with a diamond industry to join. To ensure that this would not run afoul of international trade rules, a World Trade Organization (WTO) waiver was sought and received.[74] In addition, a database was created, with each member state reporting semi-annual production statistics and quarterly trade data.[75] This would provide new levels of transparency. It meant an end to the unbelievable production statistics of nonproducing countries, and it meant that a shipment of, for example, fifty thousand carats from one country had to tally with import data in the country of destination.

The KPCS was a unique undertaking. There was no international treaty, and while the KPCS had UN support, the United Nations was not directly involved. It was voluntary, but if a country joined—and any with a diamond industry had to—it was obliged to pass the requisite legislation and the regulations to support it.[76] The KPCS, therefore, had the force of law in each member state. It became the law of the land in the United States, China, Russia, South Africa, Australia, and all of the other countries that joined.[77] And when the Republic of Congo (Brazzaville) was expelled from the KP in 2004 because it could not account for the huge volume of

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68. *See* Press Release, World Trade Org., Agreement Reached on WTO Waiver for "Conflict Diamonds" (Feb. 26, 2003) [hereinafter Agreement Reached] *available at* http://www.wto.org/english/news_e/news03_e/goods_council_26fev03_e.htm (describing an agreement securing a WTO waiver for domestic policies aimed at implementing the KP in several participant countries); *see also The KPCS: The Basic Agreement*, P'SHIP AFRICA CANADA, *available at* http://www.pacweb.org/en/kpcs-the-basic-agreement. *See generally Kimberley Process Certification Scheme*, *supra* note 47 (defining the goals of the KP and the requirements of participant countries).

69. Agreement Reached, *supra* note 68.

70. *Kimberley Process Certification Scheme*, *supra* note 47, at 5–6.

71. *Id.* at 7.

72. *Id.* at 12.

73. *Id.* at 6.

74. Agreement Reached, *supra* note 68.

75. *Kimberley Process Certification Scheme*, *supra* note 47, at 16.

76. *Id.* at 7–8.

77. *See Monitoring (WGM)*, KIMBERLY PROCESS, http://www.kimberleyprocess.com/en/monitoring-wgm (last visited Sept. 21, 2013) (describing the role of the KP Working Groups on Monitoring in "promoting full and effective implementation by all participants").

diamonds it was exporting—numbers that showed up in the new database—it seemed as though the KPCS was off to an excellent start.[78]

At the outset, the civil society organizations that had campaigned so hard for the agreement thought that their continuing involvement would not be required beyond, perhaps, 2007 or 2008. How wrong they were.

IV. POLITICAL WILL AND POLITICAL WON'T

Despite its hopeful beginning, the KPCS began to evidence some basic design flaws. The first was an inadequate monitoring system. Each member state agreed—in principle—to host a review team every three years or so.[79] This is a peer review system, with teams typically comprised of the representatives of three other governments and one each from industry and civil society.[80] They conduct a systems review in order to determine if laws and regulations are in place and if they are being adequately enforced.[81] Some of the reviews were—and continue to be—thorough, uncovering weaknesses and producing solid reports with detailed recommendations.[82] Others, however, have been perfunctory, and reports have been delayed as long as a year after the event.[83] Part of the problem has been the voluntary nature of participation on a given review. Each team member has to pay his or her way, which means that countries with fewer resources often play no role in the process, while others tend to dominate. Because each undertaking is voluntary and self-financed, conflict of interest is

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78. *See* Haley Blaire Goldman, Comment, *Between a Roc and a Hard Place: The Republic of Congo's Illicit Trade in Diamonds and Efforts to Break the Cycle of Corruption*, 30 U. PA. J. INT'L L. 359, 360 (2008) (discussing the expulsion of the Republic of Congo from the KPCS).

79. For example see BUREAU OF ECONOMIC, ENERGY AND BUSINESS AFFAIRS, U.S. DEP'T OF STATE, THE KIMBERLEY PROCESS CERTIFICATION SCHEME: THIRD YEAR REVIEW 3 (Oct. 2006), *available at* http://2001-2009.state.gov/e/eeb/rls/othr/2006/77052.htm. *See generally Administrative Decision: Implementation of Peer Review in the KPCS*, KIMBERLEY PROCESS (2003) [hereinafter *Administrative Decision*, KIMBERLEY PROCESS] *available at* http://www.kimberleyprocess.com/en/2003-administrative-decision-implementation-peer-review-kpcs (outlining the review process in greater detail).

80. *Administrative Decision*, KIMBERLY PROCESS, *supra* note 79, at 9.

81. *Id.* at 2.

82. *See* SMILLIE, *supra* note 5, at 199 (explaining that an early look at the KP's peer review system showed that it could "bare its teeth"); *see also* FRANZISKA BIERI, FROM BLOOD DIAMONDS TO THE KIMBERLEY PROCESS: HOW NGOS CLEANED UP THE GLOBAL DIAMOND INDUSTRY 119, 137 & 144 (2010) (describing the review visit process and the beneficial role NGOs played in the formation of critical reports).

83. *See* SMILLIE, *supra* note 5, at 199 (explaining why the peer review system "soon became a hit and miss business"); *see also* BIERI, *supra* note 82, at 166 (describing NGOs concerns that review visits to Brazil would fail to uncover all the issues).

not uncommon. Regardless, recommendations made by review teams have been simply that, and in many cases there has been little, if any, follow-up.

Part of the problem is that the KP established no administrative center and no budget of any kind. The position of "chair" rotates annually, and the purpose of the chairperson is essentially to convene, host, and pay for the room, translators, and meals for two meetings during his or her twelve-month tenure.[84] These two meetings, and the more frequent telephonic meetings of the working groups are important, but without professional support, the system is patchy and, on occasion, chaotic.

A 2004 KP review of compliance in the DRC, for example, found that internal controls were weak, verging on nonexistent.[85] The KPCS was established to end conflict diamonds, and the DRC was a central reason for its existence. The recommendations of the KP review team were therefore important to the integrity of the KPCS and the diamond industry in the DRC. They were also important to the future security of the country. However, they were basically ignored.[86] The DRC government ignored them in part because of its weak capacity for implementation.[87] More critically, they were ignored by the KP, which seemed happy enough to tick off that box and move on.[88] When the next review team arrived in 2009, it found that nothing much had changed.[89] It produced another meticulous report with dozens of recommendations, and once again the report was received, noted, and shelved.[90]

Civil society participants in the KP pushed and shoved and issued their own reports detailing KPCS shortcomings.[91] PAC and Global Witness conducted independent research on countries, like Angola and Sierra Leone, that had suffered so badly from conflict diamonds, and others, like Brazil and Guinea, where smuggling and

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84. *See* KIMBERLEY PROCESS, ADMINISTRATIVE DECISION RULES OF PROCEDURE (JOHANNESBURG) 3–7 (2003), *available at* http://www.kimberleyprocess.com/en/2003-administrative-decision-rules-procedure-meetings-plenary-and-its-ad-hoc-working-groups-and (describing the role and responsibilities of the chair).

85. Report of the Review Visit to the Democratic Republic of Congo, KIMBERLEY PROCESS CERTIFICATION SCHEME (Oct. 2004) (document in author's possession).

86. *See* SMILLIE, *supra* note 5, at 199–200 (explaining that even thorough reports would often "attract[ ] little attention and no follow-up").

87. *Id.*

88. IAN SMILLIE, DIAMONDS (forthcoming 2014).

89. *Id.*

90. *Id.*

91. *See generally Conflict Diamonds and the Kimberley Process*, P'SHIP AFRICA CANADA, http://www.pacweb.org/en/component/content/article/78-main/75-conflict-diamonds-and-the-kimberley-process (last visited Sept. 21, 2013) (discussing the KP's weaknesses); *News and Reports*, GLOBAL WITNESS, http://www.globalwitness.org/news-and-reports/result?&issues%5B%5D=47&type%5B%5D=45&quicktabs_1=0 (last visited Sept. 21, 2013) (collecting reports describing the KP and explaining its inherent challenges).

noncompliance were both obvious and rampant.[92] The websites of these two organizations contain dozens of reports produced in the years after the KPCS started.[93] While it is fair to say that the NGOs were heard and that some governments supported their recommendations for better management and for penalties in the case of obvious noncompliance, actual uptake of their recommendations was close to zero.[94]

Although there were several lacunae in the basic KPCS agreement, one overrides all the others: consensus decision making. In the real world, *consensus* implies general agreement. It does not mean unanimity. In the KP, however, *consensus* does mean unanimity, and this in turn means that if one country disagrees with a position on which all others have agreed, the position will not move forward.[95] This has meant that almost every attempt to bring meaningful reform to the KPCS since 2003 has been thwarted and almost every attempt to sanction noncompliance has been blocked.[96]

Two examples highlight the problem. Venezuela, a smallish diamond producer and an early member of the KPCS, stopped issuing KP export certificates in 2005 and no longer submits production and trade data.[97] Two years of trying to engage Venezuelan authorities produced no response whatsoever.[98] When PAC produced a detailed investigative report on the extent of diamond mining and smuggling on the country's southeastern borders with Guyana and Brazil,[99]

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92. *See generally Conflict Diamonds and the Kimberley Process*, *supra* note 91 (discussing the KP's weaknesses); *News and Reports*, *supra* note 91 (collecting reports describing the process and explaining its inherent challenges).

93. *See* GLOBAL WITNESS, http://www.globalwitness.org/ (last visited Sept. 21, 2013) (describing its work investigating and exposing natural resource-related conflicts); P'SHIP AFRICA CANADA, http://pacweb.org/en/ (last visited Sept. 21, 2013) (collecting materials on trading conflict diamonds).

94. *See, e.g.*, Press Release, Global Witness, Global Witness Leaves Kimberley Process, Calls for Diamond Trade to Be Held Accountable (Dec. 5, 2011), *available at* http://www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable (announcing its withdrawal as an official Observer of the KP); Eric Marx, *The Kimberley Process: Conflict Diamonds Cut Out*, ETHICAL CORPORATION (Aug. 31, 2010), http://www.ethicalcorp.com/communications-reporting/kimberley-process-conflict-diamonds-cut-out (discussing the controversy involving the certification of diamonds from Zimbabwe's Marange mine as first documented by civil society groups).

95. *See Administrative Decision*, KIMBERLEY PROCESS, *supra* note 79, at 3 (defining *consensus*).

96. *See* SMILLIE, *supra* note 5, at 197–98, 200–02 (describing monitoring and sanction weaknesses that were ultimately exacerbated by a stance favoring confrontation avoidance).

97. P'SHIP AFRICA CANADA, THE LOST WORLD: DIAMOND MINING AND SMUGGLING IN VENEZUELA 1, 12 (Shawn Gerald Blore ed., 2006), *available at* http://www.pacweb.org/Documents/diamonds_KP/16_thelostworld_Eng-Nov2006.pdf.

98. *See id.* (describing Venezuela as having "essentially dropped off the KPSC radar").

99. *See id.* at 14, 15–17 (explaining how diamonds are continuing to be mined in Venezuela and smuggled into Brazil and Guyana).

action should have been taken. Instead, the KP bowed to Venezuela's bluster and promises that it would fix its admitted problems.[100] The promises and the bluster have continued to this day.[101] Venezuela reports that there are no diamond exports, hence no KP certificates. And yet, further visits to the country's diamond-mining region by PAC, reporters from the BBC,[102] *Time Magazine*,[103] and others show that smuggling continues as before. The KP's inability to get tough with Venezuela is based on its consensus decision-making procedures. Some member states would expel Venezuela for its blatant noncompliance, but others, in thrall to Venezuelan oil and oratory, refuse to countenance disciplinary action. As a result, a body established to prevent conflict diamonds through a proscription of all rough-diamond smuggling has actually condoned diamond smuggling.

The second example is Zimbabwe, a country whose government had so shocked the world with its human rights abuse during the early 2000s that it had been slapped with some of the toughest European and American arms and travel bans extant.[104] Zimbabwe was already a member of the KP when a new diamond field was discovered in 2006 at Marange on the country's eastern border.[105] The new find was large, promising to enhance the country's modest diamond output and to boost its collapsed economy.[106] But because the diamonds were close to the surface and spread over many square miles, they were a powerful lure for tens of thousands of very poor Zimbabweans who flooded into the area.[107] The government

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100. *See, e.g.*, *NGOs Demand Venezuelan Expulsion from Kimberley Process*, INT'L BUS. TIMES (June 9, 2008, 2:20 AM), http://www.ibtimes.com/ngos-demand-venezuelan-expulsion-kimberley-process-221952 (describing the many broken promises made by Venezuela to the KP).

101. The KP finally threatened at the end of 2012 to expel Venezuela on April 1, 2013 if it did not move to full compliance. When the deadline arrived, the Venezuelan authorities blamed their continued failure to comply on the illness and then the death of President Hugo Chavez. Unlikely as this excuse was, it was accepted, and once again, the KP did nothing.

102. *See* Will Grant, *Diamonds are a Miner's Best Friend*, BBC NEWS, http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/8038583.stm (last updated May 9, 2009, 12:20 PM) (reporting on a first person experience in the Venezuelan diamond trade).

103. *See* Girish Gupta, *Not Just Out of Africa: South America's "Blood Diamonds" Network*, TIME (Aug. 20, 2012), http://world.time.com/2012/08/20/not-just-out-of-africa-south-americas-blood-diamonds-network/ (interviewing undercover traffickers).

104. *See, e.g.*, *Zimbabwe: EU Imposes Another Year of Sanctions*, IRIN NEWS (Feb. 16, 2010), http://www.irinnews.org/report/88127/zimbabwe-eu-imposes-another-year-of-sanctions (reporting on the extension of sanctions for another year against Zimbabwean President Robert Mugabe and senior members of the ruling party).

105. P'SHIP AFRICA CANADA, DIAMONDS AND CLUBS: THE MILITARIZED CONTROL OF DIAMONDS AND POWER IN ZIMBABWE 4 (2010), *available at* http://www.pacweb.org/Documents/diamonds_KP/Zimbabwe-Diamonds_and_clubs-eng-June2010.pdf.

106. *See id.* at 14 (providing government estimates of Marange's value).

107. *See id.* at 4 (describing the difficulties of preventing illegal panning).

responded with violence, using the armed forces to clear the area in October 2008.[108] People were arrested and beaten, there were media reports of rape, and human rights organizations reported that more than two hundred people had been shot and killed by the Zimbabwean military.[109]

Civil society organizations had already been calling for a human rights standard in the KPCS because of widespread violence elsewhere in the diamond world.[110] It hardly made sense to create a system designed to end diamond-related violence and then to sanction violence as a means of enforcing it. It took the KP almost a year to get a review team into Zimbabwe where it confirmed the stories and discovered just how deep the smuggling and governmental corruption ran.[111] Although the KP huffed and puffed and created a special monitoring system for Zimbabwean diamonds, this monitoring system had nothing to do with criminal behavior, human rights abuse, or smuggling. The only job of the "monitor" was to certify that diamonds offered for export in Harare, Zimbabwe actually came from the place the exporter had stated on the manifest.[112]

NGOs fulminated, issued reports, and made demands. They even boycotted the KP Plenary Meeting in Kinshasa, DRC, at the end of 2011.[113] In all of this, the only one of their number who was not ignored was a Zimbabwean human rights organizer who allegedly gave the KP monitor information about government misdeeds and was—for his trouble—turned in to the Zimbabwean authorities for beatings and jail time.[114] There were several problems with the inclusion of a human rights standard. Some African governments, led by South Africa, refused to countenance any action against the old liberation fighter, Robert Mugabe, knowing that he would certainly not have done well under a human rights spotlight.[115] The Indian

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108. *See id.* at 18 (discussing the violent crackdown led by police and government armed forces).

109. *See id.* (referencing various media and human rights reports).

110. *See id.* at 24 (recommending that the NPCS broaden its definition of conflict diamonds because a "strict interpretation . . . fails to capture" political realities).

111. *See id.* at 4 (finding "credible indications of significant noncompliance").

112. *See id.* (requiring that the KP monitor implement a "supervised export mechanism").

113. *See Kimberley Process Lets Zimbabwe Off the Hook (Again)*, GLOBAL WITNESS (Nov. 2, 2011), http://www.globalwitness.org/library/kimberley-process-lets-zimbabwe-hook-again (reporting the boycott of the KP Civil Society Coalition).

114. *See* Thierry Vircoulon, *Time to Rethink the Kimberley Process: The Zimbabwe Case*, INT'L CRISIS GROUP (Nov. 4, 2010), http://www.crisisgroup.org/en/regions/africa/southern-africa/zimbabwe/op-eds/time-to-rethink-the-kimberley-process-the-zimbabwe-case.aspx (discussing the imprisonment of Zimbabwe's own Farai Maguwu).

115. *See, e.g.*, *Kimberley Process: Zimbabwe Action Mars Credibility*, HUMAN RIGHTS WATCH (Nov. 6, 2009), http://www.hrw.org/news/2009/11/06/kimberley-process-zimbabwe-action-mars-credibility (noting that "South Africa, Namibia, Tanzania,

diamond industry wanted Zimbabwean diamonds so badly that its stance on human rights was positively embarrassing.[116] And other KP member states with dodgy human rights records feared that demanding human rights in Zimbabwe might release dogs that could soon come after them.

At the end of 2011, Global Witness announced that it had had enough and was quitting the KP. In a press release, the organization said,

> Nearly nine years after the Kimberley Process was launched, the sad truth is that most consumers still cannot be sure where their diamonds come from, nor whether they are financing armed violence or abusive regimes . . . . The scheme has failed three tests: it failed to deal with the trade in conflict diamonds from Côte d'Ivoire, was unwilling to take serious action in the face of blatant breaches of the rules over a number of years by Venezuela and has proved unwilling to stop diamonds fuelling corruption and violence in Zimbabwe. It has become an accomplice to diamond laundering—whereby dirty diamonds are mixed in with clean gems.[117]

During 2012, under the chairmanship of the United States, some hoped that the KP might at last redefine conflict diamonds to include a human rights dimension.[118] Certainly, the United States worked hard for that to happen.[119] However, that and several other hoped-for reforms fell by the wayside, and the problem of Zimbabwe was resolved by clearing the decks of all diamond restrictions and allegations and—despite ongoing EU and U.S. sanctions in other areas—giving the Mugabe regime a clean diamond bill of health.[120]

Democratic Republic of Congo, and Russia" supported Zimbabwe in its contention that conflict diamonds should continue to be defined in its technical sense, not based on the presence of human rights abuse).

116. *See, e.g.*, Meenakshi Ganguly, *India Should Say No to Blood Diamonds*, DECCAN CHRONICLE (Nov. 1, 2010), *available at* http://www.hrw.org/news/2010/11/01/india-should-say-no-blood-diamonds (describing the first KP meeting after India took its place on the UN Security Council as a "critical test" for India's new role).

117. Press Release, Global Witness, *supra* note 94.

118. *See, e.g.*, Teleconference Briefing with Ambassador Gillian A. Milovanovic, Chair of the Kimberley Process, U.S. DEP'T OF STATE (Feb. 3, 2012), *available at* http://www.state.gov/r/pa/prs/ps/2012/02/183313.htm (confirming that the actions undertaken in Zimbabwe showed a need for the KP to re-examine its systems and definitions).

119. *Id.; see also* Ricci Dipshan, *Monitoring Ends for Zimbabwe, South Africa to Take Over Kimberly Process: No Change to Conflict Diamonds Terminology*, DIAMONDS.NET (Nov. 30, 2012, 6:23 PM), http://www.diamonds.net/News/NewsItem.aspx?ArticleID=41744&ArticleTitle=Monitoring+ Ends+for+Zimbabwe%2C+South+Africa+to+Take+Over+Kimberley+Process (citing Ambassador Milovanovic as pleased with the progress the group made in discussing the need for a new definition, despite no actual changes occurring).

120. *See* Dipshan, *supra* note at 119 ("Kimberly Process chair Gillian Milovanovic . . . said that Zimbabwe had completed what was required . . . .").

V. CONCLUSIONS

The KP did not end the major diamond wars (the conflicts in Angola, the DRC, and Sierra Leone ended before January 2003), but it entirely changed the way the trade in rough diamonds was managed and reported. It made large transactions in illicit stones more difficult, and the very fact of the KP negotiations helped to starve rebel armies of weapons and ammunition. The KP was the creation of many dedicated people in government, industry, and civil society, but it was civil society that raised the alarm, conducted most of the research, created and sustained the media attention, and held the feet of the reluctant, the cynical, and the criminally inclined to the fire.

The KPCS is a unique undertaking. It has all of the bells and whistles required to be an effective watchdog for an industry prone to theft, corruption, smuggling, and violence. It currently has the power of law in almost eighty national jurisdictions, and it has the blessing of the United Nations and the WTO.[121] It is tripartite in nature, encompassing a wide range of important industry players and civil society organizations from Europe, North America, and Africa.[122]

It is something of a tragedy, however. Its consensus decision making process has turned it into a dozy talk shop—unwilling and unable to deal with noncompliance. It could have been a model for other extractive industries beset by war. Instead, it has by and large ignored the failure of internal controls; it has sanctioned smuggling and condoned human rights abuse. It is questionable whether it could prevent another warlord from taking advantage of its weakness.

Because civil society organizations were so prominent in the creation of the KPCS, it is reasonable to ask—in light of the scheme's most evident failures—four pointed questions:

- Could NGOs have negotiated a better agreement?
- Is it better to be inside the tent working for consensus or outside throwing rocks?
- Does it matter?
- What next?

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121. *See Implementation and Monitoring*, *in* WORLD TRADE ORG., ANNUAL REPORT 2013, at 39 (2013), *available at* http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep13_chap4_e.pdf (explaining WTO support for the UPCS); *KP Basics*, KIMBERLEY PROCESS, http://www.kimberleyprocess.com/en/about (last visited Sept. 21, 2013) (discussing UN support of the UPCS and listing member nations).

122. *See Observers*, KIMBERLEY PROCESS, http://www.kimberleyprocess.com/en/observers (last visited Sept. 21, 2013) (listing industry and civil society groups that play a role in the KP).

At the final KP negotiating meeting in November 2002, nobody was completely satisfied.[123] The agreement had something in it to displease almost everyone, and it was missing ingredients that many thought essential. The governments present—as well as industry and civil society organizations—knew, however, that they would not achieve much more if the debates continued. There had been more than a dozen formal gatherings and another dozen informal meetings—in Africa, Canada, Europe, and Russia.[124] And while the debates continued, so did the wars that were the underlying impetus for the effort. There was a powerful and urgent humanitarian motive for reaching agreement, and a worry that if negotiations were prolonged, significant gains might be lost. Although it was not by any means clear that consensus decision making would be the permanent order, it was essential that the final meeting conclude on the basis of full agreement because if any of the key players had walked away from the table, the KPCS would have been crippled from the outset. And so compromises were made—on a permanent secretariat, on monitoring, and on how compliance might be defined and enforced. And consensus decision making became the de facto hobble, giving each party to the agreement a veto and almost none of the responsibility that should have accompanied it.[125]

In answer to the second question, whether NGOs might have accomplished more had they remained outside the tent, the answer is probably mixed. It was NGOs inside the tent that held negotiators to account on many important issues, later exposing noncompliant countries, smuggling, and human rights abuse. While the KP itself did little to address these problems, the very fact of civil society manipulating the spotlight may have served as a deterrent in some cases and a remedy in others. When it finally quit the KP in disgust, Global Witness made a powerful statement.[126] But since then, absent from internal discussions and cut off from inside information, it has had little to say about diamonds or the KPCS that anyone has much noted.

Inside the tent, however, the tough talk, and campaigning strategies of the early years find little traction today. And so, the answer as to where a concerned NGO should position itself in the debate is unclear. Ideally, there would be organizations inside and outside working together on a common goal—using different tactics with the media, governments, and industry. That may yet evolve, but many of the original campaigning NGOs that could assist in this kind

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123. *See* SMILLIE, *supra* note 5, at 190–92 (highlighting the compromises and unresolved issues that plagued the final agreement).

124. *Id.* (noting that the NGOs—still frustrated at the agreements lack of "effective monitoring"—backed off a bit for fear that breaking the deal at such a point would result in "no agreement of any kind").

125. *See supra* text accompanying notes 96–97.

126. *See supra* text accompanying note 118.

of strategy left long ago, declaring victory and moving on to the next high-profile campaign.

Does it matter? A decade after the conclusion of the diamond-fueled wars, some ask whether a KPCS is still required. Given the ongoing cost of cleaning up after these horrific wars, such a question is almost fatuous. The current cost of UN peacekeeping efforts in three countries that were plagued by conflict diamonds is a sobering reminder of what happened. Between July 1, 2012, and June 30, 2013, the combined twelve-month budget for the United Nations Mission in Liberia, the United Nations Operation in Côte d'Ivoire, and the United Nations Organization Stabilization Mission in the DRC was $2.4 billion—$2.4 *billion*.[127] A little over half of that was spent in the DRC, where it was clearly inadequate in dealing with the ongoing security problems rebel armies posed.[128] The total UN peacekeeping costs in those three countries and Sierra Leone over the decade between 2001 and 2011 ran to more than $20 billion.[129] If there is to be sustainable peace in diamond-mining areas, and if the UN and its member states—each of them contributes to these costs through assessed funding—are to avoid prolonged and recurring peacekeeping nightmares, they must solve the fundamental problems associated with diamonds.

As to the "*What next?*" question, the answer is unclear. Some players in the diamond industry, well aware of the KPCS failure to provide a trustworthy consumer guarantee, have created another tougher certification system.[130] This is far from universal, however, and does not have governmental oversight or benediction. The NGO Coalition continues to press for reform inside the KP, continues to produce valuable independent research, and continues—with the help of the media—to make life uncomfortable for those who seek to give noncompliance and human rights abuse a pass. They are looking to other mechanisms as well that might force the KP to become tougher. The Organization for Economic Cooperation and Development offers

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127. U.N. DEP'T OF PUB. INFO., UN PEACEKEEPING OPERATIONS FACT SHEET, DPI/164/Rev. 140 (Dec. 31, 2012), *available at* http://www.un.org/en/peacekeeping/archive/2012/bnote1212.pdf.

128. *See, e.g., U.N. Concerned Over Recruitment of Child Solders by Congolese Rebels*, PRESSTV (June 11, 2013, 5:45 PM), http://www.presstv.ir/detail/2013/06/11/308446/un-concerned-over-child-soldiers-in-drc/ ("Several armed groups . . . are active in the east of the DRC and fighting for taking control of the country's vast mineral resources . . . .").

129. *See* SMILLIE, *supra* note 5, at 196–97 ("At something between $2.3 and $4 billion a year . . . it has taken a great deal of money and troops to control the fires that were fuelled by diamonds.").

130. *See* RESPONSIBLE JEWELLERY COUNCIL, ISEAL MONITORING & EVALUATION SYSTEMS REPORT: JANUARY 2013 PROGRESS REPORT 2 (2013), *available at* http://www.responsiblejewellery.com/files/RJC-ME-Systems-Report-2013.pdf ("The Responsible Jewellery Council (RJC) was founded in 2005 with the mission of advancing responsible business practices in the jewellery supply chain, from mine to retail.").

one possibility.[131] The U.S. Dodd-Frank Act, which requires American importers of gold, tungsten, tin, and tantalum from the Great Lakes region of Africa to prove that their imports are conflict free, offers another approach that might be applied to diamonds.[132]

There is a further possibility. Since the terrorist attacks in the United States, Britain, and elsewhere, Western governments have taken a very hard line on money laundering.[133] The thirty-six member states of the Financial Action Task Force require, *inter alia*, that all financial transactions over €15,000 be reported.[134] In some countries, the threshold is lower.[135] It is hard to imagine that countries this concerned about small transactions will allow the diamond industry to return to the antebellum state of the 1990s when hundreds of millions of dollars' worth of diamonds sloshed around in the world's money laundering systems, serving with impunity as a vehicle for tax evasion and the movement of weapons and drugs.

And then, there is the question of consumer taste and the desire for ethical products—a challenge from which luxury goods are far from immune.[136] Sooner or later it is likely that the KP will be forced to become the regulatory system it pretends to be, or it will be replaced with something a lot tougher that can and will do the job.

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131. *See* ORG. FOR ECON. COOPERATION & DEV., OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS 11–25 (2d ed. 2012), *available at* http://www.diamonds.net/Docs/MoralClarity/OECD-DueDiligence-ConflictMinerals-Edition2.pdf ("Guidance recommends due diligences processes and procedures that emerging industry-wide supply chain initiatives should meet as they work towards conflict-sensitive responsible sourcing practices . . . .").

132. Dodd-Frank Wall Street Reform and Consumer Protection Act § 1502(b), 15 U.S.C. § 78m(p) (2012) (requiring that a description of products manufactured or contracted to be manufactured that contain minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country be sent to the Securities and Exchange Commission).

133. *See, e.g.*, *Who We Are*, FIN. ACTION TASK FORCE (last visited Sept. 21, 2013) http://www.fatf-gafi.org/pages/aboutus/ ("The Financial Action Task Force (FATF) is an inter-governmental body established . . . to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering . . . ."); *see also Members and Observers*, FIN. ACTION TASK FORCE, http://www.fatf-gafi.org/pages/aboutus/membersandobservers/ (last visited Sept. 21, 2013) (listing the current members and observers of the Financial Action Task Force).

134. INT'L STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM &. PROLIFERATION: THE FATF RECOMMENDATIONS, THE FINANCIAL ACTION TASK FORCE 14 (Feb. 2012), *available at* http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

135. *See id.* at 19 (requiring enhanced due diligence for "higher-risk countries").

136. *See, e.g.*, Press Release, Global Witness, Tainted Love: Blood Diamonds Still Cast Shadow Over Valentine's Day (Feb. 8, 2010), *available at* http://www.globalwitness.org/library/tainted-love-blood-diamonds-still-cast-shadow-over-valentines-day ("Consumer pressure will be vital to ensure that the diamond industry finally acts to eliminate conflict diamonds once and for all."); *see also* BRILLIANT EARTH, http://www.brilliantearth.com/ethical-brilliant-earth/ (last visited Sept. 21, 2013) (marketing its diamonds as "wholly free from ethical abuses").

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