The Kimberley Process

The Case For Proper Monitoring

By Ian Smillie

'Sunlight is the best disinfectant.'
- Miguel Schloss, Transparency International

Part I: Monitoring and The Kimberley Process

Conflict diamonds have contributed to the deaths of hundreds of thousands of people over the past decade. They have fueled wars; they have led to massive civilian displacement and the destruction of entire countries. They have capitalized on the much larger traffic in illicit diamonds that are used for money laundering and tax evasion, or are simply stolen from their rightful owners. While conflict diamonds represent a small proportion of the diamond trade, illicit diamonds represent as much as 20 per cent of the annual world total (see Part III, below). This level of illegality created the opportunity and the space for conflict diamonds, and regardless of how current conflicts unfold, it will continue to present a threat to peace and stability in Africa. Conflict diamonds are a major human security problem, and illicit diamonds are their spawning ground.

The Kimberley Process aims to create a certification system for rough diamonds which will exclude conflict diamonds from the legitimate trade. This paper reviews the monitoring provisions of the Kimberley Process as agreed at its March 2002 Ottawa meeting. It compares these with the monitoring provisions in other international agreements, and rates them against the problems the Kimberley Process aims to resolve, arguing that much stronger measures will be required if the agreement is to be credible and effective. It contains a proposal for 'essential elements' of an effective and credible Kimberley process monitoring system. And it concludes that if such a system is not adopted, the Kimberley Process will create a false sense of security, allowing conflict diamonds to continue entering the system, ultimately placing the entire diamond industry at risk.

The Study

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the Diamonds and Human Security Project

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What is Monitoring, and Why Monitor?

All certification systems aim to achieve certain goals and standards. Those of any consequence contain provisions for monitoring, auditing and labeling in order to demonstrate successful achievement. This is common to environmental standard-setting, in issues relating to child labour, the regulation of financial transactions and many others.

Many industries now routinely issue environmental reports, often working with NGOs and others to ensure credibility.

'A monitoring mechanism consists of continuous monitoring and evaluation to assess the quality of performance over time in achieving the objectives and ensuring that the findings of audits and other reviews are promptly resolved.' This definition, which is as good as any, was offered by the US General Accounting Office in its review of the Kimberley Process in February, 2002.[1] In a paper entitled 'De-funding Civil Conflict: The Role of Law', international lawyer and longtime policy analyst Tom Farer says that to deter international crime, an effective international regime for 'conflict commerce' should accomplish the following things:

- it should enumerate illegal acts and omissions;
- it should enumerate the obligations of states to prevent, deter, investigate and punish such acts and omissions, and to assist each other is so doing;
- it should specify the consequences where states fail to meet their commitments;
- it should establish machinery for facilitating compliance *and identifying non-compliance.*[2]

Examples of Monitoring and Regulatory Regimes

Over the past decade, there has been a significant growth in the creation of corporate and governmental codes of conduct in a wide range of fields, including those relating to the environment, labour standards, child rights, financial transactions, information privacy and security issues. Examples are summarized here; more details can be found in Annex 2.

The Private Sector

Hundreds of private sector codes and self-regulatory schemes have been developed, especially over the past decade, as globalization became more pronounced. In a recent book on industry self regulation, Virginia Haufler says that self-regulatory programs are driven by two overwhelming forces: 'the risk that governments will intervene, either nationally or internationally, to enforce rules on industry; and the risk that activists will mobilize locally and transnationally, organizing a campaign among consumers, investors, and shareholders and putting pressure on governments to take action against the companies.'[3] Haufler identifies three other factors as well: reputation, economic competition and learning. Reputations can be damaged through inaction, and enhanced through demonstrable social or environmental concern. A good reputation can be of commercial advantage. And codes can make good management sense as well, if managers understand their potential value as a management tool. Some have emerged from a specific crisis. The International Council of Chemical Associations (ICCA) was created as a result of the 1984 Union Carbide chemical disaster in Bhopal, while the CERES Principles* grew out of the Exxon Valdez oil spill of 1989 (see Annex 2 for a description of the ICCA). Many industries now routinely issue environmental reports, often working with NGOs and others to ensure credibility. The Forest Stewardship Council, the Marine Stewardship Council and the World Commission on Dams are examples. As with the growing number of businesses

* The California Environmental Resources Evaluation System (CERES) is an information system designed to improve environmental analysis and planning by integrating natural and cultural resource information from multiple contributors and by making it available and useful to a wide variety of users.

seeking ISO 14000 certification (see also Annex 2), these companies see a commercial and a political advantage in third-party verification of their adherence to agreed standards.

Intergovernmental Agreements

Intergovernmental agreements also contain monitoring and verification provisions, but in many there is a notorious lack of teeth and consequent non-compliance. Monitoring and inspection through voluntary peer reviews may be helpful for those eager to comply, but they are usually ineffective for those countries with no interest in compliance. Annex 2 contains descriptions of OECD peer reviews for environmental programs, development cooperation programs and reviews of state audit institutions. Similar self-reporting and voluntary agreements deal with a range of issues, from the rights of children to trafficking in small arms.

In recent years, however, there have been several examples of a new willingness to insist on compliance and on third-party inspection for verification. In response to mounting concern over illicit financial transactions, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Paris Summit in 1989. FATF member countries are strongly committed to the discipline of multilateral monitoring and peer review. 'Naming and shaming' has helped to bring a number of non-complying countries into line with the norms that have been established. These have been further strengthened since September 11, 2001.

The 1993 Chemical Weapons Convention is the first disarmament treaty to include a time frame for the elimination of an entire class of weapons of mass destruction, and it is the first multilateral arms control treaty to incorporate an intrusive verification regime. And in March 2002, all 187 members of the International Civil Aviation Organization (ICAO) endorsed a program to strengthen commercial aviation security on a global scale, primarily through regular, mandatory and harmonized audits.

Civil Society

In some cases, civil society organizations take on a direct monitoring function. As noted above, many NGOs are involved with the private sector in monitoring environmental performance. Annex 2 contains a description of the CITES* agreement on endangered species, and the international non governmental organization, *Traffic*, which works with governments to ensure compliance. This sort of arrangement is also becoming common where labour standards and children are concerned: for example the Indian carpet industry, soccer ball manufacturers in Pakistan, and others.

Where inter governmental agreements are weak, or are perceived to have weaknesses, NGOs have set up parallel monitoring systems. Landmine Monitor (see Annex 2) is a prime example of this. Five NGOs, representing a much wider civil society consortium, issue a 1200 page annual report on international compliance with the 1997 Landmine Treaty, over and above the reporting that is done by governments themselves on the issue. In 2002, a group of NGOs, concerned about the lack of monitoring for compliance in the 1972 Convention on Biological Weapons, began to pursue the idea of a civil society monitoring and transparency project.[4]

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No international agreement or treaty can circumvent or supercede national sovereignty. With the exception of the Chemical Weapons Convention, most of the arrangements discussed in this paper contain an implicit, if not an explicit understanding that third-party monitoring will be done with the permission of the government of the country in question. There may be penalties attached to the rejection of a monitoring mission, but rejection is possible in most cases.

* CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Kimberley Process Agreement on Monitoring

The main provisions of the Kimberley Process agreement are contained in Annex 1. Throughout the Kimberley Process meetings, the debate on monitoring was long and heated. Invariably, there were two sides to the issue. NGOs argued for regular, credible, independent monitoring of all national rough diamond control systems. Most of the governments that spoke on the issue rejected the concept outright. Many others remained silent or said that 'the time was not right'. The text emerging from the final March 2002 meeting in Ottawa, left monitoring to the discretion of the entire membership of the Kimberley Process at plenary meetings, to be triggered only by extraordinary need:

The WDC proposal will be underpinned by independent auditing and penalties for non compliance, but — critically — it will be voluntary.

- 'Participants at Plenary meetings, upon recommendation by the Chair, can decide on additional verification measures...'

- 'These could include... review missions by other Participants or their representatives *where there are credible indications of significant non-compliance** with the international certification scheme';

- Review missions are to be conducted in an analytical, expert and impartial manner with the consent of the Participant concerned. The size, composition, terms of reference and time- frame of these mission should be based on the circumstances and be established by the Chair with the consent of the Participant concerned *and in consultation with all Participants.**'

As the assembled governments agreed on this wording, there were already 'credible indications' that a wide variety of countries would be in 'significant non-compliance' if permitted to join (see Part III, below). Membership is open to 'all applicants willing and able to fulfill the requirements of the scheme' but there is no mechanism — short of a full plenary debate — to determine whether an applicant actually is able 'to fulfill the requirements of the scheme'.

Some national systems will rely for much of their national diamond oversight on a proposed 'chain of warranties' that will be devised by the diamond industry. The World Diamond Council will develop this mechanism, presumably in conjunction with interested governments. The WDC proposal will be underpinned by independent auditing and penalties for non compliance, but — critically — it will be voluntary. And the WDC does not represent all companies involved in the diamond trade.

In creating their World Diamond Council and describing their proposal for a certification system, the World Federation of Diamond Bourses and the International Diamond Manufacturers Association said in July 2000 that 'Key to the whole process is monitoring.'[5] The December 2000 United Nations General Assembly Resolution on conflict diamonds described a system which included the 'need for transparency'.[6] On July 23, 2000, the G8 Heads of Government Meeting in Okinawa, Japan, issued a final communiqué which said, *inter alia*, 'we have agreed to implement measures to prevent conflict, including by addressing the issue of illicit trade in diamonds'. The G8 meeting in June 2002 stated in its *G8 Africa Action Plan*, 'We are determined to make conflict prevention and resolution a top priority, and therefore we commit to... working with African governments, civil society and others to address the linkage between armed conflict and the exploitation of natural resources — including by... supporting voluntary control efforts such as the Kimberley Process for diamonds, and... *working to ensure better accountability and greater transparency with respect to those involved in the import or export of Africa's natural resources from areas of conflict.*'[7]

* Emphasis added to the original.

The Kimberley Process arrangements nullify all of these resolutions on monitoring and transparency. In fact the Kimberley Process wording on transparency is as follows: 'Participants and observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.'[8]

The US General Accounting Office, which is the investigative arm of the United States Congress, reviewed the Kimberley Process agreement in June 2002 and found it seriously deficient in the area of monitoring. 'Even acknowledging sovereignty and data sensitivity constraints, the Kimberley Process scheme's monitoring mechanisms still lack rigor... The scheme risks the appearance of control while still allowing conflict diamonds to enter the legitimate diamond trade and, as a result, continue to fuel conflict.'[9]

Explanations

Why were governments so reluctant to move further on monitoring? Three reasons have been given, with different emphasis placed on them by different parties. The first is cost; the second is commercial confidentiality; the third is national sovereignty. The cost argument is disingenuous. The diamond industry already spends considerable sums to protect its interests. De Beers, for example, spends several million dollars a year on a Gem Defensive Program aimed at keeping synthetic diamonds out of the normal trade. If there was a levy on rough diamond transfers of one tenth of one per cent of a shipment's value, it would yield more than $79 million a year — four times more than the newly agreed Aviation Security Plan of Action, and many times more than would be required for a respectable diamond monitoring system. Such a levy would result in the addition of one seventh of one per cent to the cost of a diamond ring. This would represent the addition of 65 cents to the cost of a $500 luxury item, no great burden.[10]

The issue of commercial confidentiality arose frequently at Kimberley Process meetings. However, some of the same governments that worried about the possibility of breaking WTO regulations on free trade also implicitly defended monopolistic diamond industry practices, secrecy and single-company dominance of trade in one country or another. That aside, monitoring is no more about publicizing commercial confidentialities than standard financial auditing is. All commercial firms are independently audited, and commercially sensitive information is protected. If the same cannot be done where diamonds are concerned, governments are essentially condoning the secrecy that has been used to hide and foster serious crimes against humanity. In any case, Kimberley Process monitoring should be about the effectiveness of systems, not the commercial confidentialities of legitimate business.

One Kimberley Process delegation leader said that there is no compulsory international monitoring mechanism in any agreement, so why now, for diamonds? This is incorrect. The word 'compulsory' does not exist anywhere in the Kimberley agreement. The entire agreement is voluntary, as are all its provisions. There are, or should be, penalties associated with failure to meet them. These may be costly, but any country can join or not join. If a country joins the club, it must observe the rules. If the rules include certificates, it must issue certificates. This is not an infringement of national sovereignty, it is part of the cost of doing business in the diamond trade. It is agreed voluntarily. Regular independent monitoring can likewise be voluntarily agreed. In the end, of course, no force on earth can compel a country to accept a monitoring mission if it refuses. But there would, and should be consequences.

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The issue is not about national sovereignty, it is about transparency in that part of a legitimate business that has become dirty and kills people. Legitimate commercial transactions can remain confidential, but theft, smuggling, murder and terrorism cannot. The sooner the diamond industry and the governments that protect its criminals understand this, the sooner the risk of a full-blown, public, industry-wide scandal and meltdown will disappear.

Part II: 'Credible Indications of Significant Non Compliance'

This section describes problems with existing national control systems for rough diamonds, and provides an estimate of the traffic in illicit diamonds. It reviews estimates of conflict diamonds. It also offers examples of probable and/or potential areas of non compliance with Kimberley minimum standards and makes the case for regular independent monitoring of all national control systems in order to ensure consistency and conformity.

Credible Indications?

There are problems with countries that are part of the Kimberley Process now, and those that might seek to become members, because there are no tests or reviews required in order to join. Belgian imports of diamonds from the United Arab Emirates (UAE), which did not attend Kimberley Process meetings, increased from $4.2 million in 1998 to $149.5 million in 2001. The UAE has been mentioned in several UN Expert Panel reports regarding both diamonds and arms shipments.[11] If the UAE does not join the Kimberley Process, its diamonds will be excluded from world trade, but as matters stand, all it has to do is to inform the Chair that it is 'willing and able to fulfill the requirements of the scheme' and it will be permitted to join. This could only be prevented if it is decided *by the full Kimberley plenary* that the 'indications' raised by Expert Panels and by a 35-fold increase in rough diamond exports to Belgium in three years suggest 'significant non-compliance'. Only then would a review mission be triggered, and only after the UAE had a) agreed to submit to such a review, and b) had agreed on 'the size, composition, terms of reference and time frame' of the mission.

The UAE is not alone. Almost no country involved in the diamond trade today fulfills the requirements of the proposed scheme. The aim, following the Ottawa meeting, was that Participants would review their regulatory and legislative frameworks in order to put the required systems in place for a targeted launch of the worldwide system in November, 2002. But there are many countries, many businesses and many individuals that have thrived on the illicit trade in diamonds. There were and are laws against theft, smuggling and murder, but they have been completely ineffective where these players are concerned. As a result, hundreds of thousands of people have died in wars that were fueled and protracted by diamonds; millions were displaced; countries were destroyed.

In a much-quoted estimate, then Director of De Beers Diamond Buying, Andrew Coxon, calculated that conflict diamonds in 1999 amounted to approximately 3.7 per cent of the world's rough diamond production of $6.8 billion.[12] The total was based on the estimates in Table 1.

Table 1. Estimate Of Conflict Diamonds By Weight And Value, 1999

	Angola	Sierra Leone	Democratic Republic of the Congo
Average Price per carat	$300	$200	$180
Number of carats	433,000	350,000	194,000
Total	$150 million	$70 million	$35 million

This 3.7 per cent figure, rounded up to four per cent, has been widely quoted ever since. It has been disputed, however. In earlier years, the figure was certainly much higher. In 1996 and 1997, UNITA alone exported as much as $700 million annually — ten per cent of world production. An April 2001 UN report on Angola estimated UNITA smuggling at $300 million or more in 1999, double the figure in Table 1.[13] With the 2002 cease-fire in Angola and the apparent demise of UNITA, these numbers have dwindled significantly, but after 40 years of resource-based war, it would be premature to say that the danger of conflict diamonds in Angola has ended forever.

Since the declaration of peace in Sierra Leone in 2002, there are — technically — no more conflict diamonds from that country. Diamonds continue to be mined by the RUF and other illicit diggers, however. Until there is a genuine climate of peace and reconciliation, until there is no longer a need for the world's largest UN peacekeeping force, and until there is an effective international certification scheme for rough diamonds, it would be premature to declare the phenomenon ended. Fighting in Liberia and rebel attempts to dislodge the warlord President, Charles Taylor, had resulted in massive internal displacement and 25,000 Liberian refugees crossing into Sierra Leone by July 2002. Taylor, who helped the RUF to create conflict diamonds in Sierra Leone, remains an active and destabilizing force throughout the region.

Conflict diamonds in the Democratic Republic of the Congo are a more complicated issue. As diamonds in that part of Africa have not been acknowledged by formal UN resolutions and sanctions, the DRC is not, technically, a Kimberley Process problem. The country, however, is rife with conflict diamonds: diamonds stolen and exported by rebel movements; diamonds stolen and exported by the armies of neighbouring countries; diamonds laundered through Kinshasa from other conflict areas. The rebel movement, RCD-Goma, has actually licensed diamond dealers and recorded 'official' exports. In 2001, these totaled $7.6 million,

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but this number is almost certainly a fraction of the actual traffic. Uganda and Rwanda — countries with no diamonds of their own, but with troops operating in the diamond areas of the DRC — were declared as the source of $3.7 million in Belgian diamond imports in 2001. More significantly, Brazzaville, capital of the Republic of the Congo — long an entrepôt for smuggled DRC diamonds — was the declared source of $223.8 million in rough diamonds entering Belgium in 2001. It was also the declared source of diamonds entering other countries, including the United States and Israel.[14]

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In April 2002, the DRC applied to join the Kimberley Process after attending several of the charter meetings. Under the terms of the Kimberley agreement, it will presumably be permitted to join without any form of review.

While conflict diamond totals may fluctuate, and may actually decline with the conclusion of formal peace agreements, the Kimberley Process is as much about prevention as it is about cure. Kimberley Process controls will, if effectively implemented, help to ensure that diamonds cannot again be used by rebel movements in these countries or any others to further their military aims.

Illicit Diamonds

There is another issue, however, where numbers are concerned. It is widely acknowledged that a significant proportion of the rough diamonds that are traded every year has been stolen in one way or another. These are 'illicit', rather than 'conflict' diamonds. Illicit diamonds obviously include conflict diamonds, but the term also encompasses diamonds that are simply stolen or smuggled, diamonds that are not declared in order to evade taxes, diamonds that are used for money laundering and other illegal purposes. These diamonds do not contribute to local development and are, in their own way, a quiet contribution to the conflict that evolves out of abject poverty and desperation. Estimates of the illicit diamond trade range around a 20 per cent figure, although this number has never been fully analyzed.

The following six tables calculate the difference in value between the export of rough diamonds from five West African countries and the value of imports from these countries into Belgium, over a six year period between 1994 and 1999.[15] All figures are in millions of US dollars.

The difference between official rough diamond exports from these five West African countries and imports into Belgium during the period 1994–9 averaged about $663 million per annum. None of the countries in question is a diamond *importing* country; in other words, there is no officially sanctioned import of rough diamonds, so the issue of 'provenance' versus 'origin' does not arise. There is, for example, no reason to declare Liberia or Gambia as a country of provenance, except to disguise the true origin of the goods. While some of the diamonds declared as Gambian may well have passed through Gambia, it is unlikely that the $2.2 billion noted in Table 4 ever went anywhere near Liberia, one of the most unsettled and dangerous countries on earth during the years in question. It may be assumed, therefore, that all of these diamonds were one of two things:

- they were diamonds produced in the countries recorded by Belgian import authorities and not recorded as exports (i.e. they were smuggled out); or
- they were diamonds produced elsewhere and imported into Belgium under false declarations.

The former could be possible to a certain extent in the cases of Sierra Leone, Côte d'Ivoire and Guinea, although it is unlikely in the case of Côte d'Ivoire, where known production is significantly less than what was said to be imported into Belgium. The second explanation is the most likely, and can be the only one in the cases of Gambia and Liberia. Liberian diamond production has never been significant in either volume or quality, and Gambia has no diamonds whatsoever. All of the diamonds mentioned in Table 7, therefore, are illicit diamonds, representing approximately ten per cent of annual world production.

Additional estimates of illicit goods can be added to these:

- the CEO of the Angolan Selling Corporation (ASCorp) has said that between $350 and $420 million in smuggled goods left Angola in 2000, representing about five per cent of world supply;[16]
- a significant proportion of Belgian imports from Congo Brazzaville, another country without diamonds of its own ($2.2 billion between 1994 and 1999, or $377 million per annum on average; $116 million in 2000 and $224 million in 2001). The 1994-9 average represents a further five per cent of world supply;
- the direct imports of West African diamonds into Britain, Israel, the US, Hong Kong, the U.A.E., Switzerland and elsewhere. While these are not significant, and may be backed by legitimate export documentation, the numbers would have the effect of inflating the Belgian figures;
- theft from mines and afterwards; estimates vary: 30 per cent from Namibia's Namdeb in 1999; 2-3 per cent of Botswana's $2bn annual production;[17]
- laundering through, and/or theft from other producing countries: Angola, DRC, South Africa, Namibia, Central African Republic, Brazil, Ghana;

Table 2. Sierra Leone

	1994	1995	1996	1997	1998	1999
Official Exports from Sierra Leone	30.2	22.0	27.6	10.5	1.8	1.2
Declared Belgian Imports from Sierra Leone	106.6	15.3	93.4	114.9	65.8	30.4
Difference	76.4	(6.7)	65.8	104.4	64.0	29.2

Table 3. Côte D'Ivoire

	1994	1995	1996	1997	1998	1999
Official Exports from Côte d'Ivoire	3.1	2.9	2.4	4.0	3.6	4.6
Declared Belgian Imports from Côte d'Ivoire	93.6	54.2	204.2	119.9	45.3	52.6
Difference	90.5	51.3	201.8	115.9	41.6	48.0

Table 4. Liberia

	1994	1995	1996	1997	1998	1999
Official Exports from Liberia	No data available because of civil war, although no official exports are likely to have occurred.				0.8	0.9
Declared Belgian Imports from Liberia	283.9	392.4	616.2	329.2	269.9	298.8
Difference	283.9	392.4	616.2	329.2	269.1	297.9

Table 5. Guinea

	1994	1995	1996	1997	1998	1999
Official Exports from Guinea	28.6	34.7	35.5	46.9	40.7	40.2
Declared Belgian Imports from Guinea	165.7	26.2	83.6	108.1	116.1	127.1
Difference	137.1	(8.5)	48.1	61.2	75.4	86.9

Table 6. Gambia

	1994	1995	1996	1997	1998	1999
Official Exports from Gambia	0	0	0	0	0	0
Declared Belgian Imports from Gambia	74.1	14.9	128.1	131.4	103.4	58.0
Difference	74.1	14.9	128.1	131.4	103.4	58.0

Table 7. Summary
Excess of Belgian Diamond Imports over West African Exports (US $ 000 000)

	1994	1995	1996	1997	1998	1999
Sierra Leone	76.4	-6.7	65.8	104.4	64.0	29.2
Côte d'Ivoire	90.5	51.3	201.8	115.9	41.6	48.0
Liberia	283.9	392.4	616.2	329.2	269.1	297.9
Guinea	137.1	-8.5	48.1	61.2	75.4	86.9
Gambia	74.1	14.9	128.1	131.4	103.4	58.0
Total	662.0	443.4	1060.0	742.1	553.5	520.0

- laundering and/or theft in or through other significant trading, cutting and polishing countries: Israel, India, Switzerland, Britain, the US;

- laundering and/or theft through smaller conduit countries such as Portugal and Germany. As noted above, exports of rough diamonds from the UAE (Dubai) to Belgium have increased exponentially in recent years: from $2.5 million in 1997 to $149.5 million in 2001. Large increases have been recorded in shipments from the UAE to Israel as well. Hong Kong rough diamond exports to Belgium increased by 370 per cent between 1997 and 2001.

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In addition, there is a phenomenon in Russia, known in the diamond trade as 'submarining'. As much as one third of Russia's $1.6 billion worth of diamonds are sold within Russia to Russian cutters and polishers. Many of these diamonds cannot be processed economically in Russia, and the surplus is 'exported' outside of official statistics and agreements. Another term for this phenomenon is 'leakage'. Because these diamonds are laundered under other labels, the leakage does not show up in import figures elsewhere as Russian diamonds.[18]

There is undoubtedly double counting in some of these figures. Some of the smuggled Angolan goods may be counted in the figures of Brazzaville or countries in West Africa, for example. But these figures, and the potential in countries for which there are no figures, suggest that an estimate of 20 per cent of world trade as illicit is more than possible, and that it may be conservative.

Why is the level so high? Reasons for the illicit trade are the same as those for the existence of conflict diamonds: value, portability, accessibility, secrecy, lack of government controls, an absence of data for checking even the most rudimentary movement of diamonds within and between countries. These 'reasons' represent the *opportunity*. The *motivation* in the past was predominantly tax evasion and money laundering, and this continues. Where money laundering is concerned, diamonds offer an attractive alternative to hard currency, often in short supply in Africa. More recently, however, there have also been links to drug money and organized crime.[19] At the far end of the spectrum, conflict diamonds are essentially illicit diamonds taken one step further — to pay for weapons in rebel wars. And there is growing evidence that they have been used to benefit a wider terrorist network. An al Qaeda diamond connection was first reported by the *Washington Post* in November 2001.[20] More recently the UN Monitoring Group established to deal with the UN Security Council's Counter-Terrorism Resolution (S1373) has also noted the diamond connection, saying that all nations involved in the rough diamond trade should join the Kimberley Process.[21]

But without effective, regular, independent monitoring — of *all* national control systems — the Kimberley provisions will be no more effective than what already exists and may create confidence where the opposite is warranted.

Part III: Recommendations

The following is a proposal for what an effective monitoring system would look like. It is intended for consideration by the Kimberley Process Plenary with a view to establishing an effective and credible monitoring mechanism.

Kimberley Process Monitoring: Proposed 'Essential Elements'

The Kimberley Process International Scheme of Certification for Rough Diamonds recommends a number of undertakings for participating countries in order to break the link between armed conflict and the trade in rough diamonds. Recognizing the need for these undertakings to be applied effectively and consistently across diamond producing and trading countries, and recognizing the need to build international credibility into the system, Participants recommend the following provisions regarding international monitoring and review.

Annual Report

Each participating country will provide information to the Chair on the status of its implementation of the Kimberley Process minimum standards, in response to a standard questionnaire to be circulated by the Chair once each year. The Chair will analyze and compile the replies into an annual report, to be discussed at annual Plenary Meetings of the Kimberley Process.

Routine Review Missions

Routine review missions will be carried out at least once every two years on each participating country. Review missions will consist of on-site visits conducted by a team of three or four selected experts from the diamond industry, and from the legal and law enforcement fields, nominated by other Participants and appointed by the Chair. The Chair will create a pre-selected roster of designated Review Mission Members from names submitted by Participants. Participants will agree on the roster at annual Plenary Meetings or in consultation with the Chair between meetings.

The purpose of the Routine Review Mission is to draw up a report assessing the extent to which the country under review is effectively implementing the Kimberley Process minimum standards, to highlight areas in which further progress could be made, and to develop a compendium of 'best practices' in managing national systems.

Review Missions will base their terms of reference on the agreed Kimberley Process minimum standards, including but not restricted to the following key points:

- Is there a designated export/import authority?
- Are all diamond mines licensed? Are all others prohibited from mining? (For producing countries only)
- Are all miners, including artisanal miners, licensed? (For producing countries only)
- Do license records contain the name, address, nationality and/or resident status of miners, and the area of authorized mining activity? (For producing countries only)
- Is there a complete computerized database of producers? (For producing countries only)
- Are there up-to-date production statistics (electronic)? (For producing countries only)
- Is there a computerized register of dealer-licensees?
- Are all buyers, sellers and exporters keeping, by law, daily records of buying, selling and/or exporting records, listing the names of buying and selling clients, license numbers, volume and value of transactions? Are these records being kept for five years?
- Is there a computerized register of cutter-licensees?

- Is there a register of other licensees and permit holders?
- Are there up-to-date domestic diamond trading statistics (electronic)?
- Is the exporting authority sending advance notice of shipments by e-mail?
- Is the importing authority notifying exporters of import confirmation?
- Is there a secure extranet for trade notifications?
- Is there a computerized register of diamond exporters?
- Is there a computerized register of diamond importers?
- Is the harmonized system tariff code being used appropriately and effectively?
- Are there up-to-date diamond trade (export/import) statistics (electronic)?
- Are all cash purchases of rough diamonds routed through official banking channels, supported by verifiable documentation?
- Is there a real-time data capturing computer system?
- Are tamper-proof containers/bags and seals being used?
- Are there regulations/legislation/government notices to support internal controls and certification, and penalties for contravention?
- Are there effective security standards for diamond storage, transport and business premises?
- Is there an effective audit trail from mine to market? (For producing countries only)
- Are forgery-proof KP certificates being used?
- Are there qualified diamond inspectors/validation/customs officers?
- Are diamond valuators and other expertise in place?
- Is there a database of offenders convicted?
- Is there a diamond footprint for each mine or mining area? (For producing countries only)

A report on the results of Routine Review Missions will be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from the Participant, as well as the report, will be posted on the official certification scheme website, no later than three weeks after the submission of the report to the Participant concerned.

Summaries of Routine Review Missions and their recommendations will be presented in a report by the Chair at Annual Meetings of the Kimberley Process.

Challenge Review Missions

Challenge Review Missions are designed to clarify and resolve specific questions concerning possible non-compliance. An on-site Challenge Review Mission may be requested by any Kimberley Process Participant, at any time. Challenge Review Mission members will be drawn from the Roster of Review Mission Members, but will exclude nationals of the requesting country and the Participant under review. Challenge Review Missions will be undertaken within two months of the request being made. Terms of reference for Challenge Review Missions will be drawn up by the Chair in consultation with an ad hoc committee created for the purpose. A Participant may refuse a Challenge Review Mission, in which case the Plenary may be consulted by the Chair in order to decide on alternative action. At a minimum, the request for the Challenge Review Mission and the response will be noted on the official certification scheme website.

A report on the results of Challenge Review Missions will be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from the Participant as well as the report will be posted on the official certification scheme website, no later than three weeks after the submission of the report to the Participant concerned.

The results and recommendations of Challenge Review Missions will be discussed at subsequent Annual Meetings of the Kimberley Process.

Part IV: Conclusions

On Sept. 11, 2001 the Kimberley Process was holding its 8th or 9th meeting, this one at the Twickenham Rugby Stadium conference facility near London. When news of the tragic events that day in the United States began filtering through, the meeting was adjourned. But there were no buses available to take participants back to their hotels. So those concerned about diamond-fueled wars that had taken the lives of half a million Africans sat in the President's Lounge, and in stunned silence watched the collapse of the World Trade Center towers on television. Within 17 days of that event, the United Nations Security Council had passed a resolution (S1373) noting 'the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering, [and] illegal arms trafficking'. It decided that all states should 'prevent and suppress' the financing of terrorist acts, criminalize those involved, freeze their assets and bring them to justice. It then created a Committee of the Security Council 'to monitor implementation of this resolution' and required all states to report on their compliance within 90 days.

The Enron, Arthur Andersen and WorldCom scandals caused the US government to create a tough new corporate governance law within weeks, promising prison terms for CEOs who certify incorrect financial statements.

The Kimberley Process — arguably dealing with crimes of a similar nature and significantly greater magnitude in terms of human life and suffering — met for six more months and then produced a squib. And the US administration weakened a proposed Clean Diamond Act so badly that it was scrapped by senators who believed that no act was better than a weak one.

In fact, of all the recent international agreements dealing with labour, environmental and security concerns, the Kimberley Process provisions for monitoring and verification are undoubtedly the weakest. Industry monitoring proposals remain vague, and the governmental provisions are virtually non-existent. In comparing the Kimberley monitoring provisions with those of other agreements concerned with human security it would appear that there are two standards. Where the security of industrialized nations is concerned, tough, unequivocal agreements can be promulgated quickly, with clear and detailed provisions for compliance and third party monitoring. Where African diamonds and African lives are concerned, however, the issue is treated as an abstract trade matter. Terrorism and human security in Africa are treated differently from terrorism and human security elsewhere, and are therefore accorded less urgency and lower levels of remedial and preventive action.

The Kimberley Process — arguably dealing with crimes of a similar nature and significantly greater magnitude in terms of human life and suffering — met for six more months and then produced a squib.

In the matter of conflict diamonds, trust cannot be given, it must be earned. Speaking in the wake of the Enron and WorldCom scandals, US President George W. Bush said,

In the matter of conflict diamonds, trust cannot be given; it must be earned.

'We must have rules and laws to restore faith in the integrity of American business.' This is doubly true for the diamond industry.

The absence of effective monitoring in the Kimberley Process provisions compromises an otherwise significant agreement. This shortcoming must be remedied if the Kimberley Process is to halt the conflict diamond phenomenon and bring greater stability to Africa, making diamonds a force for development rather than an engine of terror and state collapse.

Annex 1

Main Provisions of the Kimberley System

as approved March 2002 in Ottawa, Ontario, Canada by members of the Kimberley Process

International Trade: Each Participant [i.e. each participating country] should:

a) with regard to shipments of rough diamonds exported to a Participant, require that each such shipment is accompanied by a duly validated Certificate [a description and details on the handling of certificates is included in the agreement];

b) with regard to shipments of rough diamonds imported from a Participant:

- require a duly validated Certificate;
- ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;
- require that the original of the Certificate be readily accessible for a period of no less than three years;

c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant;

d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

With respect to Internal controls, each participant should:

a) establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;

b) designate an Importing and an Exporting Authority(ies);

c) ensure that rough diamonds are imported and exported in tamper resistant containers [details on this are contained in other sections];

d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;

e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions [contained elsewhere in the agreement].

f) when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in [an annex].

Principles of Industry Self-Regulation

Participants understand that a voluntary system of industry self-regulation... will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

Annex 2

Examples of International Monitoring Arrangements

This annex describes a variety of international monitoring arrangements. The list is not exhaustive. Most of the material has been taken from the websites and publications of the organizations concerned. It has not been verified and its inclusion here is not intended as an endorsement or a critique.

A. Governmental Arrangements

The Chemical Weapons Convention

The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons, and on Their Destruction ('The Chemical Weapons Convention' or CWC) is the first disarmament treaty to include a time frame for the elimination of an entire class of weapons of mass destruction, and it is the first multilateral arms control treaty to incorporate an intrusive verification regime.

The Convention is lengthy (200 pages) and the Annex on Implementation and Verification contains 11 parts dealing with the destruction of chemical weapons, along with verification procedures for chemical weapons, chemical weapons production facilities and chemical industry facilities. It includes measures for challenge inspections and investigations of the alleged use and restrictions on trade in chemical weapons with states not party to the CWC. There is an additional annex on principles for the handling of confidential information before, during and after inspections. As of January 1, 2002, 145 countries had signed the treaty. [22]

The Financial Action Task Force on Money Laundering

In response to mounting concern over international money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Paris Summit in 1989. The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. The FATF has a set of Forty Recommendations, which provide a comprehensive blueprint of the action needed to fight against money laundering. As of Feb. 1, 2002, there were 31 member countries and 19 observer organizations, including regional development banks, the World Bank, Interpol and the World Customs Organization.

FATF member countries are strongly committed to the discipline of multilateral monitoring and peer review. A self-assessment exercise and a mutual evaluation procedure are the primary instruments by which the FATF monitors progress made by member governments in implementing the Forty Recommendations. In the self-assessment exercise, every member country provides information on the status of its implementation of the Forty Recommendations, by responding each year to a standard questionnaire. This information is then compiled and analyzed, and provides the basis for assessing the extent to which the Forty Recommendations have been implemented by both individual countries and the group as a whole. The second monitoring element is the mutual evaluation process. Each member country is examined in turn by the FATF on the basis of an on-site visit conducted by a team of three or four selected experts from the legal, financial and law enforcement fields from other member governments. The purpose of the visit is to draw up a report assessing the extent to which the evaluated country has moved forward in implementing an effective system to counter money laundering and to highlight areas in which further progress may still be required.

The mutual evaluation process is enhanced by the FATF's policy for dealing with members not in compliance with the Forty Recommendations. The measures represent a graduated approach aimed at enhancing peer pressure on member governments to take action to tighten their anti-money laundering systems. The policy starts by requiring the country to deliver a progress report at plenary meetings. As a final measure, FATF membership can be suspended.

The FATF is engaged in a major initiative to identify non-cooperative countries and territories (NCCTs) in the fight against money laundering. Specifically, this has meant the development of a process to seek out critical weaknesses in anti-money laundering systems which serve as obstacles to international co-operation in this area. At Feb. 1, 2002, there were 19 NCCTs, including Russia, Israel and Ukraine.

At an extraordinary plenary meeting on the financing of terrorism in October 2001, the FATF expanded its mission beyond money laundering. It will now focus its energy and expertise on the world-wide effort to combat terrorist financing. The FATF has issued new international standards to combat terrorist financing which the Task Force calls on all countries to adopt and implement.[23]

The International Civil Aviation Organization

When the Convention on International Civil Aviation was drafted over 50 years ago, ICAO was given the ongoing task of adopting safety-relevant standards and recommended practices (SARPs). The SARPs are not enforceable by ICAO, and it is up to each member country to implement them to the extent possible. Any state which finds it impracticable to comply in all respects with a standard is required to give immediate notification by filing a difference with ICAO. ICAO then notifies other states of the difference. Unfortunately, over the years, it has become increasingly difficult to know the extent to which the international standards are being implemented, because a large number of states have not notified ICAO of their differences from, or compliance with, the standards.

Concern about the uncertain status of safety-related SARPs compelled ICAO, in mid-1995, to take action. It established the safety oversight programme, whose core function is to perform safety oversight assessments on request by states. Assessments performed by special ICAO teams enable countries to establish what is needed to achieve fuller implementation of the standards and, if it proves necessary, to indicate their differences from the SARPs. Beyond these assessments, the ICAO programme offers follow-up advice and technical assistance. The current safety oversight programme is a voluntary process, limited in scope, and mostly confidential.[24]

Things changed somewhat, following Sept. 11, 2001. In March 2002, all 187 ICAO Member States endorsed a program to strengthen commercial aviation security on a global scale, primarily through a mandatory audit of national services. Delegates to a Ministerial Meeting approved a formal and comprehensive Aviation Security Plan of Action which includes regular, mandatory and harmonized audits. The cost is expected to be US$17.1 million. The three year program, which will begin in 2003, will identify and correct deficiencies in the implementation of ICAO security-related standards. ICAO experts will perform the audits with the permission of the country in question. Countries will be notified of audit results which will be shared with other member states. Technical assistance will be provided to developing countries to rectify deficiencies.[25]

OECD Peer Review of State Audit Institutions[26]

The Organization for Economic Co-operation and Development (OECD) is an international organization made up of 29 countries with advanced market economies. As an integral part of its mission, the OECD assists governments in building and strengthening their structures through its Public Management Programme. It does this by studying how governments organize and manage the public sector and identifies emerging challenges that governments are likely to face. One of the ways it does this is through peer reviews of state audit institutions under its SIGMA programme (Support for Improvement in Governance and Management). This programme is a joint initiative of the OECD and the European Union.

A SIGMA peer review is usually carried out by 1-2 members of SIGMA's staff and people drawn from EU Member States with experience from an audit office. The review team will assess the quality of the institution's audits against European audit standards, methods and reporting practices. They will also use legal experts to analyze aspects of independence, the mandate of the institution, the links between the relevant

legislation and rights of access to the necessary information. The review is normally intensive and spread over a one month timescale. It will include two or three missions to the country in question and intensive communication via telephone, e-mail and fax in between these missions.[27] After the review, the team produces preliminary findings for discussion and then formulates recommendations for incorporation in the final report. How the final report is delivered is discussed between SIGMA and the audit organization concerned.

State audit institutions find these reviews useful as the results enable them to develop and improve their audit activities. These reviews also help spread good practice, and SIGMA run various forums and discussion groups on their website as a way of facilitating this further.

OECD-DAC Development Cooperation Reviews

The 23-member Development Assistance Committee (DAC) is the principal body through which the OECD deals with issues related to co-operation with developing countries. Members of the DAC are expected to have certain common objectives concerning the conduct of their aid programmes. To this end, guidelines have been prepared for development practitioners in donor capitals and in the field. Approximately six high-impact Peer Reviews are conducted annually. These are among the main instruments of the DAC for improving individual and collective performance in both quantitative and qualitative terms. The Reviews focus on members' commitments of resources, agreed performance goals and coherence between aid policies and other policies which impact on developing countries. Peer Review Reports are published. Key strengths and weaknesses are identified in each annual series of reviews, and are synthesized and highlighted for senior policy makers and presented in the annual *Development Co-Operation Report.*

OECD Environmental Performance Reviews

There are now many international environmental agreements — on water, fisheries, the oceans, forests, wetlands, watersheds, endangered species and so on. The question of environmental performance — in other words, how far these commitments are actually met — is central to the environmental credibility of governments in the eyes of the public, other governments and the international community. The review of trends, policies and country performances, as well as the use of peer pressure to improve them, is a basic OECD function. Each review establishes the facts, uses environmental indicators and addresses around 60 recommendations to help the reviewed country consolidate achievements and make further progress. Since the beginning of the programme, 32 countries have been examined, including Poland, Bulgaria, Belarus and Russia.

B. Private Sector Certification Process

ISO 14000

The International Standards Organization (ISO) is a private sector, international standards body based in Geneva, Switzerland. Founded in 1947, ISO promotes the international harmonization and development of manufacturing, product and communications standards. ISO has promulgated more than 8,000 internationally accepted standards for everything from paper sizes to film speeds. More than 120 countries belong to the ISO as full voting members, while several other countries act as observer members. ISO produces internationally harmonized standards through a structure of Technical Committees.

Many companies are now familiar with the 9000 series of international standards dealing with quality systems. As a continuation of this standardization process, the ISO-14000 series of international standards has been developed for incorporating environmental aspects into operations and product standards. Similar to the Quality Management System (QMS) implemented for ISO 9001, the ISO14001 requires implementation of an Environmental Management System (EMS) in accordance with defined internationally recognized standards (as set forth in the ISO14001 specification).

The key to a successful ISO14001 EMS is having documented procedures that are implemented and maintained in such a way that successful achievement of environmental goals commensurate with the nature and scale of activities is promoted. In addition, the EMS must include appropriate monitoring and review to ensure effective functioning of the EMS and to identify and implement corrective measures in a timely manner.

ISO14001 standards include the need for sites to document and make available to the public an environmental policy. In addition, procedures must be established for ongoing review of the environmental aspects and impacts of products, activities, and services. Based on these environmental aspects and impacts, environmental goals and objectives must be established that are consistent with the environmental policy. Programs must then be set in place to implement these activities. Internal Audits of the EMS must be conducted routinely to ensure that non-conformance to the system is identified and addressed.

The Environmental Management System (EMS) document is the central document that describes the interaction of the core elements of the system, and provides a third-party auditor with the key information necessary to understand the environmental management systems in-place at the company. The checking and corrective action elements of the system help ensure continuous improvement by addressing root causes on non-conformance. The ongoing management review of the EMS and its elements helps to ensure continuing suitability, adequacy, and effectiveness of the program.[28]

The International Council of Chemical Associations

The International Council of Chemical Associations (ICCA) is a council of leading trade associations representing chemical manufacturers worldwide. The ICCA promotes and co-ordinates Responsible Care and other voluntary chemical industry initiatives. Responsible Care denotes the chemical industry's international and voluntary commitment to improved performance in health, safety and environmental protection. Forty-six countries embrace this initiative on reduced emissions, safe workers and communities, and fewer accidents and injuries. The Responsible Care Leadership Group introduced a peer review process in 1999 to encourage candid dialogue and constructive input among participating national associations. The initiative has advanced environmental, health and safety improvements in participating countries. Those associations and companies with greater resources have demonstrated leadership by helping those with limited resources. To date, 28 countries have published the required codes/guidelines for implementation; 29 countries are reporting on a range of performance indicators; and 20 are making the indicators public.[29]

C. NGO Monitoring Mechanisms

Coalition to Stop the Use of Child Soldiers

The Coalition to Stop the Use of Child Soldiers was formed in 1998 to advocate for the adoption of, and adherence to, national, regional and international legal standards prohibiting the military recruitment and use in hostilities of any person younger than eighteen years of age; and the recognition and enforcement of this standard by all armed forces and armed groups, both governmental and non state actors.

The Coalition was founded by six NGOs — Amnesty International, Human Rights Watch, the International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office — Geneva, and International Federation Terre des Hommes — and later joined by Defence for Children International, World Vision International, and regional NGOs from Latin America, Africa, Asia and the Pacific. The Coalition has also established partners and national coalitions which are engaged in advocacy, campaigns and public education in nearly 40 countries. The Coalition has established and maintained active links with UNICEF, the International Red Cross and Red Crescent Movement, UNESCO, UNHCR, UNHCHR and the Special Representative of the UN Secretary-General for Children and Armed Conflict.

The Coalition has generated considerable momentum towards its goal and is credited with having played an instrumental role in the adoption of the new Optional

Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.

Having completed the first-ever global survey of the use of child soldiers in 2001, the Coalition will build a global monitoring and reporting system that can keep research up to date and feed into UN bodies and ongoing campaigns. The Coalition also undertakes in-depth research on particular countries and themes.[30]

International Action Network on Small Arms[31]

IANSA is an international network of over 340 organizations from 71 countries working to prevent the proliferation and misuse of small arms and light weapons. Although governments have signed up to a number of regional conventions and programmes, practical action is far behind and much remains to be done. The international NGO community believes that a co-ordinated, independent effort — to support, challenge and monitor governmental action on small arms — is essential to enhance human security and promote effective action to curb the proliferation and misuse of small arms.

At present the secretariat is based at the Christian Aid offices in London and staffed by a Co-ordinator and an Administrative Officer. The Secretariat will soon, however, be decentralized. Devolving responsibilities to the regions will strengthen existing networks and help build new ones. Networks are emerging in Europe, North America, Central and South America, West and East Africa, South Asia and South East Asia. IANSA has been involved in symbolic and real destructions of illegally seized weapons. IANSA produced a position paper for the UN Conference — 'Focusing Attention on Small Arms — Opportunities for the UN Conference' in January 2001. The Network has regular newsletters and a website with up-to-date information on small arms work of participants in different parts of the world, press releases, official documents and publications.

D. Mixed Approaches

The Landmines Agreement

The Government Mechanism

The following provisions for monitoring compliance have been agreed by states signing the 1997 Mine-Ban Agreement:[32]

- If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of the Convention by another State Party, it may submit, through the Secretary-General of the UN, a Request for Clarification of that matter to that State Party. Information will be provided within 28 days. If this does not happen, the matter will be made known to all member states and a special meeting of States parties may be called by the Secretary-General within a further 28 days;

- If further clarification is required, the Meeting of the States Parties or the Special Meeting shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. The mission, consisting of up to nine experts, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

- The Secretary-General of the UN will keep a roster of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was

declared prior to the appointment of the expert to such missions. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission.

- The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

- The fact-finding mission shall report, through the Secretary-General of the UN, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings. The Meeting shall consider all relevant information, including the report submitted by the fact-finding mission, and may ask the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

- The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions by consensus, otherwise by a two-thirds majority of States Parties present and voting.

The NGO Mechanism[33]

Governmental arrangements for monitoring notwithstanding, a comprehensive NGO mechanism has also been created. Landmine Monitor is an unprecedented initiative by the International Campaign to Ban Landmines (ICBL) to monitor implementation of, and compliance with, the 1997 Mine Ban Treaty, and more generally to assess the efforts of the international community to resolve the landmines crisis. Landmine Monitor marks the first time that NGOs have come together in a coordinated, systematic and sustained way to monitor a humanitarian law or disarmament treaty, and to regularly document progress and problems. The main elements of the Landmine Monitor system are a global reporting network, a central database, and an annual report. *Landmine Monitor Report 2001: Toward a Mine-Free World* is the third such annual report.

To prepare its third report (a 1200 page book and a 78 page Summary), Landmine Monitor had 122 researchers from 95 countries gathering information. The report is largely based on in-country research, collected by in-country researchers. Landmine Monitor has utilized the ICBL campaigning network, but has also drawn in other elements of civil society to help monitor and report, including journalists, academics and research institutions. Landmine Monitor is not a technical verification system or a formal inspection regime. It is an effort by civil society to hold governments accountable for the obligations that they have taken on with regard to antipersonnel mines. This is done through extensive collection, analysis and distribution of information that is publicly available. Though in some cases it does entail investigative missions, Landmine Monitor is not designed to send researchers into harm's way and does not include hot war-zone reporting. Landmine Monitor is meant to complement the States Parties reporting, noted above. It was created in the spirit of the governmental agreement and reflects the view that transparency and cooperation are essential elements to the successful elimination of antipersonnel mines. It is also a recognition that there is a need for independent reporting and evaluation.

A Core Group coordinates the Landmine Monitor system. It consists of Human Rights Watch, Handicap International (Belgium), the Kenya Coalition Against Landmines, Mines Action Canada, and Norwegian People's Aid. Overall responsibility and decision-making rests with the Core Group. Additional organizations and individuals provide research coordination. Landmine Monitor's donors include the governments of Australia, Austria, Belgium, Canada, Denmark, France, Germany, The Netherlands, Norway, Sweden, Switzerland, the United Kingdom, the European Commission and the Open Society Landmines Project.

Social Accountability International

Social Accountability International, founded in 1997, works to address concern among consumers about labour conditions around the world. Since the early 1990s, a growing number of companies from the U.S. and Western Europe have responded by publishing workplace codes of conduct, which they seek to enforce in their own factories and their suppliers' factories. These diverse codes of conduct have become somewhat problematic, both for consumers who want clear information and for companies seeking to enforce the codes. They tend to be highly inconsistent and expensive and inefficient to monitor, due to unclear definitions and a lack of trained auditors. Such codes and their monitoring systems also tend to be weak on audibility and sensitivity to local laws and customs.

In response to the inconsistencies, SAI developed a standard for workplace conditions and a system for independently verifying factories' compliance. The standard, Social Accountability 8000 (SA8000), and its verification system draw from established business strategies for ensuring quality, and add several elements that international human rights experts have identified as essential to social auditing.

In order to develop SA8000, SAI convened an international Advisory Board which includes experts from trade unions, businesses and NGOs. SA8000 has nine core areas: child labour, forced labour, health and safety, compensation, working hours, discrimination, discipline, free association and collective bargaining, and management systems. The SA8000 system is modeled on the one used by companies to ensure quality control: ISO 9000. Over 300,000 production sites around the world use certification of conformance to the International Organization for Standardization to demonstrate to customers that their production system ensures quality. SA8000 builds on the proven merits of ISO auditing techniques: specifying corrective and preventive actions; encouraging continuous improvement; and focusing on management systems and documentation proving these systems' effectiveness.

Certification of compliance with SA8000 means that a facility has been examined in accordance with SAI auditing procedures and found to be in conformance with the standard. Certification auditors look for objective evidence of effective management systems, procedures and performance that prove compliance with the standard. In addition, certified facilities are subject to semi-annual surveillance audits. Once certified, a producer is entitled to display the SA8000 certification mark and use it as a selling point to customers and shareholders.

SAI accredits firms — usually known as certification bodies — to be external auditors, certifying manufacturing facilities for conformance to SA8000. Accreditation is not restricted to corporate entities and SAI encourages NGO applicants. To ensure a high level of expertise among participants in the system, SAI has developed professional auditor training courses and a Guidance Document, which details how to verify a facility's compliance with SA8000. As of March 2002, 117 companies, representing 25 industries and 24 countries had received SA8000 certification.[34]

Endangered Species

Government: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[35]

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement that came into force in 1975. To date, 146 countries have signed the treaty, making it one of the world's largest conservation agreements in existence. The Convention accords varying degrees of protection to more than 30,000 plant and animal species depending on their biological status and the impact that international trade may have upon this status. The member countries, known as Parties, act together by banning international commercial trade in an agreed list of plant and animal species threatened with extinction.

The Parties agree to regulate trade through a system of permits in many other species that may become threatened with extinction if trade is not strictly controlled. The agreement also includes species subject to regulation within a particular member country and for which the co-operation of other member countries is needed to control cross-border trade.

Each country must designate a Management Authority to issue permits for trade in species listed in the CITES Agreement. Member countries must also designate a Scientific Authority to provide scientific advice on imports and exports. CITES enforcement is often the responsibility of customs, police or similar agencies. The CITES Secretariat, located in Geneva, oversees implementation on a global level.

An NGO Mechanism: Traffic

TRAFFIC, a non-governmental mechanism, has been working to improve CITES implementation since the treaty's beginnings in the mid-1970s, and remains a key force in assisting with its application through research, policy initiatives, training and enforcement, at the national, regional and international level.

TRAFFIC aims to promote and assist the effective development and application of wildlife trade controls, with particular emphasis on CITES, to ensure that they contribute to the conservation of wildlife species in trade. TRAFFIC maintains a special working relationship with the CITES Secretariat, and has a significant influence on actions and policy decisions taken in the CITES forum. International agreements such as the Convention on Biological Diversity and the WTO/GATT are likely to have increasing relevance to the trade in wildlife; effective application of TRAFFIC's demonstrated expertise on this trade are important to guiding these and other agreements in positive directions for the conservation of wild species in trade.

The Global Reporting Initiative

The Global Reporting Initiative (GRI) was established in 1997 with the mission of developing globally applicable guidelines for reporting on the economic, environmental, and social performance, initially for corporations and eventually for any business, governmental, or non-governmental organization. Convened by the Coalition for Environmentally Responsible Economies (CERES) in partnership with the United Nations Environment Programme (UNEP), the GRI incorporates the active participation of corporations, NGOs, accountancy organizations, business associations, and other stakeholders from around the world.

The GRI's Sustainability Reporting Guidelines represent the first global framework for comprehensive sustainability reporting, encompassing the 'triple bottom line' of economic, environmental, and social issues. Twenty-one pilot test companies, numerous other companies, and a diverse array of non-corporate stakeholders commented on the draft Guidelines during a pilot test period during 1999–2000. Revised Guidelines were released in June 2000.

In 2002, the GRI will be established as a permanent, independent, international body with a multi-stakeholder governance structure. Its core mission will be maintenance, enhancement, and dissemination of the Guidelines through a process of ongoing consultation and stakeholder engagement.

The GRI has brought together disparate reporting initiatives into a new multi-stakeholder, global process with long-term implications for disclosure, investment and business responsibility. It is expected to lead to:

- Expanded credibility of sustainability reports using a common framework for performance measurement;
- Simplification of the reporting process for organizations in all regions and countries;
- Quick and reliable benchmarking;
- More effective linkage between sustainable practices and financial performance.[36]

Notes

[1] General Accounting Office, 'International Trade: Significant Challenges Remain in Deterring Trade in Conflict Diamonds', GAO-02-425T, Washington, February 13, 2002

[2] Farer, Tom, 'De-funding Civil Conflict: The Role of Law', paper presented at an International Peace Academy Conference on Policies and Practices for Regulating Resource Flows to Armed Conflicts, Bellagio, Italy, May 20-24, 2002; emphasis added to the original.

[3] Haufler, Virginia, *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*, Carnegie Endowment, 2001, pg. 112

[4] 'Civil Society Monitoring: Comparing experiences, exploring relevance to biological weapons', The Geneva Forum, Geneva, March, 2002

[5] Joint Resolution, World Federation of Diamond Bourses and International Diamond Manufacturers Association, Antwerp, July 19, 2000

[6] UN General Assembly, Resolution A/RES/55/56, 1 December 2000

[7] *G8 Action Plan for Africa*, G8 Heads of Government Meeting, Kananaskis, Alberta, June 27, 2002

[8] Kimberley Process Working Document No. 1/2002, March 20, 2002, Section VI, Para 15

[9] General Accounting Office, *International Trade: Critical Issues Remain in Deterring Conflict Diamond Trade*, GAO-02-678, Washington June 2002, pp. 21-2

[10] $7.9 billion in rough diamonds is converted into $54.1 billion in diamond jewelry. A 0.1% levy on $7.9 billion would represent, on average, a 0.13% levy on finished goods. $500 x 0.13% = $0.65

[11] For example, UN Security Council Report S/2000/1195 of 20 December 2000 on Sierra Leone; S/2001/1015 of 26 October 2001 on Liberia; S/2002/486 of 26 April 2002 on Angola.

[12] Untitled paper prepared by A.M. Coxon, De Beers, March 2000

[13] UN Security Council Report S/2001/363, 18 April 2001, para 54

[14] Details on the DRC are taken from Dietrich, Christian, *Hard Currency: The Criminalized Diamond Economy of the Democratic Republic of the Congo and its Neighbours*, Partnership Africa Canada, Ottawa, 2002

[15] All figures have been produced by the governments of the countries in question, although only those for Belgium are currently in the public domain.

[16] UN Security Council, S/2001/966, para 141, 12 October 2001

[17] Hart, Matthew, *Diamond: A Journey to the Heart of an Obsession*, Viking, New York, 2001, pp.159-181

[18] Details of various Russian diamond frauds are contained in Hart, *op cit*

[19] Smillie, I., Gberie, L., and Hazleton, R. *The Heart of the Matter: Sierra Leone, Diamonds and Human Security*, Partnership Africa Canada, 2000, pp. 44-47; UN Report S/2000/1195, pp. 32-40

[20] Farah, Douglas, 'Al Qaeda Cash Tied to Diamond Trade', *Washington Post*, November 2, 2001

[21] 'Al-Qaida terrorist operatives diversifying finances, UN expert panel warns', UN News Center, New York, May 22, 2002

[22] Adapted from the website of the Organization for the Prohibition of Chemical Weapons: www.opcw.org

[23] Adapted from the FATF website: www1.oecd.org/fatf

[24] The foregoing paragraphs were adapted from 'Universal audit Programme conducted under the auspices of ICAO would offer many benefits', by Assad Kotaite, ICAO Journal, May 1998

[25] 'ICAO sets new security standards', *Jane's Airport Review*, March 27, 2002

[26] This section is quoted or adapted from material on the OECD website.

[27] A more detailed description of the peer review process is available on the SIGMA website at www.oecd.org/puma/sigmaweb/acts/audit/index_ea.htm.

[28] Adapted from ISO 14000 website: www.ISO14000.com

[29] Adapted from the ICCA website: www.icca-chem.org

[30] Adapted from material on the Coalition website: www.child-soldiers.org

[31] Adapted from material on the IANSA website: www.iansa.org

[32] Adapted from the text of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, Opened for signature at Ottawa: 3-4 December 1997, Entered into force on 1 March 1999.

[33] Adapted from material in the *Landmine Monitor Executive Summary 2001*, Human Rights Watch, Washington, 2001

[34] Adapted from the SAI website: www.cepaa.org

[35] Adapted from material on the Traffic website: www.traffic.org

[36] Adapted from GRI website: www.globalreporting.org

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