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Diamonds and other precious stones in armed conflicts and law enforcement co-operation in Southern Africa

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Occasional Paper No 57 - May 2002

INTRODUCTION

It is widely acknowledged that about 55% of the world's annual supply of rough diamonds emanates from sub-Saharan Africa, and that five of the top ten diamond producers (by volume) are in Southern Africa.¹ In addition, the region is also generously endowed with deposits of cobalt, gold, coltan and even uranium. The semi-precious stone, tanzanite, is available in Tanzania. At the same time, the processing industry for these resources is poorly developed, being largely confined to South Africa and, to a lesser extent, Botswana. As a result, most of the precious stones extracted from the region are destined for the export market for beneficiation and sale. The relationship of dependence between the producer countries and the rest of the industry calls for a measure of sensitivity on the part of the producers to prevailing, as well as evolving, trends and sentiments in the international markets.

Southern Africa is home to two conflicts that have proved intractable. The civil wars in Angola and the Democratic Republic of the Congo (DRC) continue to attract regional as well as international attention. Many countries have committed resources to facilitate enduring resolution of the conflicts. Yet, in spite of numerous peace talks and accords the conflicts continue, prompting questions about the good faith of some of the participants. There is a growing perception that peace efforts are being scuttled by the financial incentive offered by the trade in resources extracted from Angola and the DRC. The intransigence of some rebel groups and governments to terminate their involvement in the conflicts is increasingly being attributed to commercial interest in continued resource exploitation. The resources have, therefore, been called 'conflict' or 'blood' resources. Multinational, multi-pronged strategies to deprive perceived beneficiaries of the benefits of conflict resources, which commenced in the late nineties, are gathering pace.

This paper attempts to contribute to the continuing debate. It discusses the linkage between armed conflicts and extractive resources generally and specifically with reference to Southern Africa. The challenges arising from that linkage are then explored against the background of the objectives of law enforcement. In the final part, the paper outlines some suggestions for regulatory policy and administrative changes. These will admittedly be expensive to introduce. The paper concludes that neither the public sector nor private industry has a choice, given the geo-political position of the primary resources producing countries.

THE ROLE OF DIAMONDS AND OTHER PRECIOUS STONES IN CAUSING AND FUELLING ARMED CONFLICTS GENERALLY

The political economy of resource exploitation

Resource exploitation basically entails transforming products of nature into tradable commodities. The process essentially involves creating, defining and recognising property rights and functional roles and allocating profits. It is, in parenthesis, the creation and

distribution of the value attached to the resources or commodity. As such, the process is a political one. Le Billon (2000) describes it as deeply political.

Resource exploitation, either through extraction or production, can occur in a peaceful and mutually co-operative environment, or in an environment characterised by violence and conflict. It is likely to involve conflict if the resource is relatively scarce (locally or globally). Where the availability of the resource is confined to a small part of a given territory and it is an extractive resource, it is likely to produce conditions favourable to conflict over territorial control. Often territorial control cannot be attained or secured in isolation from control of the state of which the territory is a part (for instance where there is no agreement on a non-centralised distribution of political and economic power), and the conflict becomes one over the control of state power or to redefine the geographic boundaries (secession).

Peaceful environments in which extractive precious resource (as envisaged in this paper, e.g. diamonds) exploitation occurs in Southern Africa are exemplified by:

- Botswana;
- Namibia;
- South Africa; and
- Tanzania (tanzanite).

As indicated above, Angola and the Democratic Republic of the Congo typify non-peaceful environments for extractive resource exploitation in the region.

The role of resource extraction in luring foreign intervention into conflict theatres and in conflict regeneration

Resource extraction, and sometimes the mere prospect of finding resources, provides strong commercial motivation for the involvement of foreign governments as well as mercenary groups. Conflict areas within and outside Africa provide examples of the phenomenon.² The support of foreign entities for whatever side of the conflicts has inevitably been tied to mining and other resource exploitation concessions. Conflict environments provide opportunities for the advancement of commercial ventures involving foreign governments, usually in association with local warlords, local ruling élites and/or international entrepreneurs. As one analyst has observed, '[t]he perpetuation of the war is considered profitable business in which local and international actors invest and expect quick, good profits, and thus it has proved advantageous to all parties benefiting from the war economy'.³

Among the beneficiaries are political leaders, multinational corporations, intermediary networks, local military commanders, warlords and organised crime syndicates. One must hasten to concede that the instability that is endemic to conflict situations is not always conducive to securing the returns expected by foreigners. Lessons to the contrary abound.⁴ The conflict, however, helps to eliminate competition and, in that sense, is a motivating factor.

Extractive resources can contribute to the likelihood of armed conflict, just as much as they can influence the dimensions and course of such conflict. They often also determine the impact of the conflict on the populations in both the source regions and the exploiting countries. Ultimately, the duration of the conflict and its complexity depend on a combination of these factors.

Dimensions and course of conflict

The dimensions which an armed conflict takes tend to be influenced as much by the tenacity and resourcefulness of the participants as they are by the range and diversity of secondary non-active participants, most of whom stand to benefit from whatever resources the conflict area can produce. Typical catalysts to the continuation of armed conflict in resource-rich areas include political leaders in neighbouring countries, arms brokers and dealers, service providers (such as freight transport operators) and dealers in precious metals.

Conflicts encourage deviance and the growth of informal economies, characterised by freelancing, and the evasion of regulations and taxation. Proximity to wealth-generating resources leads to the involvement of individual soldiers, local commanders and occasionally police personnel in freelancing activities. Gradually, they acquire a stake in the conflict and

constitute part of the problem. Movement of, and trading in, illicitly obtained commodities requires developing partnerships with clandestine – and often criminal – networks with access to centres of international trade or retail.

Impact on populations

Impact on the host populations

This can take any of four forms, with the local population being:

- a. involved in the exploitation and commercialisation, as semi-autonomous participants;
- b. involved in the exploitation, as forced labour and compelled to provide services;
- c. regarded as a hindrance to resource exploitation and forcibly evicted or killed; or
- d. neglected, as focus is exclusively placed on resource exploitation at the expense of the local environment, economy and public welfare.

Any of these developments is capable of producing secondary conflict. It is arguable that the first scenario is the least likely to generate secondary conflict, but this can only be true where the resources in question are available in such abundance as to accommodate the needs of the greatest possible number of operators, from both the primary belligerents and the host population, and the marketing chains are accepted as fair. The combination is unlikely.

Forced labour, apart from being illegal, is frequently the source of much resentment and eventual conflict. Services demanded may include provision of food and sexual favours, usually non-consensual.

Similarly, wholesale evictions, or displacement of the host populations, on the basis that they hinder exploitation of resources in their habitat, are conducive to conflict between the new exploiters and the displaced people and even among the displaced themselves (as with the displacement of thousands of civilians from the diamond fields of Sierra Leone by Foday Sankoh's Revolutionary United Front – RUF).

The neglect of the host population in exploited areas creates a kind of neo-colonial status, in which adverse perceptions of the exploiting entities are formed and disseminated. Writing about the situation in the Kivu provincial towns of Goma and Bukavu in the eastern Democratic Republic of the Congo, Stephen Jackson noted:⁵

Now, however, the resentment of economic motivations and rapine on the part of Rwanda – or perhaps more properly Rwandans – underlying the present violence that has dismembered the Congo, has led the rumour economy to label the lust to exploit the Kivu's mineral wealth as, itself, 'criminal'. The rumour mongers see the riches of the Congo as having been 'annexed' and recolonised by a foreign power, a view widely reflected in everyday conversation in the Kivus.

At the time of writing, the Kivu area largely fell under the control of the Rwandan-backed *Rassemblement Congolais pour la Democratie* (Rally for Congolese Democracy, based at Goma, or RCD-Goma), one of the rebel groupings in that country. There was evidence of dislike for the RCD occupiers, who were perceived to be facilitating the drain of the mineral resources of the Kivu provinces. The primary precious commodity extracted was columbine tantalite ore, better known as coltan.

Impact on populations in the exploiting countries

The assumption is made here that government agencies are involved in extractive resource exploitation. The impact on the citizens to whom they are (or should be) accountable is probably indirect and depends partly on the viability of the exploitative ventures and partly on the extent of accountability. Should the ventures be unprofitable, the impact on the national budget is negative, with possible adverse macro-economic implications. To the extent that the latter cause popular distress, they can result in a conflict situation at some point. If the ventures are profitable, on the other hand, and the government is accountable, proceeds from the disposal of the resources can be expected to contribute to national revenue, with positive spin-offs for the economy. It has been pointed out that Uganda and Zimbabwe, two of the countries involved in the conflict in the Democratic Republic of the Congo, are at opposite ends of the spectrum in this respect. While in Uganda there has apparently been a positive spin-off on account of resources obtained from the DRC, this is apparently not so with

Zimbabwe.6

At the same time, the potential for resources derived from a foreign territory to promote corruption should not be overlooked. The marketing of non-indigenous precious resources requires resort to dishonesty, especially in the disguise of their origin. In respect of diamonds, it should be noted that all countries in Southern Africa, with the possible exception of Swaziland and Malawi, have some deposits, in varying quantities. Diamonds illicitly removed from the conflict zones of Angola or the DRC can be infused into the export stream of clean diamonds extracted from the western parts of Zambia, southern Zimbabwe or south western Namibia. To avoid creating an audit trail, customs legislation may have to be circumvented through smuggling and/or bribery. Corporate production records may be falsified in order to accommodate the foreign commodities. It is not uncommon for the processes to involve the collusion of public officials at a high level, as the potential financial rewards are attractive. The causal link between public corruption and civil strife may not be obvious and direct, but the corrosive impact that corruption has on the economy is gradual and ultimately devastating.

THE SPECIFIC ROLE OF PRECIOUS STONES IN ARMED CONFLICTS IN SOUTHERN AFRICA

Much has been written concerning the decade-long conflict in Angola and the continuing conflagration in the Democratic Republic of the Congo. Diamonds are a common denominator in both countries. In addition, the DRC has deposits of coltan and gold. There is unanimity in knowledgeable circles about the connection between the existence of these resources in the two countries and the continuing armed conflicts. The general factors which shape the relationship have been discussed. Much of the contemporary discussion of conflict resources centres on diamonds. On account of recent developments within the region and internationally, the focus in this paper is on rough diamonds whose value is likely to be used to pay for weapons, uniforms, war material and military training by the belligerents in the conflict zones of Angola and the DRC.

The concept is abbreviated by the use of the terms 'conflict', or 'blood' diamonds, both of which are creations of the media. It appears that the terms were originally intended to express a partisan distinction between rebel groups and governments involved in armed conflict. Early interpretations, therefore, naturally encompassed diamonds derived from areas under the control of the *Uniao Nacional para a Independencia Total de Angola* (UNITA) rebels and Foday Sankoh's RUF in Sierra Leone. In recognition of the ease with which diamonds from these areas could be sold from third party territories, the concept was broadened to include sales from governments or countries under United Nations sanctions. Hence the extension to Liberia, a strong supporter of the RUF. For some reason, the definition of conflict diamonds has not been extended to cover diamonds extracted by rebels, or from regions under the control of rebel groups, in the DRC.

Conflict diamonds have played a significant role in Angola. The Angolan diamond trade was probably most conspicuous in the aftermath of the elections of 1992, whose results UNITA disputed. Most of its activists returned to the bush to pursue the armed rebellion. Having captured most of the diamond producing territory, UNITA raised production in areas under its control, while disrupting the small remaining official diamond sector. Diamond sales enabled UNITA to rearm, as diamonds were exported directly and through neighbouring states to international centres. Reports abound of planeloads of small arms landing at airstrips in UNITA-held territory, offloading their cargo, and taking off again with consignments of rough diamonds. It has been observed in respect of both UNITA and the RUF, that the lucrative business of diamond mining also served as a military objective for the rebel leadership, providing a rewarding alternative to sharing power with the legitimate governments of Angola and Sierra Leone.⁷

Supplies were also brought in through what was then Zaire and, it has been alleged, through Zambia. The same routes for bringing in weapons served as transit corridors for diamond smuggling.⁸ The rebels probably made more money at that time than they ever made while under the sponsorship of apartheid South Africa and the United States at the height of the Cold War.

Diamonds extracted from eastern and southern DRC, in areas under the control of either the rebel groups or of the Kabila government, also finance the war effort of the respective parties.⁹ Beneficiaries include the RCD, the *Front de liberation du Congo* (FLC), Rwanda, Uganda, Zimbabwe¹⁰ and Namibia. While they can, by virtue of geographic origin and destiny, be characterised as conflict or blood diamonds, the issue of whether they are legally regarded as such seems controversial.

The definition of the term 'conflict diamonds' is the subject of international debate. The Kimberley Process, which started in mid-2000, defined them by reference to the decisions of the Security Council of the United Nations. Conflict diamonds are understood to be: rough diamonds whose trade is deemed illegal by the United Nations, specifically the Security Council, because the proceeds of those rough diamonds are demonstrably fuelling armed conflict by rebel movements and their allies so as to undermine or overthrow legitimate governments.

The definition consists of two potentially conflicting elements, namely criminalisation by the Security Council, and the use of the diamonds as a source of finance for military acts against legitimate governments. The underlying premise behind the Security Council link was presumably that the Council would delegitimise diamonds as conflict diamonds only on the basis of that impermissible purpose. The adoption of the Security Council as a point of reference, however, renders the Kimberley Process definition hostage to the occasional incongruities of international law. In the absence of a Security Council ban, the Kimberley Process formulation would define out rough diamonds from Goma, even if they were extracted from a region under RCD control, or even sold by the RCD itself. Similarly, diamonds from the Senga Senga alluvial mine, under the control of a Zimbabwe/DRC/Oryx Diamonds Ltd conglomerate, would also not fall foul of any prohibition. The Kimberley Process does not, of course, have legal force.

The United Nations General Assembly blandly defines conflict diamonds as:

rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate governments.

The United Nations' Panel of experts on the Illegal Exploitation of the Congo's Resources did not follow the Kimberley Process definition. It went further than the General Assembly. In its November 2001 report (the November Report), which was an addendum to the April 2001 report, the panel defined conflict diamonds as:

diamonds that originate in areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military activity in opposition to those governments or in contravention of the decisions of the Security Council.

The definition comprises two criteria. The first relates to the source of the diamonds. The second is based on the use to which the diamonds are put, and envisages two alternatives – use which funds military opposition or is in contravention of Security Council decisions.

Continuing demands from pressure groups for action against diamonds from conflict zones is expected to produce consensus on a definition which is less beholden to state sovereignty and is guided by an appreciation of the logistical and economic processes surrounding tainted resource extraction. Such a definition has already been proposed in respect of conflict timber, which is defined as:

Timber that has been traded at some point in the chain of custody by armed groups, be they rebel factions or regular soldiers, or by civilian administration involved in armed conflict or its representatives, either to perpetuate conflict or take advantage of conflict situations for personal gain.¹¹

This definition has not been accepted in international law, although there is evidence of its influence in international commerce, not only in respect of timber, but also diamonds.

For present purposes, however, the General Assembly definition of conflict diamonds must be accepted as representing the position of public international law. It should be pointed out that narrow though it might be, that formulation leaves intact the pre-existing laws against possession of, and dealing in, illicit diamonds generally. In many cases, conflict diamonds are also illicit diamonds, or at least they are conveyed illegally and can thus be dealt with in terms of these laws.

The November Report indicates the absence of an official international ban on coltan and gold extracted from the eastern DRC, but it also shows the growing tide against an almost collusive arrangement between multinational conglomerates and firstly, Rwanda, in respect of coltan exports and secondly, Uganda, in respect of gold exports apparently smuggled from the DRC.

OBJECTIVES OF LAW ENFORCEMENT IN THE FACE OF ARMED CONFLICT IN SOUTHERN AFRICA

The observations made in this part should apply to diamonds as well as similarly precious resources. There are several objectives that should shape the efforts of law enforcement agencies in the face of illicit resources in general and conflict diamonds in particular. The first is to minimise the infiltration of the lawful market by illicit resources. The Kimberley Process regards this as a predominant objective. The protracted nature of the KP deliberations indicates the difficulties of designing effective safeguards towards that end. The KP is expected to produce transnational controls of diamond movements across the world.

The second objective is, therefore, to monitor the implementation of existing and proposed controls in the movement of diamonds entering and leaving the national territory. In many cases, this entails the development of a reliable database of rough diamond production and trade in a given country and in the region. The first part of the task might be relatively easy in low production countries, such as Lesotho, Mozambique, Tanzania, Zambia and Zimbabwe, but the task will certainly be monumental in the rest of the region. In addition, the movement of processed and re-imported diamonds should be monitored. On account of the risk of infiltration and interference, it goes without saying that the database should be secure and regularly updated.

The third objective is to effectively police resource production. The underlying reason behind the concern with unauthorised dealings in extractive resources is to protect national sources of revenue. It is sometimes suggested, in reference to alluvial, artisanal extractive resource offences that occur in unprotected areas, that these are victimless violations of law. That is really only because of the relative invisibility of the victim(s). The state is nearly always a victim. The resistance to legal systems and to the payment of taxes, which often fuels extractive economic resource offences, could probably be ameliorated by suitable incentives to conform. Incentives have a lot to do with the manner in which the extraction and marketing systems are organised, fields which probably lie outside the purview of police work.¹² Some of the components of the coercive elements of policing are discussed below. As is the case with policing economic crime generally, the capacity to carry out effective policing depends on co-operation with agencies and institutions outside the police, such as customs and revenue services and the private sector.

CHALLENGES INTRODUCED BY RESOURCE WARS TO LAW ENFORCEMENT IN SOUTHERN AFRICA

Definitional instability

The value-laden segregation between diamonds emanating from cognate sources, which continues to plague the search for a universal definition of conflict resources, has yielded a formidable grey area. This could create a glaring loophole which even operators in clear conflict diamond zones can take advantage of and is not conducive to effective policing. A joint team comprising detectives from Rwanda – a member state of the East African Police Chiefs Co-operation Organisation (EARPCCO) – and Namibia – a member state of the Southern Africa Police Chiefs Co-operation Organisation (SARPCCO) – chancing upon an unlicensed diamond dealer on the streets of Kigali with a consignment of diamonds known to have originated in Kisangani, in the DRC, might well have divergent opinions as to whether or not the diamonds were conflict diamonds. In the face of a politically charged conceptualisation of the notion of conflict resources, harmonisation of laws and approaches is likely to be impeded in the short-term.

Paucity of intelligence and powerful participants

The secretive nature of the diamond industry and trade, which makes intelligence gathering difficult and dangerous, stems partly from the manner in which diamonds enter the markets. A significant component of the diamonds coming out of the region is alluvial and it is extracted by informal 'miners', often from sites that have not been officially prospected. Some of them are not even known to the national regulatory authorities. It is conceivable to have hundreds of sites, and thousands of informal miners or panners, whose access to the markets is controlled by a handful of middlemen who may or may not be amenable to regulation. Such a dispersal can be expected to impose serious difficulties in creating and maintaining the database required in order to monitor diamond movements within and across borders.

Related to this are the extraterritorial and transnational dimensions of the resources industry. The important question is how to combat the involvement of international actors, who often include high-ranking politicians. In the case of both Angola and the DRC, as with Sierra Leone, foreign presidents have been implicated in reaping the benefits of illicit diamonds.¹³ In several instances, diamonds have actually changed hands in return for:

- (a) political and military support;
- (b) provision of political bases from which to plan and conduct political campaigns;
- (c) safe havens for illicit business and military transactions; and
- (d) facilitating contacts with brokers and dealers.

By virtue of lofty office and the customary immunity from legal processes, such leaders are virtually untouchable. What is more, it is quite difficult to obtain information to link them to unlawful conduct. It is fortunately not an impossible task, although the problem of using the information to activate the criminal justice system remains formidable.

Proceeds from diamond and coltan sales, and occasionally the rough diamonds themselves, fund the procurement of weapons, war supplies and fuel. More often than not this involves intermediaries. There is an abundance of arms dealers doing business with both governments and rebel movements in Southern Africa, which has raised the scale of competition but not necessarily improved ethical standards. Policing the conveyance of war supplies to rebel movements and government forces in conflict zones falls outside the scope of this paper, and my concern is with cutting off the supply of conflict resources from the middlemen as a form of payment. This calls for a comprehensive approach involving combating smuggling and mopping up the supply of diamonds available in the conflict zones. It is clearly not an assignment that the police alone can accomplish. Bringing the middlemen involved with conflict diamonds to book is another important matter. Most countries in the region proscribe unauthorised dealing in diamonds and other precious stones. No law is self-enforcing, as transgressors have to be identified first before the criminal justice process can be set in motion. If the law is to make an impact, the focus should be on significant middlemen rather than the petty diamond buyer in a corner shop on the outskirts of Mbuji Mayi. The problem is that the significant diamond buyers with access to the international markets tend to be non-nationals of transient abode in the region. Identifying them requires the co-operation of not just the corner shop operator in Mbuji Mayi, but perhaps intelligence from multiple sources outside the conflict zones and even outside Africa.

After many appeals to the diamond purchasing nations appeared to be heading nowhere, the non-governmental sector, occasionally in collaboration with the United Nations, has compiled a formidable database of information on dealers in conflict diamonds and coltan. *Global Witness* has done much work in the short period that it has been in existence, both by itself, and, recently, in association with other agencies through the Fatal Transactions campaign.¹⁴ The International Peace Information Service, based in Antwerp, Belgium, is another source of information.¹⁵ As Ambassador Paul Heinebecker said in an address to the International Ministerial Diamond Conference in Pretoria in September 2000, 'co-operation is necessary if we are to attain what I believe to be our common goal: eliminating diamonds as a source of armed conflict, and preserving diamonds as a force for prosperity.'¹⁶

A perennial problem faced by law enforcement in respect of transnational dealers is bringing them to justice when they happen to be traced to a different jurisdiction. Extradition

arrangements within the region are still cumbersome and hostage to transient political considerations. A protocol on extradition is under consideration at SADC level and it is hoped that a streamlined, standardised approach to extradition will be developed. Co-operation between police agencies within the framework of SARPCCO cannot be a substitute but in the meantime it is probably the best the police have to rely on.

Confronting the limitations of criminal justice

Measures against dealers in conflict resources should not be confined to the conventional criminal justice process of arrest and prosecution. In the interest of effectiveness, there should be a blending of criminal and civil justice measures. There is a growing international trend towards using asset forfeiture to fight crime, understandably because the focus is kept on the underlying motivation behind the crime. Current legislation in the region can be used, if suitably modified. South Africa already has specific asset forfeiture legislation, which goes beyond the traditional seizure and confiscation provisions in criminal procedure law. The Prevention of Organised Crime Act (1998) is easier and less bureaucratic than cognate legislation in other parts of the region. The Asset Forfeiture Unit has been able to utilise it to seize aeroplanes, houses and transport trucks, without necessarily using the criminal justice process. Optimum utility of such a unit requires a high degree of autonomy and adequate resources.

Harmful practices of monopolies

Counterproductive and often subversive practices of monopolies and multinational corporations present another problem to policing. The problem stems from the impact of these practices on the market in which conflict resources are traded, by making it more difficult to mop up the supply through lawful channels. The point is best illustrated by an example based on the Angolan experience. Allegations have been made that a statutory monopoly, the Angola Selling Corporation (ASCorp), abuses its monopoly over the diamond industry in that country to drive prices down. This, in turn, encourages smuggling, as middlemen find prices outside ASCorp better. Smugglers and buyers subsequently export through countries like Zambia and the Republic of Congo (Brazzaville), evading export duty in Angola and sometimes in those countries as well.

The situation is complicated by suspected dubious practices within ASCorp. It is known that shareholders in ASCorp also have interests in international diamond dealing concerns.¹⁷ It is conceivable that operatives within ASCorp may yet purchase the diamonds on foreign markets outside Angola. How should this be pre-empted or policed? Should the creation and empowerment of monopolies, as a way to combat smuggling, be reviewed, or is it just the composition and pricing practices that need rethinking? Should police have a role in monitoring corporate governance, especially of joint venture corporate entities with transnational shareholders? If this is not a legitimate or feasible police function, who should guard against corrupt or counterproductive practices by them?¹⁸

Origin certification – possible pitfalls

Angola's diamond industry is probably the best-studied conflict afflicted industry. It comprises formal, informal and illicit sectors. The formal sector is made up of the licensed mining companies. The Endiama joint venture companies effectively constitute the formal diamond sector in Angola. Extraction, processing and subsequent handling is by licensed operatives. Subsequently, the diamonds are transported to Luanda for valuation, certification and export. The informal sector consists basically of unlicensed diggers (*garimpeiros*), who sell to licensed buyers or middlemen. Middlemen sell to the sole statutory diamond buyer, ASCorp, for onward valuation, certification and export from Luanda. The illicit sector comprises unlicensed diggers and unlicensed buyers. It also includes conflict diamonds originating from UNITA mines or sold by UNITA. The informal and illicit sectors overlap, being separated only by the credentials of the buyer.¹⁹ It is easy for illicit and conflict diamonds to be introduced into the informal or formal sectors. Whether they can be flushed out by the certification scheme depends on the stage at which the certificate enters the process. The certification occurs in Luanda after valuation. For security reasons, the National Bank of Angola keeps all blank certificates of origin. It is possible for conflict and illicit diamonds to be introduced long before the certification stage,²⁰ in which case the certification is a misleading public relations

exercise.²¹ The intention or knowledge of the issuer of the certificate is irrelevant.

Moreover, the mutual recognition of internal regulatory systems, such as the diamond certification scheme, is still problematic. At this stage, it has not been determined how many countries recognise and consider themselves bound by the certificate of origin issued by government departments in Angola, Sierra Leone or Guinea. The Kimberley Process is intended to yield an international certification scheme for diamonds, but pending that development no universal certification system exists. This leaves law enforcement potentially uneven. Indications are that in some countries, no certificate of origin is requested. On a related aspect it should be pointed out that coltan can be transferred across borders without a certificate of origin.

Infiltration of law enforcement

All law enforcement agencies have to contend with the possibility of state structures being infiltrated by criminal syndicates through espionage or corruption. The vulnerability of the precious resources market to penetration at high levels has been referred to above. It calls for standard verification processes that are co-coordinated internationally, so that weaknesses or failures in one country are not fatal to the rest of the policing function.

SUGGESTIONS FOR INNOVATION

In the light of the outlined objectives and challenges, this section summarises suggestions for taking law enforcement forward. They include suggested policy reforms and changes of a technical nature. Adoption can be expected to precipitate legislative, institutional and administrative changes. Some of the ideas postulated have already been put forward in various other fora.

On the basis that corruption is a formidable problem in the minerals marketing industry, it is submitted that the conduct of structures involved in implementing and activating the various suggested changes should be underpinned by transparency. This applies as much to actors in the formal sector as it should to the informal sector.

The formal sector

The public sector

This sector is primarily involved in regulating production, valuation and export. Pursuant to current international initiatives, governments should adopt a universal mode of certification of the source of rough diamonds. Angola, Sierra Leone and Guinea have been using certificates of origin (or legitimacy) issued by the relevant government department. The *L'Office d'Contrôle in Kinshasa* also performs a certification role, at least in respect of production from the main formal sector producer, the *Societe Miniere de Bakwanga*.²² Botswana, Namibia and South Africa have similar administrative certification mechanisms. It should not be difficult to adopt a regional approach. What would be innovative is the adoption of a common type of certificate, protected from forgery. The certificate of origin, or an acceptable copy of it, would be required to be carried by transporters and exporters of rough diamonds.

Regulation should also entail comprehensive profiling and licensing of all participants engaged in mining, selling, buying or processing rough diamonds. At suitable nodal points, an obligation can be imposed to record inflow and outflow and to file regular returns with diamond control authorities. It would be unrealistic to require each diamond panner and small-scale supervisor to maintain records. It would not be too onerous or unrealistic, however, to require them to sign entries in the register of a diamond dealer relating to a consignment they had sold to the dealer. The information mobilised in this way could form an essential component of the database referred to earlier.

The export of rough diamonds constitutes a major method for the leakage of illicit and conflict diamonds across borders and deserves meticulous but realistic attention. On this aspect, the consensus of as many countries as possible is required. This includes the producers, the countries from which the diamonds are shipped (countries of provenance), the processing

countries and the trading centres. The principles on which agreement has to be struck, include:

- Limiting the number of handling centres, in particular export processing points, borders and airports, which are known to other players within the region and internationally. The objective would be to ensure that these centres are equipped to verify authenticity of both exporters and commodities.
- The requirement for certificates of origin to accompany every export, and for non-certified diamonds to be seized. The Kimberley Process has set out to create an effective global tracking system of export certification and import verification. At its core will be a national certification scheme. The Kimberley Process initiative has received the support of the World Diamond Council. If successful, certification controls may become compulsory.²³ It is further suggested that importers should be registered.
- Clarity on the issue of whether countries of provenance should be required to certify the origin of diamonds shipped from their ports. The simplest way to do this would be by endorsing the certificate of origin, rather than having an additional certificate from that country; in fact, this makes sense if consignments of rough diamonds are to be sealed by the countries from which they were extracted.
- The issue of certificates of import at the first point of entry of the diamonds (this applies especially to the diamond trading centres).
- The periodical circulation, within the region, of statistical information on production, export and import, which can be reconciled to certificates of import and which is subjected to independent international audit.
- Harmonising criminal penalties that may be imposed for involvement in illicit diamond transactions, and reliable methods for the global dissemination of criminal convictions.
- Streamlining mutually complementary measures in the civil justice system to facilitate the confiscation of the assets of illicit diamond offenders, wherever they may be situated.

The non-state sector

The role of the private diamond industry in law enforcement should mainly be complementary to the regulatory framework constructed by the public sector. To play that role, the private sector needs to be appropriately structured. Transparency demands the adoption of sound corporate governance practices, one of whose cornerstones should be the avoidance of conflict of interest situations. The diamond industry in Southern Africa is dominated by cartels, which often play a multiplicity of roles as producers, intermediaries, exporters, processors and buyers. They are also prominent in joint venture entities with governments and as such participate in the regulation of the industry. The proliferation of monopolies may impede measures against violators who are related or are part of such monopolies. Misgivings surrounding ASCorp need to be dispelled by the necessary changes. Dismantling the monopolies will require significant local and foreign investment in the region's diamond trade.

Significant provision of resources is necessary in order to equip some of the diamond producing and exporting countries to streamline or centralise export and verification points as suggested. Both Angola and the DRC have huge logistical deficits. There are vast areas of both countries not monitored by aviation radar. As a result, the conflict period has spawned a proliferation of airfields from which precious resources can be freighted directly to diamond buying places abroad. Flights have been traced from the DRC to Dubai, India and Mauritius. Needless to say, such flights file no flight plans or cargo manifests. To eliminate the resulting chaos and scope for rogue exports,²⁴ facilities enabling meaningful law enforcement have to be provided.

In the long term, both the public and private sector should promote the beneficiation of diamond resources in the producer countries, not just as a way of eliminating the space for rogue intermediaries peddling illicit diamonds, but also to increase the economic prosperity of these countries. Quite apart from the wealth acquisition instinct that spurs conflict in resource-rich territories is the reality of grinding poverty. Poverty ensures a limitless supply of virtual slaves to extract the resources and thereafter to be at the mercy of an avaricious assortment

of middlemen, corrupt politicians, soldiers, warlords and dealers. Initiatives to develop a cutting industry have been quietly taking shape in Botswana and Namibia.

Other precious resources

Measures to contain the trade in coltan have not achieved the same intensity as diamonds, even though the factors surrounding that commodity are similar to diamonds. The extraction and export of coltan is another component of the war economy of the DRC. Used in rocket manufacture, satellite engineering and the cellular phone industry, coltan has attracted the attention of major concerns like Alcatel. The coltan from Bukavu and Goma is openly traded on the London metals market at lucrative rates. Major beneficiaries are intermediaries from all over Europe and the United States. There is some distance to go before the kind of controls suggested in respect of diamonds can be adopted in respect of coltan as well, but it is submitted that the approach should be the same.

CONCLUSION

There are indications of a growing trend to eliminate the flow of conflict resources from international commerce. In the last three years, Belgium, a major diamond trading country, has moved to make the importation of conflict diamonds more difficult. It is estimated that conflict diamonds make up less than 10% of the US \$10 billion annual global diamond trade, but senior operatives in the industry are apprehensive that the growing international outrage might precipitate a calamitous decline in the diamond trade. At the same time, there is well-grounded concern that controls could prompt dealers in conflict diamonds to seek new markets, or innovative methods of concealing their merchandise. As an official lamented, 'We are trying to plug the holes here, but unless all the holes are plugged at once, the money just flows through another hole.'

Diamond producing countries in Southern Africa have every reason to be concerned as they would suffer irreparable loss if the international diamond market was to dramatically fall or collapse. Botswana, a relatively recent player on the market, but also the world's top producer, has consistently expressed this apprehension. Should producer countries in Southern Africa allow clean diamonds to be blended with illicit diamonds, the prospect of an adverse reaction by the international markets will be that much closer. On account of their appreciation of the possibilities and risks, producer countries have thrown their weight behind the Kimberley Process. The process needs to be supported. At the same time, the public sector and the diamond industry in all the countries in the region need to appreciate the responsibilities that will flow from it, and to prepare to discharge them. Quite apart from the Kimberley Process, developments in international law and international markets are already exerting pressure for policy and operational responses from Southern Africa. Law enforcement agencies in the region will be required to be at the centre of activating these responses. By virtue of that position, and their pre-existing experience, these agencies should be pro-active in suggesting what is likely to work and in identifying the impracticable. It is hoped that the international community will support the efforts by law enforcement to upgrade the necessary infrastructure, as much as it has supported the Kimberley Process in the last two years.

The preoccupation in this paper has been with conflict diamonds. The arguably disproportionate attention devoted to diamonds in the international campaign against conflict resources is not accidental. One of the reasons is that they are relatively easy to extract and to clandestinely fritter away, a kind of 'low volume, high value' resource. Another is that diamonds are perceived to be less of a strategic commodity than, say, gold or oil. As such, they may be regarded as a soft target. The observations made in the paper can be applied, with necessary variations to other resources usable in a similar way to fuel conflict in the region. Just as with diamonds, the key to breaking the resource/conflict symbiosis lies in establishing and underpinning conditions of sound governance, conducive to effective and honest regulation.

Notes

1. Based on production statistics for 2000, obtained from Minerals TerraConsult, Belgium.

2. See Philippe LeBillon (2000) 'The Political Economy of Resource Wars' in Cilliers & Dietrich (eds) [Angola's War Economy: The Role of Oil and Diamonds](#). Institute for Security Studies pp. 21-42. On page 24, the author lists 26 examples of conflicts centred on mineral and other resources. Oil is the most common conflict generating resource, but gold and diamonds feature prominently. In 14 areas, it is the prospect of new finds or fresh exploitation that is at the heart of conflict.
3. Alex Yearsley (n.d.) 'Creating Awareness of the Role of Diamonds (and other natural resources) in Funding Armed Conflict: The Role of NGOs'. Unpublished paper in the author's possession.
4. See Michael Nest (2001) 'Ambitions, Profits and Loss: Zimbabwean Economic Involvement in the Democratic Republic of the Congo'. *African Affairs* Vol. 100 pp. 469-490.
5. Stephen Jackson (2000) 'Criminalised Economies of Rumour and War in the Kivus, D R Congo'. Unpublished paper presented at the Annual Conference of the American Association of Anthropology, San Francisco, November.
6. During December 2000, for example, the International Crisis Group reported that: 'Official figures by the Bank of Uganda ... show that Uganda's gold exports shot up from \$12,4 million in 1994-95 to \$110 million in 1996 ... Major General Salim Saleh, the President's brother ... was deeply involved in buying gold in UPDF controlled areas ... Other senior UPDF officers have behaved in a similar fashion ... Brigadier Kazini is accused of distributing diamond and cobalt concessions while he was the commander of UPDF operations in the DRC ... Ties between front-line UPDF commanders and businessmen fuelled much of the Hema-Lendu violence, which may have claimed some ten thousand lives in the Ugandan controlled north-east since the war's outbreak.'
7. Christian Dietrich (2001) 'Blood Diamonds – Effective African Based Monopolies?' [African Security Review Vol.10 \(3\)](#), 99-114.
8. Mark Shaw (2002) 'The Middlemen: War Supply Networks in Sierra Leone and Angola'. Unpublished paper.
9. For more detail, see the November 2001 Report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources of the DRC, paragraphs 56-65, accessible at www.un.org/Docs/sc/letters/2001/
10. An agreement was signed between the (Laurent) Kabila government and the Zimbabwe government as early as November 1998 for the establishment of commercial interests in the mining sector by the Zimbabwe Defence Force, partly through joint ventures. The objective was to bankroll the military assistance afforded to the Kabila government to repel the rebel onslaught that started in August 1998.
11. See *Logs of War* (2002).
12. It is arguable that enlightened policing requires some familiarity with the underlying assumptions behind policy positions.
13. Angolan diamonds have proved irresistible to at least five African presidents, while resources from the DRC have been linked to the top leadership in two of the foreign countries involved in the conflict. The proximity of the personal interests of other leaders is still under investigation.
14. Global Witness is accessible on www.oneworld.org/globalwitness/
15. IPIS publishes on www.partnershipafricacanada.org
16. Statement by Ambassador Paul Heinebecker of Canada, at the time the Chairman of the United Nations Security Council Angola Sanctions Committee on 20 September 2000.
17. ASCorp was established at the end of December 1999, as a joint venture between the Angolan government, which has a shareholding of 51% (through Sodiam), and two private companies. Welox Limited is registered in Hong Kong and is part of the Lev Leviev Group of Companies. It holds 24.5 % of the shares, and the rest are held by Tais, a Belgian based company run by Sylvian Goldberg. Both Leviev and Goldberg are established names in the global diamond industry. Leviev is also involved in Africa Israel, a diamond concern, while Goldberg operates Omega Diamonds.
18. One of the recommendations adopted at the first meeting of Operation Diamante departments, at which this paper was read, was that the respective units should play

a greater role in the vetting of prospective investors in the precious minerals sector, as a prerequisite to licensing.

19. Christian Dietrich, op. cit. at p.105.
20. See Global Witness Briefing paper, 'Can Controls Work?'
21. Christian Dietrich, op. cit. at 107.
22. It is not clear whether the production from Cosleg's Senga Senga is certified.
23. The latest meeting of the Kimberley Process occurred on from 19 to 20 March 2002, but could not settle the rules to end the trade in conflict diamonds. Among other issues, the meeting sought to authorise the seizure of diamonds exported from rogue regimes or insurgents, wherever they were discovered.
24. In recent times, it has been alleged that Congo diamonds are being purchased by groups involved in funding terrorism.

ABOUT THIS PAPER

There is a growing perception that recent initiatives to achieve peace in Angola and the Democratic Republic of the Congo have been scuttled by the financial incentive offered by the trade in resources extracted from the two countries. The intransigence of belligerent rebel groups, and governments, to terminate their involvement in the conflicts, has been attributed to commercial interest in continued resource exploitation. The resources have therefore been called 'conflict' or 'blood' resources. Multinational, multi-pronged strategies to deprive perceived beneficiaries of the benefits of conflict resources, which commenced in the late nineties, are gathering pace.

This paper attempts to contribute to these strategies. It discusses the linkage between armed conflicts and extractive resources generally, and specifically with reference to Southern Africa. The paper explores the challenges arising, against the background of the objectives of law enforcement, and suggests regulatory policy and administrative changes.

FUNDER



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