

Dangerous Appetites: Human Rights Activism and Conflict Commodities

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ABSTRACT

What do oil and diamonds have in common (aside from the fact that one can never have enough)? They are the world's favorite carbon-based treasures and they also have sustained ferocious civil wars in parts of Africa. Coinciding with growing academic and political recognition that natural resources can play important roles in causing and sustaining conflict, human rights activists launched two campaigns in the late 1990s calling for targeted sanctions against oil and diamonds from several conflict regions in Africa. The coalitions involved in these two separate efforts overlapped very little in goals, methods and participant organizations. But a comparison of the two campaigns sheds light on a number of shared challenges, illuminating lessons for future activism promoting sanctions against "conflict commodities."

I. THE ECONOMICS OF WAR

One might assume that countries saturated with oil and diamonds would be assured some measure of prosperity and, hence, peace. However, corrupt governments and armed opposition movements in many of the world's hot spots face off in long, bloody civil wars caused or sustained by control of these valuable commodities. A growing field of scholarship examines the role of economic agendas, or "greed," versus the role of political "grievance"

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in the initiation or fueling of war (although going to war to secure treasure is certainly not a new phenomenon).¹ Proponents of the “greed” theory argue “the true cause of much civil war is not the loud discourse of grievance but the silent force of greed,” and that academics and policymakers have too long ignored economic agendas in conflicts.²

One of the pioneers in the “greed” field is World Bank economist Paul Collier, who has shown that a country heavily dependent upon primary commodity exports like oil or diamonds has a higher risk of conflict than one without primary commodity exports. Collier examined forty-seven civil wars from 1960–1999 and found that states earning at least a quarter of their yearly GDP from the export of unprocessed commodities face a far higher likelihood of civil war than countries with more diversified economies.³ The primacy of economic agendas is controversial; critics contend that not all can be reduced to economic explanations.⁴ But even if the greed versus grievance distinction is overstated, economic motivators are certainly important factors in the initiation and sustainability of civil wars.

Angola is an extreme example of the role natural resources can play in conflict. It is a land rich both in oil and diamonds but it consistently ranks close to the bottom of the United Nations Development Program’s Human Development Index.⁵ A pawn between the superpowers during the cold war, Angola endured a lengthy, brutal civil war between the Marxist government and the rebel movement UNITA from its independence in 1975.⁶

When its cold war backers removed their support, the war was sustained by Angola’s extraordinary natural wealth. Angola is the second largest crude oil producer in sub-Saharan Africa (after Nigeria) and expects to double its output in five years. In addition, it has diamond deposits that consistently produce gems of the highest quality. Between 1992 and 1998 analysts estimate that UNITA obtained revenues of \$3.72 billion from diamond sales alone.⁷ This buys many weapons in a land where an AK-47

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1. For an overview of recent scholarship on the economics of war, see GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS (Mats Berdal & David Malone eds., 2000).
 2. Paul Collier, *Doing Well out of War: An Economic Perspective*, in Berdal & Malone, *supra* note 1, at 101.
 3. See Paul Collier, *Economic Causes of Civil Conflict and Their Implications for Policy*, in TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT 143 (Chester A. Crocker et al. eds., 2001).
 4. Jeffrey Herbst, *Economic Incentives, Natural Resources, and Conflict in Africa*, 9 J. AFR. ECON. 270, 271 (2000).
 5. See, e.g., UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2003 240 (2003), available at hdr.undp.org/reports/global/2003/pdf/hdr03_HDI.pdf.
 6. For a short, comprehensive overview of the role natural resources have played in the Angolan civil war, see Philippe Le Billon, *Angola’s Political Economy of War: The Role of Oil and Diamonds, 1975–2000*, 100 AFR. AFF. 55 (2001).
 7. GLOBAL WITNESS, A ROUGH TRADE: THE ROLE OF COMPANIES AND GOVERNMENTS IN THE ANGOLAN CONFLICT 4 (Dec. 1998).

assault rifle can sell for as little as six dollars. Meanwhile, the Angolan government has maintained control of the offshore oil reserves. It spent most of the windfalls on fighting UNITA and stands accused of ignoring the suffering of its people—a quarter of whom were displaced from their homes by the war.⁸

The stalemate between UNITA and the government finally ended in 2002 when the death of UNITA's leader, Jonas Savimbi, created a window of opportunity for peace. However, there are reports of continued instability due to government corruption and the reported danger of a rise of warlords who control important diamond fields.⁹ Angola's natural wealth has proven more of a curse than a blessing.

If one accepts that natural resources are an important factor in either causing or sustaining conflict in civil wars like that in Angola, what policies should be implemented to address the problem of so-called "conflict commodities"?

II. CURBING APPETITES

Efforts to impose targeted sanctions on the resources believed to have created or prolonged war have had a strong appeal in the United States in recent years. Attempting to link how demand for oil and diamonds prolongs wars in a handful of countries in sub-Saharan Africa, two concurrent US congressional efforts to ban the trade of conflict oil and diamonds in the United States garnered much publicity and unexpected sources of grassroots support.

Between 1999 and 2002, a diverse collection of conservative Christian groups, members of the Congressional Black Caucus, and assorted anti-slavery and human rights activists mobilized in a loose coalition to lobby on behalf of legislation that would impose US capital market sanctions on oil companies doing business in Sudan. Capital market sanctions would ban oil companies working in Sudan from US stock markets.

Meanwhile, during the same period, scores of international human rights organizations teamed up with the diamond industry to back efforts in Congress to ban the import of "conflict diamonds" into the United States.¹⁰

8. *UN says Angola's humanitarian crisis far from over*, AP NEWSWIRE, 15 Feb. 2000.

9. See Press Release, Global Witness, United Nations Lifts Diamond Sanctions On Angola But Keeps Sanctions On Sierra Leone Diamonds, Meanwhile Congo Still Has No Diamond Sanctions. Does The UN Have A Coordinated Conflict Diamond Policy? (12 Oct. 2002). See also INTERNATIONAL CRISIS GROUP, DEALING WITH SAVIMBI'S GHOST: THE SECURITY AND HUMANITARIAN CHALLENGES IN ANGOLA, ICG Africa Report No. 58 (26 Feb. 2003), available at www.crisisweb.org/home/index.cfm?id=1487&l=1.

10. See, e.g., Joint Statement by the World Diamond Council and the Steering Committee of the Campaign to Eliminate Conflict Diamonds (21 June 2001), available at www.phrusa.org/campaigns/sierra_leone/jewel_release062101_joint.html.

Conflict diamonds are defined by the United Nations as rough (uncut, unpolished) “diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate governments.”¹¹

Both of these campaigns attempted to shape and redirect US consumption habits in order to force corporate social responsibility and thereby end brutal wars and concomitant human rights abuses. It is understandable why campaigners would focus on US consumers in conflicts involving oil and diamonds: The US is the largest retail market for diamonds by value and, with just 4 percent of the world’s population and 3 percent of its oil reserves, consumes one quarter of the world’s oil production.¹²

Exploiting America’s power as a consumer, campaigners for conflict-free oil and diamonds are heirs to the grassroots divestment campaigns targeting apartheid-era South Africa and the anti-sweatshop campaigns that forced companies to adopt corporate codes of conduct. Conflict commodities activists today, however, operate in a political climate that has been greatly shaped by America’s War on Terrorism. These two case studies illustrate, among other political challenges, how the national security environment in which a human rights campaign operates can be critical to a campaign’s fortunes. In addition, the case studies demonstrate some problematic unintended consequences of narrowly-targeted sanctions regimes.

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11. G.A. Res. 55/56, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/56 (2000). UN Security Council resolutions for Angola, Sierra Leone, and Liberia impose sanctions regimes on rough diamonds mined or traded by rebel groups in Angola and Sierra Leone, as well as the government of Liberia for its support of Sierra Leone’s rebels. See S.C. Res. 1173, U.N. SCOR, 53rd Sess., 3891st mtg., U.N. Doc. S/RES/1173 (1998); S.C. Res. 1306, U.N. SCOR, 55th Sess., 4168th mtg., U.N. Doc. S/RES/1306 (2000); S.C. Res. 1343, U.N. SCOR, 56th Sess., 4287th mtg., U.N. Doc. S/RES/1343 (2001). The Security Council voted to lift the sanctions against UNITA in December 2002 following the April peace accords. S.C. Res. 1448, U.N. SCOR, 57th Sess., 4657th mtg., U.N. Doc. S/RES/1448 (2002)
 12. See, e.g., *Ending the Oil Addiction*, N.Y. TIMES, 18 Feb. 2002, at A14; On diamonds, see, e.g., Birna Helgadóttir, *Conflict in Diamond Trade over New Trend in Sparklers*, THE BUSINESS, 10 Nov. 2002, at 30. The U.S. has approximately half of the market share of the diamond market’s \$56 billion retail trade.

III. HUMAN RIGHTS ACTIVISM ON CONFLICT DIAMONDS

[F]or those NGOs in search of an issue, diamonds are almost heaven-sent. Their connection to three brutal wars is clear. The industry, dominated by one big company, is not regulated in any meaningful way. It epitomizes the globalization problem that has so exercised young people on the streets of Seattle, Prague, and Genoa. It is a much clearer issue than seals and the fur trade.

—Ian Smillie, Partnership Africa Canada¹³

A. The Activists

The international effort to stem the trade in conflict diamonds represents a relative success story in the development of sanctions against conflict commodities. Human rights groups first drew world attention to the problem of conflict diamonds when they initially focused on the introduction of and compliance with United Nations Security Council sanctions against diamonds traded by rebel groups in a number of African countries. As a result of their investigative reporting and public demonstrations, governments and the diamond industry began to fear that catchy slogans such as “diamonds are a guerilla’s best friend” might taint all diamonds, and not just the estimated four percent of rough diamonds that is generally believed to fuel wars in Africa.¹⁴ Thus, governments and the diamond industry, with the help of human rights NGOs, created the Kimberley Process. This is a series of international negotiations between governments, the diamond industry, and NGOs launched to create an international regulatory system to curb the trade in conflict diamonds.¹⁵

The lead up to the Kimberley Process began with traditional NGO “naming and shaming” actions. The first significant NGO report was *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict* by the London-based NGO Global Witness in December 1998.¹⁶ Global Witness had already made a name for itself investigating the links between natural resource exploitation and corruption and conflict in Cambodia; its *Rough Trade* report was the first major human rights report on the subject of diamonds. Global Witness’ investigations revealed widespread violations of 1998 UN Security Council sanctions against UNITA-controlled diamonds: according to the report, UNITA was circumventing

13. IAN SMILLIE, PARTNERSHIP AFRICA CANADA, OTHER FACETS: NEWS AND VIEWS ON THE INTERNATIONAL EFFORT TO END CONFLICT DIAMONDS, no. 3 (Oct. 2001), at 4.

14. For a breakdown of approximate levels of diamond production for 1999 and 2000, see Nicholas Shaxson, *Transparency in the International Diamond Trade*, in GLOBAL CORRUPTION REPORT 2001 214 (Transparency International ed., 2001).

15. The Kimberley Process was launched in 2000. For conference documents and background information, see www.kimberleyprocess.com.

16. GLOBAL WITNESS, *supra* note 7.

these sanctions by sending its diamonds through neighboring countries, those diamonds then being sold in the major diamond importing centers. The report implicated De Beers, the diamond industry's leader, in buying up diamonds from UNITA to maintain market stability.¹⁷

More was to come. Four European human rights groups, including Global Witness, launched the "Fatal Transactions Campaign" in October 1999 to raise consumer awareness about how revenue from diamond sales have fueled wars in Sierra Leone, Angola, and Liberia.¹⁸ The campaign urged the diamond industry, especially De Beers, to take stronger measures to ensure they were not marketing smuggled diamonds.¹⁹ Perhaps not coincidentally, De Beers announced an embargo on the purchase of all diamonds from Angola by its buying offices two days after the launch of Fatal Transactions²⁰ and later announced that it would no longer buy rough diamonds from the "outside market"—the trade not controlled by De Beers.

Meanwhile the war in another diamond-rich country in western Africa, Sierra Leone, finally drew widespread international attention when rebels from Sierra Leone's Revolutionary United Front (RUF) captured the capital, Freetown, in 1999, leaving a swathe of destruction and terror in their wake.²¹ Following increased international attention, the centrality of diamonds to the RUF's armed movement was exposed in a human rights NGO report called, *The Heart of the Matter: Sierra Leone, Diamonds and Human Security* (January 2000) by an Ottawa-based Partnership Africa Canada (PAC).²² PAC's report describes how rebels exchanged diamonds for arms and drugs in open smuggling operations through Liberia and other countries in the region, and how rebel-mined diamonds were entering the diamond trade pipeline through Liberia.²³ The report helped policymakers understand the role of diamonds and, in July 2000, the UN Security Council embargoed diamonds from Sierra Leone,²⁴ forcing the government to develop an

17. *Id.* at 5–6.

18. Press Release, Campaign Launched to Stop Billion Dollar Diamond Trade From Funding Conflict in Africa (3 Oct. 1999), available at www.fataltransactions.org/news/press/releases/1999_10_03.htm.

19. NETHERLANDS INSTITUTE FOR SOUTHERN AFRICA, FATAL TRANSACTIONS CAMPAIGN, available at www.fataltransactions.org.

20. The Angolan Mission Observer, *DeBeers Announces Embargo on Angolan Diamond Purchases* (Oct. 1999), available at www.angola.org/news/mission/october99/debeers.html.

21. There was international attention given to the rebels' bloody push to Freetown in January 1999, but commentators at the time noted that coverage was muted compared to other contemporaneous conflicts, such as the crisis in Kosovo. Reynold Levy, *The Misery of Sierra Leone*, WASH. POST, 12 Jan. 1999, at A17.

22. IAN SMILLIE ET AL., PARTNERSHIP AFRICA CANADA, *THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS & HUMAN SECURITY* (2000).

23. *Id.*

24. S.C. Res. 1306, *supra* note 11.

internationally acceptable certification system; the UNSC also sanctioned diamonds from Liberia in March 2001.²⁵

Following the successes of their investigative work, NGOs organized protests outside of major diamond retailers in the United States. Posters with horrific images of children mutilated by Sierra Leone's RUF were common, and sometimes Sierra Leone amputees were present at the rallies.²⁶ As the US groups mobilized, Global Witness, Partnership Africa Canada, and a handful of other NGOs were also attending the Kimberley Process meetings as participants in the negotiations. NGOs became a critical information link to a wide audience about the status of the negotiations.

B. Legislative Efforts

Spring 2001 marked a milestone in congressional efforts to codify and implement the elements of the Kimberley Process in the United States. Various bills attempting to ban the import of conflict diamonds had been introduced since 1999 but had stalled; now, however, the momentum of the Kimberley Process and the formation of a US-based coalition of human rights NGOs on conflict diamonds brought new force to the cause.

In early 2001, over seventy US-based NGOs launched the Campaign to Eliminate Conflict Diamonds (choosing an important day for the diamond industry, 14 February).²⁷ The campaign involved prominent faith-based, development, and humanitarian/human rights advocacy organizations such as World Vision, Oxfam, Amnesty International, and Physicians for Human Rights. At first the campaign's legislative lobbying work was at loggerheads with the diamond industry's.²⁸ Both supported competing bills in Congress in early 2001, but both were also increasingly invested in the Kimberley Process and each side eventually realized that it needed the other to pass any legislation at all. Thus, human rights campaigners and their congressional supporters forged a legislative compromise with diamond industry interest groups and their congressional backers in June 2001.²⁹

As a result, protests outside of jewelry stores effectively ended. NGOs recognized not only that they had to work with the diamond industry, but

25. S.C. Res. 1343, *supra* note 11.

26. Beth Gardiner, *Sierra Leone amputees join protest against 'blood diamonds,'* AP NEWSWIRE, 7 Oct. 2000.

27. LEONARD S. RUBENSTEIN ET AL., SIERRA LEONE: OPEN LETTER TO JEWELERS OF AMERICA AND WORLD DIAMOND CONGRESS: VALENTINE'S DAY, FEBRUARY 14, 2001, available at www.phrusa.org/campaigns/sierra_leone/vday_jewelerlet_021401.html.

28. Ken Silverstein, *Diamonds of Death*, NATION, 23 Apr. 2001.

29. Ingrid J. Tamm, *Diamonds in Peace and War: Severing the Conflict Diamond Connection*, in WORLD PEACE FOUNDATION REPORT 30, 28–30 (2002).

also that boycotts could perversely end up hurting developing nations dependent on the diamond trade (thus the US-based Campaign to Eliminate Conflict Diamonds has displayed a “no boycott” policy prominently on its web site).³⁰ NGOs recognized and often publicly stated their appreciation for the legislative actions by the industry and government to create solutions to the problem. As Alex Yearsley, a campaigner for Global Witness remarked,

We didn’t really go to the mass media. We could have been a lot worse than we were, but because we’d seen moves from the industry, we didn’t see the need for that. If governments and the industry hadn’t reacted, then the profile of the campaign would have been raised dramatically.³¹

With the business and humanitarian/human rights groups on the same page, US legislative and executive branch activities on this issue were further jolted into action by allegations that the Al Qaeda terrorist network, among other terrorist groups, had profited from the trade in conflict diamonds. A November 2001 *Washington Post* investigative piece alleged a link between RUF diamonds and Al Qaeda as well as Hezbollah.³²

Conflict diamond campaigners and their congressional supporters raised the Al Qaeda-conflict diamond link allegations frequently in a post-11 September climate with a public suddenly interested in all things related to terrorism. They had some success: in Fall 2002, campaigners learned that the Bush Administration was considering a presidential executive order to support measures in the US Treasury Department that would put America in compliance with the Kimberley Process through the USA Patriot Act.³³ This was possible because the USA Patriot Act was designed in part to end any irregular business activity that suggests the movement of money through illicit channels.

However, Congress wanted to take the reins on conflict diamonds and once again took up conflict diamond legislation in early 2003. Legislation was finally enacted when President Bush signed the Clean Diamond Trade Act on 25 April 2003, which requires the President to ban the import of rough diamonds coming from any country that has not made an effort to control the trade of their diamonds in accordance with the Kimberley Process.³⁴

30. See www.phrusa.org/campaigns/sierra_leone/conflict_diamonds.html.

31. Lauren Weber, *Conflict Diamonds: What Do Consumers Know?*, RAPNEWS, 6 Apr. 2001.

32. A December 2002 *Post* piece continued the investigation, see Douglas Farah, *Report Says Africans Harbored Al Qaeda*, WASH. POST, 29 Dec. 2002, at A1. For the original *Post* story, see Douglas Farah, *Al Qaeda Cash Tied to Diamond Trade*, WASH. POST, 2 Nov. 2001, at A1. See also an investigative report by GLOBAL WITNESS, *FOR A FEW DOLLAR\$ MORE: HOW AL QAEDA MOVED INTO THE DIAMOND TRADE* (Apr. 2003).

33. Peter C. Mastro Simone, *WDC: US Can Enforce Kimberley Now*, RAPNEWS, 24 Sept. 2002.

34. Clean Diamond Trade Act, Pub. L. No. 108–19, § 4, 117 Stat. 631 (2003).

Despite the seeming convergence of its campaign goals with that of the diamond industry, NGOs involved in conflict diamond activism must walk a fine line between cooperation and threats to take the issue back to demonstrations in the streets. As the Kimberley Process certification scheme is implemented to track rough diamonds, it is clear that the system has a critical loophole—there is no independent oversight or monitoring system built into it. The NGOs frequently voiced their dissatisfaction about the lack of monitoring in Kimberley Process meetings to no avail. As a result, a January 2003 statement by the coordinator of the US campaign sounded a more confrontational note:

If this system, which so many people of good will worked on for so long, does not succeed in drying up the trade in blood diamonds and if rebel groups fueled by diamond proceeds like those who have destroyed Sierra Leone and Congo continue to flourish, activists will find other ways of voicing their dissatisfaction with the diamond industry than dissenting at international meetings. As no one knows better than the diamond industry itself, diamonds' only value comes from sentimental associations in consumers' minds. If those associations are replaced with images of war, rape, and death, the diamond's beauty will not be forever.³⁵

The statement begs the question: Will the NGOs forsake their relationships with the diamond industry and threaten more protests outside jewelry stores? Despite these tensions in the coalition, a global regulatory system to track rough diamonds exists at least on paper. This is an achievement that was driven in significant part by the linking of conflict diamonds with global concern about terrorism.

35. HOLLY BURKHALTER, PHYSICIANS FOR HUMAN RIGHTS, JANUARY 2003 UPDATE ON CONFLICT DIAMONDS: KIMBERLEY PROCESS CERTIFICATION SCHEME COMPLETE (2003), available at www.phrusa.org/campaigns/sierra_leone/update_010303.html.

IV. "STRANGE BEDFELLOWS": CAPITAL MARKET SANCTIONS AND SUDANESE OIL

We're moving along the lines of the campaign against apartheid in South Africa and putting our feet where our mouths are, and indicat[ing] to the administration that more has to be done.

—Faith McDonnell, Institute on Religion and Democracy³⁶

What is driving the current push in Washington for capital-market sanctions is a simple fact: Genocide is being fueled by oil.

—Alan Hertzke, University of Oklahoma³⁷

A. The Activists

At the same time, a very different group of human rights activists was involved in the campaign to introduce US capital market sanctions on companies dealing in Sudanese petroleum. The media often described the diverse groups in this coalition as "strange bedfellows," as many were on opposite sides of the political spectrum, from the NAACP to the Family Research Council.³⁸ Support for capital market sanctions was drawn mainly from a host of US churches and rights groups narrowly focused on slavery and religious freedom.

Sudanese oil was a logical focal point for supporters of targeted sanctions. War has been raging on and off in Sudan for almost fifty years, and oil became one more source of contention in the 1970s when it was discovered in the rebel stronghold of the South. Two million are dead as the result of a renewal of fighting in 1983, and human rights groups across the political spectrum have called the government's actions genocidal because of its scorched-earth policy in securing oil fields and beating back rebels in the South.³⁹

In 1999, the government of Sudan completed a 900-mile pipeline, bringing petroleum north to Port Sudan. Today, oil is a central source of revenue, allowing Khartoum to nearly double its defense spending.⁴⁰ As a result, rebels have attacked the pipeline numerous times. Meanwhile, foreign oil companies operating in Sudan have built roads and airstrips to further their projects, and human rights monitors have accused these

36. Quoted in Mark Stricherz, *Christians Push for More Progress in Sudan*, CHRISTIANITY TODAY, 9 Sept. 2002.

37. Alan Hertzke, *Genocide Fueled by Oil*, WKLY. STANDARD, 22 July 2002, at 27.

38. Steve Hirsch, *Why Sudan Matters*, NATIONAL JOURNAL, 2 June 2001.

39. For an excellent study of Sudan's civil war, see FRANCIS M. DENG, *WAR OF VISIONS: CONFLICT OF IDENTITIES IN THE SUDAN* (1995).

40. Katy Salmon, *Sudan: Oil Firms Facing Heat from Rights Groups*, INTER PRESS SERVICE, 21 Mar. 2001.

companies of allowing government forces to use these as bases to pursue military campaigns against the South.⁴¹

Capital market sanctions would have deprived oil companies operating in Sudan of access to US capital markets. Foreign oil companies would be mainly affected as US companies have already been barred from Sudan under a anti-terrorism Executive Order in 1997. Unlike the conflict diamonds campaign, the capital market sanctions campaign did not meet with success both because of strong opposition by business interests and, most importantly, changes in Sudan's relationship with the United States after September 11. (However, activists were able to celebrate a small victory when Talisman Energy of Canada sold its interests in Sudan due to their pressures in November 2002.⁴²)

Support for capital market sanctions was primarily drawn from groups concerned with the religious persecution of Christians around the world. Sudan's two-decade civil war is a topic of passionate interest for many of these groups because of the oppression of Christians and animists in the south of Sudan by the National Islamic Front, the leading party in the Sudanese government. These same groups were successful in advancing the concept of "religious freedom" as policy in the US executive and legislative branches.⁴³

The religious freedom movement has its origins, but is not limited to, conservative and evangelical churches.⁴⁴ An important milestone for the movement was the January 1996 "Statement of Conscience" by the National Association of Evangelicals, which expresses concern for the religious freedom of fellow believers and of other faiths and called for governmental action to curb religious persecution.⁴⁵ Stephen Rosenfeld of *The Washington Post* observed at the time,

People who know the terrain of Christian politics observe that evangelicals make up a quarter of the American population. If fully mobilized, this constituency could turn up a lot of heat under an administration that has tended to keep human rights in a box separate from American interests in commerce and other matters.⁴⁶

A review of this movement's policy successes confirms his foresight. It has grown beyond its original denominational boundaries. In addition,

41. CHRISTIAN AID, *THE SCORCHED EARTH: OIL AND WAR IN SUDAN* (2001), available at www.christian-aid.org.uk/indepth/0103suda/sudanoil.htm.

42. Bernard Simon, *A Canadian Oilman Gives In*, N.Y. TIMES, 10 Nov. 2002, § 3, at 2.

43. See, e.g., Rachel Zoll, *Religious Persecution Issue Pushed*, ASSOCIATED PRESS, 27 Jan. 2002.

44. Laurie Goodstein, *A Rising Movement Cites Persecution Facing Christians*, N.Y. TIMES, 9 Nov. 1998, at A1.

45. NATIONAL ASSOCIATION OF EVANGELICALS, STATEMENT OF CONSCIENCE OF THE NATIONAL ASSOCIATION OF EVANGELICALS CONCERNING WORLDWIDE RELIGIOUS PERSECUTION (1996).

46. Stephen S. Rosenfeld, *Human Rights for Christians*, WASH. POST, 9 Feb. 1996, at A21.

followers have moved the agenda beyond that of religious persecution to campaigns on the trafficking of women and modern forms of slavery.⁴⁷ However, it is important to note that supporters of capital market sanctions were not representative of all groups denouncing human rights abuses in Sudan. Generally, "traditional" international human rights groups such as Human Rights Watch and Amnesty International did not come out with a position on capital market sanctions.

Grassroots activity on Sudan has been rich and varied. For example, Midland, Texas, hometown of President George W. Bush, has been described as "ground zero in the public awareness campaign against genocide in Sudan."⁴⁸ Midland was the host city for the International Day for the Persecuted Church in 2001 and 2002, which drew Christian religious freedom activists from all over the country. In addition, over the past several years, the ecumenical community of West Texas has hosted annual "Rock the Desert" concerts in Midland to raise awareness about Sudan. According to a promotional announcement, the summer 2002 event featured a "New Sudan," a replication of a Sudanese village, constructed by Sudanese refugees. The Sudanese designed and built a traditional village and then replicated how this village would appear after jihad terrorists destroyed it.⁴⁹

The extent to which Sudan has attracted a broad range of supporters is illustrated by an act of civil disobedience in 2001 involving public personalities from opposite ends of the political spectrum and exemplifying the "strange bedfellows" nature of the campaign. Liberal radio talk show host Joe Madison, minister and former D.C. Congressional Delegate Walter Fauntroy, and former Reagan adviser Michael Horowitz were arrested for chaining themselves to the Sudanese Embassy in April 2001. In a surreal publicity stunt, Whitewater prosecutor Kenneth W. Starr and former O.J. Simpson attorney Johnnie L. Cochran Jr. defended the three on their misdemeanor charges.⁵⁰

B. Legislative Efforts

The lobbying for capital market sanctions began soon after proponents of increased attention to religious persecution successfully lobbied Congress

47. Miles A. Pomper, *Religious Right Flexes Muscles on Foreign Policy Matters*, CQ WKLY, 13 July 2002.

48. Hertzke, *supra* note 37, at 29.

49. Press Release, Midland Alliance for a New Sudan, Rock the Desert (23 Aug. 2002) (on file with author).

50. William Raspberry, *The Am-I-Dreaming Team*, WASH. POST, 7 May 2001, at A17.

for a new government commission tasked with monitoring religious rights around the world—the United States Commission on International Religious Freedom (headquartered in the State Department). The Commission made Sudan a first order of business: commissioners met with President Clinton in October 1999 to request, among other matters, that he apply his 1997 Executive Order imposing economic sanctions on Sudan to bar the China National Petroleum Corporation from using US capital markets to finance Sudan's new oil pipeline. The Commission argued that revenues from the pipeline was insulating Sudan's regime from the impact of US economic sanctions.⁵¹ Subsequent reports by the Commission have called on Congress to include capital market sanctions in its Sudan Peace Act.

In Congress, a bill was originally introduced into the Senate with capital market sanctions aimed at oil companies working in Sudan in 1999, but it was only in 2001 that there was sustained bipartisan activity. In June 2001, the House of Representatives voted overwhelmingly (422–2) in favor of a version of the Sudan Peace Act that included a provision for capital markets sanctions.⁵² The House version would have required the President to use the International Emergency Economic Powers Act to “prohibit any entity engaged in the development of oil or gas in Sudan from (1) raising capital in the United States; or (2) from trading its securities (or depository receipts with respect to its securities) in any capital market in the United States.”⁵³ The legislation also would have required that entities engaged in any commercial activity in Sudan disclose the nature and extent of these activities to the Securities and Exchange Commission.

Due to strong opposition from business interests, the Senate passed a version without sanctions,⁵⁴ and the House and Senate bills were never reconciled. Opponents of the House version of the bill often cited free trade as one reason for disagreement. For example State Department spokesman Richard Boucher stated that such sanctions “would undermine our financial market competitiveness and end up impeding the free flow of capital worldwide.”⁵⁵ Reminiscent of a similar divide around China's policy, there was a perceptible split between Republicans supportive of conservative Christian causes and those prioritizing business interests.⁵⁶

51. US COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, POLICY RECOMMENDATIONS WITH RESPECT TO SUDAN (1 May 2000), available at www.uscirf.gov/reports/01May00/policy_Sudan.php3#A.

52. The Sudan Peace Act passed the House on 13 June 2001. Sudan Peace Act, H.R. 2052, 107th Cong. (2001).

53. H.R. 2052, at § 9.

54. Sudan Peace Act, 50 U.S.C.A. § 1701 Note (2002).

55. Joshua Green, *God's Foreign Policy*, WASH. MONTHLY, 1 Nov. 2001, at 26.

56. On the split in the Republican Party over Chinese membership in the World Trade Organization, see Elliott Abrams, *American Power: For What? A Symposium*, COMMENTARY, 1 Jan. 2000, at 21.

Despite opposition from business groups, support for the Sudan Peace Act with capital market sanctions was still strong before the terrorist attacks on the World Trade Center and Pentagon. After 9/11, Sudan became an important ally in the war on terrorism, and the hopes of capital market sanctions supporters quickly evaporated. Following Khartoum's statement of support and cooperation in the US campaign against terrorism in September 2001, and under pressure from the Bush administration, House leaders withdrew the Sudan Peace Act from the floor the same month for reconsideration.⁵⁷

Meanwhile, the war in southern Sudan showed signs of ending when both sides of the conflict came together and signed an interim peace agreement in July 2002.⁵⁸ In September 2002, supporters of capital markets sanctions agreed to drop the capital market sanctions provision in a new version of the Sudan Peace Act in exchange for the threat of tough sanctions if Khartoum backtracks on the peace deal. In a death knell for capital market sanctions, Congress finally passed a version of the Sudan Peace Act in October 2002 with no provisions for capital market sanctions.⁵⁹

C. Common Challenges

A comparison of the diamond and capital market sanctions campaigns sheds light on common challenges faced by campaign leaders and also offers some important insights for scholars of human rights campaigns that attempt to prohibit the global trade in goods such as "conflict commodities."

D. The Political Context

The first and most clear-cut challenge to a human rights campaign can occur when national security interests unexpectedly intersect with it—as here, America's War on Terrorism. United States faith-based groups were extraordinarily effective in raising awareness of the Sudanese National Islamic Front abuses against southern Sudanese Christians and animists at grassroots and elite levels. At first these groups found it relatively simple to round up support for capital market sanctions, at least up until the events of

57. Steven Mufson, *New Casualty: Sudan Peace Act; Activists Fear Crackdown on Khartoum May be Sidelined*, WASH. POST, 5 Oct. 2001, at A8.

58. James Astill, *Accord Brings New Hope to Wartorn Sudan*, THE GUARDIAN, 22 July 2002, at 12. According to the new deal, there will be a future referendum on independence in the South. *Id.*

59. See § 1701 Note, *supra* note 54.

9/11 when Sudan became a potentially important ally in the War on Terrorism. By contrast, the diamond campaigners were given a boost by the War on Terrorism when investigative journalism exposed alleged financial connections between Al Qaeda and diamonds traded by Sierra Leone's rebels in Fall 2001. This then became a staple in congressional and human rights NGO rhetoric. Activists could now make a clear connection between high priority national security interests and their pet issue.

Second, because US human rights activists must expend much of their energy lobbying Congress in order to affect policy, activists in both campaigns found that while cooperation with the powerful industry groups is an important key to success, there is the danger of diluting the goals of the original campaign. The diamond campaign gained traction in June 2001 after the diamond industry and human rights groups recognized that it was in their own best interests to work together. By contrast, capital market sanctions never sought and never had support from the securities markets or oil industry, and perhaps not coincidentally, never got off the ground. Cooperation with industry has clear drawbacks; the human rights NGOs working on conflict diamonds now find themselves at odds with the diamond industry on the key problem of monitoring a diamond certification system. Will they opt to go back to the streets?

A third challenge relates to the changing nature of the conflicts themselves. Often it is not sanctions but rather some combination of regional military efforts, peace negotiations brought on by international organizations, or, as in the case of Angola, the fortuitous removal of an intractable rebel opponent that puts out the fires in troubled regions. When the conflicts in question show signs of ending, campaigns to stop the sale of conflict commodities can lose steam. In January 2002, Sierra Leone's president declared that its war was over.⁶⁰ Angola's civil war also ended in February 2002 following the death of UNITA's leader Jonas Savimbi.⁶¹ In July 2002 there was a breakthrough in peace talks between the Khartoum Government and the opposition Sudan People's Liberation Movement Army.⁶² So where is the conflict in conflict diamonds? The blood in the oil?

Activists respond to this last challenge by pointing to the history of peace agreements that have failed and the continued fighting and arms

60. Clarence Roy-MacCaulay, *Sierra Leone government, rebels declare end to 10-year war, burn thousands of weapons*, ASSOCIATED PRESS, 18 Jan. 2002.

61. The warring parties signed a cease-fire six weeks after the death of Savimbi. Rachel L. Swarns, *Angolans Cheer Peace and Hope It Will Stay Awhile*, N.Y. TIMES, 5 Apr. 2002, at A3.

62. James Astill, *Accord Brings New Hope to Wartorn Sudan*, THE GUARDIAN, 22 July 2002, at 12. However, a new (non-oil related) conflict began in Sudan's western region of Darfur in early 2003. See, e.g., Mohamed Osman, *Tribal Violence escalates into rebellion in western Sudan*, ASSOCIATED PRESS, 28 Feb. 2003.

build-ups in these regions.⁶³ As the scholars Mats Berdal and David Keen have written, shifts from war to peace “are more usefully seen as involving a realignment of political interests and a readjustment of economic strategies rather than a clean break from violence to consent, from theft to production, or from repression to democracy.”⁶⁴ With no true clean break from violence, greed and grievance can continue to destabilize a weak nation with little control over its borders and natural resources.

V. SANCTIONS AND THE LAW OF UNINTENDED CONSEQUENCES

Another challenge is the law of unintended consequences particular to narrowly-targeted sanctions. First, for the conflict diamond campaign, what is to stop the offending party from exploiting the next easily extractable natural resource once one has been sanctioned? In Liberia, activists expanded their reporting from diamonds to the government’s sale of its valuable timber to bolster its power;⁶⁵ for the Democratic Republic of the Congo (whose warring parties have never faced UN sanctions for the looting of diamonds that fuels war there) there are many natural resources funding armed groups. However, multiple campaigns on copper, gold, coltan, and timber might be confusing and fragmentary.

In addition, in the case of Sudan, an oil company with fewer scruples might take the place of a corporation driven out by the human rights campaign. Representatives of Talisman Energy and others have argued this in the case of India’s national oil company taking over from Talisman in Sudan.⁶⁶ Also, the use of sanctions as a policy tool has long faced criticism that sanctions hurt the common people and not the elites whose behavior the sanctions try to change. Indeed, UN Secretary General Kofi Annan raised concerns about Liberia’s vulnerable population when the Security Council was considering imposing further sanctions on natural resources, beyond diamonds, on Liberia.⁶⁷

63. See, e.g., OXFAM AMERICA, *CONFLICT DIAMONDS DRIVE WARS IN AFRICA*, available at www.oxfamamerica.org/advocacy/art826.html. Indeed, conflict diamonds continue to fuel hostilities in the Democratic Republic of Congo. *Id.*

64. Mats Berdal & David Keen, *Violence and Economic Agendas in Civil Wars: Some Policy Implications*, 26 *MILLENNIUM: J. INT’L STUD.* 806 (1993).

65. See GLOBAL WITNESS, *TAYLOR-MADE: THE PIVOTAL ROLE OF LIBERIA’S FORESTS AND FLAG OF CONVENIENCE IN REGIONAL CONFLICT* (Sept. 2001).

66. Rosanne Model, *Rights Activists Blew their Chances with Talisman*, *MONTREAL GAZETTE*, 21 Nov. 2002.

67. Secretary General Annan recommended not extending the Liberian sanctions regime to include timber, rubber and the Liberian ship registry because of the potential grave economic impact on Liberia’s population. See *Report of the Secretary-General in pursuance of paragraph 13 (a) of resolution 1343 (2001) concerning Liberia*, U.N. SCOR, 56th Sess., U.N. Doc. S/2001/939 (5 Oct. 2001).

Moreover, critics of economic sanctions argue that targeted sanctions such as those advocated for by the oil or diamonds campaigns, if not effectively implemented, can substitute for more effective measures while lulling the world into believing that it is doing something to stop the bloodshed. Princeton political scientist Jeffrey Herbst has written that efforts like the anti-conflict diamond campaign “point to ending conflict without getting the international community involved in the messy business of actually promoting fighting, much less the defeat of one side.”⁶⁸

Finally, do sanctions work? There is a great quantity of literature purporting to answer this question. Economists Gary Hufbauer and Barbara Oegg, arguing against the US capital market sanctions campaign, stated that proponents were confusing economic effectiveness of sanctions with political effectiveness and cited research that only a small percentage of US unilateral economic sanctions had achieved their stated foreign policy goals.⁶⁹ There may be a happy medium, however. Some argue that a model that combines targeted sanctions with a well-planned coercive strategy by international or regional actors might be more effective than sanctions alone.⁷⁰

Activists might argue that it is dangerous to make the best the enemy of the good—surely it is better to call for sanctions than do nothing. Diamonds and oil in certain countries are bound up with war and terrorism and using pressure to work with powerful business interests might alleviate suffering caused by civil wars when other military and diplomatic solutions have stalled.

In addition, activists have found ways to bring these distant conflicts home to the US public and policymakers who might otherwise ignore them. William Schulz, Executive Director of Amnesty USA, has called on human rights groups to find strategies to connect human rights problems abroad to United States citizens at home in order to create a more powerful human rights constituency in the US.⁷¹ What better way than showing the cruel human costs of US consumer demands?

68. Jeffrey Herbst, *Economic Incentives, Natural Resources, and Conflict in Africa*, 9 J. Afr. Econ. 270, 287 (2000).

69. GARY C. HUFBAUER & BARBARA OEGG, INSTITUTE FOR INTERNATIONAL ECONOMICS, CAPITAL-MARKET ACCESS: NEW FRONTIER IN THE SANCTIONS DEBATE (June 2002).

70. See Chantal de Jonge Oudraat, UN Sanction Regimes and Violent Conflict, in *TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT* 323 (Chester A. Crocker et al. eds., 2001), and a policy brief on UN Security Council sanctions, SIMON CHESTERMAN & BEATRICE POULIGNY, INTERNATIONAL PEACE ACADEMY, THE POLITICS OF SANCTIONS (May 2002).

71. WILLIAM F. SCHULZ, IN OUR OWN BEST INTEREST: HOW DEFENDING HUMAN RIGHTS BENEFITS US ALL (2001).

VI. A NEW PERSPECTIVE

A new human rights campaign may signal a fresh direction in conflict commodity activism. The “Publish What You Pay” campaign counts international philanthropist George Soros as a supporter and involves approximately eighty human rights NGOs, including several that have been active on conflict diamonds. Focusing on natural resources in the oil and mining sector, it aims to force governments to provide information about how they manage and distribute the revenues from these industries.⁷²

The campaign was developed out of concern that foreign investment in less developed countries is often focused on the extraction of primary commodities but the governments and corporations normally do not disclose revenues from resource extraction. This lack of transparency can result in embezzlement and corruption, and, campaigners note, “access to resources fuels regional conflict and the resulting disorder is exploited to facilitate further large-scale misappropriation of state assets.”⁷³ Thus, the coalition calls for transnational extraction companies to publish payments made to the governments of resource-rich developing countries “so civil society can more accurately assess the amount of money misappropriated and lobby for full transparency in local government spending.”⁷⁴

In terms of human rights advocacy, this campaign shifts the focus from curbing “dangerous appetites” of consumer demand in the West to the empowerment of civil society in Africa. If revenues from foreign investment were made more transparent, such a system would provide the people in affected countries with information on how profits from their natural treasures beneath their lands are used. Civil society groups could then work to influence where the money flows and thus a country’s natural resources could serve as a basis for growth rather than war.

72. See the campaign web site, *available at* www.publishwhatyoupay.org/.

73. See PUBLISH WHAT YOU PAY, A CALL FOR MANDATORY DISCLOSURE OF PAYMENTS TO AND TRANSACTIONS WITH GOVERNMENTS BY MULTINATIONAL NATURAL RESOURCE COMPANIES, THEIR SUBSIDIARIES AND BUSINESS PARTNERS, *available at* www.publishwhatyoupay.org/appeal/.

74. *Id.*