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**From “Blood Diamond” to “Blood Coltan”:
Should International Corporations Pay the Price
for the Rape of the DR Congo?**

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From “Blood Diamond” to “Blood Coltan”: Should International Corporations Pay the Price for the Rape of the DR Congo?

Maheta M. Molango

Introduction

In 2002, while the international community was congratulating itself for establishing the so called Kimberley process, aiming at clamping down on the illegal trade of conflict diamond, the plundering of the Democratic Republic of Congo’s other natural resources was a still a daily reality. With one of the richest deposits of cobalt, coltan, cassiterite, gold and diamonds among others, a staggering wildlife and one the mightiest river system, the DRC was blessed with unbelievable natural resources.¹ Unfortunately this would also be part of its death sentence. The Congolese people have witness in despair how, years after years, their natural resources were outrageously used for the benefit of rebel groups, neighboring nations or multi-million international corporation. Even though the story of the “rape of Congolese land”² finds its roots in abuses committed under King Leopold II,³ carried forward under the Belgian rule and finally completed under the kleptocratic dictatorship of Mobutu,⁴ the scope of this paper is far more modest. The time frame taken into consideration for the purposes of this analysis will be limited to the period going from the beginning of the nineties until the present time. The mass-scale looting and illegal trade of stolen minerals have fueled two

¹ See MONUC official website, at <http://www.monuc.org/news.aspx?newsID=11432>

² *Congo’s tragedy: the war the world forgot*, The Independent, May 5, 2006, available at <http://www.independent.co.uk/news/world/africa/congos-tragedy-the-war-the-world-forgot-476929.html>.

³ See Benjamin Todd, *Congo, Coltan, Conflict*, The Heinz School Review, Volume 3, Issue 1, March 15, 2006, available at http://journal.heinz.cmu.edu/articles/congo_coltan_conflict/.

⁴ See Adam Hochschild, *Chaos in Congo suits many parties just fine*, April 20, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9D00E4D9153AF933A15757C0A9659C8B63&sec=&spn=&pagewanted=2>.

armed conflicts and have originated multiple human rights violations,⁵ but the main actors of the controversy still remain impune. Bearing in mind the scale and multiple implications of the issue at hand, it would certainly be unrealistic to try to adopt an holistic approach in the study of the problem. This analysis will thus mainly focus on the role played by international corporation, and in particular U.S. businesses, which not only made the most out of the political chaos in which the country has long been immerse, but were also silent accomplices in serious human rights violations committed in the exploitation of precious minerals. This paper will therefore be articulated in five main parts: a) what is exactly “coltan”, why is it such a sought-after mineral; b) who are the main actors involved in the controversy; c) analysis of the procedures used for tracing the origin of other minerals, discussion over the applicability of those mechanisms to the coltan industry and the impact of such mechanisms on the local population; d) analysis of legal alternatives available, from a national and international standpoint, in order to make corporations accountable for their complicity in human rights violation, and analysis of the impact of other types of measures such as social pressure; e) final considerations.

I. Background

Coltan: definition and main characteristics

At this stage, two basic questions need to be addressed: what is exactly “coltan” and what makes it such a sought-after mineral? Coltan is a term used almost exclusively in Central Africa to refer to “columbo-tantalite.”⁶ It is a combination of two rare ores, columbium (also known as niobium) and tantalum. Both minerals are generally found

⁵ See generally, Dena Montague, *Stolen Goods: Coltan and Conflict in the Democratic Republic of Congo*, SAIS Review, volume XXII, no. 1, Winter-Spring 2002, at 103-104, available at <http://www.worldpolicy.org/projects/arms/news/22.1montague.pdf>.

⁶ Email from Emma Wickens, Tantalum-Niobium International Study Center, to author (March 10, 2008)

together, even though tantalum is considered to be less abundant than niobium but offers more attractive features to the production of high-tech industry electronic devices.⁷ Even though in terms of production, the RDC only accounts for a marginal percentage of the world production, being Australia the largest producer of tantalum, it seems very important to highlight that an estimated 80% of the world's known reserves of tantalum are found in Africa. Moreover, 80% of such reserves are located in the eastern part of the RDC.⁸ Tantalum's unique properties which include high reliability, low failure rates and capacity to withstand great changes of temperatures, makes it a crucial element in the production of tantalum capacitors which provide electrical storage.⁹ The industrial application of this ore ranges from pacemakers, GPS or missiles guidance systems to cellular phones, laptops or video cameras, thus affecting a broad variety of fields.¹⁰ The importance of this mineral is such that tantalite was classified as "strategic mineral" by the Pentagon.¹¹

II. The actors of the controversy

The key role of neighboring countries and rebels groups

In 2000, a U.N. Panel of experts under the mandate of the former Secretary General Koffi Annan thoroughly analyzed the illegal exploitation of DR Congo's mineral resources and its links with the two armed conflicts which caused over four million

(on file with author).

⁷ See Montague, *supra* note 5, at 105.

⁸ *Supporting the War Economy in the DRC: European companies and the coltan trade*, IPIS report, January 2002, at 8, available at <http://www.grandslacs.net/doc/2343.pdf>.

⁹ Tantalum-Niobium International Study Center (TIC) official website, <http://www.tanb.org/tantalum1.html> (last visited on February 2, 2008).

¹⁰ *Id.*

¹¹ Aloys Tegera, et. Al., *The Coltan Phenomenon*, POLE Institute, at 5, available at <http://www.pole-institute.org/documents/coltanglais02.pdf>; See also Montague, *supra* note 5, at 114 ("the United States are completely dependent on foreign supplies of tantalum. Accordingly, the *Mineral Yearbook* published by the U.S. Geological Survey, as well as the Department of Defense's *Strategic and Critical Materials Report to*

casualties and two million displaced.¹² The economical and political unrest which have been affecting the eastern part of the RDC finds its origins in the 1994-1995 Rwandan refugee crisis.¹³ Following the 1994 Rwandan genocide and fearing reprisals from Tutsi rebel forces, a substantial number of Hutus (including members of the Interahamwe)¹⁴ crossed the border and sought refuge in the RDC.¹⁵ This situation seriously disrupted the already fragile political and social balance of the region and was repeatedly used by Rwandan forces to justify the presence of its military forces on Congolese territory.¹⁶ In 1996, the situation worsened and a group of rebels led by Laurent-Désiré Kabila, the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), launched an offensive to overthrow the decadent dictatorship of Mobutu Sese Seko.¹⁷ This movement received the support of Angolan, Rwandan and Ugandan forces.¹⁸ Several commentators have denounced that a number of foreign companies started negotiating new mining deals with the rebels only a few weeks into the conflict.¹⁹ Their participation in the 1996 armed conflict allowed Rwandan and Ugandan forces to gain a better understanding of the location and economical potential of the mineral resources found in eastern DRC, as the 2001 U.N. Panel of Experts' report emphasized.²⁰

the Congress, both list tantalum as a "critical" mineral.)

¹² See MONUC website, *supra* note 1.

¹³ *Report of Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo*, U.N. Doc. S/2001/357, at 6, ¶ 22 [hereinafter 2001 Report].

¹⁴ The Interahamwe is a Hutu paramilitary organization which played a major role in the Rwandan genocide and have been accused of being responsible for thousands of killings. See, e.g., Chris Simpson, *Interahamwe: A serious military threat*, BBC News, March 2, 1999, available at <http://news.bbc.co.uk/2/hi/africa/288937.stm>.

¹⁵ *Id.*

¹⁶ *Id.*; see also 2001 Report, at 7, ¶ 28.

¹⁷ See 2001 Report, *supra* note 13, at 6.

¹⁸ *Id.* at 6, ¶ 22.

¹⁹ See Montague, *supra* note 5, at 109-110.

²⁰ 2001 Report, *supra* note 13, at 7 ¶ 26.

Despite the success of their joint offensive to conquer the country, the relationship between Kabila and its allies rapidly deteriorated and prompted the eruption of a second armed conflict in August 1998.²¹ This time, the conflict opposed Rwandan and Ugandan forces on one side, and the Congolese forces backed by Angola, Namibia and Zimbabwe on the other.²² In its analysis of the reasons behind Uganda and Rwanda's invasion of the DRC, the 2001 U.N. report clearly indicated that:

“if security and political reasons were the professed roots of the political leaders' motivation to move into the eastern Democratic Republic of the Congo, some top army officials clearly had a hidden agenda: economic and financial objectives.”²³

By comparing Uganda and Rwanda's budget allocation for their respective armed forces and these countries' actual expenditures, the 2001 U.N. Panel of Experts was able to establish a clear link between the exploitation of the Congolese mineral resources and the continuation of the conflict.²⁴ In the case at hand, the coltan industry proves to be an excellent example of such interdependence. Due to a sudden increase in demand and supply shortage, the price of coltan spiked in late 1999 and early 2000.²⁵ This caused a “coltan rush”, which led to the violent expulsion of many farmers and their families from their land by rebel groups and ruthless businessmen.²⁶ These forced displacements particularly affected properties where coltan could be found in abundance and in certain

²¹ *Id.* at 6 ¶ 24.

²² *Id.*

²³ *Id.* at 7 ¶ 28.

²⁴ *Id.* at 27, ¶ 109.

²⁵ See Todd, *supra* note 3 (highlighting how the price of coltan went from \$34 to \$220 in just a few months, between late 1999 and 2000). Between late 1999 and 2000, the Rwandan forces have reportedly manage to obtain revenues of up to 20 million dollars a month based on coltan sales only, which is particularly striking as Rwanda was never considered a major coltan exporter before the 1996 and 1998 armed conflict in DRC. See 2001 Report, *supra* note 13, at 29, ¶ 130.

²⁶ See 2001 Report, *supra* note 13, at 37, ¶ 177.

cases, slave labor was used in the exploitation of these coltan-rich areas.²⁷

Illegal exploitation of DRC mineral resources

One of the more disputed and controversial concept among the parties was arguably the criteria used by the U.N. Panel of Experts in order to determine the *illegality* of the exploitation of the aforesaid mineral resources. Uganda and Rwanda's main argument is based on the fact that during the hostilities the legitimate Congolese government did not have any sovereignty over the zones under their influence.²⁸ Thus, their understanding is that the contracts signed between the rebel forces and international corporations are perfectly valid and enforceable.²⁹ Moreover, they invoke the 1999 Lusaka ceasefire agreement as fundamental legal support for their position.³⁰ This point of view was echoed by the report on the situation affecting the Great Lakes region, published by an "ad hoc" Belgian parliamentary commission of inquiry, which investigated the contribution of Belgian companies in fuelling the armed conflict that ravaged the DCR between 1998 and 2003.³¹

In contrast to these arguments, the International Court of Justice (ICJ) seems to have adopted a different view in its final judgment of the *Democratic Republic of Congo v. Uganda* case.³² The ICJ rationale is based on International Humanitarian Law (IHL)

²⁷ *Id.*

²⁸ Security Council Press Release, *Security Council Condemns Illegal Exploitation of Democratic Republic of Congo's Natural Resources*, 4317th and 4318th Mtgs., U.N. Doc. SC/7057 (May 3, 2001), available at <http://www.un.org/News/Press/docs/2001/sc7057.doc.htm>.

²⁹ *Id.*

³⁰ According to Ugandan Minister of State for Foreign Affairs and Regional Cooperation "under the Lusaka Accord, for the period of implementation of that agreement, each of the three parties [Rwanda, Uganda and DRC] would be with the responsibility to administer the area it controlled until State control was established throughout the Democratic Republic of the Congo." *Id.*

³¹ Marc-Olivier Herman, Broederlijk Delen, Indra Van Gisbergen, *Commission des Grands Lacs: déception et révolte*, Le Soir en Ligne, February 27, 2003, available at <http://users.skynet.be/wihogora/deception-lsoir-270203.htm>.

³² *Armed activities in the territory of the Congo (Democratic Republic of Congo v. Uganda)*, 2005 I.C.J.

provisions regulating the rights and obligations of parties involved in a situation of occupation.³³ Pursuant to article 47 of the 1907 Hague Regulations and article 33 of the Fourth Geneva Convention of 1949, pillage carried out by occupying forces is expressly prohibited.³⁴ Moreover, the Hague regulations clearly set forth that an occupying State is merely an “administrator and usufructuary of the public buildings, real estate, forest, and agricultural estates belonging to the hostile State and situated in the occupied country.”³⁵ Further emphasis is put on the fact that the occupying Power has the duty to “safeguard the capital of these properties and administer them in accordance with the law of usufruct.”³⁶ As Brice M. Clagett pointed out in his comments related to the exploitation of oil resources by Israel in the Gulf of Suez, the rules of belligerent occupation apply to any occupation and an occupant cannot ignore the *ius in bello* regulation by simply questioning the sovereignty of the other party over the occupied territory.³⁷ Clagett’s comments shed even more light on the duties of the Occupying powers, when he noted that “an occupant is not an owner, but a tenant; there is no reason why it should have the right to deplete the natural wealth of territory that does not belong to it.”³⁸

In the case at hand, there is abundant evidence of abusive exploitation of the Congolese natural resources which did not benefit the population living in the occupied

116 (December 19), available at <http://www.icj-cij.org/docket/files/116/10455.pdf?PHPSESSID=e1de5c32a6ac65d29ba0e96e6059be76>.

³³ Margaret E. McGuinness, *Case Concerning Armed Activities on the Territory of the Congo: The ICJ Finds Uganda Acted Unlawfully and Orders Reparations*, ASIL Insight, January 9, 2006, available at <http://www.asil.org/insights/2006/01/insights060109.html>.

³⁴ *Id.*

³⁵ Hague Regulations of 1907 Annexed to the Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907, Annex to the Convention, 36 Stat. 2277, T.S. No. 539, art.55 [hereinafter the Hague Regulations].

³⁶ *Id.*

³⁷ Brice M. Clagett, *Territories occupied by Israel: Settlements and exploitation of oil resources*, 72 Proc. Am. Soc. Int’l 123-128.

³⁸ *Id.*

territories. In addition, the looting and plundering of Congolese assets denounced by several NGO reports,³⁹ reinforce our view that neither Uganda nor Rwanda complied with the duties owed by an occupying State. There is little doubt that their actions contravened the IHL provisions on occupation and were thus illegal.

Tantalum's complex supply chain

From the mines where the precious raw tantalite is found, all the way to our cell phones or laptops, this mineral goes through a variety of hands and processes. This is certainly one of the more complex aspect in the determination of the role each actor plays, whether directly or indirectly, in human rights violations occurring in the coltan industry. How can a corporation be made accountable for exactions taking place thousands of miles away and not directly committed by any of its employees? Is “aiding and abetting” sufficient to hold them responsible? If so, what are the mechanisms at the victims’ disposal to bring a claim against such powerful multi-nationals?

Before entering into the analysis of the legal alternatives available, we should first focus on analyzing this tortuous supply chain. In his article “Congo, Coltan, Conflict” Benjamin Todd identified three main groups involved in the extraction phase: a) individual soldiers working for their own benefit; b) local communities’ members under the command of Rwandan and Ugandan forces; c) “foreign national for the army or commander’s benefit.”⁴⁰ It has been reported that among the individuals working in the coltan mines are children, used as forced labor,⁴¹ and prisoners under the surveillance of

³⁹ E.g., *Memorandum to the European Union (EU) on the occasion of the EU-Africa Ministerial Meeting*, Amnesty International, AFR 02/001/2001, October 2001, available at <http://www.amnesty.org/es/library/asset/AFR02/001/2001/en/dom-AFR020012001en.pdf>.

⁴⁰ See Todd, *supra* note 3, at 6.

⁴¹ See, e.g., *REBUBLIQUE DEMOCRATIQUE DU CONGO “Nos frères qui les aident à nous tuer...” Explotation économique et atteintes aux droits humains dans l’est du pays*, Amnesty International, AFR

Rwandan forces.⁴²

Once the mineral is extracted, the collection of the same is carried out by local traders, and a majority of them are suspected to be controlled by rebels or foreign armies.⁴³ The U.N. highlighted in its 2001 report that the U.S. based Eagle Wings Resources International (EWRI) is among the foreign companies operating in the Great Lakes region as a local *comptoir*.⁴⁴ It is a subsidiary of Trinitech International Inc., also based in the U.S. and its involvement in the Congolese human rights tragedy will be discussed in further detail below.

After passing through the hands of local traders, the coltan is subsequently sold to larger regional traders, which are often located in Rwanda and Uganda.⁴⁵ This is the most difficult part of the chain to trace, as five or six intermediaries can be involved before it reaches the larger regional traders. At this point, the black-market coltan enters the global market.⁴⁶ The final destination of these exportations include Asia, Europe and the United States.⁴⁷ The two main company involved in the extraction of tantalum from the raw ore are the German company H.C Stark (subsidiary of the pharmaceutical giant Bayer) and the U.S. based Cabot Corporation, reportedly the second-largest mineral processing

62/010/2003, April 2003, at 37-38, available at www.amnesty.org/fr/library/asset/AFR62/010/2003/es/2NpSstljnvsJ; see also *La guerre pour les richesses fait des millions de morts*, Amnesty International, Le Fil d'AI, NWS 21/005/2003, June 2003, at 3.

⁴² See 2001 Report, *supra* note 13, at 12, ¶ 60.

⁴³ Kristi Essick, *A Call to Arms - Demand For Coltan Causes Problems in Congo - Industry Trend or Event*, June 11, 2002, available at http://findarticles.com/p/articles/mi_m0HWW/is_23_4/ai_75669917/print.

⁴⁴ *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, U.N. Doc. S/2002/1146, at 16, ¶ 79 [hereinafter 2002 Report].

⁴⁵ See Essick, *supra* note 43.

⁴⁶ *Id.*

⁴⁷ “Until the AFDL invasion of Zaire in 1996, Rwandan tantalum exports to the United States had been gradually - albeit significantly - declining, from \$3 million in 1993 to \$598,000 in 1995. U.S. imports of tantalum from Rwanda more than doubled from 1997 to 2000.” Montague, *supra* note 5, at 114.

company.⁴⁸ These processing companies not only obtain the raw coltan from international trading companies, but also directly from large mines or local traders.⁴⁹ Once processed, the refined tantalum powder is sold to capacitor manufacturers. Among them is Kemet, a U.S. company based in Greenville, S.C., which is one of Nokia's main supplier.⁵⁰ At the final end of the chain are internationally renowned cell phone or laptop companies, such as Motorola, Nokia, Compaq, Dell or Hewlett-Packard.

III. The Kimberley Process: an example to follow for the coltan industry?

The Kimberly Process Certification Scheme (hereinafter "Kimberly Process" or "KP") is a joint governments, industry and civil society initiative founded to prevent the trade of conflict-fueling diamonds.⁵¹ The KP is essentially focusing on "conflict diamonds," that is "rough diamonds used by rebel movements or their allies to finance conflicts aimed at undermining legitimate governments."⁵² The so called "conflict diamonds" should thus be differentiate from the gems simply stolen or smuggled, the diamonds not declared in order to avoid taxation or the ones used for money laundering purposes.⁵³ The KP established strict requirements on its member in order to certify that shipments of rough diamonds do not proceed from conflict areas.⁵⁴ The countries participating in this initiative have the duty to adopt legislation to enforce the KP and set

⁴⁸ See Essick, *supra* note 43.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *What is Kimberley Process?*, http://www.kimberleyprocess.com/home/index_en.html, (last visited on May 15, 2008).

⁵² The official Kimberley Certification Scheme document is available on the Kimberley process website. *Id.*

⁵³ Ian Smile, *The Kimberley Process: The Case for Proper Monitoring*, *The Diamonds and Human Security Project*, at 8, <http://action.web.ca/home/pac/attach/KP%20Monitoring.pdf>.

⁵⁴ See *What is Kimberley Process?*, *supra* note 50.

up import/export control mechanisms.⁵⁵ In addition, the KP provides that participants may only trade diamonds with other participants in the scheme.⁵⁶

Although the Kimberley Process scheme seems to have effectively contributed to reduce the trade of conflict diamonds,⁵⁷ in recent years the KP has had to face strong criticism. Most of the skeptical comments were focused on the fact that the Kimberley is essentially a voluntary scheme which lacks the enforcement and independent monitoring mechanisms required to ensure the compliance with the conditions the participants accepted to abide by.⁵⁸ This lack of effectiveness is confirmed by reports suggesting that several countries (including Russia, China and U.S.) have shown a certain reluctance in publishing diamond trade statistics and even declined to set dates for reviewers to visit their respective countries.⁵⁹ It is worth noting that a visit to a country to monitor its compliance with the KP standards can only be carried out with the consent of the affected nation.⁶⁰

For the purpose of this paper, it seems important to consider whether a similar mechanism could be set up in order to regulate the trade of coltan,⁶¹ and whether such a measure would effectively contribute to improving the life of the Congolese population in conflict areas. With regard to the first question, the main obstacle to the implementation

⁵⁵ *The Kimberly Process at Risk*, Global Witness, available at <http://www.globalpolicy.org/security/issues/diamond/2006/11atrisk.pdf>.

⁵⁶ *Id.*

⁵⁷ *General Assembly Backs Kimberley Process to Prevent Diamonds from Funding Conflict*, U.N. News, December 4, 2006, <http://www.globalpolicy.org/security/natres/diamonds/2006/1204gaback.htm> (noting that conflict diamonds have decreased from four percent to approximately one percent of the global production following the approval of the Kimberley Process).

⁵⁸ See Smile, *supra* note 53, at 4.

⁵⁹ *Controlling Diamonds*, Washington Post Editorial, November 29, 2006, available at <http://www.globalpolicy.org/security/issues/diamond/2004/1129controlling.htm>.

⁶⁰ See *What is Kimberley Process?*, http://www.kimberleyprocess.com/home/index_en.html, (last retrieved on May 15, 2008).

⁶¹ See Montague, *supra* note 5, at 106.

of a certification stemming “blood coltan” is certainly the complexity of its supply chain.⁶² The raw coltan passes through numerous hands before ending up in high-tech devices and this makes it particularly difficult to establish an effective mechanism of control of its origin.⁶³ Leaving aside the practical issues related to the implementation of a similar measure in the coltan industry, one could reflect on the effects that a “blood coltan” certificate could have on the local community. It is indispensable to bear in mind that while the average Congolese worker earns around ten dollars a month, a good coltan miner can make up to fifty dollars a week.⁶⁴ Based on this, we could reasonably ask ourselves whether a hypothetical embargo on “conflict coltan” will not be more detrimental to the interests of the local communities than to the interests of the criminals involved in human rights violations. The reality on the ground seems to confirm our fears.⁶⁵ This is particularly true considering the difficulty to separate legally and illegally mined coltan. In most of the case, such circumstances are likely to cause serious prejudice to the poor local communities rather than hampering the rebels and international corporations’ ability to continue their illegal activities.

IV. Legal alternatives available

The OECD Guidelines

This constitutes the first instrument providing a government-supported mechanism which aims to monitor and influence the behavior of multi-national

⁶² See generally Essick, *supra* note 43.

⁶³ *Id.*

⁶⁴ Jason Parkinson, *Black gold: On the Coltan trail*, Great Reporter, September 23, 2006, <http://greatreporter.com/mambo/content/view/1322/2/>.

⁶⁵ At that respect, the video report produced by Mvemba Phezo Dizolele suggests that taking away the income proceeding from the coltan industry may seriously jeopardize the future of poor local communities highly dependent on the coltan trade. This video is available on the Pulitzer Center website, <http://www.pulitzercenter.org/openitem.cfm?id=276>.

corporations operating in or from OECD countries.⁶⁶ Through a revision process carried out in 2000, the Guidelines included a complain mechanism allowing affected communities and NGOs to denounce corporate abuses.⁶⁷ It established the obligation to set up National Contact Points (NCP) which were assigned the duty to deal at individual State's level with the allegations of corporations' misconducts. Moreover, the NCPs must provide the OECD Committee on International Investment and Multinationals Enterprises (body focused on international investment, multinational enterprises and the OECD Guidelines) with an annual report regarding its activities.⁶⁸ Despite being widely recognized as a positive initiative, the Guidelines had to face a number of skeptical reactions. Various reports have criticized the voluntary nature of this instrument, which lead to a lack of effective results in the day-to-day improvement of corporate behavior. The situation affecting the DRC is a paradigmatic example of the Guidelines flaws. The three-year investigation carried out by the U.N. Panel of Experts found that 85 companies were guilty of non-compliance with the OECD Guidelines.⁶⁹ Despite these findings which were supported by clear and documented evidence, most NCP refused to investigate the validity of the claims.⁷⁰ In 2004, a claim was brought before the U.S. NCP in relation with three corporations' involvement in behaviors which contributed to fuel

⁶⁶ *Unanswered questions: Companies, Conflict and the Democratic Republic of Congo*, Rights and Accountability in Development (RAID) report, May 2004, available at http://www.oecdwatch.org/docs/RAID_full%20DRC%20report.pdf

⁶⁷ *Global NGO Coalition Calls for Tighter Regulation of Multinational Corporations*, OECD Watch press release, September 22, 2005, available at <http://www.business-humanrights.org/Links/Repository/391514/jump>.

⁶⁸ *Id.*

⁶⁹ See OECD Watch, *FIVE YEARS ON: A Review of the OECD Guidelines and National Contact Points*, September 2005, at 23, available at <http://www.business-humanrights.org/Links/Repository/874122/jump>.

⁷⁰ *Id.*

the armed conflict in the DRC.⁷¹ These companies were Cabot Corporation, Trinitech Holdings/Eagle Wings Resources International and OMG Group Inc.⁷² Even though the U.S. NCP did not squarely dismiss the complain, it gave no clear indications of its intention to admit it.⁷³ In addition, OECD Watch has reported a worrisome statement made by the U.S. NCP which casts serious doubts over the future of an institution of similar characteristics in the U.S.:

“the real focus of the Guidelines is not to focus on past behaviors, but to try and improve future behavior. We do not sit in judgment and conclude whether companies met their obligations under the Guidelines. Making judgments is about past behavior and saying you did something wrong.”⁷⁴

Some of the above-mentioned issues are discussed in a recent report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie.⁷⁵ Although a extensive analysis of the content of the same is outside of the scope of this paper, it is worth mentioning that it focused on three main principle: a) the State duty to protect against human rights abuses by third parties, including business; b) the corporate responsibility to respect human rights; and c) the need for more effective access to remedies.⁷⁶

Congolese Mining code

The Mining code adopted in 2002 by the Congolese government had for main objective to create a stable and transparent environment which would attract new

⁷¹ *Id.* at 56.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 57.

⁷⁵ See generally U.N. Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5 [Ruggie report].

potential investors.⁷⁷ According to the provisions of the code, these measures aimed at facilitating foreign investments would be counter-balanced by other mechanisms, ensuring uniformed tax structures where no companies should be arbitrarily attributed any fiscal benefit.⁷⁸ The main idea was to create a situation where the Congolese government and ultimately its population, would directly benefit from the exploitation of the country's natural resources. Nevertheless, this initiative backed by the World Bank was subject to strong criticism for failing to meet its proposed goals.⁷⁹ On the one hand, the renewed interest of foreign investors has pushed many individuals involved in agricultural activities to turn to the more lucrative mining business.⁸⁰ The immediate effect of this situation is an acute alimentary crisis and an increased dependence on imported food, whose price is constantly on the rise.⁸¹ Another recurring reproach is that, according to the Mining Code, the participation of the Congolese State in the international corporations' profits is extremely limited. Approximately only five percent of the revenues goes to the State, whereas international corporations receive seventy percent of the profits.⁸²

The Lutundula Commission

Following the adoption of the Mining Code and the publication of the various

⁷⁶ *Id.*

⁷⁷ William Wallis, *Companies international: AMF hopes to start again in Congo*, Financial Times, October 2, 2003.

⁷⁸ Exposé des motifs, Loi n° 007/2002 du 11 juillet 2002 portant Code Minier, Journal Officiel n° spécial du 15 juillet 2002, at 18 [hereinafter Mining code], available at http://www.miningcongo.cd/codeminier/codeminier_fr.pdf.

⁷⁹ *Codes minier, forestier, réformes..., les "crimes" de la Banque Mondiale en RD Congo*, Commission pour l'annulation de la dette du Tiers Monde (CADTM), April 24, 2008, <http://www.cadtm.org/spip.php?article3294>; see also, Colette Braeckman, *Elections sous pression à Kinshasa: Le Congo transformé en libre-service minier*, Le Monde Diplomatique, July 2006, available at <http://www.monde-diplomatique.fr/2006/07/BRAECKMAN/13606>.

⁸⁰ See CADTM article, *supra* note 79.

⁸¹ *Id.*

U.N. Panel of Expert reports denouncing the plundering of the Congolese mineral resources, the Congolese National Assembly created a special commission led by parliamentarian Christophe Lutundula.⁸³ This *ad hoc* body investigated the mining and other business contracts entered into by rebel groups and governmental authorities between 1996 and 2003.⁸⁴ Following a case-by-case analysis, the Commission concluded that several deals did not comply with the applicable legal regulations or were contrary to the development interests of the country.⁸⁵ The report recommended that sixteen contracts should be terminated or subject to fair renegotiation.⁸⁶ Furthermore, it advised to investigated twenty-eight Congolese and international companies (predominantly European corporations) for alleged infringements of Congolese law.⁸⁷ The report also recommended an immediate moratorium on the signing of new deals until the presidential elections scheduled in 2006.⁸⁸ The publication of the report suffered important delays, probably due to pressure exercised by politicians directly involved in the violations denounced in the above-mentioned document.⁸⁹ Furthermore, the findings of the Lutundula Commission were mainly ignored and did not lead to any further actions until April 2007, when the illegal mining activities were once again at the center of a nationwide political debate.

⁸² *Id.*

⁸³ *DR Congo: End Illegal Exploitation of Mineral Resources*, Global Witness, February 21, 2006, http://www.globalwitness.org/media_library_detail.php/422/en/dr-congo-end-illegal-exploitation-of-natural-resources.

⁸⁴ *Id.*

⁸⁵ *Id.*; see also generally Assemblée nationale commission spéciale chargée de l'examen de la validité des conventions à caractère économique et financier, conclues pendant les guerres de 1996-1997 et de 1998, available at <http://www.freewebs.com/congo-kinshasa/>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Global Witness article, *supra* note 83.

Ministerial Commission on the Review of Mining Contracts

Following a long period of speculation, the report of the Ministerial Commission on the review of the mining contracts in the DRC was finally published on March 25 2008.⁹⁰ This commission was instructed to examine over sixty contracts and, if required, issue recommendations as to how these contracts should be reviewed in order to correct any imbalances.⁹¹ Despite the fact that the commission was created in April 2007 and started its activities a couple of months later, the results of the investigations were allegedly withheld for several months.⁹² Conscious of the important economical interests at stake, a group of NGOs urged the commission to end the speculation and suspicion which was tarnishing the mining sector, by making public the outcome of its investigation without any further delays.⁹³

The report of the Commission classified the contracts into three groups: a) category A, which include the contracts not requiring any renegotiation; b) category B, which include contracts recommended for renegotiation; c) category C, which include contracts to be revoked.⁹⁴ There is no doubt that the success of this renegotiation process will depend on one central issue: transparency. As Global Witness rightly pointed out in its press release following the publication of the report, “the government should publicly outline the process it intends to follow, including the criteria used in the renegotiations,

⁹⁰ *Publication of Congo Mining Contract Review Welcome; Renegotiations Should Be Fair and Transparent*, Global Witness press release, March 25, 2008, available at http://www.globalwitness.org/data/files/pages/correct_miningcontractreviewreportmarch08.pdf

⁹¹ *International Appeal for the Publication of the Final Report of the Ministerial Commission on the Review of Mining Contracts in the Democratic Republic of Congo*, Global Witness press release, November 11, 2007, available at http://www.globalwitness.org/media_library_detail.php/596/en/international_appeal_for_the_publication_of_the_final_report_of_the_ministerial_commission_on_the_review_of_mining_contracts_in_the_democratic_republic_of_congo.

⁹² *Id.*

⁹³ See Global Witness press release, *supra* note 91.

and publish the revised contracts.”⁹⁵ The press release also referred to the creation of a task force, that should assume the next steps of the review process.⁹⁶ It is imperative for the Congolese authorities to ensure that the composition of this body lives up to the expectations of the international corporations and local communities directly affected by the outcome of this process. Global Witness insisted that the presence of international legal experts and local professionals within the task force should not be limited to a mere promise and must be effectively guaranteed by the government.⁹⁷ Indeed, some NGOs fear that this review process is in reality a ruse to transfer the money generated by the exploitation of the country mineral resources from the pockets of international corporations to the pockets of well-connected businessmen in Kabila’s entourage.⁹⁸

The revision of the contracts signed in violation of Congolese law or detrimental to the interests of the country could constitute an important step towards the strengthening of the central government authority and the stabilization of a country so far unable to exploit its mineral wealth to the benefit of its own citizens. Nevertheless, it will be interesting to observe the reaction of the international corporations which may see their contracts revoked or the companies which will have to renegotiate the terms of their deals, presumably to their disadvantage. It is well know that permissive or chaotic legal framework tend to attract unscrupulous international corporations.⁹⁹ Will international

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Aaron Ernst, *D.R. Congo Reviews Mining Contracts Signed During Resource-Fueled War*, World Politics Review, Global Policy Forum, May 8, 2008, <http://www.globalpolicy.org/security/issues/congo/2008/0508contracts.htm>.

⁹⁹ See Adam Hochschild, *Chaos in Congo suits many parties just fine*, April 20, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9D00E4D9153AF933A15757C0A9659C8B63&sec=&spn=&pagewanted=2>.

corporations contribute to the development of the country or will they turn their back to the RDC seeking more “favorable” jurisdictions? The events of the upcoming months will probably help clarifying this issue.

Litigation under the Alien Tort Statute

The Alien Tort Statute (hereinafter “ATS“), also known as the Alien Tort Claim Act (hereinafter “ATCA“), was enacted as part of the Judiciary Act of 1799.¹⁰⁰ The statute set forth that the “district courts shall have original jurisdiction of any civil action by an alien for a tort, committed in violation of the law of nations or a treaty of the United States.”¹⁰¹ However, it remained dormant for almost 200 years until the decision of the Second District Court in *Filartiga v. Pena-Irala* at the beginning of the eighties, which arguably constituted a turning point in the ATCA litigation.¹⁰² In *Filartiga*, the family of a Paraguayan citizen tortured to death brought a claim under the ATCA against another citizen of Paraguay who was living in the U.S. at the time the lawsuit was submitted.¹⁰³ The Court found that the actions of the torturer were carried out “under the color of law,” as he acted as an agent of the Paraguayan government, and found that he was liable under the ATCA.¹⁰⁴

Despite the importance of this decision, it was not until *Doe v. Unocal* that the possibility for aliens to sue in U.S. courts individuals *and* corporations for infringements of customary international law committed abroad, appeared to be a viable route.¹⁰⁵ The

¹⁰⁰ 28 U.S.C. § 1350 (1993).

¹⁰¹ *Id.*

¹⁰² *Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254, 284 (2d Cir.2007).

¹⁰³ *Landmark Unocal Settlement Strengthens Alien Tort Claims Act as Recourse for Human Rights and Environmental Abuses Committed Abroad*, International Network for Environmental Compliance and Enforcement Newsletter, December 2004, <http://www.inece.org/newsletter/10/enforcement.html>.

¹⁰⁴ *Id.*

¹⁰⁵ 395 F.3d 932 (9th Cir.2002), vacated and rehearing en banc granted, 395 F.3d 978 (9th Cir.2003),

parties finally reached an out-of-court settlement and it seems reasonable to believe that the decision of the Court to rehear the case played a key role in inducing the corporation to reach an agreement with the plaintiffs.¹⁰⁶ Unfortunately, this prevents us from knowing how the Court would have assessed the vicarious liability of Unocal in human rights violations carried out by the Burmese government and military during the construction of a pipeline in Burma.¹⁰⁷

In 2004, the Supreme Court ruling in *Sosa v. Alvarez-Machain* provided further guidance as to how the ATCA may be used to obtain a remedy in U.S. courts for international law violations committed abroad without any type of link with the U.S.¹⁰⁸ The Court confirmed that the ATCA may be an adequate avenue to vindicate these claims. It explained that the violations alleged by the plaintiffs are not limited to the statute's three original offenses, which were violations of safe conducts, infringements of ambassadors' rights and piracy.¹⁰⁹ However, the Supreme Court urged lower federal courts to adopt a cautious and restrictive approach as to the scope of application of the ATS, thus acting as "vigilant doorkeepers."¹¹⁰ It also made clear that federal courts may have limited discretion to recognize, as a matter of federal common law, ATCA suits

district court opinion vacated by 403 F.3d 708 (9th Cir. 2005) [hereinafter Unocal III].

¹⁰⁶ The District Court dismissed the plaintiffs' claim alleging that no genuine issue of material fact existed. The plaintiffs appealed and the Ninth Circuit Court overturned the District Court decision. Following the three-judge panel's decision, the case was ready to go to a jury trial. Nevertheless, the Circuit Court ordered the case to be reheard en banc upon a vote of the majority of non-recused judges on the court.

¹⁰⁷ See generally *Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997). Fifteen Burmese villagers brought a suit against Unocal for its alleged complicity in human rights violations committed by the Burmese authorities and military during the construction of the Yadana pipeline in Burma. Although the company could not be considered a state actor, the plaintiffs attempted to prove that the Burmese army actions were linked to Unocal's will and for the company's benefit.

¹⁰⁸ See *Alvarez-Machain v. United States*, 331 F.3d 604 (9th Cir. 2003), *rev'd sub nom Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

¹⁰⁹ See *Sosa*, 542 U.S., at 715.

¹¹⁰ *Id.* at 729.

based on “the present-day law of nations.”¹¹¹ Thus, Sosa recognized that the possibility to recourse to the ATS is not limited to the original violations set forth in § 1350, but it established strict requirements to be followed in the construction of the mentioned statute.¹¹²

For the purpose of this paper, we have chosen to focus on the case of the U.S. corporation Eagle Wings Resources International (EWRI) we already mentioned in a previous section. Two main issues require to be addressed: a) has there been any violation committed by the Rwandan or Ugandan forces which would constitute according to Sosa, a breach of a “norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms?”;¹¹³ b) would it be possible to establish a causal nexus between the human rights violations committed in eastern DRC and EWRI’s activities under the “aiding and abetting” doctrine, and thus determine its liability under the ATS? Several cases currently pending before federal Courts could certainly bring some interesting elements to our discussion, but for now we will focus on the existing caselaw to build our reasoning.¹¹⁴ With regard to the first question, several NGO reports have suggested that during the 1996 and 1998 armed conflicts, the Congolese civilian population have

¹¹¹ *Id.* at 725.

¹¹² *See, e.g.*, Brief for the United States as Amicus Curiae, Alexis Holyweek Sarei, et al. v. Rio Tinto, PLC, nos. 02-56256, 02-56390.

¹¹³ *See* Sosa, *supra* note 109.

¹¹⁴ In *Doe et al. v. ExxonMobil*, eleven Indonesian villagers brought a suit against ExxonMobil in US federal court alleging that the company was complicit in human rights abuses committed by Indonesian security forces, *see* <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ExxonMobillawsuiteAceh>. In another recent case, *Doe v. Chiquita Brands International*, a class action was brought to challenge Chiquita’s illegal practice of supporting brutal paramilitary death squads in order to maintain its profits, *see* <http://www.earthrights.org/chiquita.html>.

suffered serious human rights violations at the hand of Rwandan and Ugandan forces.¹¹⁵ In the area where EWRI operated, grave violations such as mass scale rape, murder, forced labor and pillage were reported.¹¹⁶ The principle of distinction and non-attack on civilian population is widely accepted as a fundamental rule of customary international law crystallized in several international treaties¹¹⁷ and U.N. declarations.¹¹⁸ Furthermore, it has also been recognized as a rule customary international law by the U.S. government.¹¹⁹ Based on these arguments, a Court may consider the violations described to meet the high threshold established in *Sosa* and thus, consider it a norm sufficiently “universal, obligatory and specific” to sustain a valid claim under the ATCA.¹²⁰

The second issue is far from being less controversial. The individual criminal responsibility of individuals convicted of aiding and abetting violations of international law is considered a key principle of the post-World War II war crimes trials.¹²¹ It was also reflected in major international human rights agreements, including the Statutes of the International Criminal Court, the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).¹²² In fact, several federal courts have found that aiding and abetting violations of a international law rules is “sufficiently well-established and universally recognized to be considered customary

¹¹⁵ See generally NGOs reports, *supra* note 41.

¹¹⁶ *Id.*

¹¹⁷ These international treaties include the 1907 Hague regulations on the Laws and Customs of War on Land and the Geneva Convention Relative to the Protection Civilian Persons in Time of War of 1949, both ratified by the U.S.

¹¹⁸ See, e.g., G.A. Res. 2675, 25 U.N. GAOR Supp. (No.28) at 76, U.N. Doc. A/8028 (1970); see also G.A. Res. 2444, 23 U.N. GAOR Supp. (No. 18) at 50, U.N. Doc. A/7218 (1968).

¹¹⁹ Letter from J. Fred Buzhardt, General Counsel of the Department of Defense to Senator Edward Kennedy (Sept. 22, 1972), reprinted in Rovine, *Contemporary Practice of the United States Relating to International Law*, 67 Am. J. Int’L. 118, 122-25 (1973).

¹²⁰ See *Alvarez-Machain*, 331 F.3d at 621.

¹²¹ *Khulumani* 504 F.3d, at 273.

international law for the purposes of the ATCA.”¹²³

In *Unocal III*, the Ninth Circuit court applied the two-pronged test used by the ICTY and the ICTR in order to determine the liability of the defendant under the aiding and abetting theory.¹²⁴ The two basic requirements are: a) *actus reus*, which “requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime;”¹²⁵ and b) *mens rea*, that is the individual aiding and abetting must have reasonable knowledge that his or her “actions will assist the perpetrator in the commission of the crime.”¹²⁶ In its 2002 report, the U.N. Panel of experts included EWRI in the category of “Rwanda-controlled *comptoir*” and it determined that the company was benefiting from a series of privileges due to its close ties with the Rwandan regime.¹²⁷ The company not only received a favorable fiscal treatment, being exempted from fulfilling its obligations to the public treasury, but it also had privileged access to coltan sites and benefited from forced labor.¹²⁸ The report also insinuated that the exportation of the coltan sold by EWRI was facilitated by the assistance of Rwandan forces.¹²⁹ The access to cheap raw materials implied graves human rights violations and was key to the economical success of the company. Furthermore, Amnesty International reported that the Rwandan forces gained control

¹²² *Id.*

¹²³ *Id.* at 277 (internal quotation marks omitted).

¹²⁴ See *Unocal III*, 395 F.3d at 949-51; see also Armin Rosencranz and David Louk, *Doe v. Unocal: Holding Corporation Liable for Human Rights Abuses on their Watch*, *Chapman Law Review*, Spring 2005 (noting that although the Ninth Circuit three-judge panel’s ruling was voided by the en banc order, and thus not considered a legal precedent, it was still a promising avenue for holding corporations liable for international human rights violations).

¹²⁵ *Id.* *Unocal III*, 395 F.3d, at 950.

¹²⁶ *Id.* at 951 (quoting *Prosecutor v. Furundzija*, Case No. IT-95- 17/1-T (Int’l Crim. Trib. For Former Yugoslavia Trial Chamber Dec. 10, 1998), reprinted in 38 I.L.M. 317 (1999)).

¹²⁷ 2002 Report, at 16, ¶ 79.

¹²⁸ *Id.* at 16, ¶ 80.

over coltan-rich areas through forcibly displacing hundreds of locals by means of physical violence, systematic looting of the Congolese population property or even mass-scale murders.¹³⁰ Such a climate of terror arguably benefited the company's economical interests and in turn the company's success provided the Rwandan forces with the funds indispensable to support their war effort. It would also be difficult to deny that EWRI had knowledge that its business activities would assist the Rwandan military in the above-mentioned serious violations.

Plaintiffs wishing to sue EWRI under the ATCA would certainly have to support the U.N. Panel report findings with further reliable evidence. Nevertheless, one could argue that there are sufficient elements indicating that an hypothetical court ruling may go either way.

Other non-legal alternative: Social pressure

NGOs and other civil society organizations have greatly contributed to raise public awareness of the close relationship between the armed conflicts raging in the DRC and the exploitation of the country's mineral resources.¹³¹ While a number of initiatives focused exclusively on human rights violations, other linked the mining activities in eastern RDC with the current serious environmental crisis affecting the area.¹³² One the

¹²⁹ *Id.*

¹³⁰ See, e.g., *REBUBLIQUE DEMOCRATIQUE DU CONGO "Nos frères qui les aident à nous tuer..."* *Exploitation économique et atteintes aux droits humains dans l'est du pays*, Amnesty International, AFR 62/010/2003, at 37-38, April 2003, available at www.amnesty.org/fr/library/asset/AFR62/010/2003/es/2NpSstljnvsJ; see also S.C. Res. 1804, U.N. Doc. S/RES/1804 (March 18, 2008). This Resolution points out that the human rights and humanitarian violations committed, among others, by the Rwandan army in eastern DR Congo are still a reality 5 years after the end of the 1998-2003 armed conflict. It also denounces that women are subject to especially violent sexual assaults.

¹³¹ The efforts to denounce the looting of Congolese mineral resources is not limited to the diamond and coltan industry. See, e.g., *The Curse of Gold*, Human Rights Watch report, 2005, available at <http://hrw.org/reports/2005/drc0505/>.

¹³² See *Gorilla, Coltan and cellphones*, <http://www.cellular-news.com/coltan/> (last retrieved on April 25,

most relevant initiative in connection with the coltan industry, is the campaign launched in 2001 by 18 Belgian NGOs under the slogan “No blood on my mobile! Stop the plundering of the Congo!”¹³³ The objective of this movement was to demand the adoption of measures to ensure that the trade of DRC minerals benefited the Congolese people instead of fuelling armed conflicts.¹³⁴

A number of companies, concerned about the negative impact that campaigns such as the above-mentioned initiative may have on their reputation, have taken immediate actions to distance themselves from accusations of being indirectly linked to DRC’s armed conflicts.¹³⁵ Even though, pressure exercised on international corporations through “shaming and blaming” seems to have given promising short-term results, its effectiveness on the long run is open to debate. Human rights violations seem to be considered a “priority” only while the violations are brought to the public attention through extensive media coverage. This suggests that social pressure can only reach its initial goals if supported by effective means to hold corporations accountable for their misconducts or their indirect participation in third parties exactions.

V. Conclusion

As exposed above, a variety of instruments have attempted to address the issue of human rights violations in the DRC coltan industry. Nevertheless, the main feature characterizing these initiatives is their alarming lacking of effectiveness. Although the

2008); see also, Ian Redmond, *Coltan Boom, Gorilla Bust. The impact of coltan mining on gorillas and other wildlife in Eastern DR Congo*, Born Free Foundation & Dian Fossey Gorilla Fund Europe, May 2001, <http://www.bornfree.org.uk/uploads/media/coltan.pdf>.

¹³³ *Supporting the War Economy in the DRC: European companies and the coltan trade*, IPIS report, January 2002, at 7, available at <http://www.grandslacs.net/doc/2343.pdf>.

¹³⁴ *Id.*

¹³⁵ See, e.g., *Motorola Position on Illegally Mined Coltan*, available at <http://www.motorola.com/content.jsp?globalObjectId=8490>.

ICJ decision in the case *Democratic Republic of Congo v. Uganda* seems to indicate an encouraging tendency towards holding neighboring States accountable for their crimes, the same cannot be said with regard to international corporations' liability. There is an urgent need to establish strong enforcement mechanisms, which may not simply be limited to "short-term" moral sanctions. In this respect, the evolution of the "aiding and abetting" doctrine will play a decisive role in determining whether the ATS is indeed a suitable way for victims to seek reparations for the violations they suffered. Should the U.S. federal courts decide to follow a broad interpretation of the concept of "aiding and abetting", then there is little doubt that the ATS constitutes probably the best alternative currently available to the individuals affected by the violations described in this paper.