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The Dual Networked Pyramid Model: The Pyramid Inside the Pyramid

That which traineth the world is Justice, for it is upheld by two pillars, reward and punishment. These two pillars are the sources of life to the world.

Bahá'u'lláh, nineteenth-century spiritual teacher¹

Chapter Overview

The second research question being considered by this book is the extent to which the networked pyramid model offers descriptive or normative insights into the conflict diamonds governance system. The previous chapter discussed the state of the art in terms of the networked pyramid regulatory model. The networked pyramid combines the insights of two models, the network model and the regulatory pyramid or pyramid of sanctions model. Network models emphasise the ability of regulators to make significant progress in standard-setting, monitoring, and behaviour modification by networking broadly with diverse groups including non-governmental

¹ Bahá'u'lláh, *Tablets of Bahá'u'lláh Revealed After the Kitáb-i-Aqdas* (Bahá'í Publishing Trust 1988) 128–129.

organisations (NGOs), corporations and governments and using the soft power of dialogue and persuasion. Beyond this, the regulatory pyramid offers insights into how regulators might respond to unresponsive or antagonistic regulated parties. The pyramid suggests a contingently punitive or forgiving response, in which more coercive interventions are deployed in cases where the soft power of dialogue and persuasion has not provided results.

The insights and approaches of the networked pyramid model are intuitively applicable to the conflict diamonds regulatory system. Nevertheless, two particular issues emerge that arguably suggest a number of modifications to make the networked pyramid a more applicable and powerful model for complex international systems, such as the conflict diamonds governance system. The first issue is that the networked pyramid model, particularly the regulatory pyramid sub-model, was developed primarily in the context of regulation in a national rather than international setting. Particular challenges arise when the networked pyramid is adapted to an international context. For example, are national governments regulating parties, or regulated parties, or both? Can a pyramidal apex be identified as readily in an international context as it can be in a national context?

In fact, these issues arise in any international system involving nation states regulating and being regulated, such as the intellectual property system discussed in the previous chapter. While the intellectual property application effectively demonstrates how nodal coalitions of US-based businesses and US Government instrumentalities deploy a regulatory pyramid approach to foster and enforce the uptake of intellectual property norms by other nation states, it does not simultaneously seek to model the manner in which those intellectual property norms are implemented, monitored, and enforced within those national jurisdictions. Such shortcomings in theoretical modelling are particularly acute in the conflict diamonds governance system because the Kimberley Process explicitly relies on the regulatory role of national governments, while they themselves are regulated by the possible sanction of expulsion from the process, as well as other possible sanctions in the event of UN intervention.

The second issue arises in the context of building the strengths-based pyramid or pyramid of rewards ideas into the networked pyramid model. Typically, this pyramid is modelled separately to

the regulatory pyramid or pyramid of sanctions model. A question arises as to whether it is beneficial to model the operation of both rewards and sanctions, or carrots and sticks, in a single diagrammatic model and in so doing whether dynamic interactions or ratchets might become more apparent.

The Pyramid Inside the Pyramid

The networked pyramid model, particularly the regulatory pyramid sub-model, has its origins in modelling regulation in a national context. As such, one of the key regulators is the national government, which will typically apply much of the regulatory apparatus, as well as the sanctions apex of the pyramid: criminal sanctions for individuals or the de-registration of a corporation. The addition of a networked dimension to this analysis, highlighting self-regulation by corporations and naming and shaming by NGOs, can still be conceptualised at this domestic or national level. The immediate challenge of moving to the international level lies in distinguishing the regulating parties from the regulated parties, a question that looms particularly large for national governments. Looking at the bigger picture, it would appear that national governments are regulated parties for the purposes of the conflict diamonds governance system. For example, the Kimberley Process (KP) acts as a regulator, attempting to make sure that national government participants are complying with their obligations, ensuring that only conflict-free diamonds are certified for export, and that only certified diamonds are imported. Regulatory techniques, such as informal naming and shaming through the peer-review system, are deployed with the intention of regulating national governments, as is the highest level intervention of expulsion from the KP for serious non-compliance.

It might also be argued, however, that national governments are just as much regulators in the KP system as they are the subject of regulation. Governments typically rely on the passage of domestic legislation to give them the legal authority to carry out their international obligations under the KP, and are therefore essential in the process of implementing KP requirements. It is the customs apparatus of national governments that must perform the leg-work of actually examining potential rough diamonds exports and issuing KP certificates for

those found to be conflict-free. It is national governments that must implement internal controls, such as licensing systems, to ensure that rough diamonds originate from legitimate sources, rather than areas and persons connected with the commission of international human rights crimes. Enforcement options such as fines or criminal prosecutions must be administered at the national level.

In the awareness that national governments act as both regulators and regulated parties in the conflict diamonds governance system, it must be considered whether this double action can be factored into a modified version of the networked pyramid regulatory model. The suggested modification to the networked pyramid model is to embrace the concept of the pyramid inside the pyramid, thereby creating the dual networked pyramid model (DNPM). With reference to Figure 7.1, it can be noted that the bottom layer of the larger pyramid is composed of small pyramids. These small pyramids denote national regulatory systems, in particular national governments. These national governments are seen as being a self-contained networked pyramid unto themselves, as is envisaged in the concept that national governments are regulators in relation to their own jurisdictions. As discussed previously, national governments are charged with implementing their international KP obligations by ensuring that only rough diamonds that have been appropriately certified as being conflict-free are exported.

Figure 7.1 also demonstrates that national governments are the subject of regulation within the context of a larger, international networked pyramid. In this context, the Kimberley Process acts to regulate national governments, applying the regulatory techniques of dialogue, persuasion, informal naming and shaming, and, potentially, expulsion, so as to promote optimal compliance by national governments. The international pyramid also allows for a further range of regulatory interventions in relation to non-compliant national governments. The United Nations Security Council may intervene to impose diamond-trading sanctions on the non-compliant national government. Beyond that, individual members of governments implicated in conflict diamonds practices may be the subject of international criminal prosecution by the International Criminal Court.

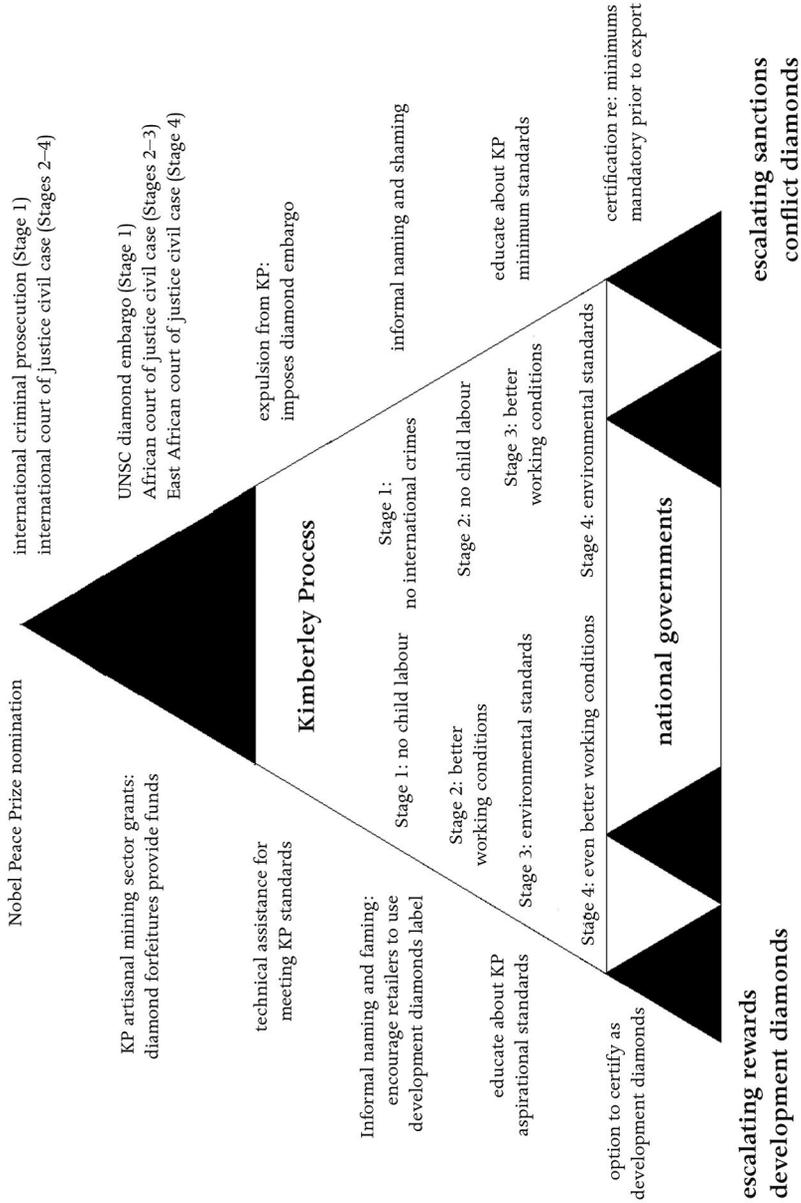


Figure 7.1: The Dual Networked Pyramid Model as Applied to the Conflict Diamonds Governance System

Source: Author's research.

The modified DNPM is therefore a clearly recognisable version of the networked pyramid model as discussed in the earlier theoretical literature. However, it is arguably better able to encapsulate a more sophisticated array of regulatory action than previous efforts to model international systems using the networked pyramid model. In particular, it is able to represent simultaneous regulatory action at the international and national levels using the concept of the pyramid within the pyramid. Such an approach to modelling, beyond application to the conflict diamonds governance system, is of utility to any international system, such as a treaty-based system, where international bodies focus on regulating the implementation of obligations at the international level into the domestic sphere.

Interactive Rewards and Sanctions

A further modification incorporated into the DNPM is the incorporation into the model of the features of the strengths-based pyramid that is also known as the pyramid of rewards. There are, therefore, multiple meanings to the dual nature of the model. It is a duality in the sense that it is a pyramid inside a pyramid, as discussed above, and also in the sense that it combines both rewards and sanctions. The rationale behind incorporating insights from the pyramid of rewards into the model is largely linked to the concept of extending the existing mandate of the KP. While insights from the pyramid of sanctions model may well provide a way forward in relation to the current KP crisis of managing serious non-compliance from Zimbabwe and Angola, it is arguable that the KP, and the system more broadly, might find a new lease of life by extending its mandate to incorporate human rights issues that are of a less serious nature than international crimes. Such issues include the prevalence of child labour in the artisanal mining fields, which deprives the children of the opportunity to undertake a proper education, even where children are working with their parents. As referred to in Chapter 2, child labour is a major problem in cutting and polishing centres in India, with thousands of children missing out on a proper education due to their induction into this industry, which provides only minimal remuneration. Other issues, particularly associated with the artisanal

rough diamond mining industry, are poor health and safety conditions, poor remuneration for work performed (less than US\$1 a day), and environmental degradation.

NGOs working on conflict diamonds issues have gradually turned their attention to the broader range of problems in the diamond industry. The term 'development diamonds' was coined to denote diamonds that are not merely free from the taint of conflict and international crime, but promote development because they have tackled a broader human rights agenda, such as child labour, health and safety, and remuneration for work performed. The NGO, Diamond Development Initiative International, formed itself around this core concept, and has done important work assessing and comparing the artisanal industries in several countries, and initiating projects to improve conditions on the ground. This book suggests that a further step would be beneficial: incorporating this important work into the core mandate of the Kimberley Process. There would be many significant benefits that would flow as a result of such a move. First of all, the engagement of the organised elements of the KP, namely national governments, corporations, and NGOs, would bring much-needed resources and international attention to this important work. It would also be of benefit to the existing original mandate of the KP, as healthy industrial practices are less likely to degenerate into places that support the commission of international crimes. For example, if an artisanal diamond miner is receiving a good reward for his or her work, that person is less likely to willingly engage with the black market, including conflict diamonds traders, in the hope of better remuneration. On the flip side, and noting that government military and police have been responsible for murder, rape, and beatings in Angola and Zimbabwe, a healthy focus on improving and legitimating the work of artisanal miners would work as something of an antidote to prevailing attitudes that artisanal miners occupy a position very close to the bottom rung on the social spectrum.

A final reason for pursuing the development diamonds agenda through the instrumentality of the Kimberley Process is that the concept of development diamonds lends itself naturally to incentive-based regulation, taking its cue from Braithwaite's strengths-based pyramid. The KP is a certification-based system, which opens the doors to a new type of certification, beyond a simple accreditation that a batch of diamonds is conflict-free. While conflict-free certification

is mandatory prior to export, under the terms of the KP certification as a development diamond would not be required prior to export, but would be an option open to the rough diamond exporter. If the rough diamond shipment meets the required criterion to be a development diamond, which might initially be the requirement that it has been produced without the use of child labour, then the exporter would have the option to have it certified as a development diamond at the point of export. The incentive for the exporter to make use of this option is that such certification opens to that person the growing fair trade or ethically produced consumer market in the developed world. As with other fair trade products, there is a market that will pay more for a product with that label, as opposed to a standard product. Ultimately, the intention of the certification is to enable the original artisanal producer to achieve a greater reward from production of a development diamond than a diamond that does not meet development diamond criteria. Thus an incentive is created that encourages the production of diamonds that are in conformity with the relevant human rights standard — for example, the absence of child labour in relation to the production.

One of the innovations of the DNPM is that it brings incentives and sanctions together into a single diagrammatic model, thereby creating a duality independent from the idea of the pyramid inside the pyramid. Although the model is based upon Braithwaite's strengths-based pyramid, the original theoretical discussion of the model took the shape of two pyramids next to each other (see Figure 6.6), thereby contrasting the strengths-based or rewards-based approach with the regulatory pyramid or pyramid of sanctions. Although a compare and contrast approach has its own virtue, combining carrots and sticks into a single model creates a greater capacity to observe the interactions between incentives and sanctions. In particular, there is a facility to clearly model the operation of a regulatory ratchet, whereby aspirational standards may, over time, be recognised as mandatory standards. For example, in the event that the KP embraced a larger mandate, the first stage of operation might involve the elimination of child labour as an aspirational standard linked to development diamonds accreditation, even as freedom from connection to international human rights crimes is required before a shipment may be accredited as being conflict-free and exported. After enough time has passed and considerable progress has been made towards the

elimination of child labour, the freedom from child labour standard might be moved from the aspirational to the mandatory side of the ledger. This would mean that export of rough diamonds would not be permissible if they were associated with child labour practices, much as export is not permissible under the current mandate where rough diamonds are associated with international human rights crimes.

There is, moreover, the capacity to ratchet up a further range of human rights standards. These standards would make their first appearance as aspirational goals that would qualify associated rough diamond exports with the label development diamonds. After significant progress has been made towards these goals through the incentive-based framework, and noting the learning process undertaken by industry and regulators in this context, the particular standard might be ratcheted into the mandatory column. Mandatory standards, of course, require compliance as a prerequisite to export. In this manner, a dynamic of progress would be created within the artisanal diamond industry.

As well as creating an interactive dynamic and a ratchetting effect, incorporating insights from the pyramid of rewards into the DNPM allows for easy access to insights from this regulatory model in the context of the conflict diamonds governance system. As provided for in the original strengths-based pyramid model, discussed in Chapter 6, the model provides for increasingly substantial rewards in return for outstanding behaviour that surpasses minimum requirements. The various incentives modelled often mirror available sanctioning responses from the regulatory pyramid. For example, while the regulatory pyramid suggests naming and shaming, the pyramid of rewards provides for naming and faming. This incentive-based process already occurs, to some extent, within the KP as it currently operates. This is because new standards of excellence in implementing KP obligations, including internal controls, are shared with others as a by-product of the peer-review mechanism. The dual model, however, pairs incentives with a self-conscious programme of aspirational standards, thereby allowing for parties to set goals that exceed simple compliance with the original KP mandate. For example, an initiative by an NGO to educate children from the artisanal mining fields, rather than allowing them to be involved in child labour, might be famed at the KP meeting.

A further ratchet up the rewards side of the dual networked pyramid is the possibility of providing grants to NGOs, national governments, or corporations to assist them with projects designed to address the aspirational goals of the suggested new KP mandate. In keeping with the concept of the pyramid within the pyramid is the idea that this segment of the model might itself contain a microcosm of the pyramid of rewards. That is, there might be different levels of grants that could be applied to efforts to improve conditions in the artisanal and cutting/polishing sectors of the diamond industry. One dynamic that might arguably emerge is that an NGO or organisation is provided initially with a grant for a limited duration, or a specific project. In the event that these limited goals are met, or perhaps expectations exceeded, the KP would be likely to provide a larger grant for a longer period of time, creating an upwards dynamic of funding, and progress towards the human rights goals.

Finally, at the peak of the incentives side of the pyramid is a Nobel Peace Prize nomination, chosen for its rough correspondence to international criminal prosecutions, which represents the apex of the sanctions side of the dual model. While any form of international recognition could usefully be employed on the incentives side of the pyramid, a Nobel Peace Prize nomination is arguably the pinnacle of achievement in relation to contributions to world peace, noting that organisations such as the KP arguably would be able to exert influence towards a nomination, with the actual conferral limited, of course, to the Nobel Committee itself. While such a nomination might appear, at first, to be overly ambitious in relation to the fledgling KP, it might be noted that two NGOs working on the issue of conflict diamonds, Partnership Africa Canada and Global Witness, already received such a nomination in 2003.²

Concluding Remarks

After considering the question of whether the conflict diamonds governance system has achieved its objectives, this book asks about the extent to which the networked pyramid model might offer descriptive or normative insights into the effectiveness of the conflict diamonds

2 Smillie, I, *Blood on the Stone: Greed, Corruption and War in the Global Diamond Trade* (Anthem Press, 2010) 8–9.

system. The networked pyramid model combines the benefits of the dialogic/persuasive networks theory, for responsive parties, with the ability of the regulatory pyramid to escalate punitive interventions in cases of unresponsiveness or outright recalcitrance. The networked pyramid model, intuitively, suggests an ability to describe the conflict diamonds governance system and prescribe improvements to that system. Before applying the model, however, this chapter has suggested two ways in which it might be modified such that it is optimally placed to describe and prescribe in relation to the conflict diamonds governance system.

The first modification relates to the fact that the heritage of the networked pyramid model is largely linked to modelling regulation at the national rather than international level. Recognising that the microcosm of national regulation is semi-independent of the international macrocosm, a modification to the networked pyramid model is suggested, which incorporates the idea of a pyramid within a pyramid. The modified model, which could be labelled the dual networked pyramid model, suggests that the base of the international networked pyramid is comprised of a number of smaller national networked pyramids. In this way, the higher institutions of the international system, in particular the Kimberley Process, act as regulators of the national governments, which are the regulated parties. Under the Kimberley Process, the peer-review mechanism operates by way of informal naming and shaming to influence national governments in the direction of compliance with their KP obligations. However, in implementing their KP obligations within their own national jurisdiction, national governments also act as regulators, involving themselves in standard-setting, monitoring, and behaviour modification in relation to the mining of rough diamonds, and their export.

The second suggested modification creates a further duality in the model, through the combination of insights from the pyramid of rewards, as well as the pyramid of sanctions. Rather than presenting these models as operating in parallel, the DNPM argues that there are synergies to be realised through laying out the operation of both rewards and sanctions in a single model. This interactivity is particularly valuable should the KP decide to broaden its mandate to include a more ambitious human rights agenda. The combination of rewards and sanctions has the potential to create a regulatory ratchet

towards higher and more ambitious human rights standards within the industry, particularly in relation to the artisanal mining, and cutting and polishing sectors. The KP as it currently operates sets out minimum standards that must be met before a shipment of rough diamonds can be exported. Sanctions attach to those who export rough diamonds without proper authorisation. By contrast with this approach, this book suggests that the concept of development diamonds can be utilised as a form of voluntary certification that is available to diamond shipments that have been mined and cut/polished in accordance with aspirational human rights standards. While certification as a development diamond is not a prerequisite to export, there is a commercial incentive to do this, as the end product could be labelled as a development diamond at the point of retail, thereby attracting the fair trade or ethical consumer market, who would pay slightly more for a product known to be promoting higher standards of human rights in the industry. It is suggested that a regulatory ratchet might be developed, whereby today's aspirational standard (compliance not required for export) might become tomorrow's minimum standard (compliance required prior to export). For example, the current KP mandate requires that diamonds be free from association with civil war and serious international crime before they can be exported. If freedom from child labour was added as an aspirational goal this year, in several years it might be included as one of the requirements prior to legitimate export under the KP. The ratchet could, furthermore, be used to raise the ceiling in relation to other standards, such as health and safety, remuneration for artisanal diamonds, and environmental standards.

Application of the pyramid of rewards, which escalates in proportion to the achievement above expectations of the parties, might move from informal recognition through naming and faming to grants and awards, with the apex reward a potential Nobel Peace Prize nomination. Financial grants might stimulate progress towards incorporating aspirational standards, and the potential for a high-level prize or recognition serves to raise the height of the aims of parties.

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