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## Applying the Dual Networked Pyramid Model: Naming, Shaming, and Faming

The Kimberley Process is failing, and it will fail outright if it does not come to grips with its dysfunctional decision-making and its unwillingness to deal quickly and decisively with non compliance.

Ian Smillie, conflict diamonds expert<sup>1</sup>

### Chapter Overview

The aim of this chapter is to return to the original research questions. The first of these is an empirical question: to what extent has the conflict diamonds governance system achieved its objectives? In considering this question, it is important to look not only at the degree to which the system has been successful, but the reasons for that level of success, and anything that may be holding the system back from achieving more of its potential. The second research question seeks to provide a theoretical overlay to the conflict diamonds system: to what extent does the networked pyramid model provide descriptive and normative insights into the functioning of the conflict diamonds governance system? It is necessary to provide an appropriate response

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<sup>1</sup> Smillie, I, *Blood on the Stone: Greed, Corruption and War in the Global Diamond Trade* (Anthem Press, 2010) 207.

to the first question so as to be fully equipped to respond to the second question. When the reasons for the relative success or failure of the conflict diamonds system to date are identified, they may be linked to features of the networked pyramid model. In doing so, the networked pyramid theory may provide insight into why the system has been successful, as well as suggesting ways in which it might be improved.

## Has the Conflict Diamonds Governance System Achieved its Objectives?

### Has the Kimberley Process Achieved its Objectives?

As the centrepiece of the conflict diamonds governance system, the Kimberley Process (KP) has faced a difficult task in seeking to break the link between human rights violations and the rough diamond trade. The central criterion of evaluation is whether the Kimberley Process has prevented the rough diamond trade from benefiting human rights violators. Given the historical lack of transparency that has characterised the diamond industry, it might be commented that there was ample room for improvement. In contrast with this starting position, the Kimberley Process now publishes annual statistical data, setting out the quantity and value of the legitimate trade in rough diamonds, and has come to conclude that conflict diamonds represent less than 1 per cent of the world rough diamond trade. Such important gains are an impressive record for an organisation that is less than a decade old. However, recent challenges have emerged that threaten the ability of the Kimberley Process to achieve its core mandate.

Perhaps the greatest irony of the current challenges to the Kimberley Process is that they do not arise from industry, but rather from government. When the conflict diamonds issue first arose in the 1990s, big business, in particular De Beers, was linked to the illegal trade. However, in subsequent years, De Beers has become a staunch backer of the Kimberley Process. Rather than big business, it has been governmental participants that have thumbed their noses recently at the Kimberley Process. In the cases of Venezuela, Zimbabwe, and Angola, the ongoing integrity and success of the Kimberley Process faces strong challenges. Although human rights violations have not

been linked to Venezuelan rough diamonds, its lack of cooperation with Kimberley Process instrumentalities has resulted in a significant quantity of uncertified diamonds entering the world diamond market.<sup>2</sup>

By contrast with its early success with serious non-compliance, the Kimberley Process has been surprisingly spineless in response to these challenges. The Kimberley Process accepted Venezuela's voluntary withdrawal from the process, but has effectively turned a blind eye to the fact that it has recommenced diamond trading outside the Kimberley system. There are several negative implications from Venezuela's action and the Kimberley Process's inaction. One is that many rough diamonds are entering world markets with uncertified origin. Although there has been no concrete evidence that Venezuelan diamonds are linked to human rights abuse, Venezuela's determination not to be involved in the system means that this cannot be clearly verified. It is possible that, while there are no linkages to human rights violations per se, there may be linkages to corruption and bribery, as was found to be the case in neighbouring Brazil. Notably, Brazil cooperated in a review visit by the Kimberley Process and took action to deal with the problems that were unearthed in relation to its diamonds industry. Venezuela also sets a bad example by demonstrating to other nations that it is possible to confront the Kimberley Process and assert your own dominance over it. Finally, the Venezuelan case leaves open the possibility of conflict diamonds entering world markets by being passed off as Venezuelan, and using Venezuela as a conduit place.

A more appropriate response to Venezuela's action would have been to recognise that this behaviour constituted serious non-compliance and for the Kimberley Process to follow-up with expulsion from the process, meaning that other Kimberley members were not permitted to trade with Venezuela while the problem persisted.

The cases of Zimbabwe and Angola are of more serious concern than Venezuela. Turning to the Zimbabwe situation, diamonds deriving from the Marange fields are connected with human rights violations, and are therefore understood to be conflict diamonds.<sup>3</sup> The approach

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2 The main exception to this analysis is the linkage of De Beers to alleged illegal trading during the early period of the Congolese wars, circa 1998–2002.

3 It should be noted that the definition of a 'conflict diamond' or 'blood diamond' was itself part of the dispute in the Zimbabwe Marange diamonds dispute.

of the Kimberley Process to the emergence of Zimbabwean conflict diamonds has been less than perfect. Rather than ensuring that Zimbabwe was not rewarded for the violence associated with the diamond discoveries, there was a weak response from the Kimberley Process focused on a monitor arrangement near the Marange mine. Beyond this, shipments of rough diamonds have been authorised for sale by the KP, often in controversial circumstances, such as when the civil society coalition walked out from the Kinshasa KP meeting on 23 June 2011. A stronger approach would have been to expel Zimbabwe from the Kimberley Process pending its willingness to ensure that appropriate measures were taken to ensure that conflict diamonds were not able to enter world markets.

In the case of Angola, as detailed in Chapter 2, hundreds of thousands of artisanal miners have been expelled from the Angola to the Democratic Republic of Congo (DRC) in circumstances involving widespread rape, murder, and other human rights violations. Perhaps as a result of the prevailing standoff in the KP regarding Zimbabwean diamonds, the situation in Angola has received very little attention, even from non-governmental organisations (NGOs). However, it would appear that the prevailing situation in Angola might, on its face, represent the commission of crimes against humanity (particularly widespread and systematic rape), meaning that these Angolan alluvial rough diamonds are in fact blood diamonds. Perhaps most ironic of all is the representation of Angola on the KP Artisanal Mining Working Group.

The cases of Zimbabwe, Angola, and Venezuela reveal some important problems in the current manner in which the Kimberley Process manages situations of serious non-compliance. Neither the Zimbabwean situation nor the Venezuelan situation have been clearly identified as cases of serious non-compliance, which is problematic given the threat to the integrity of the system that each represents. There has been no attempt to more clearly define the parameters of what constitutes serious non-compliance. There is a need for further standard-setting in relation to the definition. Unfortunately, the Angolan situation has not been given even this much attention, and remains largely ignored. Perhaps most important of all is the need for a standardised procedure to deal with situations of serious non-compliance. In the event that such situations persist, and the relevant national government is resistant to attempts to bring its behaviour into line with Kimberley standards, it should be accepted that there

will be a ratchet up to expulsion from the system. Naturally, there needs to be an ability to reinstate governments that have restored their compliance with the system.

A further problem facing the Kimberley Process is the failure of the consensus method of decision making. As discussed in Chapter 3, this method of decision making is not appropriate for dealing decisively with situations of serious non-compliance. A system of voting requiring some type of majority is required for decisions in such cases. The use of a third-party assessment system would assist the Monitoring Committee in making clear and unambiguous recommendations regarding situations of serious non-compliance.

The Kimberley Process seeks to establish a chain of warranties from the point of production to the point of sale in relation to rough diamonds. Although the primary mechanism established under the Kimberley Process is the export/import certificate, it was always understood that the certificate would be meaningless in the absence of appropriate government controls to ensure the veracity of the certificate. Perhaps most significant in this regard is the ability of producing nations, which are often developing nations with low levels of bureaucratic capacity, to certify that rough diamonds at the point of export are free from association with human rights abuse. An important step in this direction was the decision by the Kimberley Process to make the internal controls of producer countries subject to consideration by review teams. However, further measures need to be enacted. In particular, more detailed guidelines should be developed to identify the main criteria for assessing whether a producer country has adequate internal controls in relation to their rough diamond industry.

Further tightening of the Kimberley Process chain of warranties needs to occur once the rough diamonds have entered countries involved in cutting and polishing, such as India and Israel. This is particularly important given the pervasive use of child labour that characterises the cutting and polishing industry in India, a problem that ought to be addressed by the KP in the context of a new, expanded development diamonds mandate. Ideally, a certificate system should be associated with the production and export of all diamond jewellery, so as to ensure that the originating rough diamonds are conflict-free. Unfortunately, no such protocols have been created. Further down the chain, at the

retail end, there is a further lack of implementation. A 2004 study of the practices of jewellery retailers in the US, Canada, and the UK concluded that there was intermittent compliance at best with retail codes of practice. It would appear that customers purchasing diamond jewellery are not given a firm warranty regarding the provenance of the diamonds they are purchasing.

## Have the UN Security Council and Tribunals Helped?

As was outlined in chapters 3 and 5, the United Nations Security Council (UNSC) was the first organisation in the international system to gather information about and take action on the issue of conflict diamonds. It actively facilitated the establishment of the Kimberley Process, and continues to provide political support to it through its annual resolutions. Looking further afield, the UNSC was a major player in the establishment of the Special Court for Sierra Leone, which has initiated the first international criminal prosecutions relating to conflict diamonds. The UNSC also has institutional ties to the permanent International Criminal Court (ICC), possessing as it does the ability to make formal referrals to that body. At least one individual is connected to the work of institutions at all three levels. In the late 1990s, Ian Smillie was chosen to serve on the UNSC expert panel, which highlighted the ongoing conflict diamonds problem in Sierra Leone. After this, through his role with Partnership Africa Canada, Ian Smillie was an important influence in the establishment of the Kimberley Process. And it was Ian Smillie who was called on as an expert witness for the prosecution in the Charles Taylor case before the Special Court for Sierra Leone.

Noting the interconnectedness of the main institutions in what I have termed the conflict diamonds governance system, it seems natural to consider them as part of a network that operates to combat the problem of conflict diamonds. The interventions of the UNSC and the international tribunals have arguably contributed to the level of success achieved by the Kimberley Process in breaking the link between the rough diamond trade and the commission of human rights violations.

The first role played by the UNSC is its monitoring role through its expert committees. These committees, which have investigated situations in the African countries that have suffered from conflict

and human rights violations as a result of conflict diamonds, have played an important information-gathering role not only for the UNSC but also for other actors in the regulatory community, including the Kimberley Process, the international tribunals, industry, NGOs, and the media. It might appear redundant in the context of the monitoring now undertaken by the Kimberley Process itself, however, as noted in one critical review, the UNSC reports have sometimes picked up on problems in the implementation of conflict diamonds trading bans that were overlooked by the Kimberley Process monitors in reviews of the same country.<sup>4</sup>

The imposition of economic sanctions, including diamond trading sanctions, on countries in breach of their obligations relating to conflict diamonds represents an important coercive ratchet that is available to the conflict diamonds governance system. Such interventions were particularly significant in the period before the establishment of the Kimberley Process, but retain their importance in a multi-regulatory environment. In the event that a member country has been excluded from the Kimberley Process, and therefore excluded from the rough diamond trade through this mechanism, UNSC sanctions represent a more coercive escalation. This is because resolutions imposing sanctions issued with reference to the Chapter VII powers of the UNSC are legally binding under international law. The United Nations resolutions typically address a range of related issues, such as import bans on armaments, and potential bans on diamond exports. The political authority of the UNSC, combined with the possibility of further escalation, suggests that such resolutions have greater impact than exclusions under the Kimberley Process. The UNSC has, in fact, continued its practice of imposing or maintaining diamond trading and other sanctions on African producer countries in particular circumstances, despite the contemplated or actual action by the Kimberley Process. Examples include sanctions on the DRC, Côte d'Ivoire, Central African Republic and Liberia. It is suggested that the ongoing use of this regulatory ratchet has been a continuing factor in the success of the Kimberley Process to date.

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4 The smuggling of Côte d'Ivoire blood diamonds through Ghana was not picked up by the review visit, but was noted by the UNSC Expert Committee. Smillie, I, 'Paddles for Kimberley: An Agenda for Reform' (Report, Partnership Africa Canada, June 2010) 10.

As discussed previously, the UNSC has important institutional connections with the international criminal tribunal system. The criminal tribunal system has already played an important role in relation to the conflict diamonds in relation to at least two countries: the DRC and Sierra Leone. Following the UNSC expert report about the conflict diamonds problem in the DRC, the prosecutor of the ICC issued public notices highlighting the potential liability of those parties involved in the conflict diamonds trade including, potentially, businesses at the far end of the trade. Prosecutions initiated by the ICC in relation to the DRC have further highlighted the role of conflict diamonds in exacerbating the conflict there, and its connection to grave human rights abuses, including the use of child soldiers and the killing of civilians. More recently, the cases before the Sierra Leone Special Court have provided even greater attention to the problem of conflict diamonds. Conflict diamonds have been used to provide context to finalised cases, prove liability to subsequent human rights violations, and are connected — through mining processes — directly to human rights violations. There was significant media attention to the proceedings of the Special Court, particularly the high-profile prosecution of Charles Taylor, which even involved the testimony of celebrity supermodel Naomi Campbell. The conviction of members of the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) leadership on charges related to conflict diamonds, and the ongoing prosecution of Charles Taylor, have sent a clear message that, in the most serious cases, persons involved in orchestrating the conflict diamonds trade will be subject to criminal prosecution. There is also a moral dimension to prosecution, which serves to reinforce social norms against a trade such as the conflict diamonds trade. The trials before the ICC and the Sierra Leone Special Court have focused international attention on the issue of conflict diamonds and thereby reinforced the important work of the Kimberley Process in seeking to regulate the trade in rough diamonds. Even political leaders of national governments have been made to realise that involvement in the conflict diamonds trade, and commission of human rights abuses, may result in international criminal prosecutions. This has increased general willingness of member nations to cooperate fully with the other international agencies of the conflict diamonds governance system, such as the UNSC and the Kimberley Process.

In turn, such a contribution must be recognised as one of the factors resulting in the reduction of the conflict diamonds trade to less than 1 per cent of the international rough diamonds market.

## Applying the Dual Networked Pyramid Model to the Conflict Diamonds Governance System

### Network Features of the Conflict Diamonds Governance System

#### The Network as a Descriptive Tool

The network models, regulatory webs, and government networks provide important insights into the operation of the conflict diamonds legal system, particularly the functioning of the Kimberley Process. The value of networked regulation was seemingly built into the Kimberley Process, through the use of the tripartite government, business, and NGO structure. Each category of participant is, in a sense, a network. The fact that the majority of governments involved in the rough diamond trade are represented shows that Kimberley is, at least in part, a government network. The Kimberley Process was also the catalyst for the large-scale diamond industry to organise itself through the formation of the World Diamond Council (WDC). With the involvement of the WDC at the Kimberley Process, as well as member businesses such as Rio Tinto and De Beers, the Kimberley Process represented a network of rough diamond trading businesses. Given that each NGO is itself a network of like-minded persons, the bringing together of a number of NGOs of global reach through the Kimberley Process is another network feature of the organisation.

The Kimberley Process can also be understood as a node that acts as a command centre by bringing together representatives of the government, NGO, and business networks. The KP processes the information gathered by these expansive networks and makes concrete regulatory decisions in response.

There are a number of specific features mentioned in the network models that correlate closely to the operation of the Kimberley Process. The concept of webs of information is very apt in regard to the Kimberley Process, which brings together expansive networks of information through government, business, and NGO networks. Such information is vital for appropriate regulatory action to occur. For example, in the event there is an outbreak of human rights abuses fuelled by conflict diamonds, it is often the NGO network, which has been coined 'the conscience of the Kimberley Process', which brings it to the attention of the Kimberley Process. The manner in which such information is brought back to the Kimberley Process could also be described in terms of webs of accountability. Importantly, the Kimberley Process incorporates a type of separation of powers, where each power or interest is able to bring accountability to the others. In the event that big business gets caught up in the conflict trade, national governments, which are institutionally removed, may bring them to account, particularly national governments from different countries with no particular stake in that business.<sup>5</sup> Big business has an interest in holding to account parts of the industry, including the artisanal industry, which might bring the diamond trade as a whole into disrepute. Besides highlighting contraventions, big business has an incentive in assisting small business or parts of the trade that have been traditionally troubled in building capacity and becoming Kimberley compliant. Finally, and perhaps most significantly, is the role that NGOs play in promoting accountability. Entering into the Kimberley Process without an economic stake in the rough diamond industry, they are able to present an objective third-party perspective into the operation of the Kimberley Process. In particular, they are in a position to hold to account not only business interests but also national government interests where these diverge from the larger purpose of the Kimberley Process as a whole.

A further insight into the Kimberley Process derives from Ann-Marie Slaughter's government networks theory, which posits that networks of government officials group together around particular subject-matter domains. One of the ways in which they operate she describes as horizontal government networks. Such networks avoid

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5 Braithwaite, J, 'Realism and Principled Engagement in International Affairs and the Social Sciences of Regulation' (Paper presented at RegNet@10 Conference, The Australian National University, March 2011) 3.

hierarchical structures, but operate on the basis of government officials coming together as equals, giving rise to the operation of peer pressure. Through this type of peer pressure, government officials find themselves in social relationships to other governments, and through this connection feel a sense of accountability for obligations that are mutually undertaken. This model is particularly mirrored in the working of the Kimberley Process peer-review system. In the Kimberley Process peer-review system, government representatives, assisted by NGO and business representatives, review other governments in terms of their degree of compliance with Kimberley Process requirements. One of the main ways in which this system works is that it draws on the sense of mutual obligation by which Kimberley Process governments come together. Through highlighting an inadequacy in the operation of one nation's diamond processing system, pressure is placed upon that nation to come into greater conformity with its obligations.

### The Network as a Normative Tool

It is arguable that the success of the Kimberley Process to date may largely be attributed to its ability to incorporate features from the networks regulatory model. However, as discussed below, this book contends that if its operating procedures more closely conformed to features of the pyramid model, further improvement of the conflict diamonds governance system would follow. However, there should be no backtracking of the networks features already incorporated into the Kimberley Process and its related regulators. While the *sine qua non* of the networks theory is socialisation, the central feature of pyramid theory is its ability to deploy coercion in an optimal manner. However, there is a noted risk in the literature around pyramid theory that coercion, particularly as embodied in classic command-and-control theory of regulation, tends to undermine the normative good will and cooperation that are gained through socialisation, dialogue and persuasion. Therefore, it is important in discussing the deployment of coercive interventions to keep in mind that they must be made in a context where the potential to harm the gains made through persuasive functioning are minimised. This challenge is discussed further below.

While the conflict diamonds governance system has significant lessons to learn through analysis in the light of the networked pyramid model, there are arguably insights that might be suggested

in relation to networked pyramid regulatory theory that arise out of a study of the conflict diamonds governance system. One such insight relates to networks theory and understanding of the node concept. Nodes are considered the command centres of networks, with meta-nodes involving representatives of several networks. Nodes are the places where information from the various networks is gathered, and where regulatory action is determined and carried out. It appears on its face that the Kimberley Process conforms to this definition. The KP plenary brings together three major networks: representatives of NGOs, industry, and national governments. It is the plenary, and between meetings the chair and committees, which carry out regulatory functions relating to conflict diamonds, including information gathering (annual reports, statistics, review visits), standard-setting through developing terms of reference for working committees, procedures, or suggestions to reform the primary agreement, and behavioural modification activities, such as reporting on non-compliance issues highlighted in review visits, reporting issues to the UN system, or recommending that countries be expelled from the Kimberley Process. The Kimberley Process has the further capacity to engage with other networked regulators in the conflict diamonds governance system. It can receive a ratchet from below from national governments, such as when Côte d'Ivoire requested that it be removed from the Kimberly Process due its inability to manage conflict diamonds. The Kimberley Process is also able to ratchet up regulatory interventions to more interventionist institutions such as the UNSC or even the ICC. In these ways, it functions as a powerful meta-node, much in the manner that IFAC-3 operates as the major regulatory node in the export of US-developed intellectual property rules throughout the international community.

There are, however, significant differences between the nature of the intellectual property node described by Drahos and the nature of the node represented by the Kimberley Process. First of all, the intellectual property node is less formalised than the Kimberley Process. Although there are references to its functioning in terms of finalising trade treaties by the US Congress, the Kimberley Process Agreement is a more comprehensive constitutional document, placing the organisation on a more formal footing than IFAC-3. The other difference, however, is more significant in terms of the nature of nodal theory. In the intellectual property regime, IFAC-3 and the US

Government fundamentally agree on the same agenda, and promote the same interest. This is perhaps made easy because it is concerned with the alteration of rights overseas to the advantage of US corporations, and is therefore not confronting US interests in a direct manner. The nature of this node is very different to the Kimberley Process, which brings together divergent interests in the name of solving a common problem. Prior to the identification of conflict diamonds as a problem, even large corporations seemingly had no problem in purchasing them. National governments do not necessarily identify regulation of this sector as being in their immediate national interest, as demonstrated by the recent approach of Venezuela and Zimbabwe. It follows that the task of forging a common purpose and common agenda between NGOs, industry, and national governments requires looking beyond immediate self-interest in a manner that is not modelled in the intellectual property regime. Indeed, the bringing together of the three disparate groups can be seen as an example of separation of powers. This constitutionalist concept, previously discussed, indicates that, as far as possible, there should be a division of powers amongst different power bases, and not simply in the normal manner of government (i.e. between judiciary, executive, and legislature). Some examples given in the literature include separation of traditional/tribal power from power in terms of the modern state in developing countries, the separation of church and state, and the breaking up of the US military industry complex.<sup>6</sup>

Perhaps the best analogy to the manner in which the Kimberley Process formalises the tripartite involvement of civil society, industry, and national governments relates to the much more venerable International Labour Organization (ILO). The ILO, which seeks to set standards regarding labour standards internationally, combines governments with employers and employees. It is famously one of the only organisations to survive the transition from being connected with the League of Nations to the post-war era of the United Nations (perhaps the only other structure to do so being the Permanent Court of International Justice, which was transformed into the International Court of Justice, although this continuity is debated in the literature). The three separate interests that are brought together in the ILO hold each other accountable as each seeks different outcomes through

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6 Ibid.

serving the point of view of their differing constituencies. The ILO could certainly be conceptualised as a node according to networks theory, however, it appears that this has not yet been done. Perhaps this study of the Kimberly Process as a node will prompt scholarly investigation into the manner in which the ILO operates in a similar fashion.

## Pyramid Features of the Conflict Diamonds Governance System

### The Pyramid as a Descriptive Tool

The regulatory pyramid tool is particularly useful in describing the vertical aspect of regulation, that is, the manner in which increasingly coercive measures may be applied to achieve a regulatory outcome. Typically, the regulator who applies such a higher coercive measure is in a more powerful position than the person or entity that is regulated. In considering the application of the pyramid model to the conflict diamonds legal system, it is perhaps most easily seen in terms of pyramids at two different levels: the national level and the international level. At the national level, the primary regulator is the national government and the regulated persons are artisanal and industrial rough diamond miners and traders. At the international level, the Kimberley Process is the initial regulator, with national governments being the regulated entities. Peer review represents a regulatory ratchet available to the Kimberley Process, as does expulsion from the system for serious non-compliance. Further regulatory ratchets in relation to recalcitrant national governments may involve the UNSC and the ICC.

Rather than relying on the earliest iteration of the regulatory pyramid model, this book draws on the latest imagining of the model, particularly as it relates to providing for multiple regulators, both sequentially and in parallel. The model anticipates ratchetting up through the regulatory pyramid, even, potentially, from national to international levels. As such, ratchetting up may pass the regulatory baton from national governments to international actors such as the KP, the UNSC, and the ICC. The incorporation of the idea of regulators working in parallel is a more sophisticated version of the model, which provides a better explanation of the work of multiple regulators on a single regulated entity. The idea that

multiple regulators act together with respect to the Kimberley Process incorporates the tripartite nature of the process, which includes, even at the formal level, NGOs, industry, and national governments. Governments, NGOs and industry sectors operate as regulators from within and outside of the Kimberley Process. These three sectors are both regulators and the subjects of regulation. Thus, the subjects of such regulatory activities are industry bodies, other national governments, and civil society bodies.

Descriptively speaking, it is possible to view the conflict diamonds prosecutions as an informal ratchet from the UNSC to tribunal jurisdiction. The two situations involving conflict diamonds prosecutions, Sierra Leone and DRC, have both been presaged by significant action by the UNSC. The UNSC had issued major reports about the role of conflict diamonds in the perpetration of human rights violations in Sierra Leone, and had placed economic sanctions on both Liberia and Sierra Leone. The UNSC was instrumental in the establishment of the Sierra Leone Special Court. The case records, particularly those of the Charles Taylor case, show that the UNSC expert committee reports about conflict diamonds were tendered as evidence, supported by the testimony of one of its experts, Mr Ian Smillie. In contemplating the establishment of the Sierra Leone Special Court, it would be difficult to imagine that its caseload would overlook the role that the conflict diamonds trade played in the conflict.

Similarly, in relation to the DRC cases, the UNSC expert reports highlighted the connection between conflict diamonds and human rights violations in regions such as Ituri, and recommended follow-up action by the UNSC and the international community. It is likely that the UNSC expert reports formed the basis for public statements by the ICC prosecutor regarding the illegality of the conflict diamonds trade. Beyond this, the ICC initiated prosecutions for human rights violations in the area, highlighting the role played by conflict diamonds in exacerbating the situation. In an informal manner, there was a regulatory ratchet between the statements of the UNSC expert committee, its sanctions, and follow-up prosecutorial action by the ICC. Importantly, there is an institutional connection between the two, with the UNSC able to refer cases to the ICC even when such cases would not normally fall within its jurisdiction. Although the

institutional mechanism was not formally invoked, it makes sense that the ICC prosecutor would be carefully monitoring expert reports by the UNSC for possible independent action on its own motion.

Descriptively, a focus on the role of national regulatory frameworks within the international system gives rise to the concept of a pyramid within a pyramid. From this point of view, national regulators have a range of interventions available to them in relation to their local diamond industry, with the apex of that pyramid arguably being domestic criminal prosecutions. The prime obligation of the Kimberley Process, by contrast, is to assist national governments in living up to their regulatory tasks. Returning to the national regulatory pyramid, national governments already have a range of regulatory interventions at their disposal. It is clear from analysis of legislation from African producer countries that a number of regulatory tools are already available, including licensing and zoning mechanisms to manage artisanal and large-scale rough diamond mining. They will need to be built upon, as is discussed below, to provide for a better overall approach to the issue of combating conflict diamonds.

### The Pyramid as a Normative Tool

One of the key challenges currently facing the Kimberley Process at the international level can be understood clearly in relation to the pyramid model. The challenge of serious non-compliance by Zimbabwe and Venezuela can be seen in terms of a normative application of the regulatory pyramid. The pyramid model requires a hierarchical range of sanctions, with a highly coercive option at its apex. Although the regulatory pyramid was not referred to in its remarks, the suggestions made by Partnership Africa Canada for reform of the Kimberley Process are conceptually very similar:

In sum, the Kimberley Process needs a rigorous, clear and phased compliance enforcement strategy that starts with assistance and internal pressure, moves to public naming and shaming, and then moves to higher levels of sanctions, suspension and expulsion.<sup>7</sup>

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7 Smillie, I, 'Paddles for Kimberley: An Agenda for Reform' (Report, Partnership Africa Canada, June 2010) 11.

The Kimberley Process has already been successful at providing technical assistance and internal pressure, especially in the context of its peer-review system. However, it does not have a clear strategy for public naming and shaming, or suspension/expulsion from the Kimberley Process. One of the continued challenges in relation to enforcement via public naming and shaming is the fact that review visit reports are not made publicly available. The simple fact of making such reports publicly available would increase the ability of both the Kimberley Process and civil society organisations to bring the power of adverse publicity to bear on the national government in question. Finally, and most importantly, there needs to be an agreed process for the expulsion of countries in the event of serious non-compliance. As discussed previously, the parameters of what constitutes serious non-compliance need to be more clearly established, with a body exercising a degree of independence able to assess individual cases. While the decisions of this body, operating in conjunction with the Monitoring Committee, might be subject to confirmation by the plenary, as soon as a situation of serious non-compliance is recognised, steps must be immediately initiated leading to a review visit followed by the potential expulsion of that country from the Kimberley Process. In terms of confirmation of the process by the Kimberley Process Plenary, the voting method should provide for some type of majority vote, whether a 50 per cent majority or a two-thirds majority. This would liberate the Kimberley Process from the current deadlock arising from its consensus requirement (which has been interpreted as ‘unanimity’), and enable it to take appropriate action.

The pyramid model applied normatively suggests the possibility of further escalation to the UNSC in appropriate cases. There are two possible scenarios where this might be utilised. One is effectively an appeal from the Kimberley Process for a re-categorisation of a case as relating to serious non-compliance. This might be initiated by the Kimberley Process Chair or the Kimberley Process Plenary, following a preliminary decision that a case had been deemed not to have related to serious non-compliance. The UNSC would then have an opportunity to reconsider the situation and, if it was of the view that the original decision was incorrect, it would be able to pass a resolution mandating a trading ban in diamonds with the particular country.

A further scenario is a more traditional use of the pyramid, which would represent a ramping up of sanctions against a particular country that has been expelled from the Kimberley Process for non-compliance. If, in the view of the UNSC, expulsion from the Kimberley Process was not considered as having effectively countered the traffic in conflict diamonds emanating from the expelled country, it could impose, in addition, a trade ban in diamonds mandated under a Chapter VII resolution, or even more extensive economic sanctions (perhaps a ban on arms trading, for example) on that country.

Applying the pyramid in a normative manner suggests that the conflict diamonds governance system would be improved if the regulatory ratchet between the Kimberley Process, the UNSC, and the international tribunals was strengthened. While the connection between the Kimberley Process and the UNSC has been discussed above, there are connections that can be made between the UNSC and the international courts, and even directly between Kimberley and the international courts. One way in which a greater connection could be made between all three levels, even down to the national government level, would be to formulate a specific crime of trafficking in conflict diamonds. The formulation of a formal conflict diamonds trading crime would serve to strengthen the respective regulatory ratchets in several ways. Primarily, it would bring clear subject matter clarity between each regulatory level, which would heighten awareness between regulators of the relationship and strengthen the awareness of potential perpetrators of the regulatory interest at higher levels of the system. For example, although the ICC and the Sierra Leone Special Court have had prosecutions involving conflict diamonds trading, the crimes connected to it have never been labelled specifically as conflict diamonds crimes. Charles Taylor, for example, was charged with rape, the use of child soldiers, and murder and crimes against humanity, with the conflict diamonds trade used as a way of sheeting home criminal liability for the commission of those crimes. While this type of prosecution arguably captures the full extent of his crimes, concurrent prosecution for a more simply defined charge of trafficking in conflict diamonds would arguably have created a stronger conceptual connection to the Kimberley Process and the UNSC. As is the case at present, concurrent prosecution would not result in more serious sentencing in the event of concurrent convictions, as long as the elements of the crime were captured in the alternative conviction.

A conflict diamonds crime before the ICC could be defined in a number of different ways. One definition could attempt to encapsulate the core elements of the definition, namely, trading in rough diamonds in the knowledge that the proceeds would be used to commit human rights violations. However, other definitions could reinforce its connection to other regulators further down the pyramid. In particular, there could be a concurrent definition of conflict diamonds trading as the contravention of UNSC resolutions imposing a ban on trading in diamonds originating from a particular country, along with appropriate *mens rea*. Such an approach would increase the leverage of the key international regulators. For example, Kimberley Process review visits would be able to gather evidence regarding potential conflict diamonds trading in addition to their general functions. The general authority of Kimberley Process review visits would be enhanced by the heightened prospect that an international case may be taken against persons, including government officials and rebel leaders, involved in conflict diamonds trafficking. A Kimberley Process review would be seen much more in terms of the phrase cited by Braithwaite: ‘speak softly, but carry a big stick’.

Having an internationally defined conflict diamonds crime would also increase the power of the regulatory ratchet that lies between expulsion from the Kimberly Process and a rough diamond trading ban mandated by a UNSC resolution, as any breach of a UNSC diamonds trading ban would, by definition, constitute a crime. The relevant persons within that country, whether governmental officials or rebel militia leaders, would be on notice that any contravention of that ban would carry a much greater risk of an international prosecution than simply trading despite expulsion from the Kimberley Process. The UNSC would not be required to take formal referral action to the ICC above and beyond imposing diamond trading sanctions on a particular country. The mere fact of its imposing a diamond trading sanction would alert the ICC that its jurisdiction would be activated in the event of a contravention. The ICC could then activate the ratchet by initiating prosecutions in the event of proven contraventions of the UNSC resolution.

In relation to the level of regulation by national governments, the so-called national regulatory pyramid, it is arguable that there need to be further interventions available, both at the base and the apex of the pyramid. At the apex of the pyramid, it is suggested that a clear crime

of trafficking in conflict diamonds be enacted. This occurs where the offender knows that the diamonds are connected to the commission of human rights violations. An alternative, perhaps involving a financial rather than imprisonment penalty, is trading in diamonds without due authorisation. This contingency covers the situation where the alleged offender is merely negligent as to ascertain the nature of the diamonds, or even where conflict-free diamonds are traded but in the absence of attending to proper procedures and authorisations.

At the bottom end of the national pyramid are initiatives to assist the diamond industry, the artisanal diamond industry in particular, to be in a better position to be Kimberley compliant. Noting the networked nature of the pyramids being discussed, these initiatives might also connect with the international level. For example, the Kimberley Process established an Artisanal Mining Working Group, involving artisanal miners as representatives. Significant initiatives have already developed momentum, such as the Diamond Development Initiative International, seeking to enhance practices in the diamond industry that promote human rights and better income returns for artisanal miners. These initiatives, spearheaded at the international level by NGOs, need the significant commitment of national governments to be successful. It is perhaps ironic that the governmental actions of Angola, currently heading the artisanal committee at the Kimberley Process, have come under serious criticism on human rights grounds. In particular, the mass deportation of artisanal miners is of serious concern. An artisanal industry that allows for appropriate incomes, in reasonable working conditions, is less likely to go astray to assist rebel movements.

## Insights from the Networked Pyramid of Rewards

As has already been discussed, one of the current challenges before the Kimberley Process is a sensible understanding of its existing mandate. It is unfortunate that elements within the KP continue to focus on a narrow reading, which, by focusing on the connection between the rough diamond trade and civil war, would seemingly exclude serious human rights violations from the definition of conflict diamonds. This misunderstanding led the Namibian Chair of the KP, Bernhardt Esau, to make the disturbing pronouncement that 'the Kimberley

Process is not a human rights organisation'.<sup>8</sup> By contrast with this approach, this book argues that the KP is quintessentially a human rights organisation, with the breaking of the link between diamonds and serious human rights violations at the very core of its mandate and the definition of conflict diamonds. In making this point, a further important distinction arises, well understood in the jurisprudence of international law, between serious violations of human rights that qualify as international crimes, such as crimes against humanity, war crimes and genocide, and other human rights breaches that, although they may also be of a disturbing nature, do not qualify as international crimes. The group of crimes that qualify as international crimes are classified in international law as *jus cogens*, meaning that they are fundamental or peremptory norms of international law. This classification has a number of legal consequences. First of all, exceptions to following these rules that may apply to other rules are not allowed, such as because there is a state of emergency at the time: the norm is stated to be non-derogable. Another attendant consequence, in terms of crimes classified as *jus cogens*, is that the obligation to prosecute or extradite attaches. Above and beyond the standard obligation to implement the provisions of a convention, this is an emphatic and specific obligation to either take prosecutorial action through a domestic or international process, or extradite the person to a government or tribunal that will take prosecutorial action. An attendant legal concept, known as *erga omnes*, applies in relation to *jus cogens* and indicates that the international rule is applicable to humanity as a whole. This classification attaches to situations where one country sues another country in a civil international action before a body such as the International Court of Justice. Normally, when international legal action is initiated, procedural rules called rules of standing apply, stating that a case can only be brought by a party that has a legal interest in its outcome. In most cases, this means that the party bringing the action must have suffered in some direct way because of the behaviour of the other party. However, where an obligation is *erga omnes*, any country can take an international law suit, as it is considered that humanity as a whole has suffered a loss as a result of the conduct in question.

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8 Allen, M, 'The "Blood Diamond" Resurfaces', *Wall Street Journal*, (18 June 2010). Available at: [www.wsj.com/articles/SB10001424052748704198004575311282588959188](http://www.wsj.com/articles/SB10001424052748704198004575311282588959188).

It is more accurate to say that conflict diamonds are connected to international crimes than human rights violations for this reason, even though the former is a subset, albeit a more serious subset, of the latter. It is submitted that the connection between international crimes and diamonds is already defined within the parameters of the current KP mandate. The majority of this book has been concerned with improving the effectiveness of the KP to achieve its core mandate, hence the focus on the regulatory pyramid, or pyramid of sanctions, to strengthen its ability to deal effectively with issues of serious non-compliance.

It should be noted, however, that the long-term effectiveness of breaking the link between diamonds and international crimes is linked to the more general condition of the artisanal mining fields. Even in the absence of international crimes, reports on the condition of the informal sector in countries such as the DRC and Sierra Leone show it to be in a deplorable state. As discussed in Chapter 2, problems include the prevalence of child labour, unsafe and unhealthy working conditions, extremely low return for labour (less than US\$1 a day, according to one study), and lasting environmental damage to artisanal mining areas. For example, artisanal mining may require extensive periods of digging in mud or dirty water, or spending time in dangerously constructed ad hoc mine shafts.

This book suggests that, in the interests of its own long-term success, the KP vote to extend its mandate to include a broader range of human rights issues and development goals for the artisanal mining sector. To achieve this, the KP might do well to explore the implications of the pyramid of rewards theoretical model. While the regulatory pyramid focuses on sanctions and disincentives, the pyramid of rewards focuses on rewards and incentives. A natural juxtaposition between these two models is to propose, in addition to conflict diamonds, a counterpart that could be termed the development diamond. While the basic concept of the development diamond has already been coined by some of the key NGO players within the Kimberley Process, the main field for work in the area has been removed from the KP itself. An interesting discussion of the politics behind this separation appears in the work by Franziska Bieri entitled *From Blood Diamonds to the Kimberley Process: How NGOs Cleaned up the Global Diamond Industry*. Through her interviews with key players, Bieri shows that while De Beers was prepared to back the upstart NGO Development

Diamonds Initiative International, the remaining voices from industry, represented by the WDC, as well as national governments, were keen to exclude the KP mandate from moving in this direction. A revealing quote from a diamond industry representative put it in these terms:

This is definitely where the NGOs and the industry are not on the same footing. Some people want to glide the Diamond Development Initiative, which is a fantastically positive initiative that has nothing to do with the Kimberley Process, they want to glide that into the Kimberley Process itself. I think that's a wrong attitude ... And in the case of the Kimberley Process we are talking about stopping conflict diamonds from happening, and stopping conflicts in especially diamond producing countries in Africa. We are not talking about free trade, and fair trade. And when you talk about DDI you're talking especially about the fair trade issue. And let's not be forgetting one little tiny detail. We got away with the WTO waiver on the free trade issue, because in fact we are blocking free trade. I am not so sure that WTO would be willing to extend its waiver to cover also issues like fairer trade and DDI ... But then of course what you are going to do is you are de facto overloading the scheme, with a fat chance that by doing that the scheme itself will not be very functional any more. And I don't really fancy that.<sup>9</sup>

Here the WDC representative raised a number of concerns about putting the development diamonds initiative into the Kimberley Process. The first concern was in relation to the waiver granted by the World Trade Organization (WTO) permitting trade in conflict diamonds to be restricted, further to exemption provisions under Articles XX and XXI of the General Agreement on Tariffs and Trade (GATT). The GATT establishes a broad framework preventing national governments from imposing restrictions on international trade, although it allows for a number of broadly framed exemptions. Since 2003, the WTO has issued a series of decisions granting countries permission to restrict trade in conflict diamonds. The decisions cite Articles XX and XXI of the GATT, which are broadly framed exemptions concerning measures pursuant to United Nations charter obligations, national security, the protection of human life or health, and public

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9 Interview with Mark Van Bockstael, 27 September 2005, in Bieri, F, *From Blood Diamonds to the Kimberley Process: How NGOs Cleaned Up the Diamond Industry* (Ashgate Publishing Ltd, 2010) 162.

morals.<sup>10</sup> Considering that the United Nations charter, in articles 55 and 62, refers to the protection of human rights, it is highly likely that the human rights concerns connected to development diamonds and conflict diamonds would be able to come within the auspices of a WTO waiver. Development diamonds issues, such as proper working conditions and freedom from child labour, are human rights concerns protected by international instruments such as ILO regulations and the *Convention on the Rights of the Child*. As well as the more established concerns related to conflict diamonds, the human rights concerns underpinning development diamonds would also justify an exemption under the Articles XX and XXI of the GATT.

Perhaps the stronger argument raised by the WDC representative is that adding development diamonds into the Kimberley Process would overload the organisation and cause it to collapse. There is a logic to this argument, particularly given the challenges that the Kimberley Process has been through regarding Zimbabwe's Marange diamonds. However, some time has passed since the Zimbabwe issue first emerged, and there may now be opportunities not simply to address this question and its related issues (such as the narrow definition of 'conflict diamonds'), but a wider horizon of looking to formally incorporate the development diamonds concept into the KP organisation in order to give new impetus to the organisation. In a recent press release, the incoming KP Chair US Ambassador Milovanovic made a statement about dealing with shortcomings of the KP connected to the evolving nature of conflict diamonds, a reference to unresolved issues arising from the Marange diamonds dispute.<sup>11</sup> It would seem there is a willingness to begin to address this question, even if it is divorced from the actual case of the Marange diamonds. As was discussed previously, one of the challenging after effects of the Marange dispute was disaffection by NGOs, leading at least one high-profile NGO, Global Witness, to formally leave the KP. It may be that a different focus, on bringing development diamonds into the

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10 The WTO exemption for the Kimberley Process is discussed in Woody, K E, 'Diamonds on the Soul of Her Shoes: The Kimberley Process and the Morality Exception to WTO Restrictions' (2007) 22 *Connecticut Journal of International Law* 335, 349.

11 Kimberley Process, *A Note from Ambassador Milovanovic* (30 July 2013). Available at: [www.kimberleyprocess.com/en/note-ambassador-milovanovic](http://www.kimberleyprocess.com/en/note-ambassador-milovanovic).

fold, could reinvigorate NGO interest in the KP, and be a cause for reinvigoration of the organisation, helping it to tackle the more thorny issue of the definition of conflict diamonds.

It might be noted that, even if development diamonds are not formally incorporated into the Kimberley Process organisation, there already exists a level of synergy between development diamonds initiatives and the KP. As envisaged in my dual networked pyramid model (DNPM), upward ratchets modelled on the pyramid of rewards concept might be developed more fully in the current global system. Even in the absence of formal incorporation into the KP, this might be achieved, with reference to my model, through graduated certification that diamonds have achieved particular human rights standards in the domain of development diamonds: free from the use of child labour, in compliance with reasonable working conditions, etc. Such formal certification might be standardised and harmonised, perhaps using particular international benchmarks (such as the International Standards Organisation system). As envisaged in the DNPM, a positive upward ratchet can be created when there is a systematic process of certification from one level of development diamonds compliance to the next. If the process were centralised in the KP it would be stronger and more powerful, as the DNPM seeks to enhance the upward ratchet of the pyramid of rewards with a rising minimum standard. For example, at some point in the future, the KP could declare that it is not permissible to trade in diamonds that were known to have been mined or polished using child labour. Such a trade ban would require the intervention of the Kimberley Process (or an organisation with similar powers) rather than relying solely on aspirational voluntary standard certification.

Measures put into place in Canada reflect aspirational standards in relation to conflict-free diamonds and development diamonds. In publishing a press release on these measures, the Kimberley Process acted to fame Canada for implementing measures that are above compliance with minimum KP standards. This is an example of the pyramid of rewards in effect, as it creates upward momentum for other countries to follow suit. Through calling attention to the achievement by Canada, the KP increased the prestige of Canada, which creates a level of peer pressure for others to follow. The particular measures put into place by Canada introduced a unique standard of excellence in developing a particular system of tracking individual diamonds to

particular diamond mines. The centrepiece of this tracking system is a unique inscription on each diamond that is invisible to the naked eye but identifies the mine of origin of the diamond. Canada has also introduced development diamond initiatives that guarantee locals in the area of the mine benefit and the mine conforms to high environmental standards.<sup>12</sup>

## Role of WTO in the Conflict Diamonds Governance System

As long ago as 2006, a government representative from Australia was speaking about Kimberley Process winding up due to the completion of its mandate. These words, it would seem, were a little premature, given the emergence of new sources of conflict diamonds from Côte d'Ivoire, Zimbabwe, and Angola at around this time, as well as the ongoing problems in the DRC. What it speaks to, it would seem, is a lack of political will on the part of governments to ensure an ongoing role for the KP. Even if conflict diamonds were no longer entering the global system, there ought to be a process for preventing this occurring, should the nexus between international crimes and the rough diamond trade recur: a preventative role is important. The potential uptake by the KP of a broader human rights agenda is a reinforcement of this preventative role, through addressing the root causes of the emergence of conflict diamonds. Put simply, if more artisanal miners are able to make a reasonable living, in good conditions, without sending their children to work, then they are less likely to sell the product of their labour to benefit international war criminals.

One of the ironies relating to the pyramid of rewards concept is the unfortunate fact that incentives-based approaches have been misused by the international community to exacerbate conflict in central Africa. In particular, the Ugandan and Rwandan governments received inappropriate recognition following their alleged plunder of the natural resources of the Congo, including Congolese diamonds. It was reported that the International Monetary Fund and the World

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12 Kimberley Process, *Diamond Store Guarantees Ethical, Conflict-free Canadian Diamonds* (Press Release, undated). Available at: [www.kimberleyprocess.com/en/system/files/documents/Diamond%20Store%20guarantees%20ethical,%20conflict-free%20diamonds.pdf](http://www.kimberleyprocess.com/en/system/files/documents/Diamond%20Store%20guarantees%20ethical,%20conflict-free%20diamonds.pdf).

Bank actually praised the Rwandan and Ugandan governments for their unexpected increase in GDP that was, according to UNSC reports, based on plunder of the DRC's natural resources.<sup>13</sup>

## Concluding Remarks

This chapter has returned to consider the original research questions:

1. To what extent has the conflict diamonds governance system achieved its objectives?
2. To what extent does the networked pyramid model provide descriptive and normative insights into the functioning of the conflict diamonds governance system?

In responding to the first question, the first sub-question was whether the KP had achieved its objectives. Noting the distinctive collaboration between governments, civil society, and industry that constitutes the Kimberley Process, it has managed in the first instance to socialise the large-scale industry players into being KP supporters. Beyond this, the quantity of conflict diamonds in the international system is at low levels, compared with the extremes of the diamond wars of the 1990s. It is, however, in the area of managing serious non-compliance that the KP now faces its most trying test. Although it was precocious in dealing with the threat posed by diamonds being funnelled through the Republic of Congo-Brazzaville back in 2004, subsequent challenges of equal or greater severity from Venezuela, Zimbabwe, and Angola have been mishandled. In particular, the way in which the KP has turned a blind eye to gross human rights abuses in the Zimbabwe and Angolan artisanal fields shows that it is failing in its core mandate, and raises the risk of the complete collapse of the current arrangements.

The second sub-question considers the extent to which the UNSC and the international tribunal system have contributed to the effectiveness of the conflict diamonds governance system. The UNSC has played a decisive role on the issue of conflict diamonds and was in large part the

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<sup>13</sup> Montague, D and F Berrigan, 'The Business of War in the Democratic Republic of Congo', *Dollars and Sense Magazine* (July/August 2001). Available at: [www.thirdworldtraveler.com/Africa/Business\\_War\\_Congo.html](http://www.thirdworldtraveler.com/Africa/Business_War_Congo.html).

midwife of the Kimberley Process, calling for its implementation in its resolutions. The UNSC has also embodied important monitoring and enforcement roles through its expert committees to various affected diamond-producing countries, and the imposition of diamond trading and other related embargoes. Finally, the emerging jurisprudence on conflict diamonds from the Sierra Leone Special Court and the permanent International Criminal Court has provided support to the work of the UNSC, the KP, and national governments. By prosecuting key leaders in the AFRC, RUF, Civilian Defence Forces and Taylor cases, the Sierra Leone Special Court has sent a clear message that behaviours such as using child soldiers, and terrorising, murdering, and raping civilians in the pursuit of diamond profits are intrinsically criminal and unacceptable to the international community. This message is not lost on the participants in the Kimberley Process, who are galvanised by the prospect of breaking the link between diamond profits and international crime through the chain of custody system.

The second research question considers the conflict diamonds governance system in the light of the DNPM. The analysis is facilitated by breaking the model into its three components, so as to consider insights based on the network model, the regulatory pyramid model, and, finally, the pyramid of rewards model. The essence of the networks model is its reliance on the techniques of dialogue and socialisation to achieve its purposes. The Kimberley Process can be considered as a command centre, or node, where networks from civil society, national government, and the diamond industry engage in dialogue and socialisation. Its successful features largely reflect the benefits described in this model, particularly as seen in the strong engagement and commitment of diamond industry major players to the KP. Its use of peer review is another horizontal technique that has been used to promote best practice in different countries involved with the KP. It is with reference to the regulatory pyramid, rather than networks theory, that the KP's shortcomings are highlighted.

The regulatory pyramid provides for a range of more coercive interventions where particular regulated parties actively oppose the purpose of the regulatory regime. In terms of the functioning of the KP, expulsion from membership represents a more coercive escalation for situations where a government member is in serious non compliance with KP standards. It is argued that the KP should have taken this step

in relation to Venezuela, Zimbabwe, and Angola, all of which have actively resisted the core purposes of the KP. This action is important to protect the credibility of the KP, as the failure to remove diamonds originating from these countries from general circulation shows that the conflict-free label provided by KP certification cannot be entirely trusted. The development of a new international crime for trading in conflict diamonds would further reinforce the pyramid structure of the conflict diamonds governance system, particularly as the jurisdiction of the International Criminal Court would automatically be triggered following a breach of UNSC diamond trading sanctions. The enactment of this crime would further strengthen the negotiating hand of the KP, as the consequences for serial conflict diamonds offenders would loom larger.

The pyramid of rewards offers a further window of opportunity for the development of the conflict diamonds governance system. Beyond dealing with the current midlife crisis it finds itself in, the KP and its collaborators have an opportunity to broaden their horizons in the direction of an incentive-based system focused on the concept of development diamonds. Building on the important work of the Diamond Development Initiative International, the KP has a great opportunity to engage with the human rights issues associated with alluvial diamond mining in a proactive, incentive-based manner, beyond its existing sphere of activity. The book proposes that a system of voluntary certification, aimed at connecting to a fair trade niche market in developed countries, accompany the existing system of KP minimum standards. The voluntary certification is made with reference to a number of proposed aspirational standards, which move beyond the core domain of the existing KP mandate to encompass other issues confronting the artisanal industry: child labour, workplace health and safety standards, appropriate remuneration for work, and environmental standards. When both systems are established, the intention is that a standards-raising regulatory ratchet be created, with today's aspirational standard becoming tomorrow's mandatory standard, without which export is denied. An application of the pyramid of rewards to the conflict diamonds governance system might well reinforce the new aspirational standards with a system of naming and faming to parallel the naming and shaming in the regulatory pyramid. That is, countries, corporations and NGOs making particular progress towards aspirational standards might be singled out for

particular encouragement. Beyond this, a system of grants might well be established so as to fund new initiatives towards meeting aspirational standards. The apex of the pyramid of rewards — a Nobel Peace Prize nomination — would serve as a fitting counterpart to the apex of the regulatory pyramid — international criminal prosecution.

This text is taken from *The Lion that Didn't Roar: Can the Kimberley Process Stop the Blood Diamonds Trade?*, by Nigel Davidson, published 2016 by ANU Press, The Australian National University, Canberra, Australia.