
11. Conflict diamonds: the De Beers Group and the Kimberley Process

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I. Introduction

UN Security Council Resolution 1173

The concept of ‘conflict diamonds’ stems from the conflict in Angola and the failure of the international community to bring a lasting settlement to the civil war there through the combined efforts of the United Nations and a ‘troika’ of states comprising Portugal, Russia and the United States. In June 1998 the UN Security Council, exasperated by the perceived intransigence of União Nacional para a Independência Total de Angola (UNITA, National Union for the Total Independence of Angola), decided to impose comprehensive economic and political sanctions on the organization and its leadership through the adoption of Resolution 1176, which activated Resolution 1173.¹

Among other things, Resolution 1173 prohibited the purchase of rough diamonds from UNITA. Only rough diamonds with official government certificates could be exported from Angola.²

In the late 1990s, De Beers was engaged in a partnership with the Angolan Government and was active on the open market, buying rough diamonds in several government-held locations in Angola.³ The company immediately complied with Resolution 1173 and stated its support for the effective implementation of the sanctions.

Conflict diamonds: from security risk to humanitarian issue

Six months after Resolution 1173 was adopted, Global Witness, a British non-governmental organization (NGO) which specializes in the analysis of war economies, highlighted UNITA’s ability to fund and perpetuate hostilities against the government through the sale of rough diamonds mined from territory under its control. In December 1998 Global Witness published a report on the role of diamonds in the Angolan conflict and followed this up with an

¹ For UN Security Council Resolution 1173, 12 June 1998, and UN Security Council Resolution 1176, 24 June 1998, see URL <<http://www.un.org/Docs/scres/1998/scres98.htm>>.

² Then the government of the Movimento Popular de Libertação de Angola (MPLA).

³ On the De Beers Group see URL <<http://www.debeersgroup.com>>.

effective media campaign, which in due course attracted the attention of politicians in both Europe and the United States.⁴

In January 1999 Robert Fowler, Chair of the UN Security Council Sanctions Committee on Angola, was mandated by the Security Council to produce a report on ‘sanctions busting’ in Angola.⁵ At the same time, Gary Ralfe, Managing Director of De Beers, wrote to the UN Secretary-General outlining De Beers’ involvement in Angola and reiterating its commitment to the restoration of peace and its adherence to Resolution 1173. In May, Ambassador Fowler appointed two Panels of Experts to investigate violations of the sanctions regime in Angola. As part of the exercise, he held meetings in May (London) and July (Johannesburg) with Nicky Oppenheimer, De Beers’ Chairman, and Ralfe. In September, the international NGO Human Rights Watch published a report which assessed the political and military situation in Angola and confirmed the view that UNITA had been funding its war effort largely through the sale of rough diamonds.⁶

By October 1999, Global Witness had stepped up its media activities by joining forces with several other NGOs and launching an umbrella group called Fatal Transactions, whose first action was to distribute information material to jewellery retailers, alerting them to the issue that by then was known as ‘conflict diamonds’.⁷

De Beers ceases ‘outside buying’

In October 1999, following widespread reports that official government export certificates were being forged, De Beers decided to cease buying Angolan goods⁸ on the ‘open market’. By the end of 1999 the company had closed down its remaining ‘outside buying’ operations throughout the world. This was done in spite of the fact that it had never traded in conflict diamonds: the intention was rather to secure De Beers’ own channels of distribution comprehensively against any possible infiltration from external sources. Since 1999, the company’s only supply of rough diamonds has been from its own mines or from contractual sources, such as the Russian producer Alrosa. At the same time De Beers declared that it had become an absolute necessity to secure confidence in its product.

⁴ Global Witness, *A Rough Trade: The Role of Diamond Companies and Governments in the Angolan Conflict* (Global Witness: London, Dec. 1998), available at URL <<http://www.globalwitness.org/reports/show.php/en.00013.html>>. On Global Witness see URL <<http://www.globalwitness.org/>>.

⁵ The report was presented in Mar. 2000. See ‘Letter dated 10 March 2000 from the Chairman of the Security Council Committee established pursuant to Resolution 864 (1993) concerning the situation in Angola addressed to the President of the Security Council’, UN document S/2000/203, 10 Mar. 2000, URL <http://www.un.org/News/dh/latest/angolareport_eng.htm>.

⁶ Human Rights Watch, ‘Angola unravels: the rise and fall of the Lusaka peace process’, URL <<http://www.hrw.org/reports/1999/angola/>>.

⁷ Fatal Transactions is an international campaign to influence governments and companies involved in extractive industries to implement effective national and international controls ‘to ensure that the trade in natural resources does not finance or otherwise support conflict and economic injustice’. See URL <<http://www.fataltransactions.org/home/index2.html>>.

⁸ The word ‘goods’ is a diamond industry euphemism to describe parcels of diamonds.

In September 2000, political interest in the issue was further enhanced when US Congressman Tony Hall introduced the bill for legislation which became the Consumer Access to a Responsible Accounting of Trade Act (the CARAT Act).⁹ This draft legislation required that diamonds imported to the USA be accompanied by a certificate of origin.

In the meantime, the momentum of the Fatal Transactions campaign appeared to wane after the release of a press statement in November 1999 by former South African President Nelson Mandela, who emphasized the importance of diamonds for the economies of southern Africa and the harm that would be caused by a consumer boycott of diamond jewellery. He stated, 'The diamond industry is vital to the Southern African economy. Rather than boycotts being instituted, it is preferable that through our own initiative the industry takes a progressive stance on human rights issues'.¹⁰ Six months later, President Festus Mogae of Botswana stated, 'We must recognise that the very diamond trade we seek to regulate is also the life-blood of millions across the globe. Diamond revenues support essential programmes of national development in stable, democratic countries such as Botswana, South Africa and Namibia. In fact, the great majority of diamonds in world trade contribute positively to human welfare'.¹¹ A representative of the Fatal Transactions campaign denied that it had tried to encourage a boycott, stating that raising 'consumer awareness' was its preferred method.¹²

Sierra Leone becomes embroiled

By the end of 1999 media interest in the issue had begun to decline. However, this changed in January 2000 with the publication of a report by the NGO Partnership Africa Canada (PAC) on the role played by diamonds in the civil war in Sierra Leone.¹³ Images of children mutilated by factions within the Revolutionary United Front (RUF) rebel movement aroused significant media attention throughout the world. The report was particularly critical of activities in Antwerp, the world's biggest diamond trading centre. De Beers was also criticized even though it had not done any business in, or purchased goods emanating from, Sierra Leone since 1985.

⁹ The CARAT Act is available at URL <<http://www.gpoaccess.gov/bills/search.html>>. See also Fisher-Thompson, J., 'US legislators attack war in Sierra Leone with anti-diamond bill: Reps. Hall and Wolf speak after seeing victims of violence', URL <<http://usinfo.state.gov/regional/af/security/a9121502.htm>>.

¹⁰ See 'Statement by Mr Nelson Mandela on the announcement by De Beers re the sourcing of diamonds from UNITA', 17 Nov. 1999, URL <<http://bridge.netnation.com/~debeers/conflict/index.html>>.

¹¹ See 'Speech by His Excellency F. G. Mogae, President of the Republic of Botswana, on the occasion of the official opening of the ORAPA 2000 Project', Orapa Mine, 20 May 2000, URL <<http://bridge.netnation.com/~debeers/conflict/index.html>>.

¹² See Thomas, I., 'Global Witness wages war on "conflict diamonds"', URL <<http://manovisiononline.com/is18ar04.htm>>

¹³ Smillie, I. *et al.*, *The Heart of the Matter: Sierra Leone, Diamonds and Human Security* (Partnership Africa Canada: Ottawa, 2000), URL <http://www.pacweb.org/e/pdf/heart_of_the_matter.doc>. On Partnership Africa Canada see URL <<http://www.partnershipafricacanada.org>>.

In spite of this fact, and in order to secure confidence in its diamonds, in March 2000 De Beers began issuing guarantees on its invoices, declaring that none of the diamonds in its sales boxes had been purchased from areas where rebels were challenging the legitimate government.¹⁴

A significant and defining opportunity for De Beers to establish credibility, demonstrate its determination to be 'part of the solution' and regain some of the initiative came in May 2000, when it was invited to provide written testimony to the US House Committee on International Relations.¹⁵ The testimony was presented before the Subcommittee on Africa's hearings on the issue of conflict diamonds. It contained proposals for ending the trade in conflict diamonds, many of which have since found their way into the Kimberley Process certification regime (see section II). The testimony also contained expert evaluation of the value of the trade in conflict diamonds. Claims by civil society and sections of the media that conflict diamonds represented 20 per cent, or more, of annual global rough diamond production were countered by De Beers, which remains the only organization to have quantified the amount of rough diamonds actually available to the RUF and UNITA. De Beers was able to demonstrate in its testimony that, in 1999, this represented no more than 4 per cent of world production, by value approximately \$255 million.

This figure was accepted by the UN, by governments and, eventually, by leading NGOs. Having established a more realistic perspective on the volume of the trade in conflict diamonds, De Beers adopted and publicized the view that 'just one diamond dealt with in such a way, is one too many'.¹⁶

Also in May, and at the invitation of the US Department of State, De Beers attended a conference in Sierra Leone to investigate and discuss measures to rescue the Sierra Leone diamond industry from rebel groups and develop it in the future.

At the same time, a 'technical forum' was convened and hosted by the South African Government in Kimberley. This was the first time that all interested parties had met at the same venue. This meeting initiated the series of conferences that became known as the Kimberley Process.¹⁷

In its testimony, De Beers defined 'conflict diamonds' as 'diamonds mined or stolen by rebels who are in opposition to the legitimate Government of a country'.¹⁸ Global Witness welcomed this as a 'good working definition'. It was subsequently adopted universally.

¹⁴ See Swindells, S., Reuters, 'De Beers supports diamond embargo on Sierra Leone', 6 June 2000, URL <<http://www.clw.org/cat/newswire/nw060700.html>>.

¹⁵ See 'Transcript: Written testimony before the United States Congress, House Committee on International Relations, Subcommittee on Africa, Hearings into the Issue of "Conflict Diamonds"', 9 May 2000, available on the De Beers Internet site at URL <<http://www.debeersgroup.com/hotTopics/cdActions01.asp#>>.

¹⁶ See De Beers, URL <<http://www.debeersgroup.com/hotTopics/cdIntroduction.asp>>.

¹⁷ On the Kimberley Process see URL <<http://www.kimberleyprocess.com>>.

¹⁸ See 'Transcript' (note 15), p. 4.

II. The Kimberley Process

The first Kimberley Process meeting was held in a small Dutch Reform Church hall. Only a handful of government representatives, industry leaders—mainly from De Beers—and NGO members, led by Global Witness and the PAC, were present. However, its modest beginnings belied the significance of the gathering. The conference brought clarity to the issue, defined the problem and united the disparate parties in the recognition of a shared objective: an end to the trade in conflict diamonds. The tactics required to reach this objective were, and would continue to be, the focus of intense—and often laborious—negotiation over the next two and a half years.

The Kimberley Process was lent greater momentum in July 2000 at the 29th World Diamond Congress in Antwerp, Belgium, when, following sustained encouragement from De Beers, leaders of the international diamond industry issued a joint resolution declaring ‘zero tolerance’ towards those who traded in conflict diamonds.¹⁹ Anyone caught doing so would be expelled from the industry, effectively marginalizing them and, as one De Beers executive put it, forcing them to trade ‘in the gutter’.

Key among the nine proposals in the resolution was a call for the establishment of a World Diamond Council (WDC) that would represent the entire industry, from mining through to retail companies.²⁰ The disparate structure and competitive nature of the diamond industry made turning this into a reality an exceptional achievement. De Beers immediately became a member of the WDC, whose executive board spoke on behalf of all the members.

Governments now had the Kimberley Process, chaired by South Africa, in which to negotiate a solution through the establishment of an international certification system. The industry, via the WDC, and leaders of the NGO community were invited to attend each meeting of the Kimberley Process as observers, if not direct participants.

Measures begin to take effect

The Diamond High Council²¹ assisted first Sierra Leone and then Angola in creating a certification system that would be the forerunner of the Kimberley Process. In 2003, with these systems in place, including the use of ‘unforgeable’ certificates provided by De La Rue,²² Sierra Leone is enjoying a record level of official exports of rough diamonds.

¹⁹ See ‘Joint Resolution of the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA)’, 19 July 2000, URL <http://www.conflictdiamonds.com/pages/Newsarchive/19_07_00.html>.

²⁰ On the World Diamond Council see URL <<http://www.worlddiamondcouncil.com>>.

²¹ On the Diamond High Council see URL <<http://www.diamondmanufacturer.com/tutorial/council.htm>>.

²² De La Rue is the world’s largest commercial security printer and papermaker; in Jan. 2001 it was invited to participate in a policy debate on conflict diamonds. See ‘Diamonds’, URL <http://www.delarue.com/DLR_Content/CDA/Pages/RevenueDCP/fgsolns/rdpcoddia/0,2241,,00.html>.

In early 2001, De Beers reassessed the value of the previous year's trade in conflict diamonds. It concluded that a combination of measures taken by the UN, the Angolan military and the international diamond industry had significantly reduced UNITA's access to alluvial deposits and its ability to sell its diamonds through legitimate channels. The UN concurred with this view.

UNITA's estimated diamond receipts were revised downward to \$75 million from \$150 million in 2000. In the meantime, the RUF had retained possession of its territories, as had the rebels in the Democratic Republic of the Congo (DRC). Their revenue from diamonds was therefore assumed to have been maintained at \$70 million and \$30 million, respectively. The total value for the trade in conflict diamonds in 2000 was estimated to be \$180 million, or 2 per cent of world rough diamond production.

In the meantime, De Beers' efforts were recognized by UN Secretary-General Kofi Annan, who said in January 2001, in his address to delegates at the World Economic Forum in Davos, Switzerland: 'De Beers has set an example with its response to criticism of the diamond trade in Africa, and its efforts to ensure that traders and consumers of diamonds will no longer unwittingly help to finance warlords'.²³

The pace of the intergovernmental negotiations accelerated in 2001. In November a Ministerial Meeting held in Gaborone, Botswana, endorsed the Kimberley Process document put before the UN General Assembly.²⁴ The document included measures of self-regulation by the diamond industry—a 'system of warranties'—that were adopted unanimously by the WDC and welcomed by the other participants.

US legislation

In November 2001 the US House of Representatives passed a compromise version of the Clean Diamonds Trade Act—supported by all parties, including industry—by a majority vote of 408–6.²⁵ The legislation had been difficult to pass in the Senate because several senators wanted to strengthen its provisions beyond the point of acceptability to the US Administration.

The WDC stressed that, while enabling national legislation was essential for effective implementation of the Kimberley measures, it should not—as emphasized in the original UN General Assembly mandate—place any undue burden on either governments or industry.

²³ See the Secretary-General's address in United Nations Press Release, 26 Jan. 2001, at United Nations Association of the USA (UNA-USA), URL <<http://www.unausa.org/news/gcarchives/jan2001.asp>>.

²⁴ The Kimberley Process was mandated to submit its report in UN General Assembly Resolution 55/56, On the Role of Diamonds in Fuelling Conflict, 1 Dec. 2000, available at URL <<http://www.un.org/Depts/dhl/resguide/r55.htm>>.

²⁵ This legislation comprises 2 companion bills introduced in the Senate and the House of Representatives. It puts in place the Kimberley Process Certification Scheme. See 'The campaign to eliminate conflict diamonds welcomes passage of the Clean Diamond Trade Act', 9 Apr. 2003, URL <http://www.amnestyusa.org/diamonds/diamonds_act.html>.

The end of the beginning

The Kimberley Process, with its unique collaboration between governments, business and civil society, finally delivered its proposals to the UN General Assembly and received approval at the end of 2002. It was agreed that the measures would be implemented on 1 January 2003. The European Commission, which negotiated on behalf of the European Union member states, issued a regulation directly applicable in all European Community member states on implementation of the Kimberley Process Certification Scheme.²⁶ More than 50 nations had signed up to the Kimberley Process and each began, with different degrees of speed and success, to initiate its own implementing legislation. However, full and effective implementation was delayed because of legislative difficulties and eventually two further deadlines were set: first February, then finally June 2003.

Governments, the NGO community and industry, in particular, all recognize that the system is not a perfect construct. The Kimberley Process will continue to convene to refine it for as long as is necessary. The business of implementing this process is only the end of the beginning.

At the end of October 2003 the Kimberley Process met in plenary for the second time that year. As with the last plenary, in April,²⁷ the focus was on how best to acquire a credible system of monitoring. The NGO community had expressed its serious misgivings at the apparent lack of a monitoring system ‘with teeth’. Although the diamond industry has lent its full support to civil society for the establishment of a monitoring process that can be seen to work, differences remained on the tactics to secure this objective. The October plenary ‘agreed unanimously to implement a voluntary “peer review” system to ensure the credibility of the Kimberley Process Certification Scheme’.²⁸

III. An example well set?

Setting aside the core objective of severely curtailing, if not stopping altogether, the trade in conflict diamonds, what—if anything—does the Kimberley Process offer?

In a world where public confidence in established international institutions such as the UN and the Group of Eight (G8) industrialized nations is fading, the Kimberley Process has provided an alternative model for the resolution of humanitarian and environmental security problems. The combination of inter-

²⁶ Council Regulation (EC) no. 2368/2002 of 20 Dec. 2002, implementing the Kimberley Process Certification Scheme for the international trade in rough diamonds, *Official Journal of the European Communities*, L 358/28 (31 Dec. 2002), URL <www.diamonds.net/kp/EU%20Council%20Regulation%202368.pdf>.

²⁷ See ‘Final communique, Kimberley Process plenary meeting, Johannesburg, 28–30 Apr. 2003’, URL <<http://www.kimberleyprocess.com/news/documents.asp?Id=51>>.

²⁸ See World Diamond Council, Press release, ‘Diamond industry and NGOs hail Kimberley Process breakthrough’, 31 Oct. 2003, URL <<http://www.worlddiamondcouncil.com/press/wdc%20release%20103003.html>>. For the Kimberley Process Certification Scheme see annex 11A, also available at URL <<http://www.debeersgroup.com/hottopics/cdintroduction.asp>>.

ested governments with the participation of a global industry and civil society provides 'ownership', responsibility and accountability for all involved. Different needs are addressed along the way, while the structure of such a model ensures that the shared objectives are not ignored.

In the first instance, success will depend on what distinguishes the Kimberley Process from other institutions and endeavours. From the beginning, in addition to the executive powers of government representatives, both the business and NGO communities have been involved as observers. However, this 'observer' status has evolved to allow these communities to contribute significantly to policy formulation in the Process. It is a multilateral approach. The framework of the Kimberley Process presents an opportunity to address specific problems that have regional origins but can have an effect elsewhere. For example, the problem at the root of the conflict diamonds issue was that valuable natural resources were being stolen by rebel groups in Angola, the DRC and Sierra Leone and sold to international markets through legitimate, mainstream channels of distribution.

The role of governments

Governments with a direct interest and stake in developing solutions can become involved and establish ownership. In the case of conflict diamonds, this process has included governments whose interests included diamond mining, diamond polishing and diamond jewellery consumption. For Angola it was the mining aspect that counted; the US interest lay in diamond polishing and consumption; and for South Africa it was all three. Governments approached the issue from different perspectives.

The Kimberley Process is guided by a Chair who, in addition to organizing plenary sessions, coordinates the distribution of policy initiatives, discussion of them at plenary meetings, and the composition and conduct of groups formed to develop and implement them. All agreements are reached by consensus.

Business participation

The involvement of business in such endeavours is enhanced if, as in the case of conflict diamonds, it is united in its efforts. The establishment of the World Diamond Council in September 2000 was critical for the effectiveness of contributions by the diamond industry. The WDC represents the entire industry, from mining through to retail. This has limited the number of industry delegates at meetings, with the positive effect that those who attend have a mandate to present policy proposals for discussion at plenary sessions of the Kimberley Process. In addition, a small, focused WDC team has allowed a flexible and more intimate approach to engagement with the NGO community. This has occasionally led to industry and civil society representatives finding them-

selves in ‘furious agreement’ with each other, united in their frustration at governments’ intransigence and procrastination.

The WDC and the NGO community have been able to adopt a more pragmatic approach to negotiations as a mutual trust has developed between them. This is a direct result of the flexibility provided by a pan-industry organization and its ability to carry out ongoing and often ad hoc meetings and negotiations with civil society between plenary sessions, in addition to having the mandate to deliver on its promises.

The contribution of civil society

While gathering the support of some 160 other civil society organizations throughout the world, the leading NGOs on the issue—Global Witness and Partnership Africa Canada—have benefited from the establishment of a core team to carry out negotiations with governments and business.

The essential requirements for success in addressing issues under the model of the Kimberley Process framework can thus be summarized as: (a) bringing together those parties with a direct interest; (b) providing relevant expertise; and (c) adopting a unified and flexible approach.

An ideal role for the UN Security Council

The fourth player in this framework is the United Nations. There is no doubt that the General Assembly’s endorsement of the Kimberley Process provided the validation required to maintain momentum.

The Kimberley Process complemented the various Security Council resolutions which addressed conflict regions, but the two activities were largely conducted without coordination. For example, the interests of the diamond industry—as well as the interests of the people of the DRC—would have been better served if a resolution had been adopted by the Security Council banning the trade in diamonds from the Kisangani region of the DRC. The resolutions on Sierra Leone and, in particular, Liberia were—in the view of the industry—implemented too late. What was required, as the Kimberley Process Certification Scheme was being developed, was clarity on where rough diamonds should not be purchased.

This is the ideal role for the Security Council to play in such a framework. Negotiations and policy formulation are best carried out outside the UN, but with the support of the General Assembly.

In an interview with *The Financial Times*, Kofi Annan said that the time was ripe for a fundamental reassessment of how the UN functions: ‘We are living through a crisis of the international system. The emergence of new and non-conventional threats forces us to ask whether the institutions and methods to

which we are accustomed are really adequate'.²⁹ Recent events suggest that they are not, but the inclusive approach taken by the Kimberley Process, which included a supportive and proactive role for the UN, might serve as a model. The UN has stated that the Kimberley Process contributed significantly to the reduction of UNITA's funding, effectively admitting that the Process succeeded in doing in three years what the UN (and the 'troika') had failed to achieve in a decade. It would be wrong to suggest that the Kimberley Process alone brought peace to Angola or Sierra Leone, but it undeniably helped to establish the conditions in which other forces for a durable settlement could operate more effectively.

The G7 also requires reassessment

Other institutions require equally robust reassessment. Jean-François Rischard, World Bank Vice-President for Europe, argued that:

The beleaguered [G7] Genoa Summit in July 2001 . . . cost more than \$100 million—yet the crucial discussion on the world economy lasted only ninety minutes . . . Given the complexity of most of the big global issues, the knowledge base of civil servants dispatched into such groupings by governments could never be strong enough without civil society and business. The Group of Seven (G7) industrialized nations still has not found a good way to enlist those other sectors.

Rischard has observed a further drawback with the G7 forum: 'The distance between people at large and the officials in these groupings is very great—the dialogue nil'.³⁰

Global issues networks

Rischard also develops a theme of 'inclusivity' by arguing for the establishment of what he calls global issues networks (GINs). The structure he advocates for these networks is almost identical to that of the Kimberley Process. Rischard suggests that the UN would have a role as facilitator, not as a problem solver, in the constitutional phase of launching such networks.

Each network's inception would additionally enlist individuals drawn from three kinds of partners: (1) national governments of developed and developing countries that are especially concerned with, or experienced in, the issue . . . ; (2) international civil society organizations that can lend individuals with comprehensive knowledge of the issue and represent other elements of civil society; and (3) firms that . . . pos-

²⁹ See Turner, M., 'New challenges mean time for change at UN', *Financial Times*, weekend edn, 6/7 Sep. 2003, p. 3.

³⁰ Rischard, J. F., *High Noon: 20 Global Problems, 20 Years to Solve Them* (Basic Books: New York, 2002); and Rischard, J.-F., 'Global issues networks: desperate times deserve innovative measures', *Washington Quarterly*, vol. 26, no. 1 (winter 2002/2003), pp. 17–33, available at URL <http://www.twq.com/03winter/docs/03winter_rischard.pdf>.

sess knowledge of the issue and are able both to represent other businesses and lend highly experienced business leaders to the effort.³¹

For this format to succeed, Rischard states that ‘a member may have come in as a business, government, or civil society representative, but once in, must think and act as a global citizen. . . . To that effect, the network must make a constant appeal to universal values . . . that are a prerequisite to the global issue at hand.’ This is largely reminiscent of the way Kimberley Process participants have conducted themselves over the past three years. It recognizes De Beers’ view on the nature of the Kimberley Process negotiations, namely, that although each ‘partner’ has differing needs, the objectives—and values—are shared.

Whether this fresh approach to dealing with humanitarian issues is called the ‘Kimberley Framework’ or ‘global issues networks’ does not matter—although the present author would like to point out that the launch of the Kimberley Process predated Rischard’s book. What is important is that such initiatives are not ignored or forgotten.

The abuse of natural resources enslaves a nation in poverty and instability, and can be a threat to international security. In conclusion, the hypothesis that, in the absence of sufficient confidence in existing structures, the Kimberley Process offers a viable alternative to providing solutions on humanitarian issues has been shown to have merit. It is certainly worthy of serious consideration as the UN embarks on a fundamental reassessment of how it functions.

³¹ Rischard, ‘Global issues networks’ (note 30), p. 25.

Annex 11A. The Kimberley Process Certification Scheme

Adopted on 5 November 2002 at Interlaken, Switzerland

PREAMBLE

PARTICIPANTS,

RECOGNISING that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons;

FURTHER RECOGNISING the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

NOTING the negative impact of such conflicts on regional stability and the obligations placed upon states by the United Nations Charter regarding the maintenance of international peace and security;

BEARING IN MIND that urgent international action is imperative to prevent the problem of conflict diamonds from negatively affecting the trade in legitimate diamonds, which makes a critical contribution to the economies of many of the producing, processing, exporting and importing states, especially developing states;

RECALLING all of the relevant resolutions of the United Nations Security Council under Chapter VII of the United Nations Charter, including the relevant provisions of Resolutions 1173 (1998), 1295 (2000), 1306 (2000), and 1343 (2001), and determined to contribute to and support the implementation of the measures provided for in these resolutions;

HIGHLIGHTING the United Nations General Assembly Resolution 55/56 (2000) on the role of the trade in conflict diamonds in fuelling armed conflict, which called on the inter-

national community to give urgent and careful consideration to devising effective and pragmatic measures to address this problem;

FURTHER HIGHLIGHTING the recommendation in United Nations General Assembly Resolution 55/56 that the international community develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards;

RECALLING that the Kimberley Process, which was established to find a solution to the international problem of conflict diamonds, was inclusive of concerned stake holders, namely producing, exporting and importing states, the diamond industry and civil society;

CONVINCED that the opportunity for conflict diamonds to play a role in fuelling armed conflict can be seriously reduced by introducing a certification scheme for rough diamonds designed to exclude conflict diamonds from the legitimate trade;

RECALLING that the Kimberley Process considered that an international certification scheme for rough diamonds, based on national laws and practices and meeting internationally agreed minimum standards, will be the most effective system by which the problem of conflict diamonds could be addressed;

ACKNOWLEDGING the important initiatives already taken to address this problem, in particular by the governments of Angola, the Democratic Republic of Congo, Guinea and Sierra Leone and by other key producing, exporting and importing countries, as well as by the diamond industry, in particular by the World Diamond Council, and by civil society;

WELCOMING voluntary self-regulation initiatives announced by the diamond industry and recognising that a system of such voluntary self-regulation contributes to ensuring an effective internal control system of rough

diamonds based upon the international certification scheme for rough diamonds;

RECOGNISING that an international certification scheme for rough diamonds will only be credible if all Participants have established internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories, while taking into account that differences in production methods and trading practices as well as differences in institutional controls thereof may require different approaches to meet minimum standards;

FURTHER RECOGNISING that the international certification scheme for rough diamonds must be consistent with international law governing international trade;

ACKNOWLEDGING that state sovereignty should be fully respected and the principles of equality, mutual benefits and consensus should be adhered to;

RECOMMEND THE FOLLOWING PROVISIONS:

SECTION I

Definitions

For the purposes of the international certification scheme for rough diamonds (hereinafter referred to as “the Certification Scheme”) the following definitions apply:

CONFLICT DIAMONDS means rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UN Security Council) resolutions insofar as they remain in effect, or in other similar UN Security Council resolutions which may be adopted in the future, and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future;

COUNTRY OF ORIGIN means the country where a shipment of rough diamonds has been mined or extracted;

COUNTRY OF PROVENANCE means the last Participant from where a shipment of rough diamonds was exported, as recorded on import documentation;

DIAMOND means a natural mineral consisting essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42;

EXPORT means the physical leaving/taking out of any part of the geographical territory of a Participant;

EXPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant from whose territory a shipment of rough diamonds is leaving, and which are authorised to validate the Kimberley Process Certificate;

FREE TRADE ZONE means a part of the territory of a Participant where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory;

IMPORT means the physical entering/bringing into any part of the geographical territory of a Participant;

IMPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant into whose territory a shipment of rough diamonds is imported to conduct all import formalities and particularly the verification of accompanying Kimberley Process Certificates;

KIMBERLEY PROCESS CERTIFICATE means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme;

OBSERVER means a representative of civil society, the diamond industry, international organisations and non-participating governments invited to take part in Plenary meetings; (Further consultations to be undertaken by the Chair.)

PARCEL means one or more diamonds that are packed together and that are not individualised;

PARCEL OF MIXED ORIGIN means a parcel that contains rough diamonds from two or more countries of origin, mixed together;

PARTICIPANT means a state or a regional economic integration organisation for which the Certification Scheme is effective; (Further consultations to be undertaken by the Chair.)

REGIONAL ECONOMIC INTEGRATION ORGANISATION means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the Certification Scheme;

ROUGH DIAMONDS means diamonds that are unworked or simply sawn, cleaved or bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102.10, 7102.21 and 7102.31;

SHIPMENT means one or more parcels that are physically imported or exported;

TRANSIT means the physical passage across the territory of a Participant or a non-Participant, with or without transshipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a shipment passes;

SECTION II

The Kimberley Process Certificate

Each Participant should ensure that:

(a) a Kimberley Process Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export;

(b) its processes for issuing Certificates meet the minimum standards of the Kimberley Process as set out in Section IV;

(c) Certificates meet the minimum requirements set out in Annex I. As long as these requirements are met, Participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements;

(d) it notifies all other Participants through the Chair of the features of its Certificate as specified in Annex I, for purposes of validation.

SECTION III

Undertakings in respect of the international trade in rough diamonds

Each Participant should:

(a) with regard to shipments of rough diamonds exported to a Participant, require that

each such shipment is accompanied by a duly validated Certificate;

(b) with regard to shipments of rough diamonds imported from a Participant:

- require a duly validated Certificate;
- ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;
- require that the original of the Certificate be readily accessible for a period of no less than three years;

(c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant;

(d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

SECTION IV

Internal Controls

Undertakings by Participants

Each Participant should:

(a) establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;

(b) designate an Importing and an Exporting Authority(ies);

(c) ensure that rough diamonds are imported and exported in tamper resistant containers;

(d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;

(e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V.

(f) when establishing a system of internal controls, take into account, where appro-

priate, the further options and recommendations for internal controls as elaborated in Annex II.

Principles of Industry Self-Regulation

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

SECTION V

Co-operation and Transparency

Participants should:

(a) provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each Participant should provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information;

(b) compile and make available to all other Participants through the Chair statistical data in line with the principles set out in Annex III;

(c) exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances;

(d) consider favourably requests from other Participants for assistance to improve the functioning of the Certification Scheme within their territories;

(e) inform another Participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other Participant do not ensure the absence of conflict diamonds in the exports of that other Participant;

(f) cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which

could lead to non-fulfilment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other Participants of the essence of the problems encountered and of solutions found;

(g) encourage, through their relevant authorities, closer co-operation between law enforcement agencies and between customs agencies of Participants.

SECTION VI

Administrative Matters

MEETINGS

1. Participants and Observers are to meet in Plenary annually, and on other occasions as Participants may deem necessary, in order to discuss the effectiveness of the Certification Scheme.

2. Participants should adopt Rules of Procedure for such meetings at the first Plenary meeting.

3. Meetings are to be held in the country where the Chair is located, unless a Participant or an international organisation offers to host a meeting and this offer has been accepted. The host country should facilitate entry formalities for those attending such meetings.

4. At the end of each Plenary meeting, a Chair would be elected to preside over all Plenary meetings, ad hoc working groups and other subsidiary bodies, which might be formed until the conclusion of the next annual Plenary meeting.

5. Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations.

ADMINISTRATIVE SUPPORT

6. For the effective administration of the Certification Scheme, administrative support will be necessary. The modalities and functions of that support should be discussed at the first Plenary meeting, following endorsement by the UN General Assembly.

7. Administrative support could include the following functions:

(a) to serve as a channel of communication, information sharing and consultation between the Participants with regard to matters provided for in this Document;

(b) to maintain and make available for the use of all Participants a collection of those laws, regulations, rules, procedures, practices and statistics notified pursuant to Section V;

(c) to prepare documents and provide administrative support for Plenary and working group meetings;

(d) to undertake such additional responsibilities as the Plenary meetings, or any working group delegated by Plenary meetings, may instruct.

PARTICIPATION

8. Participation in the Certification Scheme is open on a global, non-discriminatory basis to all Applicants willing and able to fulfil the requirements of that Scheme.

9. Any applicant wishing to participate in the Certification Scheme should signify its interest by notifying the Chair through diplomatic channels. This notification should include the information set forth in paragraph (a) of Section V and be circulated to all Participants within one month.

10. Participants intend to invite representatives of civil society, the diamond industry, non-participating governments and international organisations to participate in Plenary meetings as Observers.

PARTICIPANT MEASURES

11. Participants are to prepare, and make available to other Participants, in advance of annual Plenary meetings of the Kimberley Process, information as stipulated in paragraph (a) of Section V outlining how the requirements of the Certification Scheme are being implemented within their respective jurisdictions.

12. The agenda of annual Plenary meetings is to include an item where information as stipulated in paragraph (a) of Section V is reviewed and Participants can provide further details of their respective systems at the request of the Plenary.

13. Where further clarification is needed, Participants at Plenary meetings, upon recommendation by the Chair, can identify and decide on additional verification measures to be undertaken. Such measures are to be implemented in accordance with applicable national and international law. These could

include, but need not be limited to measures such as;

a. requesting additional information and clarification from Participants;

b. review missions by other Participants or their representatives where there are credible indications of significant non-compliance with the Certification Scheme.

14. Review missions are to be conducted in an analytical, expert and impartial manner with the consent of the Participant concerned. The size, composition, terms of reference and time frame of these missions should be based on the circumstances and be established by the Chair with the consent of the Participant concerned and in consultation with all Participants.

15. A report on the results of compliance verification measures is to be forwarded to the Chair and to the Participant concerned within three weeks of completion of the mission. Any comments from that Participant as well as the report, are to be posted on the restricted access section of an official Certification Scheme website no later than three weeks after the submission of the report to the Participant concerned. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

COMPLIANCE AND DISPUTE PREVENTION

16. In the event that an issue regarding compliance by a Participant or any other issue regarding the implementation of the Certification Scheme arises, any concerned Participant may so inform the Chair, who is to inform all Participants without delay about the said concern and enter into dialogue on how to address it. Participants and Observers should make every effort to observe strict confidentiality regarding the issue and the discussions relating to any compliance matter.

MODIFICATIONS

17. This document may be modified by consensus of the Participants.

18. Any Participant may propose modifications. Such proposals should be sent in writing to the Chair, at least ninety days before

the next Plenary meeting, unless otherwise agreed.

19. The Chair is to circulate any proposed modification expeditiously to all Participants and Observers and place it on the agenda of the next annual Plenary meeting.

REVIEW MECHANISM

20. Participants intend that the Certification Scheme should be subject to periodic review, to allow Participants to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the Participants, and of international organisations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds. The first such review should take place no later than three years after the effective starting date of the Certification Scheme. The review meeting should normally coincide with the annual Plenary meeting, unless otherwise agreed.

THE START OF THE IMPLEMENTATION OF THE SCHEME

The Certification Scheme should be established at the Ministerial Meeting on the Kimberley Process Certification Scheme for Rough Diamonds in Interlaken on 5 November 2002.

ANNEX I

Certificates

A. Minimum requirements for Certificates

A Certificate is to meet the following minimum requirements:

- Each Certificate should bear the title “Kimberley Process Certificate” and the following statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds”

- Country of origin for shipment of parcels of unmixed (i.e. from the same) origin

- Certificates may be issued in any language, provided that an English translation is incorporated

- Unique numbering with the Alpha 2 country code, according to ISO 3166-1

- Tamper and forgery resistant

- Date of issuance

- Date of expiry

- Issuing authority

- Identification of exporter and importer

- Carat weight/mass

- Value in US\$

- Number of parcels in shipment

- Relevant Harmonised Commodity Description and Coding System

- Validation of Certificate by the Exporting Authority

B. Optional Certificate Elements

A Certificate may include the following optional features:

- Characteristics of a Certificate (for example as to form, additional data or security elements)

- Quality characteristics of the rough diamonds in the shipment

- A recommended import confirmation part should have the following elements:

- Country of destination

- Identification of importer

- Carat/weight and value in US\$

- Relevant Harmonised Commodity Description and Coding System

- Date of receipt by Importing Authority

- Authentication by Importing Authority

C. Optional Procedures

Rough diamonds may be shipped in transparent security bags. The unique Certificate number may be replicated on the container.

ANNEX II

Recommendations as provided for in Section IV, paragraph (f)

General Recommendations

1. Participants may appoint an official coordinator(s) to deal with the implementation of the Certification Scheme.

2. Participants may consider the utility of complementing and/or enhancing the collection and publication of the statistics identified in Annex III based on the contents of Kimberley Process Certificates.

3. Participants are encouraged to maintain the information and data required by Section V on a computerised database.

4. Participants are encouraged to transmit and receive electronic messages in order to support the Certification Scheme.

5. Participants that produce diamonds and that have rebel groups suspected of mining diamonds within their territories are encouraged to identify the areas of rebel diamond mining activity and provide this information to all other Participants. This information should be updated on a regular basis.

6. Participants are encouraged to make known the names of individuals or companies convicted of activities relevant to the purposes of the Certification Scheme to all other Participants through the Chair.

7. Participants are encouraged to ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation.

8. Participants that produce diamonds should analyse their diamond production under the following headings:

- Characteristics of diamonds produced
- Actual production

Recommendations for Control over Diamond Mines

9. Participants are encouraged to ensure that all diamond mines are licensed and to allow only those mines so licensed to mine diamonds.

10. Participants are encouraged to ensure that prospecting and mining companies maintain effective security standards to ensure that conflict diamonds do not contaminate legitimate production.

Recommendations for Participants with Small-scale Diamond Mining

11. All artisanal and informal diamond miners should be licensed and only those persons so licensed should be allowed to mine diamonds.

12. Licensing records should contain the following minimum information: name, address, nationality and/or residence status and the area of authorised diamond mining activity.

Recommendations for Rough Diamond Buyers, Sellers and Exporters

13. All diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds should be registered and licensed by each Participant's relevant authorities.

14. Licensing records should contain the following minimum information: name, address and nationality and/or residence status.

15. All rough diamond buyers, sellers and exporters should be required by law to keep for a period of five years daily buying, selling or exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.

16. The information in paragraph 14 above should be entered into a computerised database, to facilitate the presentation of detailed information relating to the activities of individual rough diamond buyers and sellers.

Recommendations for Export Processes

17. An exporter should submit a rough diamond shipment to the relevant Exporting Authority.

18. The Exporting Authority is encouraged, prior to validating a Certificate, to require an exporter to provide a declaration that the rough diamonds being exported are not conflict diamonds.

19. Rough diamonds should be sealed in a tamper proof container together with the Certificate or a duly authenticated copy. The Exporting Authority should then transmit a detailed e-mail message to the relevant Importing Authority containing information on the carat weight, value, country of origin or provenance, importer and the serial number of the Certificate.

20. The Exporting Authority should record all details of rough diamond shipments on a computerised database.

Recommendations for Import Processes

21. The Importing Authority should receive an e-mail message either before or upon

arrival of a rough diamond shipment. The message should contain details such as the carat weight, value, country of origin or provenance, exporter and the serial number of the Certificate.

22. The Importing Authority should inspect the shipment of rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the Certification Scheme.

23. The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.

24. Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to the relevant Exporting Authority.

25. The Importing Authority should record all details of rough diamond shipments on a computerised database.

Recommendations on Shipments to and from Free Trade Zones

26. Shipments of rough diamonds to and from free trade zones should be processed by the designated authorities.

ANNEX III Statistics

Recognising that reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the effective implementation of the Certification Scheme, and particularly for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade, Participants strongly support the following principles, taking into account the need to protect commercially sensitive information:

(a) to keep and publish within two months of the reference period and in a standardised format, quarterly aggregate statistics on rough diamond exports and imports, as well as the numbers of certificates validated for export, and of imported shipments accompanied by Certificates;

(b) to keep and publish statistics on exports and imports, by origin and provenance wherever possible; by carat weight and value; and under the relevant Harmonised Commodity Description and Coding System (HS) classifications 7102.10; 7102.21; 7102.31;

(c) to keep and publish on a semi-annual basis and within two months of the reference period statistics on rough diamond production by carat weight and by value. In the event that a Participant is unable to publish these statistics it should notify the Chair immediately;

(d) to collect and publish these statistics by relying in the first instance on existing national processes and methodologies;

(e) to make these statistics available to an intergovernmental body or to another appropriate mechanism identified by the Participants for (1) compilation and publication on a quarterly basis in respect of exports and imports, and (2) on a semi-annual basis in respect of production. These statistics are to be made available for analysis by interested parties and by the Participants, individually or collectively, according to such terms of reference as may be established by the Participants;

(f) to consider statistical information pertaining to the international trade in and production of rough diamonds at annual Plenary meetings, with a view to addressing related issues, and to supporting effective implementation of the Certification Scheme.