

# The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention

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**ABSTRACT.** The Kimberley Process Certification Scheme is an innovation in global governance that combines a voluntary industry-led certification system with an inter-state import/export control regime. States, industry, and activists speedily negotiated it in large part due to the concentrated structure of the industry, and the complementary nature of emerging norms regarding both corporate behavior and international intervention in civil conflicts. The potential strength of the Kimberley Process lies in its state-led border controls, but these are being undermined by weak national governments. This effort may not provide an effective model for regulating other “conflict commodities” because of the unique character of the diamond market.

**KEY WORDS:** certification, diamonds, governance, Kimberley Process, norms, transnational activism

## Introduction

How do we create an incentive system that encourages ethical behavior by business in the midst of conflict? How do we ensure that commerce does not contribute to strengthening illegitimate governments, or undermining the position of weak ones? Although many businesses flee conflict and instability, trade and investment often continue despite violence, corruption, and weak governance.<sup>1</sup> Under these circumstances, business leaders may either become complicit in violence and corruption, or may inadvertently contribute to it simply through their daily operations. Some observers argue that investors should withdraw from conflict-affected regions or from states with weak or repressive regimes, as in the campaigns for divestment from Sudan and Myanmar. Others, however, seek to

devise a political framework that encourages and even ensures corporate responsibility under these difficult conditions, and promotes a role for business in promoting peace.

In the last decade, the second option has gained prominence, particularly among activists and academics (Fort and Schipani, 2004, 2007; Haufler, 2009, 2010). Different international frameworks have been created to address the conflict impact of foreign trade and investment, particularly the exploitation of natural resources, which has been blamed for much of the violence and bloodshed in Africa. These initiatives include the UN Global Compact Policy Dialogue on Business in Zones of Conflict, the Voluntary Principles on Human Rights and Security, the Chad-Cameroon Pipeline Project, the research study of the UN Secretary-General’s Special Representative for Business and Human Rights, the Extractive Industries Transparency Initiative (EITI), and the Kimberley Process Certification Scheme for diamonds (KPCS).<sup>2</sup> Of these efforts, the Kimberley Process stands out in two ways: its negotiation and implementation were surprisingly quick and widely accepted despite its complicated design and relative stringency; and it was associated with a perceived decline in violence, although it has come under increasing criticism in recent months.

In the “Global governance and corporate responsibility” section, the argument of the article is presented, drawing upon theorizing in political science regarding governance and corporate social responsibility. The “The diamond industry” section provides background information on the diamond sector and its structure and evolution, particularly the role of De Beers. The discussion in “Transna-

tional activism, the responsibility to protect, and conflict diamonds” section turns to the changing normative environment surrounding corporations and conflict, focusing on transnational activism and the intersection of corporate social responsibility with a commitment to protect the innocent with international intervention, followed by a discussion of the creation of the Kimberley Process, and its implementation in “Norms, structures, and incentives in the creation of a new governance system” section. The final section examines and evaluates the design of the KPCS, the political and economic incentives it creates for members, and its impact. The conclusion considers the KPCS as a possible model for other conflict commodities and for conflict prevention and peace promotion more generally.

### **Global governance and corporate responsibility**

What features account for the rapid creation of the KPCS? This article draws primarily upon the literature on global governance in the field of international relations, instead of on the business ethics literature, taking a normative and actor-centered approach (Avant et al., 2010).<sup>3</sup> The global governance literature in political science draws attention to the character and evolution of governance – not government – in global regulation. Governance can be disaggregated into component steps or parts (agenda-setting, rule-making, monitoring, enforcement, adjudication), and these functions can be performed by different actors, and not just by state authorities (Abbott and Snidal, 2009a; Avant et al., 2010; Cutler et al., 1999; O’Rourke, 2003).

This article focuses on the mobilization of new norms by transnational actors that propelled forward the debate over conflict diamonds. These actors engaged in agenda-setting, linking commerce to conflict and promoting a particular solution to the problem. The emerging corporate accountability agenda fit well with the incentives of states and firms, and their mutual incentives to cooperate in creating a new regulatory regime. The negotiations were facilitated by the hierarchical structure of the diamond trade, the significant benefits the Kimberley Process provides to members, and by the effec-

tive transnational mobilization of activists and policymakers around this issue. The KPCS could have an impact on the illegal trade because it was broad based and included all the major industry players and significant exporting and importing states. By combining industry certification with public sector export and import controls, the legitimate diamond market is strengthened in ways that provide strong incentives for the major players to participate and ensure it functions well. The main weaknesses of the KPCS are the presence of spoilers – weak governments that cannot or will not enforce the KPCS, and middlemen and smugglers able to exploit loopholes in the system (Haufler, 2009, 2010). The Kimberley Process represents one of the most interesting recent innovations in conflict prevention. In this article, I discuss the movement to create a system to control the diamond trade, and the extent to which it may be a model for other efforts to regulate other conflict commodities, such as oil, coltan, cocoa, and timber.

The Kimberley Process is an industry-based certification scheme wrapped inside an export/import regime that is implemented through domestic legislation in member states. It is designed to track rough diamonds and prevent those from conflict zones from entering legitimate world markets. It is a global voluntary regulatory system that is a variation of the “civil regulation” that has emerged across many sectors and issues in recent years (Ruggie, 2004; Vogel, 2008). Like many such systems, the private sector had a key role in designing and implementing the rules and standards to be followed by firms, and the process included extensive negotiation and collaboration with other stakeholders. Unlike many similar efforts, however, the Kimberley Process includes a degree of enforcement through state border control and has developed procedures to end the membership of violators. What is particularly striking is the ambitious goals of this effort – to influence the course of war and peace through a multi-stakeholder approach that attempts to harness the power of the private sector. This is a new approach to understanding the dynamics of conflict prevention, and one that makes sense in an era of economic globalization.

KPCS is a voluntary certification regime, and could be compared to other certification systems like the Forest Stewardship Council, but it is, at the same

time, a sanctions regime, a cartel, and a conflict-prevention initiative. The majority of certification systems are in the environmental field, where there is the possibility of creating a win-win situation in which changes in firms' behavior can contribute to efficiency gains (Delmas and Young, 2009). This is not as easy to achieve in governance systems addressing issues of war and peace, which cannot be framed in terms of efficiency gains and losses.

### The diamond industry

The diamond industry is notable for being organized for over a century into one of the most successful and long-lived cartels in history. The cartel was created in the early years of the twentieth century by De Beers. De Beers controlled both the supply of rough diamonds and its distribution. It did this by manipulating production at its own mines, buying up other companies and mines, negotiating long-term supply contracts with other producers, and maintaining a stockpile of rough diamonds that it could release on the market to stabilize supply (Spar, 2006). It also controlled international distribution by creating one distribution channel, the Central Selling Organization, which would only deal with a select number of buyers ("sightholders") and would only sell the amount and type of diamonds that De Beers wanted. At one time, it was estimated that De Beers directly and indirectly controlled 80% of the market for rough diamonds (Keller, 1992).

De Beers did not control the market because it owned the most diamond mines, but because it was clever in calling upon the common interest of all the diamond producers – a common interest in maintaining stable and high prices. Under the direction of the Oppenheimer family, De Beers from the beginning pursued a strategy to make diamonds a luxury good and not a commodity, creating an illusion of scarcity to uphold their value. This was combined with clever marketing that made diamonds the gem of choice for engagement rings, heightening their value further (Brinig, 1990). Deborah Spar described the system in this way:

It is an intricate network of production quotas, quality controls, and stockpiles. It is a formidable system of fixed prices and controlled distribution. It is an

incredible array of rules and regulations, rarely violated and meticulously enforced. Most of all, however, the diamond cartel is a staggering edifice of cooperation. (Spar, 1994, p. 52)

The literature on cartels is replete with discussions of all the failed international cartels, many of them launched at the same time as the diamond cartel (Olson, 1965; Spar, 1994). Most cartels fail because of the strong incentive to free ride in order to reap the individual benefits of high prices by selling more of the product than others. De Beers was able to enforce the cartel by buying up excess diamond supplies to maintain prices; by selling rough diamonds from its stockpile to drive prices down to discipline unruly industry participants; and by excluding or punishing free riders through its control of the main sales center for rough diamonds. The resources that De Beers controlled, and its willingness to use those resources to support the cartel, ensured its longevity.

This cooperation and control began to weaken in the 1990s. The collapse of the Soviet Union led to difficult negotiations with the successor Russian government, which wanted to sell rough diamonds through channels outside De Beers' sales channels. De Beers' executives referred to the "leakage" of diamonds into markets outside of its control ([www.DeBeersgroup.com](http://www.DeBeersgroup.com)).<sup>4</sup> At the same time, the breakdown of order in some diamond-producing states in Africa pushed large amounts of rough diamonds into world markets as both rebels and governments sought a new means to finance war and rebellion now that their Cold War patrons had turned away from them. This strained the ability of De Beers to buy up the excess supply to continue to maintain price stability. Finally, new diamond discoveries were made in Australia and then Canada, weakening further the position of De Beers as a major source of diamonds.

In the 1990s, the company lost market share (dropping from 85 to 65%), but its stockpile of diamonds doubled from \$2.5 to \$5 billion. New smaller players entered the market throughout the 1990s and challenged De Beers for market share. Taking advantage of the civil war Angola, Lev Leviev convinced the Angolan government in 2000 to break its contract with De Beers and instead sell to his company. By the turn of the twenty-first

century, South Africa no longer remained the primary diamond-producing country. By 2006, the leading producers by value in dollars were Botswana (27%), Russia (21%), and Canada (12%) totaling over one-half of world production value ([www.kimerleyprocess.com](http://www.kimerleyprocess.com)). According to *The Economist*, in the early 1990s, De Beers produced about 45% of the world's rough diamonds, but sold about 80% of the total world supply through the Central Trading Organization ("Changing facets" 2007). Today, De Beers controls only around 40% of the rough diamond market ([www.dtc.com](http://www.dtc.com)).

In a dramatic response to these challenges, the management of De Beers restructured the company, launched a major joint venture with the government of Botswana, bought mining interests in the Northwest Territories in Canada, and most significantly relinquished its tight control over rough diamond supply and distribution. Its new strategy was to move from being "buyer of last resort" to "supplier of first resort." In order to demonstrate its change in policy, De Beers committed to selling much more of its stockpile of diamonds, which reduced its ability to manipulate diamond supplies and support a stable price (United Press International, 2000). The trading arm of De Beers stopped buying diamonds on the open market, which was one of the primary means to build up its stockpiles and control supply.

Part of its new strategy was to begin to enter consumer markets, including selling polished diamonds marketed with the Forevermark label. De Beers would seek to become the pre-eminent brand name for gem diamonds. In order to do this, it had to be able to enter the U.S. market, which was a significant importer of gem diamonds. This was blocked to the company by class-action lawsuits launched in 2001 accusing the company of price-fixing. The suits claimed that the company manipulated supply and controlled distribution of diamonds to affect diamond prices. In order to lift the bar on doing business in the United States, De Beers began negotiating a settlement in 2005 ("Changing facets", 2007). In 2008 the final settlement was approved, with the company paying \$295 million to purchasers of diamonds and committing itself to end its practice of monopolizing rough diamond supplies and manipulating prices ([www.diamondsclassaction.com](http://www.diamondsclassaction.com)).

In order to sum up, the supply and distribution of rough diamonds was monopolized by De Beers in a highly structured and tightly-knit set of contractual relationships. All the major suppliers cooperated with De Beers to maintain the value of diamonds, which depended so much on the perception of scarcity. This monopoly began to weaken in the 1990s, prior to the initial negotiations over what became the Kimberley Process. In fact, the end of the monopoly and the settlement of anti-trust litigation in the United States coincided with the negotiation and implementation of the KPCS. As some observers have argued, the new regulatory control regime established by the Kimberley Process may have had the unintended consequence of saving De Beers (Economist, 2007).

### **Transnational activism, the responsibility to protect, and conflict diamonds**

Civil wars in Angola, Sierra Leone, Rwanda, Liberia, DRC, and Cote d'Ivoire spilled across borders and garnered worldwide attention in the 1990s. The brutality of genocide in Rwanda and the cruelty of rebel practices in Sierra Leone, including the use of child soldiers and rape as weapon of war, generated extensive media attention and galvanized activism on behalf of the victims. The international community sought to directly intervene in conflicts in a way it had not done previously. UN-sponsored peacekeeping missions expanded in number and size. There was talk of a "responsibility to protect" innocent citizens, even from their own governments, which would justify active intervention by the international community in contravention of traditional norms of sovereignty (Evans et al., 2002; Finnemore, 1996, 2003; International Commission on Intervention and State Sovereignty, 2001).

In addition to authorizing peacekeeping missions, the United Nations imposed sanctions on many of the countries suffering conflict in Africa. However, widespread concern arose that these sanctions did not impose sufficient costs on either rebels or government leaders to persuade them to negotiate an end to war, but imposed their harshest burden on ordinary citizens (a particular concern in the case of Iraq, leading to the ill-fated Food for Peace program). The UN had progressively narrowed its

sanctions policies throughout the 1990s, implementing “smart sanctions.” As part of this strategy it began to target high-value commodities such as oil, diamonds, and timber, which financed the conflict. The UN Security Council applied sanctions against diamonds from Angola, where UNITA rebels were able to continue to fight – despite repeated efforts to bring them to the negotiating table – because of their access to diamond revenues. One report estimated that in 1999 alone, the UNITA rebels received approximately \$3–4 million from the trade in illegal diamonds (Fowler, 2000). In Sierra Leone, a proposed peace agreement in 1999 hinged on the return of diamond fields in rebel-controlled territory to the government, which they refused to do, leading to the imposition of sanctions. And the Democratic Republic of Congo is a major source of conflict diamonds. The UN sanctions regime did not succeed in its aim of ending these conflicts through negotiated settlements. Neither broad sanctions nor the more narrowly targeted “smart sanctions” were successful in reforming regimes or ending conflicts, in part due to widespread sanctions-busting documented in high profile reports from the UN itself.

A number of activists in the 1990s formed new organizations or redirected the attention of existing ones toward the dire need to end the continuing violence and bloodshed. They lamented the failure of international action – from sanctions to direct intervention – and the dire situation of innocent and powerless victims. Some of these groups focused their attention on how the market for natural resources financed conflict by providing revenues to hire soldiers and buy weapons.<sup>5</sup> In a series of reports in 1998 and 1999, Global Witness, a London-based activist organization, put oil companies and banks on notice for their culpability in facilitating the ongoing conflict in Angola (Global Witness, 1998, 1999). Ian Smillie, of Partnership Africa Canada, released a report in 2000 that linked diamonds to bloodshed in Sierra Leone (Smillie et al., 2000). Both of these organizations mobilized a larger transnational campaign that framed the issue in terms of “conflict diamonds.” Shortly afterward, the more dramatic label of “blood diamonds” became a rallying cry for advocacy organizations appealing to consumer sentiment and pressing policymakers to take action.<sup>6</sup>

This campaign resonated with the rising tide of efforts to hold corporations accountable for a variety

of ills – environmental and social – that accompanied globalization. Across a variety of issue areas, numerous transnational campaigns targeted name-brand companies, such as Nike, in an effort to force political and social change by transforming corporate behavior. These different campaigns constituted what might be labeled a “corporate accountability movement,” propelling norms of corporate social responsibility onto the international agenda (Bendell, 2004; Broad and Cavanagh, 1998). These campaigns were aimed at improving labor standards, upholding human rights, protecting the environment, and generally establishing global social and environmental standards. One of the hallmarks of the 1990s was the rise of transnational activism more generally, as the political concomitant to economic globalization (Keck and Sikkink, 1998; Tarrow 2005).

By the end of the 1990s, the reality of failed efforts to use sanctions and military force to bring an end to bloodshed formed a backdrop for a new focus on the role of the private sector. Norms of corporate social responsibility intersected with ideas regarding the responsibility of the international community to intervene for humanitarian purposes (Finnemore, 2003). The campaign against conflict diamonds meshed with rising interest in mobilizing the business community on behalf of peace, and responded to the anti-globalization movement’s claims the private sector benefited from free markets without taking responsibility for the costs it imposed (Korten, 1995). In this climate, it was relatively easy for groups aiming to end post-Cold War conflicts to build transnational activism against the diamond industry, linking their concerns about complicity to corporate social responsibility norms.<sup>7</sup>

### **Norms, structures, and incentives in the creation of a new governance system**

The creation of the Kimberley Process took a record-breaking 3 years from start to finish. It was propelled forward by the intersection of multiple global norms with a hierarchical industry structure and strong market incentives. As Finnemore, Sikkink, Tarrow, and some other authors have noted, there has been a transnational mobilization of activists in recent years who carry new ideas about appropriate behavior into the public sphere (Finnemore and Sikkink, 1998;

Keck and Sikkink, 1998; Khagram et al., 2002; Tarrow, 2005). They identify pressing problems, propose new solutions, and most importantly create coalitions that span borders and increasingly incorporate multiple stakeholders. They are particularly effective when they appeal to sentiment based on threats to bodily integrity, as in war and human rights abuses.<sup>8</sup> Their efforts seek to change the normative constraints within which states and firms interact. The ideas that emerge on the international agenda do not float freely, as Risse points out – they are carried by specific actors, and become embedded within society through a number of different mechanisms, such as imitation and changes in material incentives (Dobbin et al., 2007; Risse, 1994).

In the case of diamonds, transnational activists identified a “new” problem – that the trade in rough diamonds financed war. Their concerns fell on relatively deaf ears in part because of the larger context in which anti-globalization activists and others increasingly argued that multinational corporations needed to become more accountable for the consequences of their actions (Bendell, 2004; Broad and Cavanagh, 1998). But they would not have been able to construct the coalition necessary to create a governance system for diamonds without two other factors that worked in their favor. First, they could credibly threaten the reputation of diamonds as a symbol of love, undermining their value and imposing severe costs on the industry for failure to act. They raised the potential consequence that consumer markets for gem diamonds would dry up. Second, as already noted, diamond markets were highly concentrated, both in terms of the role that De Beers played in the industry, and also in the fact that only a handful of states produce the majority of diamonds. The way in which norms, incentives and industry structure combined facilitated the rapid movement from the initial idea of conflict diamonds to the successful negotiation of a regime to end the global trade in them.

The year 2000 was pivotal in the creation of the Kimberley Process. In the beginning, the diamond industry may have resisted the demands of the campaigners to end the trade in conflict diamonds, but they quickly saw both the threat and opportunity they confronted. At first, some argued that they did not trade in conflict diamonds, that it was impossible to distinguish conflict diamonds from “clean”

stones, or that the responsibility for war lay elsewhere. De Beers could ignore the campaign at first, remaining confident that it would have little impact on consumers or policymakers. De Beers had shrugged off an earlier campaign against labor practices at De Beers-owned mines, and it would shrug off this one as well.

By 2000, however, some industry leaders realized that the conflict diamond campaign posed an increasing threat to diamond markets as a whole. The value of diamonds used for jewelry is at heart based on a myth about the value of the stones, and not rooted in material value. The diamond cartel reinforced the perception that the diamond was a special gem by maintaining artificial scarcity, and “branding” diamonds as luxury products and status goods. The idea that an engagement ring must be a diamond was one promoted by the diamond sector, and is of fairly recent origin.<sup>9</sup> Activists had become more adept over the years at constructing campaigns and appealing to consumers, social investors, and policymakers through protests, new media, and litigation (Spar et al., 2003).

The campaign against “blood diamonds,” complete with vivid portrayals of the limbs of children cut off by rebels in Sierra Leone, effectively countered the soft-focus portrayal of a diamond ring as an object representing love and commitment. The blood diamond campaign had the potential to change how consumers viewed diamonds, destroying their reputation as appropriate symbols of affection and fidelity. The worst-case scenario that some in the industry foresaw was the collapse of the diamond gemstone market. The stakes in this case were significantly higher than in earlier campaigns about labor standards, and the impact of the blood diamond campaign appeared to be more significant.

In 1999, a High Level Expert Committee of the UN began investigating sanctions-busting. Robert Fowler, head of that committee, also began lobbying for the diamond industry to take action independently to stem the impact of the blood diamond campaign and forestall harsher action by the UN and member governments (Fleshman, 2001). The UN Security Council favored establishing a tracking system for uncut, or rough, diamonds that would identify their origin and legitimate export, and document the handling of the stones. By 2000, the UN published the Fowler Report, for the first time

giving the names of individuals and companies involved in sanctions-busting (Fowler, 2000). All of this put increasing pressure on the diamond industry to take action against conflict diamonds. For De Beers, the decision to support action on this issue came from a pragmatic assessment of the stakes. As Nicky Oppenheimer said in 2000,

When you look at the volume of conflict diamonds, which are less than 4 percent of the world production compared to the 96 percent plus that come from good areas, it is obviously in all our interests to drive this 4 percent away. Why should any of us put our business at risk for peanuts like this? That's crazy. (Cowell, 2000)

Worldwide, there appeared to be growing consensus on the need for the diamond industry to take action on conflict diamonds. The World Federation of Diamond Bourses and the International Diamond Manufacturers Association met together in 2000 and passed a resolution creating the World Diamond Council (WDC) to address the conflict diamonds issue. The mandate of the WDC was to develop a tracking system for the export and import of rough diamonds to prevent their illicit use.<sup>10</sup> Through negotiations among its members, meeting in an array of different committees, the WDC explored options and produced proposals that would become the basis for a new international regime. The heart of the system would be an industry-designed system of warranties and chain-of-custody practices that would assure buyers that the rough diamonds they purchased did not come from conflict zones. These “no go” zones would be excluded from markets for legitimate diamonds because members of the WDC committed not to trade in uncertified stones. They also proposed that other sectors, including banks, insurers, and shippers, also agree not to do business with anyone dealing in conflict diamonds (Rapaport Tradewire, 2000).

In 2001, the industry began to implement a voluntary system of certification, and began to establish internal controls to prevent the purchase and distribution of conflict diamonds. Such a system, however, could not be implemented effectively by industry alone, as the participants recognized from the beginning. The WDC called for the implementation by governments of export and import controls to back up and enforce the diamond certification system. Major exporting and importing

states needed to establish policies that would only permit trade in legitimate diamonds, and enforce them through their customs systems.

The blood diamond campaign, while targeting primarily the industry's major players, also had raised concerns among the major producing states – Botswana, Namibia, and South Africa all recognized the threat to one of their major exports. They supported calls by the UN General Assembly to end the sale of conflict diamonds, which were defined as those used to finance rebel causes against recognized and legitimate governments. Spurred to action, the South African government in 2000 hosted the first UN-sponsored negotiations among industry representatives from the WDC, major diamond producing states, major consuming states (including the United States), and civil society organizations (Global Witness and Partnership Africa Canada). It was held in Kimberley, South Africa, the site of the historic diamond mine. This meeting launched the negotiations to create the Kimberley Process, which would take another 2 years of negotiation. However, by the end of 2000, the UN General Assembly adopted a resolution supporting the establishment of a diamond certification system, as proposed by the WDC as part of the Kimberley negotiations.

Under the KPCS, rough diamonds (diamonds that are uncut or minimally cut and unpolished) would be packaged together in a parcel with a forgery-resistant certificate that documents the origin of the stones, i.e., that they do not come from conflict zones. A system of warranties would track the diamond packages and document who handled them. All participant states are required to ensure that exports and imports of diamonds are in sealed containers, properly certified, and do not come from states that are not members of the KPCS. States must implement national legislation to criminalize trade in conflict diamonds. The members are supposed to report information such as country diamond production levels, trade data, and the implementation problems they encounter. They are also required to institute internal controls developed by the industry to ensure that conflict diamonds are eliminated from internal markets as well as from exports. The Kimberley Process Certification Scheme entered into force in 2003 with over 40 member countries, the WDC, and the two NGOs that started it all – Global Witness and Partnership Africa Canada.

The state-based border control regime would be complemented by industry self-regulation which “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” (KPCS Section IV). For each of these steps, the KPCS makes specific recommendations about the design of the system but leaves the details to industry and government in each member state. Within each member state, the diamond industry would develop a system of certification warranties to ensure that no conflict diamonds were knowingly brought to market. In addition, they would submit themselves to regular third-party audits. While the WDC has established guidelines on how to implement such a system, there is variation in the design of the warranty system across countries. To date, the KPCS has not established clear oversight and sanctioning of industry participants in response to the problems revealed by some audits, and the audit system itself is not well established.

All KPCS members meet annually to review the behavior of member states, address any problems that have arisen, and refine the system. One of the first issues they addressed was the need to institutionalize a system of peer review to monitor their own behavior. This peer review system was launched in 2003, with a Working Group on Monitoring that regularly reviews implementation ([www.Kimberleyprocess.com](http://www.Kimberleyprocess.com)).<sup>11</sup> States that violate the terms of the KPCS, that are too riddled with corruption to implement it effectively, or that otherwise are free-riding on the KPCS system would have their membership revoked.

From the first outcry by Global Witness and Partnership Africa Canada to the entry into force of the KPCS in 2003 only 5 years passed, and the actual negotiations only took 2 years. Nevertheless, the participants created a complex international institution which, while voluntary, garnered the support of all the major players within the diamond industry, all the major producing and consuming countries, and many of the activists. The support from industry and government is despite the fact that the KPCS is much more than words – for members, it institutes substantive changes in how rough diamonds are

handled within a country, and how they are traded internationally.

The activist groups, particularly Partnership Africa Canada and Global Witness – both of which became founding members of the KPCS – successfully built a coalition among the major stakeholders. They defined a problem that needed to be resolved, and built a campaign that drew upon the rising corporate accountability movement and new norms of corporate social responsibility. They mobilized action at a time when the international community had grown increasingly concerned about the responsibility to protect the innocent. Their task was facilitated by the fact that they were targeting a highly organized industry, in which the single biggest player, De Beers, came to support the idea of regulating conflict diamonds. The solutions proposed include both carrots and sticks for participants – without some action on the conflict diamond issue, the market for diamonds could collapse if consumers refused to buy “blood” diamonds; but the certification system and export/import controls would essentially establish a new cartel for those dealing in legitimate – “clean” – diamonds.

### Implementing the Kimberley Process

There are different ways in which we can evaluate the KPCS: its processes, its impact, and its legitimacy. In terms of its processes, the KPCS is notable for its inclusive membership, and its ability to evolve over time. Membership has increased from 40 at its founding (including the European Union as one member) to 48 today, representing 74 countries. In addition, the WDC (representing all major producers, traders, polishing centers, and the majority of diamond consumer markets), Global Witness, and Partnership Africa Canada are official observers. Very quickly after its founding, the members recognized the need to establish a regular monitoring system. All member states now submit annual reports, and are reviewed for compliance with the KPCS rules (Global Witness and Wexler, 2006). The members meet annually, and have created committees to address different issues.

The impact of the KPCS can be seen in both the level of trade in legitimate diamonds, and the impact

of the KPCS on conflict. The KPCS is credited with a significant increase in the level of legitimate diamonds traded in international markets. It is difficult to estimate the illegal trade in conflict diamonds prior to the Kimberley Process, and estimates range up to 15% of total world trade in rough diamonds, according to the Kimberley website although most observers describe it as constituting around 4% of total trade.<sup>12</sup> The KPCS website prominently displays its estimate that over 99% of the diamonds traded today are conflict-free ([www.kimberleyprocess.com](http://www.kimberleyprocess.com)). An outside audit of the KPCS in 2006 pointed to the significant increase in legitimate exports from countries that were major sites of conflict diamonds, such as Sierra Leone, which went from around \$26 million in official exports in 2001 to \$142 million in 2005 (Global Witness and Wexler, 2006). The increase in legitimate exports signals that more diamonds are circulating in being brought into the system instead of circulating in illicit transactions.<sup>13</sup>

The industry has implemented a certification system and chain of custody standards within each member state, and the major industry associations and firms have joined. Diamond shipments that have occurred outside the KPCS have been seized, although smuggling has remained an ongoing problem. Most member state participants have been reviewed at least once, and a few have been barred for non-compliance, such as the Democratic Republic of Congo and Liberia. The latter was permitted to re-join in 2007, after the lifting of UN sanctions in response to a change in government and significant reforms there. The Wexler/Global Witness Report noted the effect the KPCS has on peace and governance, which is difficult to assess (Global Witness and Wexler, 2006). The hope of many was that the KPCS process itself may provide the standards and guidelines for rebuilding the industry following the devastation of war, and contribute to the ability of the government to reclaim control of territory.

The KPCS probably had its greatest success in preserving the market for gem diamonds. Botswana is now the largest producer in terms of the value of diamonds, and Canada has also expanded its presence in the market, both of them based in part on the strong claim that their diamonds are conflict-free. The export/import controls of the KPCS assure that

Kimberley members only trade with other Kimberley members, raising the cost for those outside the “club” (Potoski and Prakash 2006). This is probably the greatest incentive for both states and firms to support the KPCS, since it upholds the value of diamonds and at the same time creates high barriers to entry. It was designed to provide incentives for participation by providing a ready market for legitimate diamond sales – a market that would not be subject to official sanctions or consumer boycotts. The certification is a clear and public symbol of a positive reputation, to be highlighted to consumers, activists, and public officials. In preserving the market for diamonds, the system also preserves the profits of the industry participants.

While the Kimberley Process started well, and members were willing to negotiate regular monitoring, it has also run into a number of problems and perceived loopholes in the system. While open conflict in Africa has declined, many states continue to suffer from weak governance, which makes implementation of the internal controls required to track diamonds difficult if not impossible. Cheating includes falsification of certification documents by industry and government officials; lack of controls as the rough diamonds change hands and are transferred among middle-men, distributors, polishers, and retailers; and unwillingness by states to enforce export and import controls. The ability, and more important, the willingness of some states to provide effective oversight within their own countries is a source of weakness in the regime. Some member countries are weak governments, with high levels of corruption and erratic commitment to the process. The certificates of origin from these states may be suspect, as officials can be richly rewarded for certifying diamonds from suspicious sources.

The Democratic Republic of Congo, Angola, and Côte d’Ivoire have all demonstrated an inability or unwillingness to control the diamond trade within their borders. Smugglers and corrupt officials can free-ride and benefit from the Kimberley system without contributing, by exploiting loopholes in the certification and warranty mechanisms and evading border controls (King and Toffel, 2009). Some major firms, such as the Russian ALROSA, oppose the attempt to control conflict diamonds and are suspected of conducting transactions outside of the Kimberley Process system. As a press release from

Global Witness noted after a November 2007 meeting of the KPCS, “weak controls and enforcement in major trading and manufacturing centres are undermining the effectiveness of the KP and allowing conflict and illicit diamonds to enter the legitimate trade” (Global Witness, 2007).

Today, the major flashpoint of concern is the diamond-producing regions in Zimbabwe, a state in shambles though not in an outright state of war (although some would argue the point). The government has militarized diamond-producing areas of the country, and has been accused of numerous acts of violence against citizens. Revenues from the sale of these diamonds go to the police and military, along with senior government officials. The diamonds from this area are not technically conflict diamonds, but many of observers see the rough diamonds as a means for a repressive and corrupt regime to maintain its power, reward its allies, and crush its opponents. In the last few months, a Kimberley Process investigation produced no meaningful action, and Zimbabwe remains a member. In response to this inaction, the continuing weaknesses of internal tracking systems for diamonds, and concerns about artisanal mining, Ian Smillie of Partnership Africa Canada recently withdrew as an official observer of the process. “I am leaving Partnership Africa-Canada (PAC) because I feel that I can no longer in good faith contribute to a pretense that failure is success, or to the kind of debates we have been reduced to,” he says in a farewell letter ([www.diamondintelligence.com](http://www.diamondintelligence.com)).<sup>14</sup> PAC as an organization remains a member, however, and Smillie has also said that he still supports the goals and promise of the Kimberley Process.

### **The KPCS and conflict prevention**

The Kimberley Process is an innovative attempt to end conflict by cutting off the ability of combatants to finance war via diamonds. It speaks to the humanitarian norms that are increasingly a part of global discourse, and at the same time builds upon the growing expectation that corporations should behave responsibly. In recent years, the UN Global Compact has supported ongoing discussions with the business community regarding responsible investment in conflict zones, and many national and

international foreign aid and development agencies have sought to integrate the private sector into conflict management and post-conflict reconstruction initiatives. However, despite these efforts, only a few voluntary regulatory systems have been created specifically to address conflict.

The Kimberley Process stands out among existing efforts as an inclusive and relatively strong institution, despite its current problems. If we look at other conflict prevention efforts in which business plays a significant role, they tend to be much narrower and/or weaker. The Voluntary Principles on Security and Human Rights is a set of principles negotiated by a multi-stakeholder group in 2000 designed to guide companies in hiring security forces (public or private) without violating human right of citizens. Although it has expanded its membership and strengthened criteria for participation over the years, and has a lot of potential for growth in the future, they currently are supported by only five governments, 18 companies, and eight NGOs ([www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)). It is not a certification system, and has few implementing mechanisms. Another initiative is the Extractive Industries Transparency Initiative (EITI), which is aimed primarily at ending corruption. Since corruption is a by-product of conflict and sometimes an indirect cause, many observers view the EITI as a global conflict-prevention effort.<sup>15</sup> Corporate and government transparency about the payments made by extractive companies to governments is intended to be a mechanism for citizens to hold others accountable. The EITI, though, promotes the kind of transparency that many observers argue would also reduce conflict. It was launched by Tony Blair in 2002 but quickly became internationalized and now has an International Secretariat. Like the Voluntary Principles, it began as principles but has added more elaborate monitoring and accountability mechanisms over time. They are now required to meet EITI standards within 3 years of applying for membership, and currently 40 states participate (only one has reached the fully compliant stage as yet). While the EITI is much more deeply institutionalized than the Voluntary Principles, they are still weaker and smaller in scope and membership than the Kimberley Process.

There are other examples that could be discussed – the study of John Ruggie, the UN Secretary-General

Special Representative on Human Rights and Business; the OECD Guidelines for Multinational Enterprises; the World Bank Chad-Cameroon Pipeline project – but there are others which are either much weaker than the three regulatory systems described above, as we see in the various guidelines, or much more narrow, as in the World Bank project with two countries.<sup>16</sup>

Is the KPCS, then, a model for establishing similar systems for the other so-called conflict commodities? Given the weakness of these other initiatives, would it make sense to focus international attention on building more regulatory systems similar to the Kimberley Process? Is Kimberley a model for these other conflict commodities such as cocoa, timber, and gold? Global norms of corporate social responsibility appear to be widely accepted, and perhaps the financial meltdown has even strengthened public support for holding companies accountable.

Unlike diamonds, other conflict-linked resources are standard commodities and not luxury goods, where value is based on use and not reputation, and branding is rare and difficult. Because of this, the benefits from forming a certification system/cartel are less apparent. There is little threat that these markets will collapse if a transnational campaign links the product to bloodshed, especially since ordinary consumers are typically not the end users of the commodity (consumers buy cell phones, not coltan itself). Voluntary certification regimes, what Cashore has labeled “non-state market driven” processes (Cashore et al., 2004), are effective to the degree that information about the goods reaches consumers and is valued by them (Cashore et al., 2004; King et al., 2002). Creating a label that would signal “clean” commodities may not be enough. In 2004, shortly after Kimberley came into force, Global Witness and Amnesty International surveyed retail jewelers and found that few had implemented the self-regulatory provisions of the KPCS (Global Witness, 2004). Among consumers, few were aware of the problem of conflict diamonds, although this probably changed to some degree when the movie “Blood Diamond” came out. This ignorance exists despite the fact that retailers are members of the KPCS, and Tiffany’s jewelers has been very public in supporting the system. Other commodities tied to the financing of war are even less likely than diamonds to reach consumer consciousness – coltan is an obscure

mineral used in cell phones, gold is not as dependent on its reputation for value as diamonds are, and timber is not sold directly to consumers. It is unlikely that a “blood coltan” campaign would succeed in generating support for a certification system.

The Kimberley Process establishes a diamond cartel in a new and “improved” version. The goal of the cartel is not explicitly about levels of supply, prices, profits, or market share.<sup>17</sup> However, the end result of establishing limits on trade in a particular product, regardless of intent, is to reaffirm the market power of the participants – they are given easy access to major markets for their products, reducing competition, and eliminating small players. The structure of the diamond sector facilitated the creation of this cartel, with De Beers playing a dominant role, and all players recognizing the threat of common sanctions against them (King and Toffel, 2009). No other sector is quite so concentrated or so cognizant of a common threat as we saw in the case of diamonds.

There also few other conflict-linked products where the incentives of both private and public actors were so closely aligned as in the diamond case; everyone involved, including the transnational activists, had an interest in maintaining the value of diamond gemstones. The producing countries, such as South Africa, sought to preserve their markets. Major consuming countries, including the United States, had already been moving to place sanctions on conflict diamonds on a national level. Nothing similar is occurring for other commodities, although there have been proposals for national regulations in the United States on strategic resources that are components of electronic products.

In conclusion, we can say that the Kimberley Process is an innovation in global governance that was facilitated by how norms for companies and conflict complemented each other, and fit with the structure and incentives built into diamond markets. The different features that came together in this instance may not be replicable elsewhere, although features of the design of the KPCS may be usefully integrated into other initiatives. The Kimberley Process is part of a larger trend in global governance, in which hybrid forms of collaboration between governments and other actors have become common (Abbott and Snidal, 2009b). However, it is not entirely clear that these new forms are articulated

well with the realities on the ground in the most conflict-ridden cases. As Lemos and Agrawal point out in a discussion of environmental governance systems,

governance from below may be too timid a remedy and “the greater good” not enough justification for what is essentially the superimposition of new governance “technologies”—in the form of hybrid partnerships—on top of local realities fraught with inequalities... (Lemos and Agrawal, 2009)

However, all these hybrid forms of governance are beginning to overlap and occupy the same global “space.” Human rights, corruption, conflict, environmental degradation and climate change – global voluntary regulatory programs in which business plays a critical role have grown in number and size in the last few years (Abbott and Snidal, 2009a; Avant et al., 2010). Each addresses a different ethical concern, and in some areas – like conflict – they are beginning to connect and overlap in ways that may strengthen them. It may be that we cannot and should not evaluate each of them in isolation, but consider the totality of new forms of governance and their larger impact on relations between citizens, governments, and markets.

## Notes

<sup>1</sup> For insight into how executives think about conflict risk, see Berman (2000).

<sup>2</sup> The Voluntary Principles are mainly directed at the human rights impact of companies hiring security forces, and the EITI and Chad-Cameroon Pipeline project are both primarily aimed at reducing corruption. Nevertheless, given the links between human rights abuses, corruption, and conflict, these initiatives at least indirectly can be termed conflict-prevention efforts.

<sup>3</sup> Different disciplinary traditions examine these new forms of governance from different perspectives. For a review and comparison of disciplinary perspectives on global environmental governance, see Delmas and Young (2009).

<sup>4</sup> In her study of cartels, Spar argues that the success of the diamond cartel was due in large part to the tight hierarchical control of both the De Beers Corporation and the Soviet Union (Spar, 1994, pp. 41–42).

<sup>5</sup> The natural resource–conflict link (the “resource curse”) has been explored extensively in the academic

literature in recent years. For a review and analysis, see the special issue of *The Journal of Conflict Resolution* 49, 4 (2005), especially the article by Humphreys; also see for instance Ross, 2006; Humphreys, 2005; Luong and Weinthal, 2006; Overseas Development Institute and United Nations Development Programme, 2006.

<sup>6</sup> These campaigns also launched a larger “business and conflict” agenda, including policy meetings at the United Nations Global Compact, and interest within national foreign policy and development agencies.

<sup>7</sup> For a model of the evolution of norms, and how widespread adoption reaches a “tipping point” where the norm is embedded and accepted as normal, see Finnemore and Sikkink (1998).

<sup>8</sup> See Charli Carpenter on cases which do not garner international attention despite complementary norms and threats to bodily integrity (Carpenter, 2007a, b).

<sup>9</sup> Tiffany’s has been a major promoter of diamond engagement rings, which until recently were not a specialty of some top jewelry retailers. The idea of a diamond engagement ring has taken hold so completely that now De Beers itself is entering this market. There is also a large industrial diamond market, though much of this is being supplied today by synthetic diamonds. Natural diamonds are still the main source for gemstones, however.

<sup>10</sup> One insider was of the opinion that the shift from resistance to action was spurred in part by generational change in organizations such as De Beers, with the new leaders more sensitive to the possible negative impact on markets of sustained activist campaigns against diamonds.

<sup>11</sup> The reviews are available at [www.kimberleyprocess.com](http://www.kimberleyprocess.com).

<sup>12</sup> A recent report by Partnership Africa Canada estimates that prior to 2003 the illegal trade constituted 25% of world trade in rough diamonds (Global Witness and Wexler, 2006).

<sup>13</sup> This is an imprecise measure, but it is difficult to gather data directly on the level of illicit exports. It could be that the increase in legitimate diamond exports is simply an artifact of the end of war and the re-establishment of the rule of law, leading to higher production levels. However, the increase in legitimate exports is nevertheless an important milestone.

<sup>14</sup> Smillie and PAC have repeatedly published investigative reports on smuggling, money laundering, and other weaknesses in the KPCS. PAC has been particularly concerned with the problems of artisanal miners, who are the most vulnerable parts of the commodity chain.

<sup>15</sup> For a discussion of the links between corruption, conflict, and the role of business see Fort and Schipani (2004).

<sup>16</sup> The Chad–Cameroon project focuses just on these two countries and the pipeline constructed across them both. The focus is quite narrow, but the project has an elaborate set of implementing mechanisms. Although launched with great hope that this would be a new model for managing resource wealth, the government in Chad has consistently tried to undermine it, and the World Bank has been struggling to maintain it.

<sup>17</sup> Although Participant states are obliged to report production levels, and non-reporting is a violation of KPCS, such reporting is not designed to manage the supply of diamonds. Instead, the goal is to monitor the level of legitimate diamonds in the market, determine their origin, and estimate the level of smuggling/violation of the KPCS.

## Acknowledgments

The research for this article was supported in part by a grant from the US Institute of Peace. The opinions, findings, and conclusions or recommendations expressed in this article are those of the author and do not necessarily reflect the views of the United States Institute of Peace. I would like to thank Timothy Fort and Cindy Schipani for organizing the series of conferences and workshops on business and peace, and inviting me to participate. I would also like to thank two anonymous reviewers for their helpful comments.

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