

**POLYLATERALISM AS DIPLOMATIC METHOD:
THE CASE OF THE KIMBERLEY PROCESS, 2000-2002**

By

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LIST OF ABBREVIATIONS AND ACRONYMS

CSO	-	Central Selling Organisation
DRC	-	Democratic Republic of Congo
DTC	-	Diamond Trading Company
DME	-	Department of Minerals and Energy
DFA	-	Department of Foreign Affairs
EU	-	European Union
G8	-	Group of Eight
GAO	-	USA General Accounting Office
GATT	-	General Agreement on Tariffs and Trade
HDC	-	High Diamond Council
IDMA	-	International Diamond Mining Association
IGO	-	Inter-governmental organisation
KP	-	Kimberley Process
KPCS	-	Kimberley Process Certification Scheme
NGO	-	Non-governmental organisation
MNC	-	Multi-national Corporation
NiZA	-	Netherlands Institute for Southern Africa
PAC	-	Partnership Africa Canada
UK	-	United Kingdom
UN	-	United Nations
UNGA	-	United National General Assembly
UNITA	-	National Union for the Total Independence of Angola
UNSC	-	United Nations Security Council
USA	-	United States of America
WCO	-	World Customs Organisation
WFDB	-	World Federation of Diamond Bourses
WTO	-	World Trade Organisation

ABSTRACT

Examples of state and non-state actors collaborating on issues of global politics abound. Non-state actors are increasingly involved in policy formulation processes, in peace-keeping processes, in human rights and environmental issues by advising governments or inter-governmental organisations. This type of collaboration mostly takes place at the discretion of states. However, non-state actors sometimes appear to initiate diplomatic processes. The Kimberley Process is an example of such a case. States and another non-state actor, namely business, were forced to the negotiating table by NGOs who were effectively raising consumer awareness about the role of diamonds in fuelling conflict and who held the power over launching a possible consumer boycott.

Polyateralism is a term that was coined to represent the participation of non-state actors in the conduct of international relations. The study uses the Kimberley Process negotiations from 2000 to 2002 as a case study to analyse the dynamics of polyateral diplomacy by examining the nature and form of interaction between the three sets of actors, namely states, civil society and business in order to understand the role played by each group in both agenda setting and rule making, and the extent to which their interactions conform to the central ideas of polyateralism as advanced by international scholars. In so doing the study examines the evolving mode of interaction between states and non-state actors in the Kimberley Process, the ability of non-state actors to influence diplomatic processes, the extent to which states determined the boundaries of non-state diplomatic involvement and, finally, the limitations of polyateral diplomacy.

The study concludes that the apparent increase in collaboration between state and non-state actors in diplomatic processes does not constitute a new method of diplomacy and that this will not change until non-state actors have become recognised polities. It also finds that the involvement

of non-state actors in diplomacy, particularly as *consumers* of diplomatic outcomes is likely to become more-and-more prevalent and that professional diplomats, especially those in developing countries, may have to adapt their working methods in order to benefit from this phenomenon by allowing for a more systematic engagement with non-state actors. Finally, it finds that while the Kimberley Process is a good example of the involvement of non-state actors as *producers* of diplomatic outcomes, this phenomenon is less likely to reoccur and may well be the exception rather than the rule for the foreseeable future.

Chapter 1

1. INTRODUCTION

1.1 Aim of the study

The main question that this study seeks to answer is the extent to which the Kimberley Process has demonstrated the necessity for and challenges of polyilateralism as a contemporary method of diplomacy? It is the contention of this study that the phenomenon of polyilateral diplomacy is here to stay and might become more prevalent in the future. Thus, the dynamics of the Kimberley Process multi-actor international negotiations should be used to establish benchmarks for similar processes in the future.

The term polyilateral diplomacy was coined by Geoffrey Wiseman in 1999 and he defined it as “The conduct of relations between official entities and at least one unofficial, non-state entity in which there is a reasonable expectation of systematic relationships, involving some form of reporting, communication, negotiation, and representation, but not involving mutual recognition as sovereign, equivalent entities” (Wiseman 1999: 41).¹

Hocking (1999: 21-42) refers to this growing symbiosis between state and non-state actors as “catalytic diplomacy”. The term catalytic diplomacy was borrowed from the idea of a catalytic state, that is, a state that acts as a dominant element in coalitions of other states, transnational institutions and private sector groups, while retaining its distinct identity and its own goals. States employ catalytic diplomacy in their pursuit of specific objectives. This allows them to establish flexible and short-term relationships with non-state actors. Catalytic diplomacy allows states to overcome the constraints imposed by national boundaries and enables them to operate in multiple arenas. States, however, try to retain discretion in determining the boundaries of non-state diplomatic involvement. Later (2006:17), Hocking refers to the involvement of non-state actors in diplomacy as “multi-stakeholder” diplomacy.

White (1997: 252-254) refers to this phenomenon as 'new' diplomacy in which intergovernmental and non-governmental organisations have become part of the diplomatic stage. Official diplomats have to contend with multilateral dimensions and an increasingly complex global agenda involving highly specialised economic, social and welfare issues. Global interconnectedness and interdependency has transformed diplomacy both as a process and as a policy instrument. It has allowed the entry of non-state actors in the diplomatic process and these actors are able to communicate their interests and deploy their resources to influence the outcome of negotiations.

Langhorne (2005: 331-339) noted a sharp increase in the number and activity of non-state global actors, which he attributes to the information revolution that has largely done away with diplomatic secrecy. The result has been the emergence of three types of actors on the international stage, namely states, governments and associations of states; the transnational social movement organisations (civil society) and; the transnational commercial organisations (business). The interaction of the three mainly focuses on the resolution of immediate crisis, the resolution of threats to social and administrative collapse; and the formulation of regulations. The states may also encourage the participation of non-state actors as a means of outsourcing touchy or costly tasks.

For Leguey-Feilleux (2009: 101-138) the emergence of new actors in world affairs has led to an important structural change affecting the conduct of diplomacy. NGOs have the ability to affect the diplomatic process through rallying public support behind their diplomatic initiatives or by generating massive opposition. The NGOs, however, represent special interests or are one-issue constituencies. Their participation in the diplomatic world does not therefore represent the democratization of international affairs.

In summary, polyilateralism, catalytic diplomacy or multi-stakeholder diplomacy appears to refer to the entry of non-state actors in the diplomatic arena, which has for a long time been dominated by states. It is, however, stressed that despite the fact that non-state actors have the ability to influence the outcome of

the negotiations through the rallying of public support or generating massive opposition, states still retain discretion in determining the boundaries of non-state diplomatic involvement.

The Kimberley Process represents the best form of interaction between states and non-state actors on the specific issue of “blood diamonds” that resulted in the creation of a new diamond trading regime and which made provision for the certification of rough diamond exports by states. It thus offers the best opportunity to analyse the nature and form of interaction between states and non-state actors. This will help us to determine:

1. The evolving mode of interaction between state and non-state actors.
2. The ability of non-state actors to influence diplomatic processes through the use of their resources.
3. The extent to which states determine the boundaries of non-state diplomatic involvement.
4. The limitations of polyilateral diplomacy.

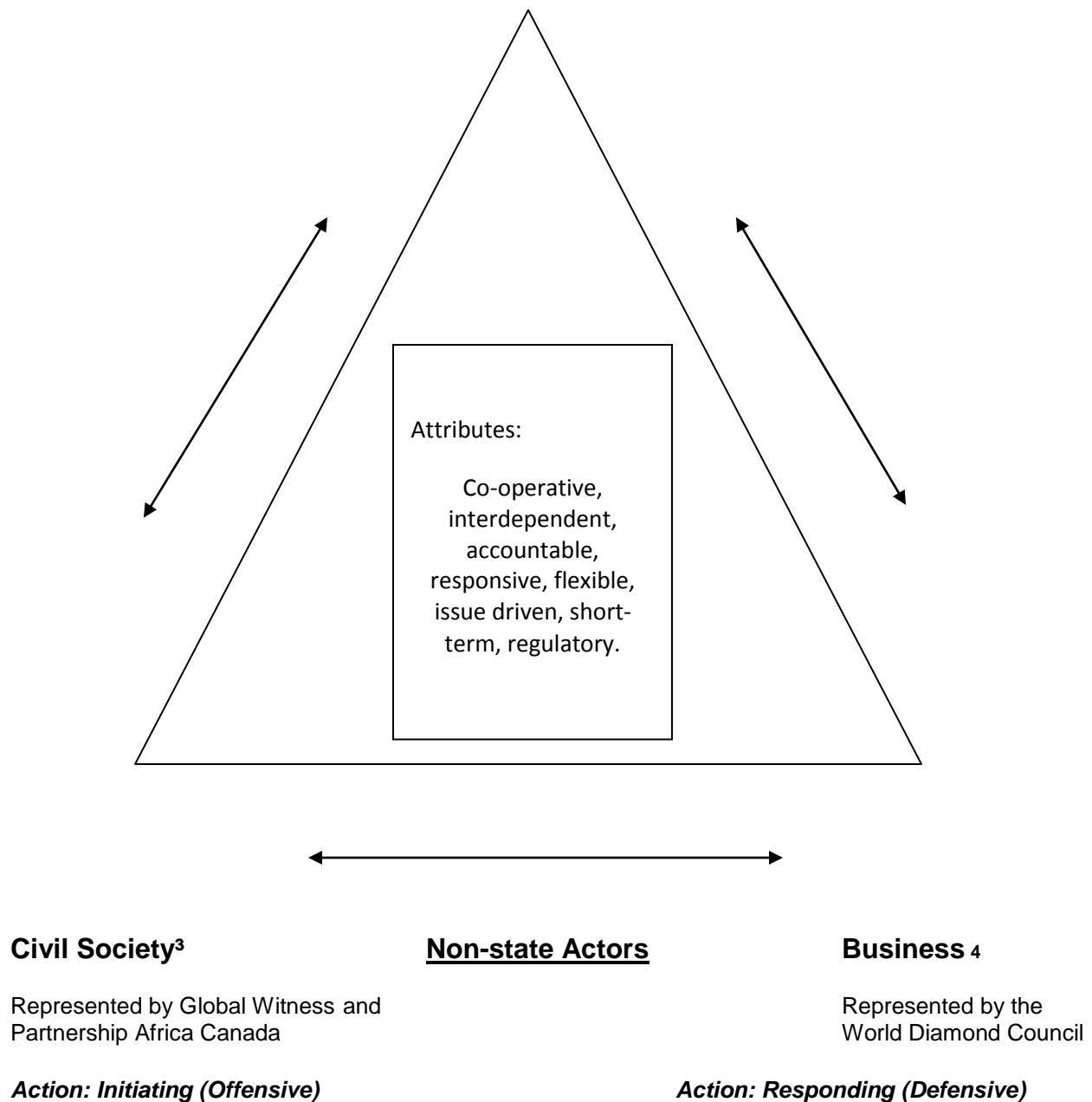
Polyilateral diplomacy and the Kimberley Process interactions can be diagrammatically represented as a triangle. At the top of the triangle are the state actors acting through the Kimberley Process secretariat, and at the other two ends we have the non-state actors in the form of civil society and business. The interaction takes place between the states themselves; between states and civil society; between states and business and also between business and civil society. The interaction amongst the three is co-operative, interdependent, accountable, responsive, flexible, issue driven, short term and regulating:

Polylateral Diplomacy and the Kimberley Process, 2000-2002

State Actors²

Kimberley Process Secretariat: South Africa

Action: Responding and rule-making (initially defensive, later offensive)



This study is based on the Kimberley Process documents that are in the public domain and those archived in the registry of the South African Department of International Relations and Co-operation (formally the Department of Foreign Affairs) that acted as the Secretariat of the Kimberley Process. It is furthermore based on my personal recollection as part of the Secretariat. The other source is, of course, the published materials and articles on the Kimberley Process.

1.2 Organisation of the study

Chapter two looks at how polyilateral diplomacy - the interaction between states and non-state actors- fits into the broader context of diplomacy. Do instances of polyilateral diplomacy represent a distinct diplomatic method or new diplomacy as indicated by White (1997) or is it just an extension of the diplomatic practice? In order to answer this question it is first necessary to establish what generally the roles, norms and rules of diplomacy are. It is by so doing that one is able to place polyilateral diplomacy. Chapter three provides an historical evolution of the Kimberley Process. It looks at how the issue of “blood diamonds” emerged and at how states and business responded to the civil society threat of organising a consumer boycott of diamonds. Chapter four looks at the three sets of actors – states, civil society and business and their positions on “blood diamonds”. It examines the main issues that each group had to contend with, how these issues were addressed within each group and in the negotiations between the various groups. Specifically, it addresses the manner in which states took charge of the process and how the non-state actors interacted with the states in the negotiation process. Once the issue of blood diamonds was raised, businesses responded by calling for self regulation of the industry, which did not satisfy civil society. The states then took over the issue working out a process of control to support the diamond trade.

Chapter five identifies lessons that can be learnt from the Kimberley Process *vis-à-vis* the interaction between states and non-state actors. It returns to the starting question of whether polyilateralism represents something new in terms of the normal diplomatic process.

1. Despite the fact that the term is, etymologically speaking, an unforgivable combination of Greek and Latin, it has subsequently been used by a number of scholars in recognition of the growing phenomenon.
2. The list of states participating in the Kimberley Process increased as the Process progressed. By the time the KPCS was adopted in November 2002 it included Angola, Australia, Botswana, Brazil, Burkina Faso, Canada, Côte d'Ivoire, People's Republic of China, Cyprus, Czech Republic, Democratic Republic of Congo, Gabon, Ghana, Guinea, India, Israel, Japan, Republic of Korea, Lesotho, Malta, Mauritius, Mexico, Namibia, Norway, Philippines, Russian Federation, Sierra Leone, South Africa, Swaziland, Switzerland, Tanzania, Thailand, Ukraine, United Arab Emirates, United States of America, Zimbabwe and the European Community.
3. The two were the only ones allowed to participate directly in the deliberations, but were supported by a host of other NGOs.
4. This body was created to represent all facets of the global diamond industry.

Chapter 2

2. UNDERSTANDING POLYLATERAL DIPLOMACY

2.1 Introduction

In order to have a clear understanding of polyilateral diplomacy, it is important to start with a brief elaboration on diplomacy. The term diplomacy has been used in both a narrow and in a broad sense. In the narrow sense it is seen as a state practice representing the main form of interaction between states (Magalhães 1988: 48; Melissen 1999: xiv; Berridge 2001: 1). Diplomacy would thus be seen as a formal process of communication between states. In the broad sense diplomacy is seen as a dynamic global institution whose main objective it is to promote international understanding and in the process reduce the likelihood of international conflict (Jönsson and Hall 2005: 3; Hamilton & Langhorne 1995: 1; Sharp 2009:13; Der Derian 1987: 6).

It is important to note that communication between groups of strangers predates the formation of nation states in the 15th and 16th century. In other words, diplomacy has existed for thousands of years and in all known civilizations. Diplomacy is therefore an inherent part of life itself. Thus Jönsson and Hall (2005:3) view diplomacy as a perennial international institution that expresses a human condition that precedes and transcends the experience of living in the sovereign, territorial states of the past few hundred years. For them diplomacy as an institution is made up of recognisable roles, underlying norms and a set of rules (2005:25). Polyilateral diplomacy fits into the broader sense of diplomacy as a global dynamic institution with specific roles, norms and rules.

2.2 Roles, norms and rules of diplomacy

Jönsson and Hall (2005: 25) identify communication, representation and the reproduction of the international society as the main enduring elements of diplomacy. They equate diplomats to messengers and diplomacy to communication between polities. According to Ferguson and Mansbach (1996: 34) a polity is a political authority which has a distinct identity, a capacity to

mobilize persons and their resources for political purposes and a degree of institutionalisation and hierarchy, typically a state.

In diplomacy communication often takes the form of negotiations and diplomacy is often defined in terms of negotiations. Negotiations may take place at the bilateral, multilateral and plurilateral (mediation and arbitration) levels.

The diplomats, according to Jönsson & Hall (2005: 98-118), thus act as representatives of their polities and act on the basis of an 'imperative mandate' which implies accountability to the leader and implies monitoring and sanctions in the process of carrying out the representative function. Leaders, on the other hand, are assumed to act on the basis of a 'free mandate' from their electorate to represent their interests as the leader sees fit and they are held accountable by the electorate.

The question of representation is important when considering the role of non-state actors in diplomacy. Credible representation is based on acceptance (recognition) of the representative by the audience they are doing the representation to. The basic question that has emerged with the entry of non-state actors into the diplomatic field has been: who do the non-state actors represent and therefore, can they be considered as producers (rather than consumers) of diplomatic outcomes?

Another role of diplomacy is the reproduction of the international society. Hamilton and Langhorne (1995: 238) argue that diplomacy has historically been both a function and a determinant of the international order. In the absence of independent political entities with a will to communicate amongst themselves there would be no need for international order. This dual role of diplomacy – to maintain and shape international society – remains an essential element of diplomacy. It is the element that lends stability to international societies. This view is shared by Sharpe (2009: 11) and Jönsson & Hall (2005: 37).

Diplomacy represents a process through which a population of polities maintains itself as a political and social entity. This process is based on recognition and

socialisation among the polities (Jönsson & Hall 2005: 119). Recognition has to do with knowing the 'other' and with accepting them. It is a political act. Recognition is a prerequisite for official communication to take place. Socialisation starts once polities have been recognised.

Diplomacy contributes on a continuous basis to global order through the processes of recognition and socialisation of polities. Over the past 400 years this has increasingly been done on the basis of territorial states. Membership of international organisations such as the United Nations, for example, is an indicator of the level of recognition and socialisation of polities. More recently the forces of globalisation have eroded the authority of states particularly in economic and financial fields as well as human rights matters (Jönsson & Hall 2005: 119-135) and resulted in the increased participation of non-state actors in the diplomatic field.

The norms of diplomacy have been identified by Jönsson & Hall (2005: 28-30) as those of coexistence and interdependence. This would imply equal rights to participate in international relations as well as reciprocity in the exchanges between polities. Reciprocity contributes to the predictability and stability of diplomatic relations and forms the basis of the procedural rules of immunity for diplomatic agents in the modern state system.

Spies (2005: 24-26) identifies peaceful co-operation, problem solving and ordering as norms central to diplomacy. The association of diplomacy with peaceful activity is shared by Hedley Bull (1977:156), Magalhães (1988: 59), Barston (2006: 1), Hamilton & Langhorne (1995: 1) and du Plessis (2007: 125). It is important, however, to note that diplomacy sometimes involves unfriendly methods such as coercion and disinformation in the pursuit of national interest.

Diplomacy operates on the basis of specific rules. Central among these rules is the rule of diplomatic immunity (Jönsson & Hall 2005: 28). This is an outcome of the institutionalisation and professionalization of diplomacy and resulted in the

creation of resident embassies and a *corps diplomatique* that emphasised secrecy, protocol, immunity and honesty.

The widely accepted Western rules of diplomatic practice were formally adopted by global society in 1961 through the Vienna Convention on Diplomatic Relations. The Convention provides for the inviolability of the chancery and official residence of the ambassador, the inviolability of the person of the diplomat. It also places obligations on Embassies. Diplomats must respect the laws and regulations of the receiving state and, importantly, may not interfere in its domestic affairs. Activities such as espionage, destabilisation, unlawful or criminal activity, disinformation, fomenting civil strife and intimidation are therefore not permitted. Embassies are also required to confine their conduct of official business to the receiving state's foreign ministry unless agreed otherwise. The sending state has to obtain permission to open offices in any other part of the receiving state than the capital. Finally, receiving states have the prerogative to refuse to accept an envoy from a sending state and must convey their *agrément* before the envoy may be dispatched (Berridge 2010: 103-112).

The roles of diplomacy mainly focus on the functions of diplomats. The Vienna Convention on Diplomatic Relations of 1961 codifies the five functions of diplomats and diplomatic missions as: representation of the sending state, protection of nationals in the receiving state, negotiation with the receiving state, gathering and reporting of information to the sending state, and the promotion and development of friendly relations between the two states (Berridge 2010: 110).

Diplomats, however, are increasingly performing other duties such as managing, lobbying, hosting, performing consular functions, assisting visiting delegations, informing and influencing public opinion, implementing policy at the political level and providing policy advice (Hamilton & Langhorne 1995: 183-227; Jönsson 2002: 215; Spies 2005: 72-82; du Plessis 2007: 138; Leguey-Feilleux 2009: 185-209; Berridge 2010: 114-119).

In the normal diplomatic world diplomacy has taken place at two main levels: bilateral and multilateral. Bilateral diplomacy refers to communication between two parties (Berridge 1995: 108). It is sometimes also referred to as 'traditional' diplomacy and is regarded as the most conventional method of diplomacy. Bilateral diplomacy relies to a large extent on written communication and focuses on the key functions of representation, negotiation, reporting, protection and the promotion of good relations as described in the Vienna Convention on diplomatic relations. It takes place when two polities (eg. states) officially communicate with each other through mutually recognised representatives. These representatives could be the leaders of the respective polities or their intermediaries. When it occurs at the highest level, it is commonly referred to as summitry. Bilateral summit meetings usually take place during official or state visits by one leader to the other or on the fringes of multilateral meetings.

Recurring wars in Europe in the 17th, 18th and 19th centuries created a need for international meetings bringing together representatives of different states with the specific purpose of negotiating terms of peace. These peace congresses were *ad hoc* and limited in duration and were focused exclusively on the negotiation of terms of peace. Nevertheless, they are regarded as the first examples of multilateral diplomacy.

The multilateral diplomacy of the 20th century became a permanent feature with the establishment of the League of Nations and other inter-governmental organisations in which open agreements were reached through transparent negotiations. Multilateral diplomacy involves Inter-governmental Organisations (IGOs) created by states. As such, they form part of the Westphalian state system. They are instruments of the states to whom they owe their existence and are mainly responsible for international rule making, agenda setting and information gathering (Ataman: 2003).

The multilateral method provides mainly for verbal, face-to-face communication and varies greatly in subject matter, scope, duration, size and level of

attendance, longevity and extent of bureaucratization (Berridge 1995: 151). It holds several advantages: issues affecting more than two polities are addressed more quickly and effectively; meetings are focused on a particular subject and includes all the parties whose agreement is necessary; and such meetings are usually results-driven.

Multilateral diplomacy often takes place at the level of heads of state and government. In multilateral summit diplomacy the leaders of polities personally represent the interests of their constituents rather than mandating someone else to represent them. The increasing frequency of summit diplomacy has been made possible by the ease and speed of air travel. Its advantage lies in the fact that the head of state or government, as the highest representative of the people, can personally evaluate the intentions of other leaders and are able to take final decisions, which means that decisions can be reached in the shortest possible time. The disadvantage is that leaders may hastily commit their countries without the benefit of careful consideration. While summit diplomacy is still on the rise many commentators believe that it should be limited to situations of a 'negotiation of last resort' or to brainstorming sessions, without binding decisions.

It is within this broad understanding of diplomacy with its state centric focus that one has to situate the involvement of non-state actors.

2.3 Non-state actors and polyilateralism

It has been noted above that one of the main roles of diplomacy is the reproduction of international society. However, not only diplomats help to shape the international society. The role and impact of non-state actors on the international stage has increased dramatically. It is therefore important to gain a broad understanding of who the non-state actors are. Equally important is to fit these into the broad context of diplomacy as defined above.

The first thing to note is the broad spectrum of non-state actors. Among these are:

- a) Non-governmental Organisations (NGOs), which are defined by the United Nations (2010) as “not-for-profit, voluntary citizen’s groups, which are organised on a local, national, or international level to address issues in support of the public good”;
- b) Multinational corporations (MNCs), that is, business organisations that operate for profit in three or more countries;
- c) Think-tanks and universities, whose main roles are to teach, to conduct research and provide policy advice;
- d) Epistemic communities or policy networks, that is, groups of experts from different parts of the world that share views on the cause-and-effect of a phenomenon and on how the issue should be dealt with;
- e) Trade union organisations that can be organized at a national or at the international level and whose main function it is to look after the interests of the working class;
- f) International media organisations such as CNN and Al Jazeera;
- g) Religious groups such as the Roman Catholic Church, the Lutheran Church and Islam, that are organized at both the national and the international level;
- h) Transnational Diaspora communities such as the Irish and Jewish communities in the USA that are able to influence policy decisions in favour of their homeland;
- i) Political parties acting at the local, national and international level;
- j) Violent non-state actors such as armed groups, pirates, criminal organisations and terrorist organisations, such as Al Qaida ; and
- k) Private individuals with a prominent profile at the national or international level, such as George Soros and Bono, as well as former political leaders.

(Wiseman 1999: 36; Barston 2006: 10; Hill 2003: 194; Trinity College 2009: on the role of NGOs.)

Non-state actors are at times referred to as transnational actors. Hill (2003: 189, 195) defines these as: ‘...“those private groups or even individuals who, while they require physical facilities inside states, do not need governments in order to

conduct international relations”. He identifies three categories of transnational actor: those that use or seek a territorial base such as national liberation movements; those that seek to promote ideas or ways of thinking across national frontiers such as single issue organisations and churches; and those whose primary focus is on wealth-creation such as production companies, service industries and international crime syndicates.

The involvement of non-state actors in diplomacy poses, according to Jönsson & Hall (2005: 157-167) certain challenges for representation of and communication with them, because they are not recognised polities. For example, which non-state actors are to be allowed into negotiations forums and international organisations? Who are the principals of non-state actors? Do they act on behalf of their own organisation only or do they represent the NGO or business community as a whole? What kind of commitments can non-state actors make to states? To whom are they accountable?

Langhorne (2005: 331-339) divides the non-state actors into two. The first consists of non-governmental organisations or, as he prefers to call them, transnational social movement organisations. The second is made up of transnational commercial organisations. Langhorne wonders whether the reference to non-state actors constitutes a rearguard action by states to entrench their dominant position at the international level or whether it represents the states’ move to “outsource” touchy or costly tasks.

It is within the context of growing participation of non-state actors in international relations that concepts like polyilateralism, catalytic diplomacy and multi-stakeholder diplomacy have emerged. Below we look at each of these terms.

The term ‘polyilateralism’ was coined by Wiseman (1999: 41) in an effort to distinguish between the established concept of diplomacy between three or more states at permanent or *ad hoc* international conferences (multilateralism) and a new concept referring to the relations between states and ‘other entities’ rather than between states.

Wiseman evaluates the new emerging patterns of diplomatic interactions between governments and non-state actors in terms of how states are responding to the challenge. His point of departure is that bilateral and multilateral diplomacy is state-centered and that polyilateralism could provide new avenues in international relations by adding another conceptual layer to the practice of diplomacy. He suggests that the growing complexity of global dialogue will require states to make institutional adjustments and to adopt new skills, instruments and outlooks in order to provide for systematic working relationships with non-state actors (Wiseman 1999: 42).

Wiseman (1999: 42-49) advances five working propositions about the prospects for diplomatic innovation within states and reaches the following conclusions: Firstly, that state capacity for diplomatic adaptation and innovation is generally underestimated and that the extent of innovation will vary with state size, state governance type, issue area, and issue longevity. Secondly, that great or larger powers will be less likely to innovate and will tend to co-opt, rather than co-operate with non-state actors, offering only token acceptance of polyilateralism. In contrast, small and middle-sized states are expected to embrace polyilateralism. Thirdly, that democracies will be more likely than semi-democracies or non-democracies to welcome and utilise non-state actor participation. Fourthly, that foreign ministries and diplomatic services would be more likely to engage non-state actors in issues of low politics than on issues of high politics, but that there have been cases such as the Ottawa process on landmines and the involvement of non-state actors in various peace-keeping activities that there are exceptions to this rule. Finally, that there may also be exceptions to the hypothesis that diplomatic establishments are more likely to co-operate with non-state actors engaged in long-term policy influence and less likely with those engaged in short-term political campaigns or protests.

Jönsson & Hall (2005: 157-163) also recognise the existence of polyilateral diplomacy as a mode of diplomacy that has evolved in the European Union as a result of the broad participation of special interest groups representing business

interests, labour interests, public interests as well as territorial interest, in policy formulation. They take part in informal policy networks along with government representatives, individual specialists and members of the European Commission. As a result diplomats engaged in European issues become engaged in polyilateral dialogues with NGOs, firms and sub-national actors. Also at global conferences and multilateral forums NGOs have increasingly been granted presence. In fact, on several global issues, such as environmental protection, trade and human rights, NGOs have become key actors who cannot be bypassed in the search for viable solution. They mention two examples of active NGO involvement in diplomatic processes: the 1997 Ottawa convention banning anti-personnel landmines and the 1998 Rome Treaty establishing the International Criminal Court. They believe that rather than replacing traditional diplomacy, polyilateral diplomacy will add a new layer to it (2005: 160).

Spies (2005: 65) and Du Plessis (2007: 141) refer to polyilateral diplomacy in the context of a 'level-type' of diplomacy that involves various non-state actors, ranging from individuals and interest groups to NGOs and posit that polyilateral diplomacy is closely related to multi-track diplomacy, which is a negotiation process that takes place on different levels.

The theory of polyilateralism is a contested theory. Some observers are not convinced by the idea that the involvement of non-state actors in diplomacy constitutes a new method of diplomacy. Berridge (2010: 254) states for example that: "As for the so-called 'new actors in diplomacy' – in particular, the international NGOs – they are neither new nor diplomats: they are either free-booting amateurs, or para-diplomats with valuable but limited usefulness and no special immunities, and, in either case, long pre-date the appearance of the professional diplomat".

The term 'catalytic diplomacy' has been used as an alternative to polyilateralism. Hocking (1999: 21-37) defines catalytic diplomacy as: "The establishment of functional relationships and coalitions with informal diplomatic players, to further

their own diplomatic causes”. This is an outcome of growing globalization. He notes that the conduct of international relations is no longer the preserve of professional diplomats. Several actors are becoming more directly involved in order to deal with the emergence of several new issue-areas involving transnational and global problems. Officials from government departments, referred to as ‘pro-tem’ diplomats, now have direct contact with their counterparts in other countries, often circumventing the foreign ministry and embassies. Sub-national actors such as local and provincial authorities, to whom he refers as ‘para-diplomats’, may also have direct ties with their counterparts in other states. Finally, there are the transnational actors that have transformed the diplomatic environment. He believes that diplomacy, which is noted for its adaptive ability has compensated for these changes by learning to deal with new tasks such as management, co-ordination, internal mediation and lobbying as well as media relations.

Hocking believes that diplomacy is not a state-centric concept or a tool of foreign policy. He consequently defines diplomacy as: “The mechanism of representation, communicating and negotiation through which states and other international actors conduct their business”. He believes that diplomacy has always been innovative and that it must continue to be adaptive and elastic.

More recently, Hocking has used the term ‘multi-stakeholder diplomacy’ interchangeably with catalytic diplomacy. He contends that non-state actors are not only participating in international relations as *consumers* of diplomacy, but also as the *producers* of diplomatic outcomes (2006: 17). State and non-state actors alike are faced with certain limitations, but each possesses resources that the others need. This means that working together they are able to establish networks to deal with complex policy agendas. Hocking mentions the Ottawa Process and the Kimberley Process as examples of multi-stakeholder diplomacy (2006: 23).

Hocking does not advocate for the recognition of multi-stakeholder diplomacy as a new diplomatic method, nor does he advance a definition of multi-stakeholder

diplomacy. He maintains that professional diplomacy is not threatened by multi-stakeholder diplomacy and that it merely means that professional diplomats are assuming a bigger role as mediators/brokers, facilitators and entrepreneurs (2006: 19). Finally, while recognising that the different traditions of state and non-state actors has produced tension in their interaction, he believes that the “rules of engagement” between governments, NGOs and industry are gradually being shaped.

2.4 Conclusion

There are many examples of state and non-state actors collaborating in issues regarding global politics. Non-state actors become involved in policy formulation processes, in peace-keeping processes, in human rights and environmental issues by advising governments or inter-governmental organisations. This type of collaboration is mostly taking place in the context of *consumers* of diplomacy as initially foreseen by Hocking and Wiseman. This kind of collaboration may have grown, but it can hardly be regarded as a new diplomatic method. Just as summitry takes place within either the bilateral or multilateral context, so can catalytic or multi-stakeholder diplomacy by simply enriching the consultation process, the decision-making process and the implementation of bilateral and multilateral diplomacy.

However, the idea of non-state actors as the *producers* of diplomatic outcomes, places the issue in a new light. Langhorne’s triangular formation seems to indicate that states do not always have the discretion to say whether or not they want to work with non-state actors. The Kimberley Process is a prime example where non-state actors initiated the diplomatic process. States and the industry were forced to the negotiating table by NGOs who held the power over launching a possible consumer boycott against ‘conflict diamonds’.

In the following chapter we look specifically at the Kimberley Process as an agenda that was initiated by non-state actors, to which the states were forced to respond.

Chapter 3

3. THE HISTORICAL EVOLUTION OF THE KIMBERLEY PROCESS

3.1 Introduction

The issue of conflict diamonds began to take centre stage in 1998. In an effort to cut UNITA's revenue from diamonds the UNSC passed resolution 1173 of 12 June 1998. This required member states to prevent the direct or indirect import from Angola to their territories of all diamonds that are not controlled through the certificate of origin regime established by the government of Angola.

In December 1998 a British-based NGO, Global Witness, published "A Rough Trade – the Role of Companies and Governments in the Angolan Conflict", which focussed on the fact that embargoed rough diamonds mined by UNITA were still reaching the market. It is this publication that in part prompted Ambassador Fowler, the Chairman of the UNSC Sanctions Committee on Angola, to appoint a panel in May 1999 to look into sanctions busting. The Fowler Report that came out in early 2000 recommended among other things that in order to discourage diamond smuggling and sanctions busting, forfeiture penalties should be introduced where a possessor of suspect diamonds could not prove where those diamonds came from; that Member States should apply sanctions against individuals and enterprises who are intentionally breaking sanctions against UNITA; that the Belgian government and diamond authorities in Antwerp should work with the Sanctions Committee to devise effective measures to limit UNITA's access to the diamond market; that dealing in undeclared rough diamonds be declared a criminal offence in countries hosting important diamond marketing centres; that a conference of experts be convened to devise a system of controls that would allow for increased transparency and accountability in the control of diamonds from the source of origin to the bourses; and that the diamond industry develop and implement more effective arrangements to ensure that its members worldwide abide by the relevant sanctions against UNITA (United Nations 2000: S/2000/203).

In the meantime the conflict in Angola and the role of diamonds in that conflict was gaining more attention. In September 1999 Human Rights Watch came out with a report on Angola: “Angola Unravels: The Rise and Fall of the Lusaka Peace Accord”. This helped to draw attention to the Angolan conflict and the role played by the diamond trade in the conflict. This was followed in October 1999 by the creation of an NGO coalition¹ “Fatal Transactions” that campaigned against the use of the proceeds of the sale of commodities to finance wars. The broader aim of the campaign was to stem the revenue flows from diamonds that were funding not only the conflict in Angola, but also those in Sierra Leone, the Democratic Republic of the Congo (DRC) and Liberia. As far as diamonds were concerned the campaign called for a system of verification that could guarantee consumers their purchases were untainted. It was believed that the solution lay with the industry.

In May 2000 Partnership Africa Canada came out with a new report on Sierra Leone: “Conflict Diamonds and the Role of Civil Society – The Case of Sierra Leone”. It is in part because of this report that the UNSC adopted Resolution 1306 on 5 July 2000, which imposed a world-wide ban on the purchase of rough diamonds. The ban on the purchase of rough diamonds from Sierra Leone lasted until October 2000, when the Sierra Leone Government was allowed to export diamonds under a national control mechanism established with the help of the Belgian High Diamond Council.

The publications by the NGOs, in particular Global Witness and Partnership Africa Canada helped to highlight the link between diamonds and the continuation of the conflict in these countries. Their main campaign was aimed at the diamond consumers in the developed countries, in particular the US and UK. Their campaigns produced a number of reactions in various places. In the US and Britain the governments started to focus from 1999 on the role of diamonds in African conflicts. Minister Peter Hain of the UK went as far as to call for a consumer boycott of diamonds mined by UNITA rebels. Congressman Tony Hall (D-Ohio) introduced the CARAT Act (Consumer Access to a Responsible

Accounting of Trade) in November 1999 in the House of Representatives. The Act demanded that diamonds imported in the US must be accompanied by the certificate of origin to ensure that they did not come from conflict areas. It is this that galvanised new action by the diamond industry and the African diamond producers.

The South African diamond company De Beers, who controlled roughly 60 per cent of the world diamond production and trade took the lead on behalf of the diamond industry in responding to the issue of conflict diamonds. It took pains to point out that conflict diamonds were a very small percentage of diamond production (hardly 2%) and that the diamond industry contributed substantially to the economies of diamond producing, processing and consuming countries. It maintained that a consumer boycott of diamonds would be an overreaction given the small percentage of conflict diamonds in the international market and that a boycott would have a disruptive effect on the diamond producers in Africa in general, and in Southern Africa in particular(De Beers Briefing Note: 1999).

In October 1999 De Beers issued a statement entitled “Angolan Diamonds”, announcing that the company had placed an embargo on the purchase of all Angolan diamonds in its buying offices around the world. In November 1999 it issued a media statement entitled “Diamonds Working for Africa” which included a transcript of Chairman Nicky Oppenheimer’s address to the Commonwealth Business Forum in Johannesburg, highlighting the benefits diamonds had brought to many African economies. On the 29th of February 2000 De Beers announced that from that date the Diamond Trading Company (DTC), which had replaced the CSO, would include on its invoices notification of De Beers’ total support for UNSC Resolution 1173. It also reiterated that no diamonds in its boxes came from conflict areas in Africa.

On the part of the African diamonds producers, South Africa was mandated in February 2000, by other African Mining Ministers attending the annual African Mining Indaba in Cape Town to co-ordinate the establishment of a joint initiative of African diamond producing countries to address the potential threat of the

conflict diamonds campaign. It was further mandated to organise a ministerial conference to discuss the matter. It is in fact South Africa's lead that kick-started the Kimberley Process. The name Kimberley Process arose because the first technical forum on diamonds took place in Kimberley, South Africa. The process itself, which is discussed below, went through two main phases: the consultative phase that took place in 2000 and the expanded Kimberley Process that took place starting in 2001.

3.2 The consultative phase

The first technical forum on diamonds was held in the South African city of Kimberley, well-known for its diamond deposits, from 11 to 12 May 2000. The theme of the meeting was: "African diamond industry: challenges of the 21st century". The meeting was attended by government representatives from Botswana, Namibia, Angola, the DRC, Ghana, South Africa, USA, UK and Belgium. The NGO community was represented by Global Witness, Partnership Africa Canada (PAC), Oxfam and the Fatal Transactions Campaign. The diamond industry was represented by De Beers, the International Diamond Mining Association (IDMA), the High Diamond Council (Antwerp), the Rapaport Corporation and various smaller producer and manufacturing concerns. The United Nations was also represented in the person of Mr Stanlake Samkange, co-drafter of the Fowler Report (Kimberley Process, 2000. Working Group on Diamonds. Report to the Pretoria Ministerial Conference).

The UK-based NGO, Global Witness, emphasised that their campaign was not a consumer boycott campaign, but it warned that diamonds could ultimately become associated with atrocities unless a concerted effort was made to stem the flow of illicit diamonds. The representative from Partnership Africa Canada (PAC) underlined the importance of the advocacy work of civil society organisations on the issue, but acknowledged that they alone could not solve the problem. Solutions had to come from the diamond industry, the United Nations, and the governments involved in the issue throughout the world (Kimberley

Process. 2000. Working Group on Diamonds. Report to the Pretoria Ministerial Conference).

The Technical Forum dealt with three broad areas to demonstrate the role of diamonds in society. The first area concerned regulations, policy and capacity to implement and monitor. The second considered the important role of the diamond industry in development and the third focussed on the role of diamonds in creating functional societies as opposed to being the cause of conflict in Africa.

After having identified and subsequently rejected several possible solutions to the problem including prohibiting artisanal mining of alluvial diamonds, geochemical fingerprinting of diamonds and requiring retailers to provide a document certifying each diamond's origin, the first group proposed ways to deal with the issue of conflict diamonds and to encourage the contribution of diamonds to development in producer countries. It was decided to opt for a diamond certification scheme, with controls both at point of export and point of import as an effective way of regulating, controlling and monitoring the international flow of diamonds. Such a certification scheme had to be practical, reliable and enforceable. The establishment of an international diamond ethics committee, representative of each segment and geographic sector of the industry and based in Southern Africa was also proposed. This body would be designed to oversee the new global system of transparency for diamonds and that it would be financed by stakeholders in the diamond industry.

An international working group was appointed to develop these proposals in preparation for a ministerial conference which would be convened in Pretoria later the same year to endorse "final" proposals (South African Department of Minerals and Energy, 2000).

The working group was made up of representatives of diamond producing, processing and consuming states, the international diamond industry and civil society. It met in Luanda on 13 and 14 June 2000, in London on 20 July 2000

and in Windhoek from 3-5 September 2000 where after it produced a report to the Pretoria Ministerial Conference.

The working group proposed that consideration be given to the negotiation of minimum international standards for national certification systems, forming the basis of an effective global certification scheme. Such negotiations would have to be conducted by way of an open and inclusive process, possibly under the auspices of the UN. The working group identified a system of Certificates of Origin for diamond producing states and Certificates of Legitimacy which would be issued after verification of the Certificate of Origin of a producing state for diamond processing and consuming states, as a possible format for such a scheme. For it to be effective, all rough diamond exporting, processing and importing states should agree to participate in the new certification scheme and no country would permit imports of polished diamonds from any country not complying with the scheme.

The working group distinguished between illicit diamonds and conflict diamonds. The former was understood to mean: “a rough diamond that upon its last import was not accompanied by a valid certificate of origin/legitimacy”, while conflict diamonds were defined as: “...rough diamonds which are illicitly traded by rebel movements to finance their attempts to overthrow legitimate governments”.

The idea of an international diamond ethical standards committee, mooted at the Technical Forum meeting in Kimberley, was retained, although the name was not mentioned. Instead, the working group suggested that an inter-governmental monitoring and standards-setting body could be considered once the requirements of the new scheme had been determined, thereby leaving an option to consider a less formal body. This was presumably because it was realised that an international committee would have to be established through an international treaty process, which could take too long.

The Working Group recommended that each major diamond producing, processing and consuming state would consider how best to enforce regulations,

including legal and customs and excise regimes to curb the trade in illicit diamonds.

The Working Group suggested that diamond producing, processing and consuming states should consider calling upon the international diamond industry to do more to address the problems of illicit diamonds and suggested several measures to be introduced by the industry. It also suggested that national economic and legal regimes needed to be flexible and that they should include certain incentives and control measures. Finally, the Working Group recognised the important role of the diamond industry and civil society in development and it called upon the industry to take this responsibility seriously (Report of the Working Group on Diamonds to the Pretoria Ministerial Conference, September 2000: 3-10).

The Working Group presented its report to the Ministerial Conference in Pretoria on 21 September 2000. The Conference was attended by ministers and/or senior officials from Angola, Australia, Belgium, Botswana, Burkina Faso, Canada, the DRC, Japan, Lesotho, Liberia, Namibia, Russia, Sierra Leone, South Africa, Tanzania, the United Kingdom, and the United States of America.

The joint statement issued by the ministers at the conclusion of the meeting confirmed that it was their desire to break the link between the illicit trade in rough diamonds and armed conflict because this trade was contributing to the prolonging of wars in parts of Africa, frustrating development efforts and causing immense suffering. They noted that conflict diamonds made up only a small fraction of the overall market for rough diamonds and that the legitimate diamond trade made a critical contribution to economic development worldwide. They resolved to work together to deny conflict diamonds access to world markets, whilst recognising the difficulty of devising and enforcing measures to prevent the smuggling of this portable, concealable, valuable commodity, which was difficult to identify by source.

The Ministers welcomed the role of the United Nations, the G8, individual governments, industry, civil society, the initiative taken by African states that led to the Kimberley Process and the readiness of South Africa and other countries to co-sponsor a resolution at the 55th Session of the United Nations General Assembly.

The Ministers noted the report by the Working Group and agreed to strive for a workable international certification scheme for rough diamonds that was simple and effective and that would not place undue burden on governments and industry; to adopt a comprehensive approach to deal with the causes and drivers of conflict; to investigate a mechanism of establishing an intergovernmental body to monitor compliance with the certification scheme; to maintain the momentum of the Kimberley Process; to welcome the initiative to convene an intergovernmental conference in London to bring other interested states on board and to take the multilateral process forward; and finally, to accept the proposals of the Working Group as a basis for further discussion (Kimberley Process Ministerial Statement 2000: 2).

The London meeting of 25 and 26 October 2000 was a follow-up to the statement on conflict diamonds that formed part of the G8 Communiqué following its meeting in Okinawa in July, which called for practical approaches to break the link between the illicit trade in diamonds and armed conflict, including consideration of an international agreement on certification for rough diamonds. The London meeting therefore took place outside the framework of the Kimberley Process. Up until the Pretoria Ministerial meeting the British government felt compelled to lead a broader process to negotiate an international treaty on diamonds under the auspices of the UN and this meeting was designed to 'take over' from the Southern African states who had initiated the consultative meetings on conflict diamonds. South Africa and Russia reacted by sending only observers to the meeting.

The meeting was attended by representatives from 36 governments, the European Commission and the World Diamond Council. According to the

statement issued after the meeting, its objective was to build on the momentum of the South Africa-led Kimberley Process by sensitising a wider range of key states to the problem of conflict diamonds. It retreated from the idea of an international treaty and welcomed the decisions taken at the Ministerial Meeting in Pretoria. It agreed that the forthcoming UN General Assembly debate was an important opportunity to further negotiations on an international certification scheme involving all interested parties and that everyone would work together to ensure that the momentum of the Kimberley Process was maintained and strengthened (Statement of the London Inter-governmental Meeting on Conflict Diamonds, London, 26 October 2000).

After the Ministerial Conference in Pretoria the United Nations General Assembly was consulted on the need for a certification scheme for rough diamonds. The UNGA adopted Resolution A/55/56 on 1 December 2000, entitled “The Role of Diamonds in Fuelling Conflict: Breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflict”, which provided the necessary mandate for the Kimberley Process and encouraged the development of an international certification scheme for the trade in rough diamonds.

The resolution was sponsored by South Africa and co-sponsored by 49 states. It acknowledged the work that had been done by the Kimberley Process and urged all diamond trading states to support the efforts to find ways to break the link between conflict diamonds and armed conflict. In particular, it expressed the need to give urgent and careful attention to devising effective and pragmatic measures to address the problem. These measures would include an international certification scheme for rough diamonds and appropriate arrangements to ensure compliance. The Resolution also called on the Kimberley Process to expand the membership of the Process to all key states with a significant interest in the world diamond industry and requested a progress report in the following Session (UNGA Resolution A/RES/55/56: 29 January 2001).

3.3 The Expanded Kimberley Process

The first meeting of the expanded Kimberley Process, as mandated by the UN General Assembly, took place in Windhoek, Namibia, from 13-16 February 2001. It was chaired by South Africa and consisted of two parts: the first day was dedicated to a meeting of government representatives only, while the other three days consisted of a technical workshop attended by representatives of 26 governments, SADC, the European Commission, the international diamond industry, and civil society. It was realised that the issue was complex, sensitive and urgent.

Delegates agreed that South Africa would continue to chair the process. They also agreed on a schedule of meetings for 2001 (road map) and established a Task Force to prepare adequately for these meetings. This schedule was subsequently honoured and culminated in the second ministerial conference in Gaborone in November 2001.

The Task Force was established in order to facilitate and accelerate action by the Kimberley Process. It included representatives of the following governments: Angola, Australia, Belgium, Botswana, Canada, China, Israel, Namibia, Russia, Sierra Leone, South Africa, Switzerland, the United Kingdom and the United States, officials of the SADC, the European Commission, and the World Diamond Council. The mandate of the Task Force furthermore stated that: “The Task Force will work in close consultation with civil society” (Windhoek Final Communiqué, 16 February 2001). The Task Force was mandated to assist the Chair in tracking the overall process, preparing draft agendas for meetings and co-ordinating the preparation of detailed working papers for each meeting.

The Kimberley Process met in plenary session in Brussels on 25 and 26 April 2001. This time 38 governments were represented along with the World Diamond Council, SADC, the European Commission, the World Customs Organisation,

representatives of the chairmen of the UN Sanctions Committees for Angola and Liberia and representatives from civil society.

The meeting focussed on minimum acceptable standards for an international certification scheme for rough diamonds, both from the perspective of the producer countries and from the perspective of countries that import, use and re-export rough diamonds. Technical specifications for a certificate of origin were developed. At this stage it was felt that the proposed certificates of origin would only be relevant to producer countries.

Presentations were made on the existing national certification schemes in Angola and Sierra Leone. Also discussed were the preliminary results of a detailed questionnaire on national import and export controls for rough diamonds, which was compiled with the inputs of all participants and co-ordinated by the Task Force subsequent to the Windhoek meeting.

The next meeting took place in Moscow on the 3rd and 4th of July 2001. It was attended by representatives from 34 states, the European Commission, representatives of the international diamond industry, notably the World Diamond Council, and representatives of civil society. The Russian Federation presented for consideration a model certificate and container sample to be used for the storing and transporting of rough diamonds, while Guinea presented its Certificate of Origin that was introduced on 18 June 2001 to increase consumer confidence. The need for adequate national monitoring and control systems to promote transparency and accountability was agreed upon.

The diamond industry introduced proposals through the World Diamond Council for a system of industry self-regulation based on a system of warranties. The meeting welcomed the proposal and recognised the fact that such a system of self-regulation would form an integral part of the overall certification scheme.

Based on the progress made at the Moscow meeting the Kimberley Process was able to proceed with further development and refinement of the proposed certification scheme at its next meeting in London.

The London meeting took place at Twickenham from 11 to 13 September 2001. This was the first meeting of the Kimberley Process where participants were faced with a consolidated draft text, setting out the essential elements of an international scheme of certification for rough diamonds. The meeting was chaired by Mr Abbey Chikane, Chairman of the South African Diamond Board.

Thirty-one countries were represented at the Twickenham meeting. They were: Angola, Australia, Belgium, Botswana, Brazil, Burkina Faso, Canada, Cote d'Ivoire, Czech Republic, Democratic Republic of the Congo, France, Gabon, Germany, Ghana, Guinea, Israel, India, Italy, Japan, Namibia, People's Republic of China, Portugal, Russian Federation, Sierra Leone, Singapore, South Africa, Sweden, Switzerland, Tanzania, United Kingdom, and United States. More than 70 countries were directly invited to the meeting, while all member states of the United Nations were informed of the meeting and invited to indicate their interest to attend.

The meeting had to be adjourned on the 11th of September after the attack by Al Qaeda on the World Trade Centre in New York and the Pentagon in Washington DC, which meant that there was not enough time to consider the entire text. On the whole much progress was made in negotiating the text, with the understanding that "nothing was agreed until everything was agreed".

Participants also agreed on the key elements that would form the basis of an international certification scheme. These were:

- The use of forgery-resistant certificates and tamper-proof containers for shipments of rough diamonds;
- Internal controls and procedures which provide credible assurance that conflict diamonds would not enter the legal market;
- A certification process for all exports of rough diamonds;
- The gathering and sharing with other participants, of relevant production, import and export data on rough diamonds;
- Credible monitoring and oversight of the international certification scheme;

- Self-regulation by the diamond industry which will fulfil minimum requirements; and
- The sharing of information with all other participants on relevant rules, procedures and legislation, as well as examples of national certificates used to accompany shipments of rough diamonds.

These elements were to be further refined at the scheduled meeting of the Kimberley Process in Luanda.

Participants in the London meeting were invited to send their comments on the framework document to the Secretariat. The Secretariat, with the help of an official from the Foreign and Commonwealth Office, consolidated the text of a revised working document, which contained no brackets. The Chairperson forwarded this 'Chairman's Perception' to participants in advance of the Luanda meeting.

Twenty-five states as well as the European Community (representing the 15 EU Member States) were represented at the Luanda meeting. They were Angola, Australia, Botswana, Brazil, Burkina Faso, Canada, Central African Republic, Cote d'Ivoire, Czech Republic, Democratic Republic of the Congo, Gabon, Ghana, Guinea, Israel, India, Japan, Mozambique, Namibia, People's Republic of China, Tanzania, and the United States. The World Diamond Council represented the international diamond industry and several civil society organisations were also represented.

Consensus was reached on most of the detailed proposals to be presented to the Ministerial meeting in Gaborone, Botswana, on 29 November 2001. It was decided that outstanding issues would be finalised by officials meeting in Gaborone in the days leading up to the Ministerial meeting. It was also agreed that a report to the 56th Session of the UN General Assembly would be drafted for consideration in Gaborone.

The meeting considered proposals from the World Diamond Council for a comprehensive system of warranties and industry self-regulation, and

incorporated the essential elements of this into the draft certification scheme. The World Diamond Council was encouraged to present these proposals to its membership and its membership organisations for formal adoption.

The Second Ministerial Conference took place in Gaborone on 29 November 2001. The ministers attending the meeting endorsed the detailed proposals for an international certification scheme for rough diamonds as developed by the participants in the Kimberley Process in 2001, thereby completing the first phase of the Kimberley Process. It was decided that the certification scheme should be established through an international understanding (without specifying the form it should take, but understanding that it could not be a legally binding instrument at that stage) as soon as possible, in recognition of the urgency of the situation from a humanitarian and security standpoint. A process of implementation and the setting up of credible monitoring and control systems would follow.

Several sticking points were agreed. Firstly, it was finally established that *all* states trading in rough diamonds would certify their rough diamond exports, not only the diamond producing states. Secondly, participants agreed on a definition for conflict diamonds: “ 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 (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC 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 resolution which may be adopted in future”. Thirdly, fears about the compatibility of the certification scheme with obligations under the World Trade Organisation (WTO) were finally put to rest when it was argued that Article XXI (c) of the General Agreement on Tariffs and Trade (GATT) provided that “Nothing in this Agreement shall be construed: ...to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security”. Fourthly, it was finally agreed that the proposed certification

scheme would not take the form of a legally binding treaty, but rather a politically binding instrument to be implemented as soon as possible.

Ministers (and in some cases Ambassadors and senior officials) decided to extend the mandate of the Kimberley Process until the beginning of the simultaneous implementation of the certification scheme. Outstanding issues included the definitions of “participant” and “applicant”; the date of full and simultaneous implementation; the requirement to provide statistics on the production and the international trade in rough diamonds; and the nature of the future secretariat and who would chair the Kimberley Process after the implementation of the certification scheme.

The Ministers decided to submit a progress report immediately to the 56th session of the UN General Assembly and recommended that the United Nations take action to support the implementation of the international certification scheme for rough diamonds as an instrument that would help to promote the legitimate trade in, and ensure the effective implementation of the relevant Resolutions of the UNSC containing sanctions on the trade in conflict diamonds, and the relevant UNGA resolutions as referred to in the scheme. The UNGA passed a resolution on 13 March 2002 supporting the decisions made by the second Ministerial Conference in Gaborone.

From 18-20 March 2002 a Kimberley Process meeting took place in Ottawa. Thirty-seven states and the European Community participated in this meeting. Participants welcomed the resolution adopted by the UNGA on 13 March 2002 (UNGA Resolution A/RES/56/263), which expressed firm support for the work being done by the Kimberley Process. The Working Group on Statistics, led by the Government of Canada, proposed technical clarifications to the text of Annex III of the Framework Document, taking into account the role of statistics in supporting effective implementation of the certification scheme, as well as the need to protect commercially sensitive information. The nature and scope of the statistics to be collected and the frequency of its publications were elaborated.

The Working Group on Participant Measures, led by the Government of South Africa, clarified the question of the monitoring and implementation of the scheme. This clarification was endorsed by the Plenary, allowing an earlier reservation by civil society to be withdrawn. Nevertheless, the coalition of civil society organisations attending the meeting presented the Chairperson with a letter expressing their disappointment that the national control mechanisms would be purely voluntary. They felt that there ought to be a system of impartial monitoring and periodic reviews for all participants.

The Working Group on Administrative Support Measures required for the optimal functioning of the certification scheme, led by the European Commission, paved the way for a decision that a permanent secretariat would not be required at that stage. The participants considered the layout and logo of Kimberley Process Certificates and encouraged each participant to design its own certificate along common lines.

Finally, it was decided to allow time to prepare for the implementation of the certification at national level and that the following meeting at the level of Ministers, should take place in Switzerland in November 2002, during which the simultaneous launch of the certification scheme would be announced (Kimberley Process Meeting, Ottawa. Final Communiqué: 20 March 2002).

The Kimberley Process Certification Scheme for Rough Diamonds was adopted at the third Ministerial Conference in Interlaken, Switzerland, on 5 November 2002. Thirty-six states and the European Community (representing 15 Member States) attended the meeting. The Ministers decided that the Kimberley Process Certification Scheme for Rough Diamonds would be simultaneously launched on 1 January 2003 on the basis of national laws and internal systems of control that meet the standards established by the Scheme.

The Ministers and other heads of delegation also declared that they would ensure that the measures taken to implement the Kimberley Process Certification

Scheme (KPCS) for rough diamonds would be consistent with international trade rules; they declared their determination to monitor effectively the trade in rough diamonds in order to detect and to prevent trade in conflict diamonds through the ongoing international process of the KPCS; they welcomed the intention of several additional states to become participants of the KPCS by the end of 2003; thanked South Africa for chairing the process up until that point, and requested officials to review initial progress with implementation at the first formal meeting of the Participants of the Kimberley Process to be held early in 2003. A Participation Committee was established for this purpose (Kimberley Process Interlaken Declaration: 5 November 2002).

Representatives of civil society, namely Action Aid, Amnesty International, Cenadep (DRC), Fatal Transactions, Global Witness, Network Movement for Justice and Development (Sierra Leone), Oxfam International and Partnership Africa Canada, issued a media statement on 5 November cautiously welcoming the launch of the Kimberley Process. However they also registered their concern about the fact that some states that had not implemented the Scheme would be excluded from the international diamond trade. But most importantly, they expressed concern that the Scheme did not provide for a system of regular, independent monitoring of all national diamond control systems, which they felt would open it up to abuse.

The KPCS was gradually implemented by more and more states between 1 January 2003 and 31 July 2003, which marked the end of the so-called tolerance period. At that time 39 states and the European Community were participating in the KPCS. Implementation was followed with a report to the UNGA and the adoption of UNSC resolution S/RES/1459(2003). The Kimberley Process Group held a plenary meeting in Johannesburg from 28 to 30 April 2003 during which the chair was formally handed over to Canada.

In the following chapter an attempt is made to use the Kimberley Process to understand the dynamics of polyilateral diplomacy, understood as negotiations

that involve state- and non-state actors. Attention is paid to the interests of the various actors and the nature and process of negotiations.

¹ The NGO coalition was composed of Global Witness, The Netherlands Institute for Southern Africa (NIZA), Medico International and NOVIB (part of Oxfam).

Chapter 4

4. THE KIMBERLEY PROCESS AND POLYLATERALISM

4.1 Introduction

Polylateralism was defined at the start of this study to represent the participation of non-state actors in the conduct of international relations. In this regard the Kimberley Process is a good example of polylateralism. It is thus presented as a case study to examine whether polylateralism is indeed a new diplomatic method. The best way to analyse this case study is to focus on the various actors in the negotiating process, the mode of interaction between the actors and the issues and challenges that the actors faced.

There were three sets of actors in the Kimberley Process as diagrammatically portrayed in the introductory chapter. There were states, civil society and the private sector. In the following pages a more detailed examination is made of each of these actors as well as the entire interaction process.

4.2 State actors

The states that had a particular interest in the diamond industry during the period 2000-2002 fell loosely into four categories. First were the producers of diamonds. The second group of states consisted of diamond processors. The third group consisted of the consumers. Fourthly, there were the stockers of diamonds. In addition to these four categories, state actors were also represented in the form of multilateral organisations.

At the time many diamond producing states were located in Africa. Botswana was the world's largest producer of gem quality diamonds in the year 2000. worth \$1.8 billion, while South Africa, Namibia, Angola, Sierra Leone and the DRC were the other significant producers on the continent. The world's second largest diamond producer, with \$1.6 billion, was the Russian Federation. Canada was an emerging producer, while Australia produced \$0.4% of world output at that stage, mainly in industrial quality diamonds. The concentration of gem quality diamonds

in two countries, namely Botswana and the Russian Federation, and to a lesser extent in South Africa, the DRC and Angola, made it fairly easy to co-ordinate the agenda of the diamond producing countries.

The main concern of the African diamond producing states, in particular SADC members, was the possible loss of revenue from the sale of rough diamonds. Diamonds were an important component of regional development. Any disruption in the diamond trade would adversely affect their economies. They therefore took the initiative to resolve the issue of conflict diamonds. Their other main concern was that the responsibility to control conflict diamonds should extend to the processing, trading and consuming countries. The certification and warranty scheme that finally emerged ensured that this was the case.

It should not be surprising that South Africa spearheaded the initiative and served as Chair and secretariat for the entire initiative. There were several reasons for this. First of all there was pressure on South Africa as the home of De Beers, which was mainly responsible for handling over 60% of all the diamonds on the market, to play a leading role. Secondly, South Africa was the main anchor of SADC economies and was therefore expected to shoulder the responsibility of the costs associated with the co-ordination of the entire process. Thirdly, South Africa was respected internationally, having attained liberation in 1994 and acting as a champion for human rights. Finally, the fact that South Africa was not only a producer, but also a processor and a consumer of diamonds, added to its credentials and enabled it to act as a catalyst.

In 2000 there were around thirty countries world-wide where diamonds were cut, polished and processed into jewellery or used for industrial purposes. The four traditional cutting and trading centres, Antwerp, Mumbai, New York and Tel Aviv, specialised in different categories of diamonds. At the same time several other countries were in the process of developing cutting industries. Belgium was the world's biggest market for rough diamonds, with an estimated 80% of rough and more than 50% of polished diamonds passing through Antwerp. Another important processor was Chinese Taipei (Taiwan). The processors had two main

interests: (a) limiting the responsibility of curbing conflict diamonds to the producers by excluding the secondary rough diamond trade from the certification scheme, and (b) individually ensuring that all the main players participated in the emerging diamond trade regime. Hence Belgium's concern that Israel participates in the regime.

The question about the participation of Chinese Taipei was raised in Gaborone as an important factor to ensure the effectiveness of the Kimberley Process Certification Scheme (KPCS) and in order to ensure that as a member of the WTO, Chinese Taipei would not be discriminated against by excluding it from the trade regime. The participants in the Kimberley Process recognised the importance of the participation by Taiwan in the scheme as it was trading 8% of the world's rough diamonds at that stage. China agreed with the importance of the eventual participation by Taiwan in the trade regime, but it insisted that it alone would represent Chinese Taipei, Hong Kong and Macau in the negotiations.

Key consumers were the USA (45% of global diamond sales) Japan and Saudi Arabia. There were diverse motives among the consumer countries. Saudi Arabia did not participate in the negotiations even though they were invited, which seems to indicate that it was not affected by the advocacy campaign launched by civil society. Japan, on the other hand, participated constructively. Their main concern was to prevent any measures that would contradict their commitments under the General Agreement on Tariffs and Trade. The USA, by far the largest consumer accounting for over 45% of the market, was an active participant as a result of the high level of public awareness created by civil society.

The US Congress became involved in the issue early on. The House International Relations Subcommittee on Africa held a hearing on 9 May 2000 on "Africa's Diamonds: Precious, Perilous Too?". In September 2000 the Trade Subcommittee of the House Ways and Means Committee heard testimony from representatives of the diamond industry, civil society and the US Government on

the “Illegal Trafficking in Sub-Saharan Diamonds”. Congressman Hall, one of the proponents of US legislation, participated in the demonstrations outside Tiffany’s and Cartier’s in New York in October 2000 and outside Tiffany’s in Chevy Chase in Maryland in December 2000. The House Ways and Means Committee also held a hearing on “Breaking the Link between Conflict Diamonds and Human Rights Abuses” on 9 October 2001.

Several conflict diamonds-related bills were introduced in the US Congress (Cook 2000: 11). One was the so-called CARAT Act introduced by Congressman Tony Hall on 1 November 1999, which required certificates of origin for every gem-quality diamond and gem-quality diamond product imported into the USA. The bill was later determined to be unworkable. Later Congressmen Hall and Wolfe sponsored the Clean Diamonds Act, which was passed by the House of Representatives, but was killed in the Senate. In March 2002 three Senators, Dick Durbin (D-IL), Mike DeWine (R-OH) and Russell Feingold (D-WI) introduced new legislation, also entitled the Clean Diamonds Act, as Senate Bill S. 2027 which tried to establish separate standards (such as a requirement for a certificate of origin) from those set by the KP, including a far more expansive and ambiguous definition of conflict diamonds. This bill was drafted in consultation with the World Diamond Council (in an effort to provide protection to the legitimate diamond industry in the USA) and several NGOs and would have preempted the outcome of the Kimberley Process. It was not adopted as legislation.

There was a renewed interest in the Kimberley Process when the Washington Post published an article after the attacks in the USA on 11 September 2001, claiming that Al Qaeda was using the proceeds of diamond sales to fund its terrorist activities. Some observers including the Washington correspondent of the South African daily Business Day, Simon Barber (2002), believed that the issue was pushed by certain US Senators in order to obtain support for their draft legislation on conflict diamonds.

The US Administration as a whole was supportive of the creation of an international diamond trade regime backed by international sanctions. It believed

that this regime should be based on working partnerships with other diamond trading states as well as the international diamond industry and NGOs (Cook 2000:6). It was also concerned that US legislation should not pre-empt these efforts and that any legislation should be consistent with WTO rules. However, the Administration was firmly opposed to accepting obligations to issue Kimberley Process Certificates for its own rough diamond exports. It believed that only diamond producing states had an obligation to participate in a certification scheme. At the Luanda meeting October 2001 the US delegation requested that a reservation on the requirement for all participants to certify their rough diamond exports should be entered on the Kimberley Process working document. The US was the only participant to register a reservation in this regard. Despite the fact that it withdrew its reservation at the meeting of officials in Gaborone in November 2001, Timothy Skudd (2002) of the Department of the Treasury indicated in his testimony before the US Senate Committee on Governmental Affairs as late as 14 February 2002, that the US Government would only meet the KPCS requirements as far as imports of rough diamonds were concerned. It was only after the Ottawa meeting in March 2002 that the US accepted that they would also have to issue Kimberley Process certificates with each rough diamond export however, the industry would be tasked to do this. The US Administration finally affected the required measures to apply the KPCS domestically through federal emergency powers, obviating the need for new legislation.

Of the rough diamond trading countries, two deserve to be mentioned. Switzerland was important because De Beers's London based Diamond Trading Company (DTC), formerly known as the Central Selling Organisation (CSO) transferred large quantities of diamonds for purposes of security and insurance via Switzerland. The UK played a unique role as it was the country from which De Beers, through its sight holder system (fewer than 200 clients approved by De Beers who buy pre-mixed parcels of diamonds at prices determined by De Beers) sold its diamonds.

The United Kingdom (UK), and in particular its foreign ministry, appears to have had a special interest in the issue of conflict diamonds (emotively referred to as 'blood' diamonds by Foreign Minister Peter Hain). As a result the issue came to form part of the agenda of the G8 meeting in Okinawa, Japan in June 2000. The statement expressed concern regarding the situation and called for practical approaches to break the link between the illicit trade in diamonds and armed conflict, including consideration of an international agreement on certification for rough diamonds. The Kimberley Process, which had had its inaugural meeting the previous month, was named as one possible forum to address the issue (Japan: G8 Communiqué, Okinawa).

To the four sets of states mentioned above must be added the multilateral organisations and regional economic integration organisations. In the first category were the United Nations (UN), the World Trade Organisation (WTO) and, to a lesser extent, the World Customs Organisation (WCO). In the second category were the European Union (EU) and the Southern African Development Community (SADC). The main multilateral actor in the question of conflict diamonds was of course the United Nations. The involvement of the United Nations stems from the civil wars in Angola and Sierra Leone which were deemed by the Security Council to threaten international peace and security. The UN's involvement was at two levels: introducing sanctions against the sale of conflict diamonds and giving credence and authority to the Kimberley Process. The role played by the multilateral organisations will be further elaborated in 4.4 below.

Given the fact that states had different interests and motives to engage in the Kimberley Process it was not easy to reach a consensus on a number of issues. It is this fact that lead to the establishment of governments-only meetings before and after each of the Kimberley Process meetings. This was a way of creating a common position *vis-à-vis* the non-state actors.

4.3 Non-state actors

There were two categories of non-state actors: the diamond industry and civil society. Looking at the diamond industry one needs to note a number of things.

First, there is the unique nature of the diamond production and trading system, which gives the impression that it is highly secretive. Secondly, the dominance of one global player over the diamond industry, both in terms of production and sale of rough diamonds, namely De Beers, and the concentration of processing in Antwerp, Tel Aviv, Mumbai and New York, which made it relatively easy to co-ordinate the industry's response.

Diamonds are a natural mineral consisting essentially of pure crystallised carbon, found in primary or secondary deposits world-wide. Primary deposits are found in a solid rock or kimberlite. The mines in Botswana, Russia, Canada, Tanzania and most of South Africa and Australia are primary deposits. These are localised, easy to secure and control. Secondary deposits are alluvial diamonds washed down from kimberlites and deposited in river beds and -mouths. Production from Namibia, in much of the Democratic Republic of the Congo and Angola, and in West African and South American countries, is derived from widely dispersed secondary deposits found in old river bed gravels. These are very difficult and expensive to fence in and to control. Finally, there is also synthetic diamond production, mainly for industrial application, which takes place in several countries.

Diamonds are the hardest mineral found on earth, which makes them indispensable in many industrial processes. They are also beautiful and through clever marketing have become associated with eternal love and devotion. Diamonds usually fall into these two broad categories, gem quality and industrial quality. Diamonds are measured in carats. There are five carats in one gramme. The value of a diamond is determined by the four c's: colour, clarity, cut and carat. The total timeframe from point of extraction to the final sale is known as the 'diamond pipeline' (De Beers presentation dated 11 May 2000. Global

Witness report dated 10 May 2000). It takes about two years for a diamond to go through the whole pipeline from mining to jewellery retail, or from mining to industrial application. Diamonds are not only valuable, they are also compact and therefore easy to transport (and smuggle). They are often used as an alternative currency in conflict areas.

The international diamond industry operates in countries where diamonds are mined, processed or traded and in states where they are sold as jewellery. The diamond industry is unique in many ways. Through its effective control of the supply and marketing of diamonds, De Beers is able to manipulate diamond prices, keeping them artificially high. This persuades most producers to sell their diamonds to De Beers rather than to trade them on the open market. Other large diamond mining companies include ALROSA (Russian Federation), Trans Hex(Australia), Endiama (Angola) and Lev Leviev (Israel).

The international diamond industry was represented in the Kimberley Process mainly by the World Diamond Council (WDC). A decision by the International Diamond Manufacturing Association (IDMA) and the World Federation of Diamond Bourses (WFDB) at the meeting of the World Diamond Congress in Antwerp in July 2000 led to the establishment of the WDC, which held its inaugural meeting in September of the same year. In a statement released at its first meeting on 7 September 2000 the WDC (2000: 1) announced that its membership would comprise of all segments of the international diamond industry including producers, manufacturers, traders and retailers, as well as financial institutions, governments, relevant international and civil society organisations. Its mandate (WDC 2010: 1) was the “...development, implementation and oversight of a tracking system for the export and import of rough diamonds to prevent the exploitation of diamonds for illicit purposes such as war and inhumane acts”. The WDC was registered as a Delaware non-profit organisation and structured into ten Committees.

The industry was intent on satisfying the needs of the largest consumer country, the USA, and believed at that stage that it was firmly in control of the campaign

to ban conflict diamonds. In January 2001 the WDC met in Washington DC to present its members with the 'model legislation' that was drafted as a compromise between US legislators and the diamond industry. The WDC met again in London two weeks later to adopt the draft legislation, which served as a basis for discussion with government authorities, NGOs and other interested parties in the US (WDC: 17 January 2001). When the industry delegation arrived in Windhoek for the first meeting of the expanded Kimberley Process a few weeks later, it announced that it was ready to take charge. The negotiations, however, were focussed on creating an agreement between the various governments and not on adopting the industry's self regulation.

There are a number of issues that need to be noted about the participation of civil society in the Kimberley Process: First of all, the fact that the UN recognises NGOs as important global players, afforded them space to make their presence felt. The UNSC imposition of sanctions on UNITA in Angola and later in Sierra Leone was in part an outcome of the NGOs' efforts to address gaps in the implementation of the sanctions that were imposed by the UN Security Council. In this regard Global Witness (2001: 1-11) carried out an independent review of the Sierra Leone certification process following the adoption of UNSC Resolution 1306 (S/RES/1306 (2000)). The aim was in part to offer recommendations to the Kimberley Process.

Secondly, interest in conflict diamonds grew rapidly to a point where 180 NGOs were involved. These presented a petition in September 2001 before the London meeting, urging all governments to agree speedily on minimum international standards for an international certification scheme and to allow independent monitoring and evaluation (Action Aid 2001). It was, however, not possible to accommodate all the 180 interested NGOs into the Kimberley Process. Only Global Witness and PAC were allowed full participation in the Kimberley Process through participation in the various committees that were created and in the plenary meetings. These NGOs played a crucial role in the Kimberley Process and their campaign for a certification scheme for rough diamonds did succeed.

Thirdly, the NGOs had a limited, issue-specific focus and were able to mobilise global support by means of the media, based on their research. It is important in this regard to take note of the reports produced by Global Witness on Angola in 1998 entitled “A Rough Trade” on the role of companies and governments in the Angolan conflict that started the whole campaign against conflict diamonds. This was followed in January 2000 by Partnership Africa Canada’s report “The Heart of the Matter: Sierra Leone, Diamonds and Human Security”. Together with the International Peace Information Service in Belgium and the Network Movement for Justice and Development in Sierra Leone, PAC produced a number of information sheets, Other Facets, on diamond-related conflict in an effort to improve public understanding, policy dialogue and policy change to reduce the role of diamonds in fuelling conflict.

PAC produced two other reports in 2002, in March it published “Diamonds for Ever or Diamonds for Good”, which disputed claims that diamonds were making a meaningful contribution to development in poorer countries. In June it came out with “Hard Currency: The Criminalised Diamond Economy of the Democratic Republic of the Congo and its Neighbours”. The report described how the criminal networks in the Central African region were using diamonds as a currency and the destructive effects this was having on human security. The report further criticised the restrictive definition of conflict diamonds adopted by the Kimberley Process. The report further recommended that the UNSC should treat DRC diamonds the same way it treated the Angolan and Sierra Leonean Diamonds (Dietrich 2002: 6). These reports kept the issue of conflict diamonds in the spotlight.

They could, however, not persuade the governments to establish an independent monitoring and evaluation system. In fact, in March 2002 several NGOs including World Vision, PAC, Oxfam International, Global Witness, Action Aid and Amnesty International sent a joint letter to the chairperson of the Kimberley Process expressing their concern about the reasons for a review system that was agreed by governments and which would be applied on a purely voluntary basis in which

they undertook to continue to advocate for stronger monitoring in the KPCS (Other Facets, Issue #6: 1). The same issue was raised in September 2002 by the Diamonds and Human Security Project in its report “The Kimberley Process: The Case for Proper Monitoring”, which called for strict monitoring of the illicit diamond trade, which had the potential of developing into a conflict diamond trade. This, however, could still not persuade the governments involved in the KPCS process.

Fourthly, NGOs were supported by governments who used them to spearhead government interests within the Kimberley Process. This was the case for Canada’s PAC, the UK’s Global Witness and the USA’s Amnesty International. Amnesty International helped to organise in 2000 and 2001 demonstrations in front of Tiffany’s in New York and Washington DC with certain US Congressmen and the Ambassador of Sierra Leone to the USA. At the Kimberley Process meeting in Ottawa, Amnesty International and several international and Canadian NGOs distributed a petition describing the Kimberley Process measures as weak and feeble, that will have absolutely no effectiveness and no credibility whatsoever, as well as amateurish and completely inadequate. The petition further stated that if outstanding matters were not resolved at the Ottawa meeting “the legitimate diamond industry...will face the growing outrage of consumers...” (Amnesty International: 2003).

NiZA and Oxfam International organised an experts meeting at the European Parliament in Brussels on 7 March 2002, which identified the outstanding issues such as WTO compliance, monitoring and statistics and the question of future administrative support.

The NGOs produced a ‘Kimberley Process Report Card’ in March 2002, which was promoted by more than 100 other NGOs around the world and which received wide media coverage. The report card gave a good grade to controls in producing countries, to certificates of origin developed for Angola, Sierra Leone and Guinea, and for the industry’s chain of warranties. It gave fair ratings to controls in trading and consumer countries and the re-export certificate, but failed

participants on the handling of the WTO issue, the need for good statistics, independent monitoring and a permanent secretariat.

Wright (2004: 701) points out that civil society, having first raised awareness of the problem of conflict diamonds and played an important role in the negotiation, found itself potentially redundant when the agreement was adopted. Governments had the leading role in implementing the KPCS through legislation, regulation and administrative procedures and the industry had a key function in implementing its voluntary scheme of self-regulation. Civil society turned their attention to the improvement of the monitoring and transparency of the KPCS and maintained the pressure on the industry. NGOs that endorsed the adoption of the KPCS were criticised by other NGOs for “selling out”.

4.4 The Process

As was noted above, South Africa was mandated by both SADC and the African ministers responsible for mineral resources to spearhead the resolution of the issue of conflict diamonds. It thus organised the first Technical Forum on Diamonds in Kimberley in May 2000. From there on, South Africa acted as the Chair for the entire Kimberley Process negotiation. In April 2001 the South African Minister of Minerals and Energy appointed the Chairperson of the South African Diamond Board, Mr Abbey Chikane as Chairperson of the Kimberley Process, while the leadership of the South African delegation remained with government officials. Mr Chikane was a businessman in his own right and politically well connected. He was therefore deemed to be the right person to ensure that the values espoused by the young South African democracy would be guarded throughout the Kimberley Process. The South African Department of Foreign Affairs provided the secretariat to the entire process.

It was decided at the first meeting in May 2000 to establish a working group component of government representatives, the diamond industry and civil society. The membership of the working group was not formally documented, but the meeting was attended by government representatives from Botswana,

Namibia, Angola, the DRC, Ghana, South Africa, the USA, the UK and Belgium. Civil society was represented by Global Witness, PAC, Oxfam and the Fatal Transactions campaign. The diamond industry was represented notably by De Beers, the International Diamond Mining Association (IDMA), the High Diamond Council (HDC) and the Rapaport Corporation. The working group was expected to work out a national certification system for diamond trade. The working group subsequently met in Luanda (13-14 June 2000), in London (20 July 2000) and in Windhoek (3-5 September 2000) and presented its report to the first ministerial meeting in Pretoria on 21 September 2000.

A number of decisions were made at the first ministerial meeting in Pretoria and by the subsequent working group meeting in Windhoek. First was the decision to have a government representative only meeting prior to the plenary sessions, that were open to NGOs and the private sector representatives. These exclusive meetings enabled the government representatives to control the pace of the negotiations. The second decision was to restrict the participation of NGOs in the plenary session to two – the Global Witness and PAC - based on the fact that they had shown interest in the issue of conflict diamonds from the start. It is these two that acted on behalf of other NGOs. Equally, participation by the diamond industry was limited to representatives of the WDC. The negotiation of the Kimberley Process was thus dominated by government representatives.

Another decision taken at this early stage was to include the members of the UN's Sanctions Committee on Angola and the Monitoring Mechanism on Sanctions against UNITA in the plenary meetings. Also allowed at the meetings were the representatives of the USA General Accounting Office (GAO), the investigative arm of the US Congress. Lastly, a decision was made to create a task force whose main job it was to assist the Chair in tracking overall progress, proposing draft agendas for meetings and co-ordinating the preparation of detailed papers. The task force was initially comprised of government representatives from Angola, Australia, Belgium, Botswana, Canada, China, Israel, Namibia, Russia, Sierra Leone, South Africa, Switzerland, the United

Kingdom and the United States, officials representing SADC and the European Commission and representatives of the World Diamond Council. Japan and India were added to the task force at the Brussels meeting in April 2001. Ironically, Global Witness and PAC only participated as observers in the task force.

It fell on the task force that met before and after the plenary meetings to draft recommendations. This prompted more and more governments to attend the task force meetings. By the time of the Moscow meeting in July 2001 the attendance at the task force meetings was so large that it put into question its usefulness. This led to the decision at the London meeting in September 2001 to disband the task force.

The task force was temporarily replaced by a group referred to as the “Friends of the Chair”. It was composed of countries appointed in Moscow in July 2001 as co-ordinators for the various sections of the working document for the meeting in London. These countries were Angola, Belgium, Botswana, Israel, Namibia, South Africa, the UK and the USA. At the discretion of the Chair, Canada and the European Community were later added. The Friends of the Chair then became responsible for the preparation of the subsequent meetings in lieu of the task force. The Friends of the Chair met in Luanda in October to approve the framework document that was presented as the “chairman’s perception” and used at the subsequent plenary.

As the Kimberley Process progressed, it became necessary to establish special working groups to address specific issues. Thus the Botswana meeting in November 2001 created four working groups to deal with outstanding issues in preparation for the Ottawa meeting. The four working groups were: the Working Group on WTO compliance, convened by Switzerland and composed of Japan, China, Canada, Namibia, the European Community (EC), the USA, South Africa, Russia and Australia; the Working Group on Statistics, convened by Canada and included Russia, South Africa, Israel, China, the WDC, PAC, EC, Australia and Switzerland; the working Group on Participant Measures (monitoring), convened by South Africa and included Global Witness, the DRC, EC, Russia, Israel,

Canada, China and Australia; and the Working Group on Administrative Support (future secretariat), convened by the EC and composed of Russia, Canada, Oxfam, the WDC, Angola, Sierra Leone, USA, South Africa and Australia.

After the Ottawa meeting in March 2002 the working groups were disbanded and a new Technical Committee on Administrative Matters was appointed by the chairperson. It was to be convened by the European Commission and included of Angola, South Africa, Russia, Switzerland, Canada, Israel, the USA, the WDC and NGOs. The Technical Committee was to finalise outstanding issues pertaining to administrative support such as: the body that will be made responsible for the analysis of statistics; the nature of the “international instrument” that will launch the scheme; and the rules of procedure of the body that will be formed after the date of simultaneous implementation. The Committee met in Pretoria on 19 and 20 September 2002 in preparation for the Ministerial meeting in Switzerland.

As noted above, final agreement on the Kimberley Process scheme for rough diamonds was reached at the third ministerial conference in Interlaken, Switzerland on 5 November 2002 and came into force in January 2003. South Africa played a key role throughout the Process.

4.5 The role of South Africa

South Africa as chair of the Kimberley Process from 2000 to 2003 was faced with a challenge of unique complexity (Hughes 2004: 49) for several reasons. Firstly, it was the first process of its kind involving non-state actors from civil society and business, which made it a groundbreaking process. These actors were initially highly suspicious of each other’s motives. Secondly, the Process was global in scale involving states from around the globe with many different interests as well as international organisations such as the UN and the WTO. Thirdly, it was fraught with controversial issues as we will see below and finally, there was a real urgency to find durable solutions in the shortest time possible. Civil society constantly put pressure on the states and businesses to find lasting solutions to

the problem of conflict diamonds as quickly as possible. The threat of a consumer boycott was always there.

South Africa, in its capacity as Chair, was able to navigate these challenges by being flexible and inclusive on the one hand and decisive when it was necessary. It was flexible by allowing different states to be represented by different kinds of representatives, as long as they were mandated to do so by their governments. Some, for example were represented by professional diplomats, some by officials from technical ministries and yet others by businessmen. South Africa was also flexible in terms of venues for the different meetings and the composition of the working groups, although it insisted on a balance between developed and developing country representation and on a balance between producing, processing and consumer states. It went to great lengths to include all interested parties in the negotiations. In this regard it informed all UN member states of upcoming meetings through its Permanent Mission to the United Nations. The South African Chair was decisive when it came to the composition of some of the working groups and on such issues as the participation of Taiwan in the Kimberley Process. While it highly valued the participation of China in the process, it would not allow the effectiveness of the KPCS be compromised by its internal politics.

In its capacity as a participant South Africa consulted its national stakeholders and worked closely with the other diamond producing countries in Southern Africa to protect its national interests. It also played an important role in engaging participating states bilaterally on the many diverging views regarding aspects of the process. It followed a simple strategy: firstly to curb the trade in conflict diamonds in order to make a positive contribution to the resolution of conflicts on the African continent, and secondly, to protect the legitimate diamond trade from the negative effects of a threatened consumer boycott. It assisted the Chair in managing the process which meant that the distinction between South Africa as Chair and participant sometimes became blurred. It is this dual role as both the Chair and a participant that gave South Africa a distinct advantage in maintaining

control over the direction of the Process. In this regard South Africa acted as a catalytic state, mobilising other state and non-state actors to achieve its policy goals.

Before turning to the negotiation issues and challenges it is important to highlight briefly the UN involvement in the process.

4.7 The involvement of the United Nations in the process

After the Ministerial Conference in Pretoria (September 2000) the United Nations General Assembly was consulted on the need for a certification scheme for rough diamonds. The UNGA adopted resolution A/RES/55/56 on 1 December 2000, entitled “The Role of Diamonds in Fuelling Conflict: Breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflict”.

As noted above, the resolution was sponsored by South Africa, co-sponsored by 49 states and adopted by acclamation. It acknowledged the work that had been done by the Kimberley Process thus far and urged all diamond trading states to support efforts to find ways to break the link between conflict diamonds and armed conflict. In particular, it expressed the need to give urgent and careful attention to devising effective and pragmatic measures to address the problem. These measures would include an international certification scheme for rough diamonds and appropriate arrangements to ensure compliance. The Resolution also called on the Kimberley Process to expand the membership of the Process to all key states with a significant interest in the world’s diamond industry and requested a progress report in the following Session(United Nations 2000: A/RES/55/56).It was this UNGA resolution that gave rise to the expanded Kimberley Process that had its first meeting in Windhoek, Namibia in February 2001. It also provided the necessary mandate for the Kimberley Process itself.

The UN Security Council also referred to the KP in resolutions such as Security Council Resolution SCR 1385 (2001) on the situation in Sierra Leone, paragraph 5 in the Preamble, which states: “ Welcoming General Assembly resolution

A/RES/55/56 of 1 December 2000, as well as ongoing efforts by interested states, the diamond industry, in particular the World Diamond Council, and non-governmental organisations to break the link between illicit trade in rough diamonds and armed conflict, particularly through the significant progress made by the Kimberley Process, and encouraging further progress in this regard". As required by resolution A/RES/55/56 the Kimberley Process submitted progress reports to the General Assembly. The first was an interim report (A/56/502) in October 2001, followed by a full report (A/56/675) in December 2001 and a second full report (A/56/775) in January 2002.

On 13 March 2002 the General Assembly adopted resolution A/RES/56/263, which noted with appreciation the reports and welcomed the detailed proposals for an international certification scheme for rough diamonds. It stressed the need to implement the scheme as soon as possible and encouraged the Kimberley Process to finalise outstanding matters. It requested a report on progress during its fifty-seventh session.

The adoption of the KPCS in Interlaken was strongly supported by the Security Council in resolution S/RES/1459 (2003) on 28 January 2003. The resolution also welcomed the voluntary system of industry self-regulation, recognised the important contribution made by industry and civil society in the development of the KPCS and encouraged the widest possible participation in it. These sentiments were echoed by the General Assembly in resolution A/RES/57/302 adopted on 15 April 2003. The resolution helped to ensure that the trade regime established through the Kimberley Process was regarded as WTO compliant. The issue of WTO compliance was one of the negotiation issues and is discussed in the next section.

With the above background on the actors and the process one can now turn to the negotiation issues and challenges.

4.8 The negotiation issues and challenges

The issue of diamonds funding conflicts was placed on the international agenda by civil society. Through their actions they forced both governments and industry to the negotiating table to address the issue. The moral and legal obligation by members of the UN to uphold international peace and security, combined with the threat posed by the conflict diamonds campaign to the international diamond industry motivated governments to take ownership of the agenda and to ensure a successful outcome at the global level. While both civil society and industry played indispensable roles in the process and thereby influenced the agenda, it was governments that quickly took control of the process. It was the governments that decided on which civil society organisations should participate in the meetings. As noted above only two civil society groups were allowed to participate in the plenary discussions – Global Witness and the PAC. The participation by the private sector was equally limited to the WDC.

The first issue that had to be dealt with in regard to conflict diamonds is whether it was a strictly human security issue or a trade issue. Due to the existing sanctions and the fact that diamonds are easily smuggled into Europe by buyers that travel to African states, many of the African representatives at meetings of the Kimberley Process felt that the proposed certification scheme should be dealt with as a security issue rather than simply as a trade issue. The issue arose when the European Community emphasised that its single market status meant that rough diamonds could move freely within its customs territory without the need for certification. It became a divisive one in the Kimberley Process at the time of the London meeting and threatened for a while to derail the process. In the end representatives from African states accepted that it was up to the European Union to devise a mechanism other than border controls to enforce the certification scheme, but that this would only be possible once the KPCS had entered into force.

The second issue that confronted the negotiators was the definition of conflict diamonds. In 2000 Global Witness (2000: 1) defined conflict diamonds as:

“Diamonds that originate from areas under the control of forces that are in opposition to elected and internationally recognised governments, or are in any way connected to those groups”. The De Beers representative at the first meeting in Kimberley in May 2000 defined conflict diamonds as: “Diamonds which are mined or stolen by rebels in opposition to the elected government of a country” (Coxton 2000: 14).

The first definition adopted by governments was contained in UN General Assembly Resolution 55/56 (2000) which states that conflict diamonds should be understood as “rough diamonds which are used by rebel movements to finance their military activities including attempts to undermine or overthrow legitimate governments”. Some countries wanted to include rough diamonds in the definition originating from territories in diamond producing countries that are under military occupation by other countries. Others felt that conflict diamonds included diamonds used by illegitimate or corrupt governments to entrench their power.

In the final analysis the Kimberley Process Certification Scheme (2002: 3) defined conflict diamonds as “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 (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and is understood and recognised in the United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA Resolutions which may be adopted in future.”

The two main elements here are rebel movements and the financing of conflict aimed at undermining legitimate governments. No attempt was made to include polished diamonds in the definition as most of the affected states did not have a polishing industry and that it would unnecessarily complicate the issue. Dealing with rough diamonds only was more manageable. It is also noteworthy that the identification of rebel movements and legitimate governments would be done by the member states of the United Nations and not by non-state actors.

The NGOs believed that this definition was too restrictive. They expressed the need to allow the Kimberley Process Certification Scheme to address human rights issues such as the problems confronting artisanal diamond diggers who are often working under unacceptable conditions, particularly since the conflicts in Angola and Sierra Leone were over in 2002 before the KPCS could take effect. They felt that by including human rights in the definition there would be a greater reason for the KPCS to continue. Currently Global Witness (2010) defines conflict diamonds on their website as “diamonds that are used to fuel violent conflict and human rights abuses”.

The third issue to be dealt with was whether to base the regime on national or international certification. The idea of a certification scheme to control the trade in diamonds in order to ensure that conflict diamonds do not enter the diamond market anywhere in the world was proposed as early as May 2000. During the consultative phase states varied in their opinions. At the one extreme were states, notably the UK that felt that an international certification scheme should be achieved through a treaty negotiated under the auspices of the UN. At the other extreme were states such as the Russian Federation and Angola, who believed that the regulation of the international trade should be based on national certification schemes set up by each diamond trading state according to its needs and circumstances.

After much deliberation and in view of the urgency of addressing the human security issue it was decided that participation in the scheme would be voluntary and that it would be based on an efficient and effective self-regulatory national certification schemes that would be put in place in the shortest time possible. However, there was an important caveat: the standards for these national certification schemes had to be negotiated and agreed at the global level. Each state would be required to meet these minimum standards. It was felt that a decision on whether to develop a legally binding treaty could be taken at a later stage.

On the basis of the minimum standards set by the Kimberley Process each state had to pass national legislation to implement the Scheme. The legislation typically provided for control systems for the mining, import and export of diamonds. In terms of the KPCS, participants would only trade in diamonds that were mined in their territory or that entered their territory with a valid Kimberley Process Certificate, attesting to the fact that the goods had been handled in accordance with the Scheme. Finally, participants could only trade in rough diamonds with other participants.

The fourth issue to be dealt with was whether to rely on self-regulation by the diamond industry or to provide for government regulation. The industry, under the leadership of De Beers, naturally preferred the emphasis to be on self-regulation. At the meeting in Moscow (July 2001) the WDC proposed a system based on certificates of origin for producing countries, supported by national legislation, and a chain of industry warranties in non-producing countries. Several non-producing states welcomed the proposal but producing states objected to the notion that the industry in their countries could not be trusted and that there should be different standards applied to producing and non-producing countries.

The issue was resolved in Moscow (Kimberley Process Final Communiqué 2001: 1) where it was decided in principle that all participants in the KPCS should certify their exports of rough diamonds - not only the producer countries; and secondly that a system of warranties employed by the industry would have to be employed in addition to the certification scheme rather than replacing the need for certification in non-producing states.

On 29 October 2002 the International Diamond Manufacturers Association and the World Federation of Diamond Bourses adopted a resolution at their joint meeting in London that provided for a voluntary system of industry self-regulation in order to comply with and support government undertakings of the Kimberley Process. This system provided for a system of warranties and a code of conduct (WDC 2002: 1). After the adoption of the KPCS in November 2002 the World Diamond Council issued a document entitled: "The Essential Guide to

Implementing the Kimberley Process” containing the compulsory measures to be taken by its members. According to the guide all buyers and seller of rough and polished diamonds must state on all their invoices that the diamonds in each parcel were purchased from legitimate sources not involved in funding conflict, and in compliance with UN resolutions. The statement must also declare that:“the seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds”. Each company trading in rough and polished diamonds has to keep records of warranty invoices received and issued which must be reconciled and audited on an annual basis.

The fifth issue to be dealt with was whether to have a UN treaty or a voluntary agreement between states dealing with diamonds. Once it was established that an international instrument was necessary, the question arose whether or not it should be in the form of a UN Treaty. The UK, supported by the European Commission believed that a UN treaty was called for, but the majority of states wanted to avoid the UN route as it would be too time consuming and would possibly only bind those countries that have both signed and ratified it – both lengthy procedures. Most of the participating states, including the African diamond producing states, preferred a voluntary agreement supported by the United Nations in which all states would be invited to participate. It was decided fairly early in the Process to opt for a simple agreement that could be put into place in the shortest time possible. It resulted in a political agreement that provides for voluntary participation.

The sixth issue was on the monitoring of the certification scheme once it was in place. It stands to reason that some kind of monitoring would be required to ensure that the national certification schemes work properly and honestly. However, many states were opposed to an oversight body. At best they feared that an independent watchdog would erode their national sovereignty and that it would be costly to maintain such a body. At worst, they believed that it could

open the way for one or more countries to take control of the international diamond trade.

The NGOs continued to call for a system of independent monitoring. In fact they were adamant that strong checks and balances should be built into the certification scheme to ensure its transparent and effective functioning. Some states, notably China and Russia strongly opposed the notion of monitoring missions being allowed to investigate their national systems on the grounds of national sovereignty. As a result the term “monitoring missions” had to be replaced by the term “participant measures” in the final document.

Statistics would play an important part in monitoring the effectiveness of KPCS. The civil society representatives in the Kimberley Process felt strongly about the need for accurate and comparable statistics on diamond production. However, this was easier said than done. Although all trading entities use the Harmonised System of Classification (KPCS: 16) there are a number of classification options and issues that could have contributed to incompatible or misleading statistics. These were: identifying provenance *versus* origin (place of mining *versus* last country exporting the diamonds), general trade *versus* special trade (special trade refers to rough diamonds imported into a country but not released in that country), the misclassification of goods (to avoid duty), double counting as a result of re-exporting the same diamonds, the valuation (to avoid taxes) of the export and the compatibility of timing (period) of the publication of statistics. There was also the sensitive question of commercial confidentiality that had to be considered. Finally, in some countries statistics related to the trade in rough diamonds were not published, as diamonds were considered a strategic mineral.

Related to the question of monitoring and statistics was the issue of the role of a future secretariat. While some participants favoured the eventual establishment of a permanent secretariat funded by budget contributions from participants and the diamond industry to oversee the implementation of the KPCS, others did not, on the grounds that it could become quite expensive. In the end it was decided that the secretariat would be provided by the (future) rotational Chair.

The seventh issue to be dealt with was the regime's compatibility with the provisions of the General Agreement on Tariffs and Trade (GATT). A trade regime for rough diamonds that would allow only those countries participating in the KPCS to trade in rough diamonds would necessarily amount to trade discrimination against countries that do not participate in the scheme. It was therefore deemed essential to ensure that the implementation of the regime was compatible with provisions set out in the General Agreement on Tariffs and Trade (GATT) to avoid non-participants from complaining about the KPCS at the dispute settlement body overseeing the GATT, the World Trade Organisation (WTO) (Schram 2007: 22). As noted above, early in 2002 the Chair established a working group to deal with the question of the consistency between the proposed trade regime for rough diamonds and the obligations of states signatory to the General Agreement on Tariffs and Trade.

On 26 February 2003 the WTO Council for Trade in Goods agreed to recommend that the General Council grant requesting members a waiver for trade measures taken under the KPCS. The decision recognised "the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fuelled by 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" (WTO 2003: 1). The waiver was requested by Australia, Brazil, Canada, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, United Arab Emirates and United States. The waiver decision exempted trade measures taken under the Kimberley Process by these eleven members and other members that would subsequently join, from GATT provisions on most-favoured nation treatment, elimination of quantitative restrictions and non-discriminatory administration of quantitative restrictions, for an initial period of three years. The General Council granted the waiver on 15 May 2003 (Gilgen, 2007: 4).

The last question to be dealt with and which was related to the issue of WTO compatibility, was the participation by Chinese Taipei (Taiwan) in the negotiations

and later in the KPCS. Some of the participants were in favour of full participation by Chinese Taipei in the negotiations to establish the scheme, partly because of the level of diamond trade involved (8%) and the fact that it was a member of the WTO. In order to accommodate Chinese Taipei it was suggested that the definition of “participant” in the KPCS be amended to include “special customs territories”, which was the category under which Chinese Taipei joined the WTO in January 2002. However, the participation by Chinese Taipei in the KPCS negotiations was fiercely resisted by China who threatened to walk out if it was allowed to participate.

China foresaw the eventual participation of Chinese Taipei in the Scheme itself, but only on the same basis as two other Chinese territories (and WTO members) Hong Kong and Macau. The Chair had to intervene in the matter by holding discussions with officials from the Chinese Foreign Ministry in Beijing and with the US State Department in Washington.

In the end the definition of “Participant” adopted in Interlaken read as follows: “...a state or a regional economic integration organisation for which the Certification Scheme is effective”, with a footnote stating that further consultations were to be undertaken by the Chair. On 12 December 2002, in anticipation of the implementation of the Scheme from the first of January 2003 the Chair issued an Interim Statement which said that the consultations had not yet yielded a result but that, for the duration of the consultations Paragraph (c) of Section III of the KPCS, which prohibits trade with non-Participants, would not be applied to shipments to and from ‘rough diamond trading entities’ that have been found by Participants to have fulfilled all the requirements of the KPCS. In this way provision was made for the participation by Chinese Taipei.

4.9 The outcome of the Kimberley Process

The international negotiations that led to the adoption of the Kimberley Process Certification Scheme for Rough Diamonds (KPCS) was a first attempt by governments to address the problem of the illegal exploitation of natural

resources in a concerted way. It was also the first time that an international import and export control regime had been negotiated and adopted on the basis of consensus between governments, industry and civil society (Wright 2004: 702). The inclusive nature of the negotiation process lent it legitimacy. Its legitimacy and authority was further strengthened as a result of the endorsement by the UN and the WTO. Grant and Taylor (2004: 385) believe that it is “an intriguing development in global governance and multi-track diplomacy, blurring the line between ‘official’ and ‘unofficial’ diplomatic channels”.

The implementation of the KPCS is done through a consultative inter-governmental mechanism operating with the support of industry and civil society. Several commentators have remarked on the unique nature of this co-operation, including Wright (2004: 702) and Gilgen (2007: 56). Scram (2007: 36) comments that the KPCS continues to be implemented because: “Participants feel compelled to co-operate with the scheme, they want to be a part of it, and fear the consequences of non-compliance, even if no proper legal basis for sanctioning exists.”

From an African perspective the process was a success because it demonstrated the ability of African states to work together on an issue of mutual concern. Although it was never recognised as a project for the New Partnership for Africa’s Development (NEPAD) the north-south collaboration exemplified the objectives and spirit of it. Another outcome of the process was the added determination of African diamond producing states to speed up efforts to add value to their diamond production by developing skills in sorting, cutting and polishing diamonds and in developing the diamond jewellery manufacturing sector (Associated Press 2008: 1).

One of the important outcomes of the Kimberley Process is the fact that the campaign prompted significant restructuring in the operations of one of the non-state actors, namely De Beers and that it brought the diamond industry together. De Beers introduced its best practice principles in July 2000 and moved from a

buyer of last resort to a supplier of choice thereby making more accountable to governments and consumers. At the initiative of De Beers the industry established the World Diamond Council in 2000 in order to co-ordinate its response to the issue. In 2002 the WDC implemented a system of warranties in the production, marketing and sales chain. Overall, it led to a realisation by the international diamond industry that it too had a corporate responsibility to ensure that their product did not contribute to human insecurity.

The governments, for their part, had to face up to their responsibility and not turn a blind eye to sanctions busting, while civil society realised that advocacy on single issues could lead to unintended consequences doing more harm than good. The fact that governments, industry and civil society managed to reach agreement despite their diverging interests is a testament to the role of professional diplomacy in shaping the international society.

Civil society consistently called for strong independent monitoring of the KPCS in the hope that it would lead to more effective implementation, but ambitions of a strong, independent secretariat that would provide support to a revolving Chair as well as organise monitoring missions and gather and analyse statistics made way for an informal secretariat providing only administrative support to the revolving chair, after several states, including the Russian Federation and the USA, expressed concern about the unnecessary costs associated with an independent secretariat. This led to a perception that the KPCS as window dressing for the diamond industry. While it is not the intension of this study to analyse the effectiveness of the Kimberley Process Certification Scheme it may be noted that although the KPCS cannot claim to have stopped the civil wars in Angola, Sierra Leone and the DRC, the fact is that these wars have not re-ignited and the conflict in Liberia has stopped (Hughes 2006: 68). Furthermore, the KPCS Third Year Review Report (2006: 4) states that there is little doubt that it has had a significant impact in curbing the illicit production and trade of diamonds in countries affected by conflict diamonds. The Kimberley Process therefore achieved what it set itself out to do: Firstly to make it more difficult for rebels to

finance their activities through the sale of diamonds, there by contributing to international peace and security. Secondly, it managed to protect the international diamond industry so that it could continue to create jobs and grow the international economy.

What, then, led to the successful outcome of the Kimberley Process? It is believed that dual objectives, namely the need to address an urgent issue of human security, coupled with the need to ensure that the diamond trade continued to contribute to national development, generated the necessary political will on the part of states to act at the global level.

Secondly, a successful outcome would not have been possible without professional diplomacy. Professional diplomats played an important role in the Kimberley Process. Their involvement started at the national level, where they had to consult national stakeholders. It took place at the regional level within the context of regional economic organisation such as SADC and the European Community. It took place at a bilateral level with individual states and at the multilateral level with the United Nations and the WTO. While any government official was able to communicate with the non-state actors in the Kimberley Process, only professional diplomats were in a position to communicate officially with other states and multilateral organisations, such as the process of reporting to the UN and sponsoring draft resolutions at the UN General Assembly. Professional diplomats were responsible to ensure compliance with international law such as the nature of legal instruments, the participation of Taiwan and the compatibility of the KPCS with the GATT. They were responsible for the drafting and distributing all UN reports and resolutions, communiqués, letters and compliance checklists, while at the same time handling all official communication with participating governments, the diamond industry and NGOs.

The third factor that contributed to the eventual success of the Kimberley Process was the tripartite nature of the negotiations to which each side was able to bring their respective interests, expertise, skills and knowledge. Business

brought with them the intimate knowledge of the diamond industry and technical expertise, which enabled it to identify the security gaps. Civil society researched the issue and maintained the pressure on business and the states. The states were in a position to balance the interests of the various constituencies in their countries and they were able to enforce the regime nationally.

A fourth factor was the collaborative nature of the negotiating process and the principle of burden sharing and flexibility adopted by the participants. At the start there was noticeable animosity amongst the actors in each category and even more so between the three groups of actor, this gradually disappeared as the talks progressed. Once everyone was focussed on the desired outcome they were able to be more creative in search of solutions.

A fifth factor was the intelligent sequencing of issues, starting with the easier ones and reserving the most controversial ones for last when participants knew and understood each other's positions better. It was relatively easy to agree to the need for certification at the outset and to establish a road map for the Process. It was much more difficult to agree on the definition of conflict diamonds and monitoring mechanisms. No-one ended up getting what they wanted at the start, but everyone was more-or-less satisfied with the outcome.

The sixth factor was that the process strived from the start to be as inclusive as possible. By seeking a mandate from the United Nations General Assembly the matter was brought to the attention of all member states of the UN. The Chair and Secretariat took pains to invite all UN member states to participate in the negotiations, whether or not they had an interest in the diamond industry. The participation of non-state actors was deemed as essential to the success of the outcome and they remained an integral part of the process from beginning to end.

A seventh factor related to the eventual recognition that the issue was not only an African problem, but a global problem and the acceptance of the responsibility of each government to implement national measures based on internationally

agreed standards. Failure on the part of the non-producing states to recognise this fact would undoubtedly have led to the failure of the process.

The eighth factor was the choice to pursue a politically binding legal instrument based on voluntary participation and not an international treaty negotiated under the auspices of the UN.A binding international treaty would have taken years to negotiate and even longer to implement.

Chapter 5

5. CONCLUSION: LESSONS FROM THE KIMBERLEY PROCESS

5.1 Introduction

In Chapter 1 it was noted that the Kimberley Process represents the best form of interaction between states and non-state actors on the specific issue of conflict diamonds. It is also a prime example of the involvement of non-state actors in international relations. This chapter will consider how the interaction between state and non-state actors evolved throughout the process; the ability of non-state actors to influence the diplomatic outcome; the extent to which states determined the boundaries of non-state diplomatic involvement; and the limitations of polyilateral diplomacy. In particular, it will consider whether the Kimberley Process is an example of a new diplomatic method.

5.2 Interaction between state and non-state actors

The Kimberley Process involved a series of interactions. The first of these concerned the interaction between civil society and individual states. There appears to have been a close relationship respectively between Global Witness and the British Government, and between Partnership Africa Canada and the Canadian Government, which might suggest that these governments were using their national NGOs to push the issue of conflict diamonds on the global agenda. This they could not do directly without straining their relations with the diamond producing states of Africa in general, and SADC in particular. The USA as the world's largest diamond market attracted the attention of a coalition of NGOs who launched a specific campaign to prevent the entry of "blood diamonds" into that market. This, in turn, led to several attempts by individual Members of Congress and Senators to introduce laws to prevent the entry of "blood diamonds" into their country. Various Congress and Senate Committee hearings on the issue resulted in pressure on the business non-state actors. The urgency of the matter in view of a threatened boycott in the USA prompted these non-state actors from business to develop a relationship with the US government. They delivered

testimony to the various Congress and Senate committee hearings in a bid to stop the passing of the proposed laws that could hurt their interests, or to promote their proposed system of self-regulation. They were met with partial success when their proposal for self-regulation was taken up in one of the pieces of draft legislation. However, the draft legislation was not adopted and in the end the US President used emergency powers to enact legislation that respected the international standards contained in the KPCS.

The second type of interaction was that between civil society and business. At first the interaction was confrontational. Civil society was on the offensive, calling for the control of the diamond market through a certification system and independent monitoring. They challenged the development value of diamonds, depicting them as a curse rather than a blessing. Business, initially caught on the back foot, reacted quickly by developing its own offensive strategy. It noted that conflict diamonds represent less than 2% of the diamond trade and that the industry could therefore handle the situation itself by introducing self-regulation. The second part of their argument was that any boycott of diamonds would harm producing countries (particularly in Africa) and stem development. Both civil society and business used the media and other available resources to convey their messages and to influence public opinion.

The interaction between the states themselves took place within the context of the four groupings mentioned in Chapter 4, namely the producers, the processors, the consumers and the stockers of rough diamonds. Despite their diverging interests they shared an obligation to implement UN Security Council sanctions effectively in order to contribute to peace and security in the affected countries. It was also in their national interest to protect the diamond industry in their respective countries. Despite their diverging interests the state actors came together to address the issue. South Africa acted as a catalytic state by organising the response of the African producers. South Africa also ensured that all the processors came on board and influenced the consumers and stockers to accept common action by agreeing to certify their rough diamond exports. The

states managed to reach a diplomatic consensus through several mechanisms. At the negotiations themselves they decided to meet exclusively before and after each plenary meeting and established several technical groups in an effort to control the process. In so doing they determined the boundaries of non-state actor involvement. As far as international law is concerned they consistently sought UN support for their actions and went to great lengths to ensure that the regime would be WTO compatible.

States that participated in the negotiations had, as noted above, specific interests and positions. What is important to note is the fact that the African diamond producing countries took the lead in the entire process, as they had to protect their economies and help to create a voluntary political agreement that helped to solve the issue of conflict diamonds, which was seen as an African problem.

The non-state actors also interacted with the states as a group, through the Chair and the secretariat and by participating in working groups and plenary sessions. The issue of conflict diamonds was elevated by one of the non-state actors, namely the NGOs, through their continuous global campaign. There were, as noted before, more than 180 NGOs that joined the conflict diamonds campaign. It was, however, only two NGOs that were granted full participation in the negotiation process. This was a deliberate decision by governments participating in the process. It was a tactical decision, because the inclusion of all interested NGOs would have made the negotiations more cumbersome. It also forced the NGOs to work out a common stand on a number of critical issues. The outcome, however, was not completely in favour of the NGOs, in particular their insistence on the creation of an independent monitoring system. This was rejected by governments as an infringement on their sovereignty. The other non-state actor, namely business, interacted with the states as a group through the mechanism of the World Diamond Council. Their goal was to create a system of self regulation. They did indeed present such a scheme at the Moscow meeting. This did not satisfy the governments and the NGOs, who demanded national regulation, to

which the industry warranties could be added. The industry could not be trusted to regulate itself.

The interaction amongst the various groupings evolved gradually from one characterised by confrontation, threats and suspicion, to one of co-operation and mutual understanding. The Kimberley Process was issue driven, short term and regulatory in nature. The actors had to respond to their various constituencies and were accountable to those constituencies, but they also recognised that they were interdependent and therefore that they had to be flexible in their respective approaches.

5.3 The ability of non-state actors to influence the diplomatic outcome

In examining the ability of the two categories of non-state actors to influence the outcome of the Kimberley Process one needs to note a number of things.

As far as business is concerned, there is the unique nature of the diamond production and trading system to consider. Secondly, the dominance of one global player over the diamond industry, both in terms of production and sale of rough diamonds, namely De Beers, and the concentration of processing in Antwerp, Tel Aviv, Mumbai and New York made it relatively easy to co-ordinate the industry's response. The industry tried to play down the issue by pointing out that it affected a small percentage of the global trade. It galvanised the diamond producing states in Southern Africa (and Africa at large) to take action by bringing the threatened boycott to their attention, which resulted in the matter being placed on the agenda of the annual African Mining Indaba (meeting). However, the industry was unable to control the process and it fell on the states to deal with the matter.

There are a number of issues that need to be noted about the participation of civil society in the Kimberley Process: First of all, the fact that the UN recognises NGOs as important global players, afforded them space to make their presence felt. The UNSC imposition of sanctions on UNITA in Angola and later in Sierra Leone was in part an outcome of the NGOs' efforts within the UN system. Global

Witness did in fact carry out an independent review of the Sierra Leone certification process under the UNSC resolution 1306. The aim was in part to offer recommendations to the Kimberley Process.

Secondly, interest in conflict diamonds grew rapidly to a point where 180 NGOs were involved. These presented a petition in September 2001 before the London meeting, urging all governments to agree speedily on minimum international standards for an international certification scheme and to allow independent monitoring and evaluation (Action Aid 2001). It was, however, not possible to accommodate all the 180 interested NGOs into the Kimberley Process. Only Global Witness and PAC were allowed full participation in the Kimberley Process through participation in the various committees that were created and in the plenary meetings. These NGOs played a crucial role in the Kimberley Process and their campaign for a certification scheme for rough diamonds did succeed. They, however, could not persuade the governments to establish an independent monitoring and evaluation system. In fact, in March 2002 several NGOs including World Vision, PAC, Oxfam International, Global Witness, Action Aid and Amnesty International had sent a joint letter to the chairperson of the Kimberley Process expressing their concern about a review system that was agreed by governments and which would be applied on a purely voluntary basis (Other Facets, Issue #6) and they undertook to continue to advocate for stronger monitoring in the KPCS. The same issue was raised in September 2002 by the Diamonds and Human Security Project in its report “The Kimberley Process: The Case for Proper Monitoring”, which called for strict monitoring of illicit diamonds that created an opportunity to develop into conflict diamond trade. This, however, could still not persuade the governments involved in the KPCS process.

Thirdly, the NGOs had a limited, issue-specific focus and were able to mobilise global support by means of the media, based on their research. It is important in this regard to take note of the reports produced by Global Witness on Angola in 1998 entitled “A Rough Trade” on the role of companies and governments in the Angolan conflict that started the whole campaign against conflict diamonds. This

was followed in January 2000 by Partnership Africa Canada's report "The Heart of the Matter: Sierra Leone, Diamonds and Human Security". Together with the International Peace Information Service in Belgium and the Network Movement for Justice and Development in Sierra Leone, PAC produced a number of information sheets, Other Facets, on Sierra Leone in an effort to improve public understanding, policy dialogue and policy change to reduce the role of diamonds in fuelling conflict.

Fourthly, NGOs were supported by governments who used them to spearhead government interests within the Kimberley Process. This was the case for Canada's PAC, the UK's Global Witness and the USA's Amnesty International. The issue of conflict diamonds was already on the international agenda through the UN Security Council embargo against trade with UNITA. The main role of civil society was therefore to ensure that the matter stayed on the agenda and to force the UN Security Council to act on its resolutions as witnessed by the Fowler Report and the ban that was introduced later against the trade in diamonds with Sierra Leone.

5.4 Determining the boundaries of non-state actor involvement

States set limits on who should participate in the deliberations. They decided to allow two NGOs and one business representative to intervene during plenary meetings and to participate in technical groups. They also set the negotiating agenda. The agenda was in line with business interests in that it ensured the continued smooth running of the diamond trade. However, states did not accept that business could both conduct and police the trade. It therefore considered that the proposed system of industry self-regulation should support the trade regime rather than take the place of certification.

In line with the position of civil society, states agreed to consider ways of stopping conflict diamonds from entering the trade. However, it did not agree to consider the negotiation of an international treaty or for the establishment of an international secretariat to monitor the implementation of the certification

scheme. It preferred national certification systems based on internationally agreed standards with a revolving chairmanship among the participating states.

Civil society did to a certain extent determine the pace of the negotiations. While the civil wars in Angola and Sierra Leone were over by the time the expanded Kimberley Process started, the state and the business actors were concerned that the perceptions created by a diamond boycott could damage the diamond industry permanently and they were therefore under pressure to conclude the negotiations as soon as possible. Civil society often expressed their frustration at what they thought was the slow pace of the negotiation, but their pressure resulted in an international agreement that was reached in a remarkably short space of time.

5.5 The limitations of polyilateral diplomacy

Having noted the specific circumstances of non-state actor involvement in the Kimberley Process it is possible to confirm several propositions regarding the participation of non-state actors in diplomatic processes, notably:

- The involvement of non-state actors in diplomacy is not a new phenomenon, but observers agree that they are increasingly able to influence global politics (Wiseman 1999: 42; Hocking 1999: 21; Langhorne 2005: 331).
- Polyilateral diplomacy, which as noted above is sometimes referred to as multi-stakeholder diplomacy provides a platform with which to overcome national boundaries to address transnational issues and it helps to compensate for the lack of legitimacy, knowledge or access experienced by both state- and non-state actors (Hocking 2006: 21). Each of these actors possesses these three elements in varying degrees. They need each other as Hocking states (2006: 23) to 'manage complex policy agendas'.

This leads us to believe that states need to deepen their diplomatic discourse by embracing transnational non-state actors in a more systematic way, not out of moral obligation, but out of necessity. While the focusing on single issues has the disadvantage of not taking all stakeholders into account and therefore not being able to prioritise issues, it has the advantage of being able to focus on an issue without the other distractions. The engagement of non-state actors furthermore increases the transparency in dealing with issues and therefore enhances the legitimacy of government action, which, in turn, enables governments to manage public opinion better.

The participation of non-state actors in the Kimberley Process as 'equals' (Wright: 702) may be questioned. While non-state actors were certainly important partners in the Process and while they undoubtedly eroded the power of the state actors by forcing them to the negotiating table, it would be wrong to argue that governments, industry and civil society participated in the Kimberley Process as equals. As illustrated earlier, the state actors soon took the initiative by limiting the participation of non-state actors and by controlling the agenda. The reason why non-state actors could not participate as equals relates to the question of accountability: To whom were the participants in the Kimberley Process accountable? Governments are accountable to the voters who put them in power, which means that they are responsible for striking the right balance between the numerous interests represented by their voters. Industry, on the other hand, mainly has a responsibility towards its shareholders. It may act in a socially responsible way, but usually because it is in its own interest to do so. Civil society represents individual sectors of society. These organisations often do not have a membership base, nor do they have an elected leadership, which means that they cannot be held accountable to the people they aim to represent. On the other hand they are accountable to their sponsors, which often include governments.

The continuous process of globalization, which has resulted in higher levels of interconnectedness and inter-dependency has enabled NGOs to either rally

public support or to generate massive opposition in support of their issues. But is their involvement always good? Non-state actors, especially NGOs that focus on single issues may divert the attention (and scarce resources) of governments away from important business to such single issues. In the case of South Africa for example, the government was in the process of restructuring its mining industry and to enhance the role of diamonds in development when attention was drawn to conflict diamonds. It meant that fewer resources were available to deal with the restructuring process.

In the Kimberley Process there appeared to be a close relationship between certain NGOs and the governments where they were based. These governments were able to 'outsource' investigation into the issue of the use of natural resources to fuel conflicts to civil society. This seems to be a growing phenomenon and may be as a result of capacity constraints in those governments or an honest attempt to obtain an independent opinion. Be it as it may, this practice could have both intended and unintended consequences for those governments and other states. In this regard we are reminded of Hocking's (1999: 21) definition of catalytic diplomacy as: "The establishment of functional relationships and coalitions with informal diplomatic players, to further their own diplomatic causes". Be it as it may, the situation that presented itself regarding conflict diamonds required urgent attention. It is ironic that the countries that were the biggest proponents for establishing control of the diamond industry were reluctant to make an equal effort to implement the certification scheme and that it was the pressure from the civil society that prompted them to agree to equal responsibility. It may explain why observers in those countries have indicated subsequent to the implementation of the KPCS that it is unlikely that similar trade regimes would be put in place for other commodities (Wright 2004: 705-706).

For the reasons stated above it is believed that the involvement of non-state actors in global politics does not necessarily mean that it is becoming more democratic, but that it could strengthen the system of 'checks and balances' in

international relations. What remains is for professional diplomats to manage their participation in such a way that it contributes to the preservation and strengthening of the international society.

Wiseman's definition of polyilateralism (1999: 41) appears to describe the Kimberley Process. However, in testing the working propositions put forward by Wiseman (1999: 42-49) it becomes clear that what he had in mind was the involvement of non-state actors at the discretion of states in order to enrich diplomatic processes. In Chapter 2 we noted that Wiseman had put forward five working propositions about the prospects for diplomatic innovation within states to deal with polyilateralism.

Wiseman's first proposition that state capacity for diplomatic adaptation and innovation is underestimated and that the extent of innovation will vary with state size, state governance type, issue area, and issue longevity rings true, except for the fact that the states participating in the Kimberley Process had little choice to respond to the demands of civil society. His second working proposition is that great or larger powers will be less likely to innovate and will tend to co-opt, rather than co-operate with non-state actors, offering only token acceptance of polyilateralism. We have seen in the Kimberley Process that the USA and the UK (as members of the UN Security Council) worked closely with civil society and business both in their countries and within the broader context. China and Russia focused more on business. In the case of smaller states, particularly the African diamond producing states, there was more emphasis on co-operation with business and less emphasis on co-operation with civil society.

Wiseman's third working proposition was that democracies will be more likely than semi-democracies or non-democracies to welcome and utilise non-state actor participation. This is the case for the Kimberley Process as far as voluntary co-operation with non-state actors is concerned, but it should be noted that all participants had to work with the non-state actors whether they wanted to or not. The fourth working proposition was that foreign ministries and diplomatic services would be more likely to engage non-state actors in issues of low politics than on

issues of high politics. The Kimberley Process was both a security and a trade issue, which means that it was an exception. The fifth working proposition was that diplomatic establishments are more likely to co-operate with non-state actors engaged in long-term policy influence and less likely with those engaged in short-term political campaigns or protests. The Kimberley Process was short-term in the sense that it urgently had to address an issue of international concern. However, it is also a long-term issue in that the KPCS continues to be implemented even in the absence of conflict diamonds as defined in the Scheme so as to prevent diamonds from being used to fuel conflict in the future.

In Chapter 2 we considered the roles, norms and rules of diplomacy as elaborated by Jönsson and Hall (2005: 25). They maintain that the institution of diplomacy exists within a system of recognized polities. A polity was described as a political authority which has a distinct identity, a capacity to mobilize persons and their resources for political purposes and a degree of institutionalisation and hierarchy. For the past few hundred years these polities have taken the shape of states and it is foreseen that states will remain the main actors in international relations for the foreseeable future. At this stage trans-national civil society organizations and multinational corporations lack the organization, institutionalization and hierarchy that would qualify them as polities in their own right. They are therefore not in a position to establish recognition based on the norms of representation, reciprocity or immunity. They represent limited constituencies and it is not entirely clear to whom they are accountable - particularly in the case of NGOs. It therefore appears that the participation of non-state actors in global politics cannot be regarded as diplomacy in terms of the element of representation. However, it could be argued that non-state actors do fulfil the requirements of other two essential elements of diplomacy, namely communication and the reproduction of international society. While the diplomatic channel still remains the only official channel of communication in the international system of states, the Kimberley Process has demonstrated that non-state actors are able to communicate their respective positions

effectively(albeit informally) in diplomatic negotiation processes and that they play an important role in shaping the international society we live in.

We have to consider, therefore that it is not only diplomacy that reproduces international society. Non-state actors (and other national and sub-national state institutions) are increasingly able to contribute to the shaping of our international society. The question that arises is whether the contribution by non-state actors in shaping our international society constitutes diplomacy and whether this interaction with professional diplomats constitutes a new method of diplomacy beyond the traditional bilateral and multilateral diplomacy. Non-state actors have in some cases become the initiators (*producers*) of diplomatic outcomes, rather than merely the enrichers (*consumers*) of diplomatic outcomes. In this sense they share the power of states to negotiate diplomatic outcomes. This sharing of power is by no means obvious or equitable, but in the case of the Kimberley Process both governments and industry had to recognise and react to the power held by civil society and that states do not always have the discretion to say whether or not they want to engage non-state actors. However, it does not follow that non-state actors participate as equals in diplomatic processes, nor that it is a new phenomenon. It is submitted that non-state actors have always been able to influence diplomatic outcomes to a greater or a lesser extent.

In Chapter 1 we introduced a diagram to illustrate the idea of the Kimberley Process as a trilateral co-operation involving state actors and two types of non-state actors, namely civil society and business. The diagram gives equal weight to these three groups of actors. After having examined the example of the Kimberley Process, it is now possible to conclude that this triangular illustration exaggerates the power and equity in diplomatic outcomes involving the state and non-state actors. Nevertheless, the involvement of non-state actors in diplomacy is evolving and it will require the development of new 'rules of engagement' between state and non-state actors in order to reduce conflict, which may result from unrealistic expectations on the part of non-state actors. Issues such as representation, mandate, location and confidentiality need to be considered. It is

a reality that special interest groups sometimes make conflicting demands and that there are therefore limits to the degree in which they can be accommodated.

It is therefore concluded that the apparent increase in collaboration between state and non-state actors in diplomatic processes does not appear to constitute a new method of diplomacy and it is believed that this will not change until non-state actors have become recognised polities. However, it is expected that the involvement of non-state actors in diplomacy, particularly as *consumers* of diplomatic outcomes is likely to become more-and-more prevalent, which means that professional diplomats, especially those in developing countries will have to continue to adapt their working methods to allow for a more systematic engagement with them and in order to benefit from it. This does not necessarily mean that foreign ministries have to restructure radically, but it does mean that they will have to change the organizational culture and the mentality of diplomats in order to optimize the potential benefits of involving non-state actors in international relations. The Kimberley Process goes beyond the involvement of non-state actors as *consumers* of diplomatic outcomes and is a good example of the involvement of non-state actors as *producers* of diplomatic outcomes. However, having encouraged civil society involvement on the question of conflict diamonds, developed states participating in the Process had to accept the unintended and burdensome consequences of having to agree to certify their own rough diamond exports. Since then these states have been more circumspect as evidenced by the fact that no other trade regimes for valuable commodities have been established since the start of the Kimberley Process. The involvement of non-state actors as *producers* of diplomatic outcomes is therefore less likely to reoccur and the Kimberley Process may well have been the exception rather than the rule.

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ANNEX 1

KIMBERLEY PROCESS CERTIFICATION SCHEME

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 international 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 (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC 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 appropriate, 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 fulfill 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 organizations 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. Modifications may be proposed by any Participant. 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

21. 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 computerized 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 semiannual 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.