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2011

# **Illuminating facets of diamond regulation in the EU: theoretical explanations for implementation**

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This study examines the viability of two theories - constructivist theory (where norms interact with preferences to shape policy outcomes) and rational choice theory (where actors make decisions to further their self-interest) – as a means to explain the European Union’s (EU) implementation of international diamond regulation. The regulation in place, the Kimberley Process Certification Scheme (KPCS), is a multilevel governance initiative designed to stem the flow of conflict diamonds. For decades, the illicit diamond trade has spawned human rights atrocities in countries where diamonds are procured, impacting the development of several diamond-producing nations. Seeing as over 80 percent of international diamond transactions occur within the EU’s borders, this governing authority has a large stake in international diamond industry regulation.

In recent years, EU scholars have explored the fruitfulness of constructivism in explaining EU policy implementation, in part because it accounts for the way in which the EU exerts its authority in our globalized world. That is, scholars have analyzed how the EU exerts its authority through values, norms and principles (i.e. upholding human rights abroad), as opposed to more traditional forms of power such as military force. My hypothesis states that diamond regulation implementation is a case for constructivist theory, as it best accounts for the underlying forces behind this highly complex and global supply chain. However, the findings in this study indicate that the theoretical explanations behind the EU’s KPCS implementation are

just as multifaceted as the diamond industry itself.

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## 1.0 INTRODUCTION

The European Union has a distinct identity in the world. No other governing authority can tout such a hybrid system of governance composed of a supranational Commission, Parliament, Council, Court and individual member states, all interacting to influence vast policy outcomes. This dynamic and complex system creates an integrated institution characterized by political, economic and social prerogatives that influence the world unlike any other governing structure. Since the Treaty of Rome in 1957, when the first customs union was established among European nation-states, the EU has proven a constantly changing institution, impacting the world in an ambiguous yet meaningful way.

The way in which the EU influences world affairs is often conceptualized as a function of its collective identity (Bretherton et al., 2005). This collective identity has been thought as one that is constructed around a set of core values, norms and principles, materializing in what has been termed, ‘normative power’ (Lucarelli and Manners, 2006). While the concept of normative power has extensive historical roots in colonization (and decolonization), many scholars use this paradigm to draw insights on the EU’s global authority today.

The way in which the EU derives this normative power has fostered extensive dialogue around two theoretical models for analyzing the properties of normative influence in international affairs. This has manifested in a theoretical yet policy-oriented debate around constructivism, which refers to how *endogenous preference formation among actors influence*

*policy outcomes*, as well as rational choice models of governance, otherwise known as the *methodological individualist incentives around which actors make choices*. While these conceptual frameworks have been tested in a variety of EU contexts (Rosamond, 2001; Fierke and Wiener, 2001; Moravcsik, 2001) I employ these different theories in my analysis to gain clarity on the elements that inform international diamond regulation implementation in the EU.

The global regulation framework in place – known as the Kimberley Process Certification Scheme (KPCS) – was introduced in 2003 with the mindset that implementation is ongoing (hence, a *process*). As a fairly recent development, the KPCS is a particular brand of international regulation that is unprecedented. That is, in no other market has a regulation engaged constituencies around the world in such a short period of time, across governments, nongovernmental organizations and industry representatives. As host to some of the world's largest diamond suppliers, including De Beers, the way in which the EU chooses to implement diamond regulatory policy holds implications for actors at every stage of this globalized supply chain. Additionally, seeing as roughly 80 percent of diamond transactions occur in Belgium alone, with the vast majority of worldwide rough diamonds being handled in Antwerp and London, the importance of the diamond trade to Europe should not be underestimated.<sup>1</sup> Through this research, I hope to make clear how existing theories in political science help illuminate EU diamond regulatory policy.

To this end, the following question will be explored: *What theoretical model explains the implementation process of diamond industry regulation in the European Union?* I hypothesize that: *the implementation of diamond regulation in the EU will illustrate a constructivist*

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<sup>1</sup> This is according to a pamphlet released by the European Commission prior to its Chairmanship of the Kimberley Process in 2007 ([http://www.europa-eu-un.org/documents/en/070125\\_EU.pdf](http://www.europa-eu-un.org/documents/en/070125_EU.pdf))

*approach to policy-making as opposed to rational choice theory.* Upon gaining clarity on which facets most influence implementation at the EU level, it will be possible to gauge the implications diamond regulation holds for the EU as well as the global political economy.

To provide the most comprehensive analysis of this question, this study will first explore the background of diamond regulation, understanding why this market is regulated the way it is. Second, a survey of how diamond regulation (in this case, the KPCS) has been implemented in the EU will be helpful for understanding the behavior of decision makers when it comes to regulating Europe's diamond market. Third, the theories of rational choice and constructivism will be explained in the context of diamond regulation. With a firm grasp of these frameworks, it will be possible to move forward in analyzing the ways in which diamond regulation was implemented in the EU, and what this means for the viability of constructivism and rationalism as theories that account for this global regulatory system.

## 2.0 THE PATH TO DIAMOND REGULATION

Why is the market for diamonds ‘regulated’? Like many extractive industries, the diamond trade has proven a highly lucrative business – each year, the industry produces over \$62 billion in diamond revenue. Also like many extractive industries, the majority of diamonds are produced in African nations and in total, roughly 65 percent of world diamond production occurs on the African continent, amounting to roughly \$8.4 billion – about one-fifth of total diamond revenues worldwide ([www.diamondfacts.org](http://www.diamondfacts.org), “Diamond Facts.”). Top producing African countries today include Botswana (26 percent), South Africa (11.8 percent), Angola (8.1 percent) and the Democratic Republic of Congo (8.0 percent) ([www.economist.com](http://www.economist.com), 2007).

However, these countries’ markets and others, notably Sierra Leone, Liberia and more recently, Zimbabwe, have endured considerable challenges in recent times. That is, throughout the 1990s diamonds fueled instability in African countries already rife with political unrest, corruption and violence. This was the case in Sierra Leone, where diamonds were a viable source of funding for many rebel groups willing to exploit human rights in order to seize the established government. By the end of the 1990s, and after an 11-year civil war, 50,000 people were killed across Sierra Leone and hundreds of thousands were displaced ([www.un.org](http://www.un.org), “Conflict Diamonds: Sactions and War”). The most prolific rebel group, known as the Revolutionary United Front (RUF) of Sierra Leone, earned roughly \$400 million in conflict diamond revenues

in over the course of one decade, which were used systematically exploit citizens for arms, labor and other abusive means ([www.ec.europa.eu](http://www.ec.europa.eu), “Blood Diamonds: the international response”).

UNITA (Portuguese for, the National Union for the Total Independence of Angola), an Angolan rebel group that gained power as a Cold War proxy militia for the U.S., earned an estimated \$3 – 4 million from the trade in illegal diamonds in 1999 alone. Sierra Leone and Angola were just two African nations that experienced such damaging returns from its diamond market. Over the course of the 1990s (and into the 2000s) approximately 3.7 million people were killed and another 6.5 million people were displaced across Africa as a result of conflicts fueled by diamond profits ([www.amnesty.org](http://www.amnesty.org), “Blood Diamonds are Still a Reality”). Angola was in fact the first African nation to attract the attention of the United Nations Security Council, as it launched an investigation in 1999 into the activities of UNITA leader, Jonas Savimbi, finding that he and his supporters were able to leverage illicit diamond profits for munitions purposes and war operations. Such activities had been carried out despite continued UN arms and financial sanctions ([www.un.org](http://www.un.org), Fleshman), and in April 2000 the Security Council adopted resolution 1295, establishing a “Monitoring Mechanism’ to collect additional information and investigate any relevant leads regarding sanctions violations, with a view to enhancing the implementation of the measures imposed on UNITA” ([www.un.org](http://www.un.org), Fleshman).

In response to these events, civil society groups around the world were quick to raise awareness of the human rights abuses stemming from diamond transactions. Non-governmental organizations (NGOs) such as London-based Global Witness and Partnership Africa-Canada, aroused public awareness for the linkages between diamonds and conflicts taking place in diamond-producing nations. Simultaneously, many consumer groups mobilized around the issue of conflict diamonds, urging consumers to boycott the diamond market until the industry

committed itself to socially responsible supply-chain operations. This concerted international movement was seen as a real threat to the diamond business (an industry that heavily relies on the integrity of its brand value) and representatives worldwide therefore saw it in their interest to respond to the humanitarian consequences of the global diamond trade ([www.economist.com](http://www.economist.com), 2004).

In 2000, representatives of diamond bourses and firms from the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA) joined efforts and formed the World Diamond Council, the body that now manages “an industry-designed system of warranties and chain-of-custody practices that [assures] buyers that the rough diamonds they purchased would not come from conflict zones” (Haufler, 2007). By 2001 the diamond industry began to implement this voluntary system of internal controls based on a tracking system of certificates. However, it soon became apparent that neither states nor industry could afford to work in isolation from one another.

Thus, in May of 2000, the first discussions took place in Kimberley, South Africa to devise a diamond tracking system that would ensure that diamonds would not finance conflict or human rights abuses of any nature. By December, 2000, the UN General Assembly passed an initiative to regulate the systemic effects of the diamond trade by adopting resolution A/RES/55/56 titled, *The role of diamonds in fueling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts.*<sup>2</sup> The term “conflict diamonds” gained traction in popular discourse and become defined as, “diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in

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<sup>2</sup> To view document, visit: <http://www.nrcan.gc.ca/mms-smm/busi-indu/kpd-pdk/un-resol-eng.pdf>

opposition to those governments, or in contravention of the decisions of the Security Council.”<sup>3</sup> With this resolution, the UN called upon member states to take substantive measures to trade in only ‘legitimate’ diamonds, or only diamonds that came from participant member state governments. The Kimberley Process was established the first meeting between major diamond producing states, diamond consuming states, industry representatives (including the WDC), and civil society organizations.

Today, the KP is comprised of 75 member states worldwide who account for approximately 99.8 percent of rough diamond production. The European Community<sup>4</sup> is considered one participant in the KP and represents all 27 of its member states in every plenary and inter sessional meetings held in different member state countries.<sup>5</sup> As there is no physical institution created for the KP, the regulation scheme is run on the basis of annual plenary sessions. These plenary sessions are overseen by a Chair that rotates among participants every year. The Chair for the following year is selected at the annual plenary session, at which time participating countries, industry representatives and civil society groups come together to discuss the ongoing process of implementation and current issues. ‘Inter sessional’ meetings take place throughout the year and are used to discuss specific working group activities. There are seven working groups in total: Monitoring, Statistics, Diamond Experts, Artisanal and Alluvial, Participation Committee, Rules and Procedures and a Selection Committee. Each working group

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<sup>3</sup> For further reference, see: <http://www.un.org/peace/africa/Diamond.html>

<sup>4</sup> Before the European Union was formally established with the Maastricht Treaty of 1993, member state were referred to as the European Community, and this term is still used today to denote the Single Market among member states. See: [http://europa.eu/legislation\\_summaries/economic\\_and\\_monetary\\_affairs/institutional\\_and\\_economic\\_framework/treaties\\_maastricht\\_en.htm](http://europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/treaties_maastricht_en.htm)

<sup>5</sup> The EU also accounts for all territories as described in the Treaty Establishing the European Community, including French overseas departments such as French Guyana.

is chaired by a member-state participant, which manages a sub-group of participants to carry out the group's work. For example, the Working Group on Monitoring is chaired by the EU, and oversees the work of twelve members in total.

The KP can best be characterized as a “global voluntary regulatory system,” and was designed around an incentive-based scheme so that no participant could trade with states or diamond organizations trading diamonds outside of the process (the logic was that this would raise the costs for anyone trading outside of the “club”). This process leverages a certification scheme that “provides incentives for participation by providing a ready market for legitimate diamond sales – a market that would not be subject to official sanctions or consumer boycotts” (Haufler, 2007). The comprehensive system of diamond exchange *between countries* is now known as the Kimberley Process Certification Scheme (KPCS).

This import-export system “applies only to international trade between participants” (Weyzig, 2004). However, once a diamond shipment reaches a private organization after being inspected by government-appointed customs officials, diamonds are monitored through the industry-established System of Warranties. This system operates in the following way:

*Each warranty issued must be supported by proof that the diamonds were obtained from legitimate sources, which means all warranties must match up with warranties received for purchases, KP certificates or (in the case of mining companies) proof that diamonds were mined from legitimate sources* (Weyzig, 2004).

In other words, the System of Warranties can be seen as a complement to the intergovernmental KPCS, and is a necessary element of any regulation that intends to capture negative societal effects of diamond trading. These two systems are considered complementary because the KP certificate is used to evaluate the same shipment as it moves through the hands of



diamond organizations within country borders (the System of Warranties). Each certificate includes information such as the parcel's country of origin, date of shipment, carat weight and value (See Figure 1). Additionally, invoices must accompany diamond shipments from business to business, including a 'written guarantee' that diamonds are conflict-free.<sup>6</sup> Although the System of Warranties is obligatory for all organizations operating within KP member-states, the rules and regulations for this system, the implementation, is left to the participant countries' discretion – the EU is said to have the strictest implementation guidelines of all KP participants (Weyzig, 2004).

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<sup>6</sup> For more details on the tracking system, see:  
<http://www.debeersgroup.com/en/Sustainability/Ethics/Conflict-diamonds/>

### **3.0 IMPLEMENTING THE KPCS IN THE EU**

Two pieces of legislation that provide a legal basis for implementation of the KPCS in the EU include the Single European Act (SEA) of 1986, as well as the Treaty of the European Union (TEU) of 1992 (Georges, 16; 1996). The SEA enables diamonds to flow freely between EU member states, while the TEU makes it so that the “European Community is considered as one entity without internal borders.”<sup>7</sup> Diamond bourses, firms and individual traders are therefore impacted by how the EU continues to implement the KPCS within the Schengen Area.

#### **3.1 COUNCIL REGULATION 2368/2002**

In light of the aforementioned resolution passed by the UN General Assembly in 2000, the Commission proposed to the Council of Ministers in 2002 a regulation to implement the Kimberley Process Certification Scheme. When the KPCS came into force on January 1, 2003, all 49 KP participants (75 countries altogether) were charged with rolling-out a system that would best suit their respective trading infrastructure and government institutions already in place. Therefore, the Commission, Council and Parliament had to agree on a customs authority

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<sup>7</sup> [http://eeas.europa.eu/blood\\_diamonds/docs/trading\\_guidelines0108\\_en.pdf](http://eeas.europa.eu/blood_diamonds/docs/trading_guidelines0108_en.pdf)

that would serve as both the point of entry/exit for diamonds flowing across the Schengen borders. For example, in the United States, these provisions are granted to its Customs and Border Protection, an agency within the Department for Homeland Security. In India, on the other hand, the Scheme is carried out by the Department of Commerce, which is situated in India's Ministry of Commerce and Industry. Seeing as the EU represents 27 countries, the implementation of the KPCS took on a much different, albeit more complex, design for the Community in comparison to other participants. Not only was implementation more complex in structural terms, but substantively speaking as well. That is, the EU obligates all diamond organizations operating within the Schengen Area to strictly follow guidelines set out by (1) Community Authorities and (2) the System of Warranties.

The Community Authorities are diamond bourses that are managed by its member state's external affairs ministry, and are agreed to by the Commission. The Community Authority is in place for "namely the verification of incoming shipments for conformity with KP rules and the issuance of KP Certificates for export shipments" (Council Regulation 2368/2002). Since 2003, the EU has developed six Community Authorities within the Schengen Area - Belgium, the UK, Germany, Bulgaria, Czech Republic and Romania – where diamond containers and certificates are verified and inspected by authorized customs officials. These authorities (typically co-opted by member state foreign ministries) are responsible for ensuring that valid certificates are presented with every shipment of diamonds along with reporting trade statistics to the EU, which are then aggregated and reported to the KP. In the event that a diamond shipment is not sent from or destined for a member state with a Community Authority, "the importer can chose which Community authority it will submit the shipment and certificate to, for verification."

The second overarching component of the EU's implementation of the KP, the System of

Warranties, is applied to all individuals and organizations engaged in diamond trading among the 27 member states. While this system is a framework for all industry stakeholders worldwide, the European Union has adopted the System of Warranties as a further measure to arrest all illicit diamond trading within the Shengen Area. Council Regulation 2368/2002 officially states:

*The European Community explicitly endorses the principle of **industry self-regulation** as laid down in Section IV of the KPCS Document in its legislation implementing the Kimberley Process Certification Scheme in the Community*

*Chapter IV (“Industry Self-Regulation”) of Council Regulation (EC) No 2368/2002 sets out requirements for the establishment of a system of warranties and industry self-regulation by organisations representing traders in rough diamonds*

It is important to note that by ‘endorsing’ industry self-regulation, the EU is not delegating ‘governmental responsibilities’ to diamond industry stakeholders, but rather, granting privileges “to companies subject to considerable responsibilities as members of industry bodies.”<sup>8</sup> That is to say, the system of warranties in *this* section of the Regulation is recognized as a voluntary process rather than a binding one. However, Article 17 of the Regulation takes on a stricter interpretation of the system of warranties, and it has been noted that the EU’s specific implementation of the system is the strictest out of all KPCS participants (due to the Council’s legal framework) (Weyzig, 2004). For example, one of the criteria that the Council lays out

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<sup>8</sup> This statement can be found online on the EU’s External Action website: [http://www.eeas.europa.eu/blood\\_diamonds/docs/trading\\_guidelines0108\\_en.pdf](http://www.eeas.europa.eu/blood_diamonds/docs/trading_guidelines0108_en.pdf)

states that all diamond organizations trading in rough diamonds must:

*sell only diamonds purchased from legitimate sources in compliance with the provisions of relevant United Nations Security Council Resolutions and of the Kimberley Process Certification Scheme and guarantee in writing on the invoice accompanying each sale of rough diamonds that, on the basis of their personal knowledge and/or written warranties provided by the supplier of such rough diamonds, the rough diamonds sold are therefore not conflict diamonds;*

### 3.2 SIGNIFICANCE OF COUNCIL REGULATION 2368/2002

While in principle the System of Warranties is voluntary at the international level (the KPCS forum), *under Council Regulation it becomes obligation for all who wish to engage in the diamond trade with and among EU member states.* Before the KPCS, rough diamonds could be imported directly into the Schengen Area even though not all member states had the resources or capability for meaningful inspection. Hence, the Community Authority coupled with the System of Warranties carries particular weight for diamond industry interests within the EU, as diamond traders have since become obliged to tune all operations to this newly developed regime. Statistical reporting, for example, has stirred a great deal of commotion among industry stakeholders, as valuation of carat weight became standardized for all KP participants and has subsequently incurred costs amongst diamond importers and exporters alike. However, before analyzing EU-industry relations in full, it is important to lay the theoretical foundation that contextualizes diamond regulatory implementation in the EU. Doing so will allow for substantive analysis of KPCS implementation in the EU and the extent to which these theories hold true in today's global economy.

#### **4.0 CONSTRUCTIVISM AND RATIONAL CHOICE THEORIES**

What are the theoretical explanations for diamond regulation implementation in the EU? By drawing from past theoretical frameworks and interpretations, I am hopeful that a better understanding of diamond regulatory processes will speak more broadly about how industry preferences impact EU policy implementation. Examining this question will elucidate existing theories that address international policy implementation at the EU level. As stated in my original hypothesis, I suspect that constructivism explains this multilayered approach to diamond regulation within the Schengen Area. However, important considerations must be made for how rational choice may account for diamond regulation as applied to EU member states. The extent to which these theories apply to diamond regulation will then be compared to findings from a shadow case study probing the theoretical explanations for KPCS implementation in the U.S. Constructing this conceptual bridge will cast light on the implications for KPCS implementation.

The case study of the diamond industry in the EU is employed to illustrate the extent to which constructivism accounts for policy implementation, seen as a product of endogenous preference formation among diamond stakeholders. Within the context of the broader constructivist-rationalist dialogue, it will be possible to analyze how pre-existing relations with European diamond firms (specifically, De Beers) played a role in this particular brand of regulatory implementation. This section will illuminate the literature that analyzes

constructivism and rational choice, so as to draw broader insights from diamond regulation implementation in the EU.

In an effort to establish a logical starting point for analysis, this study will be situated in the theoretical paradigm of the constructivist-rationalist dialogue. As noted, this framework will provide the appropriate theoretical tools to understand how diamond industry interests bear on the implementation of EU diamond regulation – the KPCS. My hypothesis posits that constructivism more accurately explains the dynamics of diamond regulation implementation in the EU as opposed to rationalism, and this is based on existing conceptualizations of constructivism and rationalism in international relations and in EU politics.

#### **4.1 OVERVIEW OF THEORETICAL FRAMEWORKS**

The constructivist-rationalist debate is often fraught with tension, as rationalists doubt the empirical fruitfulness of constructivist tests, and constructivists criticize the disillusionment of rationalists as they sidestep political realities. When analyzing the viability of these two theories in the context of EU diamond industry regulation, it is logical to evaluate the elements that make constructivism substantively different from theories of rationalism. However, it is just as important (if not more so) to establish the theoretical overlap between the two when evaluating the EU's implementation of the KP. Seeing as rational theories have traditionally pervaded much of the political science literature to date, it is helpful to use this theory as a reference point for subsequent evaluation of constructivist methods.

The contribution of both constructivism and rational choice theory to EU politics (and to international relations) is that they circumvent the underlying forces of actors' interactions.

Conceptualizing the reasons for actors' behavior is valuable for understanding variation among states and the stakeholders within them. The point of departure for constructivists and rationalists is not the mere existence of certain motivations for action – such as norms, ideas, values, interests or relative power – but the role that each force has to play in the decision making process. For example, the conceptualization of norms is often a contested feature between the two paradigms. While rationalists (particularly, adherents to rational choice theory) conceptualize interests and identities as *exogenous* constraints on actors' inter-state behavior, constructivist theory treats these elements as *endogenous* to actors' pursuits of policy outcomes, allowing for “a new understanding of interests” among actors as they learn of one another's preferences. As emphasized by constructivist scholars, norms are more complex than simple constraints on agents' actions. From this standpoint, norms are conceptualized as, “shared, collective understandings that make behavioral claims on actors” yet for rationalists, norms are a product of instrumental reasoning which occurs on the domestic level (Checkel; 2001, 56),

## 4.2 RATIONAL CHOICE EXPLAINED

Rationalist methods, as proposed by Chong (2000) Pollack (2006) and Katzenstein et al. (1998), are seemingly wide-ranging and often change based upon the context in which they are employed. However, Chong provides a succinct understanding of rational choice by leveraging various levels of analysis that apply to the context of political science. According to Chong:

Individuals act rationally when they choose the best available means to achieve what they understand to be in their interest...most examples of rational choice reasoning rely on importing assumptions about a person's goals and his knowledge and beliefs about the world...When we say that an option or policy is in someone's interest, we mean that pursuit of that policy will increase the likelihood that he will get something he wants for himself – whether that something



is money, or power, or status...If someone does something in order to obtain goods for others, then he is acting in their interest and not his own” (12).

Rational choice demonstrates a point of departure from constructivism, adding to the dichotomy between diamond industry interests and EU regulation. According to this framework, state actors – in this case, the European Community – should be expressing buy-in to regulation only if it is a mean ‘to achieve what they understand to be in their interest.’ This is imperative for understanding any empirical analysis that attempts to gauge *how and why* the KPCS was implemented the way it was in the EU. According to this model, the European Commission should ‘buy-into’ regulation – such as the self-regulatory provisions in Council Regulation 2368/2002 - when (1) manipulated persuasion drives decision making (2) Normative ideas are at play when they align with broader policy incentives (3) Strategic incentives are primary for policy outcomes with ideas as ‘transmission belts.’ (Checkel et al; 2001).

Mark Pollack (2006) lodges rational choice theory within EU integration politics, and adds to the constructivist-rationalist debate in a dynamic way. According to Pollack, “individuals act according to preferences that are assumed to be fixed, transitive and exogenously given” and are “assumed to act so as to maximize their expected utility, subject to constraints” (32). For the case of the diamond industry, this posits that individuals and firms will act according to a ‘logic of consequentiality’ as opposed to a ‘logic of appropriateness’, with the former predicting that actors will choose only what is best for their utility, while the latter action is “guided by the aim of behaving in conformity with accepted social norms” (32). Analyzing the diamond industry’s actions in this way – as a logic of consequentiality versus a logic of appropriateness – will be helpful to whether or not the stated hypothesis will uphold.

Katzenstein et al., (1999) provide an additional understanding for how rationalism explains outcomes as a result of actors pursuing their maximum utility. While the diamond

industry is comprised of multiple actors – bourses, firms, individual traders – this account of rational choice theory would assume that diamond industry preferences are given and strategically exerted in the environment to enhance their economic situation. For example, “All rationalists use the assumption of rationality to provide the crucial link between features of the environment—power, interests, and institutional rules—and actor behavior” (679). Additionally, “rationalists interpret persuasion in the language of incentives, strategic bargaining and information” and importantly, “for a consistent rationalist, it would be anomalous to think of persuasion in terms of changing others’ deepest preferences” (682). These interpretations of rationalist ideals carry implications for the diamond industry in the EU in terms of how regulation and consumer behavior influenced the expressed interests of firms and diamond traders.

Further, Katzenstein et al. provide a succinct understanding of constructivist-rationalist models, and for the purposes of empirically testing the viability of constructivism and rationalism in the context of diamond regulation in the EU, it will be helpful to draw upon their basic terminology. When making choices, rationalists are persuaded by “incentives, strategic bargaining, and information,” while constructivists are persuaded by “changing preferences by appealing to identities, moral obligations, and norms conceived of as standards of appropriate behavior” (682).

Additionally, Chong provides an astute assessment of how both norms and interests have a role to play in rational choice theory:

“we are rational in the sense of trying to identify and follow our interests within our limitations of experience and our relatively shortsighted ability to make prognoses over the life course. Interests are an essential part of the explanation whether they enter through the front door, as a conscious element in developing norms, or through the back door, as a past investment in personal development that motivates individuals to sustain the institutions that they have built their lives around, whether or not those institutions are the product of rational action” (Chong, 4).

As a strong proponent of rational theory in explaining actors' decisions in world politics, Andrew Moravcsik (2001) suggests, "Rationalist theories of IR or European integration do not deny that actors in international affairs have ideas in their heads...No one doubts or denies that almost any complex organization, up to and beyond a national polity, is held together by myriad linguistic conventions, norms, ideas, standard operating procedures, and such" (229). Moravcsik claims that when actors' ideas shift it is a function of more "fundamental underlying influences on state behavior," including economic interests, relative power and "the need for credible commitments" (229). Ideas, in Moravcsik's view, serve as "transmission belts" for these fundamental interests which are central drivers of state behavior. Moravcsik also makes the claim that, although fundamental differences exist between constructivist and rational choice paradigms, rarely are social interactions strictly coercive. Moravcsik points out that "it is misleading to view rationalist theory as committed to a coercive view of politics" (Checkel et al, 2001; 238). This integrated understanding of social interactions will therefore be applied to later analysis.

### **4.3 CONSTRUCTIVISM EXPLAINED**

Much of the dialogue around the constructivist-rationalist debate stems from the rigors of theorists in international relations, including Finnemore and Sikkink's *International Norm Dynamics and Political Change* (1998). This work calls into question the role of international institutions in norm creation, diffusion and internalization, and thus provides guidance for how to treat the Kimberly Process as an international organization that diffuses norms from the

international level to the supranational, national, and sub-national level. Remaining consistent in this work and throughout various accounts of constructivist theory is that norms are central to international organizations because of the socialization process that takes place between agents and the structures with whom they interact. Finnemore et al. attempt to reconcile the constructivist-rationalist debate by arguing that this ‘fault line’ is inherently flawed when we try to explain policy outcomes. The authors capture the empirical fruitfulness of understanding policy through this integrated approach by stating that while actors are in fact rational, naturally calculative in terms of how best to achieve their end goals, actors will also engage in “strategic social construction.” They define this process as one in which “these actors are making detailed means-ends calculations to maximize their utilities, but the utilities they want to maximize involve changing the other players’ utility function in ways that reflect the normative commitments of the norm entrepreneurs.” These findings suggest that there is theoretical space to unite these two conceptions of social interactions among actors informing policy. It will be important to consider this notion when evaluating the socialization of the European Commission and the global, KP forum, for norms and rationality may be more closely related than expected by constructivists.

In his chapter, *Social Construction and European Integration* (2001) Jeffrey Checkel emphasizes the particular handiness of constructivism for explaining European policy-making. For example, Checkel underlines that the reality of our “social world” lies at “the nexus where structure and agency intersect.” He continues, “The real action, theoretically and empirically, is where norms, discourses, language and material capabilities interact with motivation, social learning and preferences – be it international or European regional politics” (62). Further, Checkel posits that rationalists “have it easy” in that they are at liberty to ignore the interactions

between structures and agents which in fact constitute one another's reality. However, he makes it a point to note that rational choice should not be dismissed from the dialogue of strategy among actors. Rather, constructivism should be employed as a means to ask new questions and to probe the meta-theoretical implications for action in our international system so as to "broaden our understanding of how and under what conditions new European institutions – norms – are constructed through processes of non-strategic exchange" (56). Essentially, Checkel and other constructivists posit that social interaction among actors is what leads to a change in their interests and identities.

Checkel continues to diligently explore how institutions "structure the game of politics, provide information, facilitate side payments or create incentives for agents to choose certain strategies" (52). Thus, as an institution the EU may be considered a "structure" that conditions the interests of "agents" interacting with an EU authority. This perspective on institutional socialization underlines how Checkel ultimately contextualizes constructivism in EU politics. He states, "Constructivism...is an argument about institutions, one which builds upon the insights of sociological institutionalism" and is therefore "well suited, in the conceptual sense, for expanding our repertoire of institutional frameworks..." (53). Whether this interpretation can adequately account for KPCS implementation in the EU is a function of the extent to which the EU "acquires new interests and preferences." In this sense, the case of the KPCS regulatory framework may induce a process by which "basic preferences are rethought." It is therefore important to explore the various byproducts of mutual preference formation in the EU context, beginning with the seminal impact this process has on diamond stakeholders' preferences.

Checkel differentiates himself as a constructivist scholar by operationalizing the outcomes of "argumentative persuasion" – the chief characteristic of constructivist decision-

making. In the spirit of empirical testing, Checkel sets out five criteria for when endogenous preference formation is evident among actors. Table 1.0 operationalizes Checkel’s method for testing constructivist theory:

**Table 1: Checkel's Constructivism**

1	The persuadee is in a novel and uncertain environment and thus cognitively motivated to analyse new information
2	The persuadee has few prior, ingrained beliefs that are inconsistent with the persuader’s message. Put differently, agents with few cognitive priors who are novices will be more open to persuasion
3	The persuader is an authoritative member of the in-group to which the persuadee belongs or wants to belong
4	The persuader does not lecture or demand, but, instead, ‘acts out principles of serious deliberative argument’.
5	The persuader-persuadee interaction occurs in less politicized and more insulated, in-camera settings

(Source: Checkel et al; 2001, 222).

While this criteria is a very useful tool for analyzing the extent to which decisions are infused with constructivist ideals, it is most important to establish how such criteria translates into tangible testing expectations for EU diamond regulation. According to Checkel’s hypotheses we should expect the following from the EU’s implementation of the KP when subjected to constructivist testing: (1) the above conditions of argumentative persuasion are met through the EU’s socialization with KP stakeholders (2) Policy change is intimately linked to normative ideas and (3) These ideas are the primary drivers for policy outcomes.

Additionally, Checkel proposes a resolution for the methodological challenges that come with the territory of constructivist theory. He relies on ‘process-tracing’, which means, “uncovering the setting and reconstructing the mechanisms through which social agents may change their preferences” (2001, 223). This methodology allows Checkel to unpack the differentiating features that delineate rationalists and constructivists. For Checkel, process-tracing will reveal the extent to which socialization among actors is either manipulative,

characteristic of the rationalist perspective, or argumentative, which describes “a social process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion” (2001, 224). However, testing the extent to which decisions are manipulated rather than “argued,” presents its share of difficulties. Moravcsik criticizes this methodology with the following claim:

“If one actor is successful at persuading another in such circumstances, it is usually, in the rationalist view, because that effort at persuasion fits within a broader structure of incentives imposed by, for example, a market, a political institution or an information set” (2001, 242).

Not only does Moravcsik challenge the empirical fruitfulness of Checkel’s methods, but he insists that changing preferences are secondary to actors’ primary interests. For Moravcsik, observable changes in actors’ preferences are possible because they align with wider strategic incentives, whether they be market-based or politically savvy. However, as noted by Checkel, “The point is not to make all theoretical schools happy; rather, it is to bring our models closer to the empirical reality we observe on a daily basis, where social actors in Europe are not only strategic and instrumental, *but also* deliberative and other-regarding” (2001, 243). Both Moravcsik and Checkel offer viable frameworks for understanding such political reality. The case of EU diamond industry regulation presents an opportunity for greater clarity on what separates and unites constructivist and rationalist theories.

## 5.0 KPCS IMPLEMENTATION - CONSTRUCTED OR RATIONALIZED?

Is the implementation of diamond regulation rationalized or constructed, based on the established criteria? A dynamic and qualitative understanding of this question is made possible by analyzing cases whereby EU interests are compared with those of European diamond stakeholders in implementing KPCS procedures. While various types of diamond stakeholders operate in the EU, the most illuminating case study is that of De Beers. The De Beers Group, which now refers to a “family of companies,” was established by UK-native, Cecil Rhodes (the same man associated with the Oxford scholarship) in 1870 (Kretschmer, 1998). Since this time De Beers has dominated the world of diamonds, and now controls roughly 40 percent of diamond supply.<sup>9</sup>

The proliferation of De Beers was made possible by the thrifty deployment of financial mechanisms that provided attractive incentives for diamond dealers around the world to buy through its selling arm, today known as the Central Selling Organization (CSO). These merchants became known as “Sightholders,” and today there are approximately 68 sightholders in the EU.<sup>10</sup> With this broad constituency across the Community, and with a large stake in the

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<sup>9</sup> By 1891, De Beers controlled roughly 90 percent of worldwide diamond supply (<http://pages.stern.nyu.edu/~lcabral/teaching/debeers3.pdf>)

<sup>10</sup> Sightholders are those diamond dealers who buy directly from the Central Selling Organization (CSO), De Beers’ marketing arm which then grades, distributes and sells these



fluid transactions of diamonds across borders, what were the EU's motivations to regulate a market that brings in over 30 billion dollars per year?<sup>11</sup> To what extent does the EU look to protect the interests of its diamond industry in implementing KPCS regulations? Alternatively, did the EU seek to “change preferences” by “appealing to identities, moral obligations, and norms” when implementing regulatory standards for its member states? Examining the EU's historical relationship with diamond stakeholders such as De Beers will allow for increased clarity as to which theoretical frameworks account for how and why the EU regulated this lucrative trade.

## 5.1 DE BEERS AND THE EU

Since its founding in 1870, the De Beers Group used a simple strategy to gain and maintain market dominance for over 100 years. That is, control the supply of diamond stocks. When Cecil Rhodes consolidated a group of South Africa's most profitable diamond mines in 1987, he simultaneously took control of all diamond distribution channels through ‘the Diamond Syndicate’ (Kretschmer, 1998). The incentives for diamond sellers to join this alliance, or cartel<sup>12</sup>, stemmed from De Beers' intimate control over two integral components of diamond sales: the notion that diamonds are scarce, and prices. Before the discovery of South Africa's

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rough diamonds to cutters and dealers closer to consumer sales and distribution (<http://mises.org/econsense/ch91.asp>)

<sup>11</sup> Roughly 7 percent of Belgium's GDP relies on diamond transactions ([http://www.certified-gems.com/Antwerp\\_diamond\\_market.htm](http://www.certified-gems.com/Antwerp_diamond_market.htm))

<sup>12</sup> “A cartel is a group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them” ([http://ec.europa.eu/competition/cartels/overview/index\\_en.html](http://ec.europa.eu/competition/cartels/overview/index_en.html))

rich source of diamond deposits in the township of Kimberley (the same town where the UN first met to discuss a certification scheme), diamonds were known to come from only India and Brazil.

Although diamonds began making their way to aristocrats in Bruges, Paris and other affluent European centers in the 14th century, it was Vasco da Gama's expedition to India in 1498 that made diamonds a viable market in Europe, albeit only for the noble. However, diamonds were still highly scarce and even the monarchs had trouble getting the gems in their possession (Kretschmer, 1998). By the 19th century the value of diamonds was well established, reflective of their high scarcity in the world marketplace. Thus, the diamond discoveries in South Africa in the late 1800s were seen as a threat to the commodity's value – more diamonds entering the market would drive down prices and wreck the reputation of diamonds as a scarce commodity. As noted in her article, *The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention* (2010), Virginia Haufler notes that “The value of diamonds used for jewelry is at heart based on a myth about the value of the stones, and not rooted in material value. The diamond cartel reinforced the perception that the diamond was a special gem by maintaining artificial scarcity, and “branding” diamonds as luxury products and status goods” (408).

This dynamic between intrinsic value and perceived value is what makes the diamond market substantively different from other commodities on the market. At the time of Rhodes' business venture, diamonds were purely used for luxury purposes and held no utility value. Even today, only 17 percent of the value of rough diamonds produced are represented by the industrial diamond market (Stern School of Business). The fear amongst Rhodes and his shareholders was that with decreased prices, consumers would no longer desire these gems, as their value were

intrinsically linked to their high prices.<sup>13</sup> As long as the supply was restrained, consumers would desire diamonds for their extravagance as well as the symbolism they held for love, affection and fidelity.

Rhodes pursued a supply-oriented strategy in order to address the assumption that “steady production of a good that never perishes must eventually lead to oversupply,” (and thus low prices) by keeping the newly produced South African diamonds from entering the market. This command and control strategy has permeated De Beers’ operations over time, and was further intensified under Sir Ernst Oppenheimer’s chairmanship, which spanned from 1926 to 1930. Oppenheimer continued Rhodes’ business model, committed to stemming the flow of diamonds into the market in order to sustain the notion of scarcity, thus keeping diamond prices high. Over time however, new threats emerged to De Beers’ control over distribution, as new sites were discovered in Australia, Siberia and Western Africa (Kretschmer, 1998). By the time Ernst Oppenheimer’s son, Harry, took over the organization, there was a pressing need to further consolidate De Beers’ distribution affiliates. This was done by formalizing (mainly European) distributors under the CSO (Kretschmer, 1998). The role of the CSO can be summarized as follows:

“The main purpose of this organization was to stimulate and control the demand for diamonds of which almost 80% of the supply was under De Beers control. De Beers mined the rough diamonds which it in turn consolidated in a central sorting exchange in London. Other rough diamonds from other sources could be brought to the exchange and sold to a select few customers which were known as ‘sightholders’ at non-negotiable prices. These sightholders would then either sell on the diamonds on cut, polish and set the diamonds for sale as jewelry or for industrial purposes...This arrangement was successful in controlling the pricing of diamonds through manipulation of the supply and demand arrangement” (Stern Case Study, 2004).

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<sup>13</sup> This follows Thorstein Veblen’s economic theory of “conspicuous consumption” as introduced in his book, *The Theory of the Leisure Class* (1899).

Although now known as the Diamond Trading Company (DTC), this conglomerate has more or less stayed in tact until present day, as privileged sellers of De Beers' diamonds, the sightholders, gather in London annually to buy from the stock of diamond parcels De Beers chooses to release on the market for that season. However, the early 2000s saw fundamental changes for De Beers' selling strategy, as the company began to feel pressures not only from the U.S. (where De Beers was facing class-action lawsuits in 2001 due to price-fixing) but also from the EU's competition authority. It is important to note the interaction between the EU and De Beers during this time period to help uncover the interests at play just as the KPCS implementation was first put forth by the Commission.

One of the first of these disputes between the EU and De Beers surrounded its new supply-side strategy, known as "supplier of choice" (SoC). In 2000 De Beers proposed this strategy in order to begin formalizing its contractual agreements (which were historically done on a verbal, "backroom" manner) with sightholders. As a more "efficient channel of distribution" SoC proposed to "award fixed-term supply contracts" to "an applicant business as a Sightholder if it can offer that organisation an economically efficient level of supply of the categories of rough diamonds that company requires for the entire duration of the contract period in light of the DTC's intake forecasts, the competing demands of other applicants and the DTC's objective assessment of all applicants against the Sightholder Criteria" ([www.debeersgroup.com](http://www.debeersgroup.com), "The Role of the DTC"). The Commission further characterized this new strategy as agreements that "are designed to formalise what has so far been an informal commercial relationship between De Beers and its customers for the purchasing and selling of rough diamonds. The agreements set out the criteria according to which its Sightholders will be selected" ([www.europea.eu](http://www.europea.eu), "Commission clears venture between De Beers", 2001).

However, this new “criteria” resulted in various European diamond suppliers being dropped including Antwerp IDH, a company that had been a De Beers Sightholder for nearly 70 years (“De Beers the Defendant”, 2004). This particular supplier raised its concerns to the European Commission via DG Competition, noting that this strategy will further “cut out industry middlemen.” Another stakeholder in the European diamond market, Arthur Beller, president of the Beurs von Diamanthandel (the largest bourse in Antwerp) stated that “Supplier of Choice is not the best policy for the Belgian trade...It has already hurt a lot of people. By going direct to the retailer, you are cutting out a lot of middle people” (“De Beers the Defendant”, 2004). Despite these claims among European diamond stakeholders, the EU ruled De Beers’ SoC model lawful, as noted in a press release in January, 2003. The official statement reads:

“The Commission has now decided not to oppose the SoC system. But given remaining concerns that the SoC system could be used to artificially reduce supply, namely of high quality diamonds, and considering that the implementation of Supplier of Choice has not yet taken place, the Commission will keep a close watch on the market. The Commission will also particularly want to ensure that the system does not lead to a restriction in the supply of adequate quantities of rough diamonds to traders in order to ensure enough liquidity in the market” (europea.eu, “Commission clears venture between De Beers”, 2001).

This decision only came about after considerable investigation on behalf of DG Competition, for when the case was first opened in 2001, the Commission was committed to reviewing the extent to which De Beers’ new strategy truly posed a monopolistic threat. It was then decided that, “The Commission's statement of objections identifies a number of restrictions and trading conditions in the Supplier of Choice agreement which appear to violate European competition law, and which can therefore not benefit from exemption under Article 81(3)” (europa.eu). Despite these preliminary concerns, the question of the SoC system was mitigated

by employing an Ombudsman that would monitor relations between De Beers and DG Competition, working to constantly gauge the legality of De Beers' supply chain operations.

The Commission addressed the SoC strategy in a press release ruling over a merger occurring between De Beers and French luxury goods retailer, LVMH (commonly known as Louis Vuitton) in 2001. Combining forces would culminate in a joint venture, Rapid Worlds Ltd., and would be situated in the retail sale of diamond jewelry and other luxury products. This merger was cleared by the Commission with a ruling in July of 2001 stating that, "The Commission's extensive and detailed investigation into the competitive effects of this deal has highlighted the extent of De Beers' dominance in the global market for the supply of rough diamonds. But it did not unearth a causal link between the combination of LVMH and De Beers at the retail level, and a possible strengthening of De Beers' position in the upstream markets." The press release goes on to say, "the Commission's investigation did not establish that the creation of the joint venture would have led to a significant structural change on the upstream rough diamond market. While the joint venture may create a greater awareness of the Forevermark\* and enhance the perceived value of diamonds channelled through the De Beers's fully-owned subsidiary Diamond Trading Company (DTC), this contribution will be limited by the fact that Rapids World is not yet operational and will have to build up its market position from scratch" (europa.eu, "Commission clear venture between De Beers", 2001).

This venture reflected another component of De Beers' strategic makeover in the beginning of the decade: stimulate the *demand* for diamonds among consumers. Entering the

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\* Forevermark is the Trade Mark of De Beers' diamonds, and ensures that each De Beers diamond is "of exceptional quality" assuring that each diamond has been "responsibly sourced and has been nurtured in every step of its journey" (debeersgroup.com)

retail end of the value chain allowed De Beers to develop its most prolific marketing campaign to date, “A Diamond is Forever.” By reinvigorating market demand for diamonds, De Beers sought a new kind of control over diamond sales by way of sentimental appeal to both men and women alike (Stern case study, 2004). As a company that lost about half of its market share by the early 2000s (from 80 - 90 percent of the total rough diamond supply to 40 percent today) there existed a great deal of incentive for De Beers to ensure consumer confidence in the value of luxury diamonds (Haufler, 2010).

While De Beers was coming to grips with the weakening of its monopoly before the preliminary negotiations of the Kimberley Process, De Beers could not afford to lose out on consumer confidence in the face of such wide-sweeping EU law suits (as well as those occurring in the U.S.) Conflict diamonds “raised the potential consequence that consumer markets for gem diamonds would dry up...” as “the idea of a diamond engagement ring has taken hold so completely that now De Beers itself is entering this market” (Haufler, 2010).

By 2002 De Beers felt pressure to ensure a healthy demand for diamonds while maintaining its consolidated “family of companies.” However, the EU’s interests in diamond industry operations align with maintaining a liberal economic environment for this industry. Based on the aforementioned rulings on behalf of the competition authority, the Commission was strictly concerned with anti-monopolistic policies. The question therefore remains, to what extent was KPCS implementation a reflection of the EU’s relationship with De Beers, the dominant diamond stakeholder in all of Europe? How did the implementation of the KPCS play into De Beers’ interests in maintaining its market footing around the world? Analyzing press releases submitted by the Commission (the representative at all KPCS forums) will be helpful in understanding the extent to which the EU made an effort to protect a profitable firm such as De

Beers. It will then be possible to construct a relationship between the EU's interests towards industry and how those interests were conveyed (or not conveyed) through implementation. This will allow for a better understanding of the conceptual underpinnings of the EU's interests in diamond regulation.

## **5.2 METHODOLOGY FOR ANALYZING EU PRESS RELEASES**

Over the course of 2000 – 2010, the European Commission published various press releases regarding the ongoing implementation of the KPCS. These included statements made by Benita Ferrero-Waldner, the Commissioner for External Relations and European Neighbourhood at the time. These press releases best represent the EU's interests towards the ongoing implementation process of diamond regulation in the EU and around the world. While the EU submitted policy statements in other forums such as the UN, this medium provides a more objective policy stance while remaining representative of the EU's preferences towards the KPCS. Altogether, nine press releases were submitted by the EU from 2000 to 2010\*. The greatest number of press releases<sup>+</sup> was submitted in 2007, which is not surprising given that this was the year that the European Community chaired the KP.

Rather than using content analysis to code the information conveyed through these press releases, this analysis is deeply qualitative and examines the press releases as they were submitted over time, and within the context of changing political and economic environments. Furthermore, while personal interviews with EU decision-makers would have been the most

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\* Including the year 2010

<sup>+</sup> Six in total



optimal methodology for this study, both time and resource constraints posed a barrier on gathering data through such methods. With that being said, further studies on this subject matter will benefit from interviews with those directly engaged with the EU's KPCS implementation.<sup>14</sup>

### 5.3 FINDINGS FROM EU PRESS RELEASES

Beginning in 2005, the Commission began issuing press releases commenting on the progress and developments of KP implementation. The first of these press releases was a general list of statements focused on the EU's commitment to driving implementation forward, appealing to the leadership role of the Commission during implementation. This statement, titled, *Support to peacebuilding: examples of EU action*, was released on September 12, 2005, affirming that, "the EC is currently Chair of the Working Group on Monitoring of the Kimberley Process, and thus playing a leading role in ensuring implementation of the Scheme."<sup>15</sup> It is not surprising that this statement did not address concerns dealing with industry interests, given that this press released aimed to convey "the breadth of the EU's contribution to peacebuilding, not only the geographical spread of EU activity but the wide range of policies and instruments deployed, covering support for peacekeeping operations, peace processes, peace negotiations and reconciliation efforts."

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<sup>14</sup> Including the European External Action Service, Community Authority representatives and relevant member-state ministry officials.

<sup>15</sup> Refer to Commission website:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/313&format=HTML&aged=1&language=EN&guiLanguage=en> (12 September 2005)

Following this statement was a press release in 2006, in which Commissioner Benita Ferrero-Waldner commented on the Commission's upcoming chairmanship of the Certification Scheme. She stated, "The Kimberley process is our best weapon against a trade in diamonds which fuels war and bloodshed. The European Commission is looking forward to chairing the process in 2007, and our aim will be to make the process even more effective in stopping illicit trading in diamonds. We need to dry up this source of income for those who stir up lethal conflicts, and ensure that those who buy diamonds around the world can do so confident that they are not contributing to this terrible trade."<sup>16</sup>

By stating the goals of the EC chairmanship as such, Ferrero-Waldner points to the volatility of this trade and appeals to the values and interests of diamond consumers. However, there remains no mention of ensuring the economic viability of diamond firms specifically. Rather, the statement continues to note that, "the [Kimberley] Process needs to be strengthened further in order to protect innocent lives and the livelihood of those who depend on the diamond industry in Africa and elsewhere."

In December of 2006, the Commission announced its commencement as KP Chair. "The Commission, supported by Member States, will use its Chairmanship in 2007 to work to ensure effective implementation of controls by all participants and to close down remaining loopholes. As Chair, the Commission intends to promote the active involvement of industry in policing itself. The European Union's system of industry self-regulation has a lot to offer as a model for others"<sup>17</sup> In this way the Commission not only promotes industry self-regulation among

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<sup>16</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1538&format=HTML&aged=1&language=EN&guiLanguage=en>. 9 November 2006.

<sup>17</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1834&format=HTML&aged=1&language=EN&guiLanguage=en>. 19 December 2006.

European companies, but for industry internationally. Additionally, the Commission further defines its role as Chair as an opportunity to lead the KP community in promoting effective implementation mechanisms for all participants.

On January 23, 2007, Commissioner Ferrero-Waldner addressed the implications of the then newly released film, *Blood Diamond*, starring Leonardo DiCaprio. During this pre-screening speech she stated that, “Consumers today can and should ask questions about diamonds before they buy, ask about the supply chain and demand proof of conflict-free origin. We may not be able to wipe out smuggling completely, but as long as Kimberley rules are applied fully by every participant, consumers buying from legitimate suppliers can be confident that they are not fuelling violence or funding war.”<sup>18</sup> In this way, the Commissioner sends a message of reassurance – that diamond purchases among ‘legitimate suppliers,’ or KP participants, will not fuel the intense conflict portrayed in the film. It is in this speech that she first comments on the economic impact of the KP trade on developing nations that were once most rife with diamond conflicts. According to the Commissioner:

“Kimberley means that in these countries there is now the potential for the natural wealth of diamonds to contribute to peace and prosperity, rather than conflict. 2006 was the DRC’s best year for diamond exports since the stones were discovered 100 years ago. In Sierra Leone itself, legal exports have increased 100-fold since the end of the war, bringing obvious benefits for the estimated 10% of the population who depend on the diamond industry.”

The EU released two statements in June of its Chairmanship. One of the statements titled, *Kimberley Process: key players meet to strengthen efforts against conflict diamonds*, addressed a meeting hosted in Brussels from June 12 to 14. Attendees included diamond experts, industry

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<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/34&type=HTML&aged=0&language=EN&guiLanguage=en>. 23 January 2007

representatives and civil society organizations in order to “take stock of the progress in implementing reform measures agreed [in 2006].”<sup>19</sup> The follow-up press release titled, *Kimberley Process – United to fight blood diamonds!*, explicitly states the EU’s role in the KP, playing on both its commercial interests and interests in conflict-prevention. The press release notes that, “Europe has major interests in the diamond industry since it is the biggest diamond trading centre in the world, and more than 80% of the world’s rough diamonds pass through Antwerp in Belgium. We have no option but to be involved in discussions on the diamond trade” however, “beyond commercial interest, *the EU is above all committed to the KP as a conflict prevention tool and a way to ensure better regulation and a fairer, more equitable world trade. The KP is genuinely an instrument of stability in countries where the state and its institutions are fragile.* Sierra Leone is a striking example of this, a county that now plays an important role in the KP, particularly on the issue of controlling artisanal/alluvial production.”<sup>20</sup>

Further appealing to how the KP aligns with the EU’s development priorities “the EU also considers the KP as a useful tool to stabilise fragile states and support their sustainable development. One of the effects of the KP has been to *support the integration of parallel economic networks into the formal economy; this can generate significant fiscal revenues for the countries concerned and enable them to better manage their development.*” This statement is of note because it was the first of several press releases to assert that the EU’s priorities lie with using the KP as a means for conflict-prevention, rather than protecting its own commercial interests.

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<sup>19</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/791>. 11 June 2007.

<sup>20</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/236>. 11 June 2007.

In October 2007 the EU alluded to another challenge it faced as chair by making reference to the conflict that was mounting in Zimbabwe. That is, it was beginning to surface at this time that President Robert Mugabe was using force to secure the Marange diamond fields in the eastern town of Chiadzwa (timesonline.co.uk, 2008). Additionally, the Commission remained committed to monitoring the issue of diamonds being illegally smuggled into Ghana's informal market from northern Côte d'Ivoire. The last press release of 2007 was a letter submitted by Commissioner Ferrero-Waldner addressing the body of the KP plenary in Brussels, and summarized the successes and challenges faced by the EU as Chair. Not a great deal of new information is conveyed in this address, as the Commissioner focused on recapping the events that characterized the EU's presidency.

Another press release does not resurface until November 2009, when KP participants swiftly took action to address the tensions mounting between the Mugabe regime and artisanal diggers that fled to the Marange diamond mines just three years prior. The European Community states its commitment to endorse an action plan "to address Zimbabwe's non-compliance in the Marange mining area" noting that, "Zimbabwe's commitment to undertake a series of ambitious actions to bring diamond mining in Marange in compliance with the minimum requirements and to subject exports of Marange diamonds to independent verification pending full compliance is a welcome step."<sup>21</sup>

However, in June 2010 the Community voiced its disappointment with the KP to produce any meaningful resolution that would address the flawed mining operations continuing to occur in the Marange diamond fields. Omitted from the press release was the fact that the EU was

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<sup>21</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1701&format=HTML&aged=1&language=EN&guiLanguage=en>. 12 November 2009.

simultaneously renewing sanctions on Zimbabwe in the form of “travel bans and asset freezes” targeting government officials, including Robert Mugabe (eubusiness.com). The motivations for pursuing such sanctions stem from both the alleged human rights abuses in government-run diamond fields (Marange) as well as the "the lack of progress in the implementation of the Global Political Agreement" (news.bbc.co.uk). As such, the EU delivered a statement regretting “the current impasse which undermines the Kimberley Process, the credibility of governance in Zimbabwe and the reputation of the legitimate international diamond industry.”<sup>22</sup>

Nevertheless, one month later (with EU sanctions still in place) an agreement was reached on Zimbabwe’s diamond exports at a plenary session in St. Petersburg, authorizing Zimbabwe to export a “proportion of its diamonds mined in Marange, provided that it meets certain prior requirements, including the provision of an audit of its diamond stocks, and the receiving of a review mission.”<sup>23</sup> The concluding remarks state, “The EU urges Zimbabwe and all KP parties to spare no effort to ensure the good faith implementation of the agreement in full, so that it can pave the way to a lasting solution.” Today, this solution continues to be discussed among the KP participants. There have been no press releases thus far in 2011 regarding this issue or the KPCS.

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<sup>22</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/856&format=HTML&aged=0&language=EN&guiLanguage=en>. 29 June 2010

<sup>23</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/969&format=HTML&aged=0&language=EN&guiLanguage=en>. 19 July 2010.

## **6.0 CONFLICT OF INTEREST: ZIMBABWE DIAMONDS AND THE EU**

It is important to note that although there has been an absence of Commission press releases since July 2010 speaking to KP implementation, the EU has remained engaged in the Marange diamond conflict. As stated, the EU member states continue to administer “smart sanctions” on members of President Robert Mugabe’s government, for it is alleged that he and his cabinet are directly linked to the human rights abuses of diamond minors. As of February 15, 2011, the EU extended sanctions for an additional year against 163 individuals and 31 businesses in Zimbabwe, including Robert Mugabe and 200 of his “inner circle” (bbc.co.uk).<sup>24</sup> However, since February 2009 the EU has devoted roughly 365 euros in aid for social programs, food security and ‘good governance’ measures (europeanvoice.com). This aid is delivered in the context of the EU’s African, Caribbean and Pacific (ACP) relations, and formalized through a Global Political Agreement (GPA) in Zimbabwe. The EU has sought to leverage the Zimbabwe GPA - a government coalition formed in November 2008 between Robert Mugabe and opposition leaders, Morgan Tsvangirai and Arthur Mutambara – to “normalize relations” with Zimbabwe (europa.eu). Regardless of efforts towards advancing the GPA and aid offerings to Zimbabwe, Mugabe and his cabinet members have continuously voiced contempt for EU

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<sup>24</sup> Sanctions against Robert Mugabe and his associates have been in place since 2002 (<http://www.bbc.co.uk/news/world-africa-12471983>)

sanctions, which the bloc has imposed since 2002 in light of human rights abuses surrounding the Marange mines, the rule of law, and treatment of foreign investors ([guardian.co.uk](http://guardian.co.uk)).

The latter of this list of conditions references in part the (involuntary) handing over of the Marange mines in 2006 by the UK-registered mining organization, African Consolidated Resources (ACR). However, beginning in the 1980s mining rights were owned by a De Beers subsidiary, known as Kimberlite Searches Ltd. through an Exclusive Prospecting Order (EPO) contract. When the EPO expired in 2006, ACR took up all exploration rights. The year 2006 was also the year in which the massive Marange diamond deposits were discovered, and according to Zimbabwe Finance Minister, Tedai Biti are "the biggest find of alluvial diamonds in the history of mankind." ([economist.com](http://economist.com), 2010). However, it is hard to say whether or not this claim is completely accurate given the speculative nature of diamond prospecting.

It is now known that the Marange diamond mines span 150,000 acres and produce 6 million carats of diamonds per year ([crisisgroup.org](http://crisisgroup.org)). Thus, soon after this finding was made public, 15,000 to 20,000 unlicensed artisanal miners flocked to the fields in search of diamond wealth. ACR also began operations at this time, but shortly thereafter these rights were revoked by the state-owned, Zimbabwe Mining Development Corporation (ZMDC). In fact, just one day after ACR began operations Zimbabwe's Assistant Police Commissioner, Olbert Denge "ordered the company to shut down and told employees of the company to leave immediately" (Partnership Africa Canada, 2009; 7). Amos Midzi, Zimbabwe's Development Minister of Mines and Mining, commented that "The decision of the government is that the Zimbabwe Mining and Development Company (ZMDC) should go it alone," adding that, "From what we've seen, there is no need for that (external investment). ZMDC has not drawn on any expertise or equipment



from outside, which is testimony that we are able to do it on our own.” (Partnership Africa Canada, 2009; 7).

As of December 2010, Zimbabwe’s Minister of Mines, Obert Mpofu, had cancelled all rights for ACR’s mining activity in Marange.<sup>25</sup> The strategy of seeking public ownership was intrinsically linked to the government’s need to generate liquidity rapidly, as diamonds were seen as a reliable financial mechanism for investments. Although the government was able to successfully block foreign investment in mining rights, Mugabe still faced the challenge of controlling the diamonds being smuggled by illegal miners, which posed yet another threat the government’s securitization of diamond profits. In an attempt to secure these diamond revenues from Marange (and reduce black-market diamond sales) Mugabe ordered his current commander of the Air Force (and cousin) Perence Shiri to securitize the mines.<sup>26</sup> Shortly after Shiri arrived at the Marange fields (on October 31, 2008), it was reported that illegal diamond diggers were shot dead by police. One human rights lawyer studying the case reported the following series of events:

“Police drove the miners into an ambush using a helicopter, and fired tear gas and live ammunition. The miners were said to have escaped from the diamond fields and were hiding in nearby mountains” (Partnership Africa Canada, 2009; 7-8).

Confirmed reports stated that human rights abuses as such in the Marange district were (and may still be) a frequent occurrence. One policewoman working in the Chiadzwa fields (the region in which Marange is located) witnessed a pile of 50 bodies after one of the helicopter attacks. She states, “There were a lot of bodies. They were piled up. I don’t know what happened

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<sup>25</sup> African Consolidated Resources plc. 22 December 2010. “African Consolidated Resources plc (‘ACR’ or ‘the Company’) Statement re Press Reports. (21 February 2011).

<sup>26</sup> Since 2002, Shiri has been barred from entering the EU and his property in the United States has been blocked since 2003 (Partnership Africa Canada, 2009; 7).

to them. Some of the dead are just buried secretly...miners are killed every day. The orders to the police are to shoot them if they find them digging but many of the police do not want to carry out those orders. These are ordinary people like us” (Partnership Africa Canada, 2009; 8). The figures to date indicate that a total of 78 people were directly killed in such attacks throughout 2008, while at least five illegal miners died from contracting cholera.

By January 2009 the EU took action to tighten their existing sanctions on Zimbabwe’s leadership. The Council of EU foreign ministers released a statement at this time strongly criticizing Mugabe’s credibility and that of his government. The statement characterizes the rule of law in Zimbabwe as an “ongoing failure” to deliver “the most basic economic and social needs of its people.” The Council stated its concern surrounding “the growing trade in illicit diamonds that provide financial support to the regime,” further noting:

“In this context, it also condemns the violence inflicted by state sponsored forces on diamond panners and dealers at Marange/Chiadzwa. The Council supports action to investigate the exploitation of diamonds from the site at Marange/Chiadzwa and their significance in possible financial support to the regime and recent human rights abuses. It calls on the Kimberley Process to take action with a view to ensure Zimbabwe’s compliance with its Kimberley obligations” (Partnership Africa Canada, 2009; 8)

On an industry-level, diamond stakeholders within the EU have also taken steps to refrain from Zimbabwe diamond investments. For example, two Belgian banks with diamond industry customers – Antwerp Diamond Bank (ADB) of Belgium and ABN Amro (the Netherlands) – have refused to engage in transactions that involve Zimbabwe diamonds. Pierre De Bosscher, Chairman of the ADB Executive Committee, stated that, "ethical standards must improve...we will not finance diamond transactions with Zimbabwe while it is still on the OFAC (U.S. Office of Foreign Asset Control) list, under an EU trade embargo as well as a number of other such issues...We are not willing to even finance roundabout transactions in South African rands or Hong Kong dollars, because this isn't good for the transparency of the industry” (allafrica.com).

This commitment to reputation, in combination with adherence to EU sanctions, demonstrates the far-reaching implications that human rights norms hold for diamond trading stakeholders, including financial institutions.

European Union sanctions on Zimbabwe were most recently revisited on February 15, 2011. Although 35 names were removed from the list, EU leaders moved to renew the sanctions (which include the aforementioned visa bans and asset freezes). According to one BBC article published on February 15, 2011, “Among those firms are defense and diamond companies, which the EU still believes are bankrolling Zanu-PF's campaigns to quash its opponents” (bbc.co.uk). The EU also suspects some of these individuals to be committing human rights violations in Zimbabwe. Further, EU decision-makers have noted the “weak advances in the country's democratic situation,” such as the disappointing implementation of the 2008 GPA. According to Catherine Ashton, Vice President of the European Commission and High Representative of the EU’s Foreign Affairs and Security Policy, “Economic and social developments have not been matched by equivalent progress on the political front” (independent.co.uk). Further, the EU’s chief representative in Zimbabwe, Emilio Rossetti, called for further reforms “with regard to respect for the rule of law, human rights and democracy which are essential to create an environment conducive for the holding of credible elections,” adding that, “These measures are not affecting the people of Zimbabwe at large and the economic impact of the sanctions is negligible. They are just preventing certain people from traveling and having their assets frozen” ([www.cbsnews.com](http://www.cbsnews.com), 2011).

The response among Zimbabwean officials and government stakeholders has been less than receptive to the extension. Ceaser Zvayi, a political analyst for the state-owned Herald newspaper deemed the sanctions as “sabotage” of the unity government and writes that, “what

the EU has done is tantamount to sabotaging the inclusive government. In fact, the EU is preventing the full implementation of the GPA” (eubusiness.com). This is only one of many criticisms Zimbabwean government stakeholders have voiced concerning the EU’s sanctions program.

Despite ongoing EU sanctions, the Kimberley Process chose to legalize the auctions of Zimbabwe’s diamonds in August 2010.<sup>27</sup> This first public auction was permitted after a review mission was sent to Zimbabwe in June of 2009. The mission’s inspectors concluded that the country would be granted six months to fulfill its KP requirements, which included “gradually withdrawing the army [from the Marange sites]; ending illegal mining by setting up adequate security infrastructure and engaging potential investors” in addition to tightening border controls (crisisgroup.org). The KP inspectors<sup>28</sup> returned to the fields for two separate visits the following year in both March and May, affirming that Zimbabwe diamonds could be sold in public auctions under KP supervision. The first of these auctions was held on August 11, 2010, selling 900,000 carats of diamonds worth an estimated \$46 million of which the Zimbabwe government received \$30 million. Foreign buyers included India’s Surat Diamond Sourcing Limited, with other buyers from Russia, Lebanon, Israel and the U.S (crisisgroup.org).

The second round of public auctions took place from September 9 to 13 of 2010. This time around it was estimated that 500,000 carats (\$13.5 million) were sold. It is also estimated that between the two auctions, the total value earnings for ZMDC amounted to approximately

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<sup>27</sup> The U.S. also continues to impose sanctions on Robert Mugabe and his cabinet, but U.S. merchants have been able to buy diamonds from Zimbabwe (bbc.co.uk).

<sup>28</sup> Abbey Chikane is the KP monitor responsible for supervising work plan compliance (crisisgroup.org)

\$43.5 million (Rapaport, 2010).<sup>29</sup> What differentiated the second auction from the first was that Belgian buyers reportedly sought out Zimbabwe these second round sales, sidestepping both EU and U.S. sanctions.<sup>30</sup>

Today, the EU (along with the U.S.) continues to impose sanctions on Zimbabwe, including the state-owned ZMDC despite the KP's recent clearance of the mines for supervised export. Many Zimbabwe officials have deplored EU decision-makers for extending its sanctions on a nation with whom it has developed a strong bilateral relationship and political ties. One of the most outspoken of Zimbabwe's officials on this matter is Reserve Bank governor, Gideon Gono. In a speech he delivered on February 20 2011, he states the following:

The issue is more fundamental than it is emotional. When President Jacob Zuma of South Africa (representing Sadc) and when the AU (representing the whole of Africa) called for the lifting of the sanctions, they did not engage in semantics of individualism. They called for the total lifting of all sanctions against Zimbabweans and Zimbabwe and the latest defiance by the EU ought to be viewed as an affront to African authorities on African affairs, and a defiance of African presidents and heads of state.

And when the views of your own African presidents, heads of state and leaders are disregarded or defied by another group of world leaders, who do you or are you supposed to side with as an African? What does that mean to the continent?

Another reason why no self-respecting Zimbabwean who is true to his ideals and convictions would not celebrate is the fact revealed by the German Ambassador to Zimbabwe who was quoted in the media as saying that his country (Germany) wants the whole regime of sanctions lifted, but EU Club rules oblige them to go by the majority vote in the 27-member bloc. The bloc works on the principle that an attack against or disagreement with one of them is an attack on or disagreement with all of them as a bloc.

With that concept in mind, it should follow that sentencing one Zimbabwean onto the sanctions

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<sup>29</sup> This figure was derived by adding the first auction's total earnings to the second auction's total earnings.

<sup>30</sup> It should be noted that these actions are what prompted two Belgian banks to refuse the financing of all diamond transactions to and from Zimbabwe.

list by foreign governments must constitute the sentencing of all of us onto that list regardless of individual personalities or differences. If we have problems, as we indeed do have, amongst ourselves as Zimbabweans, or as SADC and/or Africans, are we not capable, without inviting outsiders, to settle them amongst ourselves? How many Zimbabweans have been invited to go and settle political differences in other parts of the world outside Africa or even to referee soccer matches outside the continent?

We must learn to exhaust our own African methods and structures of conflict resolution first before we export our differences to foreigners who only have permanent interests and not permanent friends, as they say! Look at what has just happened in Egypt and Tunisia. The issue of sanctions is far much broader than an individual such as Mrs Gono, Mrs Bonyongwe, Mrs Chihuri, Mrs Charamba or Mrs Sekeramayi as some simple minds would want us to believe.

In addition to Gono, one of Zanu-PF's (Mugabe's party) policy makers has characterized the sanctions as an "unacceptable neo-colonial gesture" (bbc.co.uk). Before these last rounds of sanctions, President Robert Mugabe himself expressed his disdain for all EU sanction efforts aimed at his country. During his sister's funeral in August, 2010, EU diplomats were present in addition to those from the U.S. Mugabe took this time to address the then most recent sanction regime (February, 2010) imposed on Zimbabwe. He stated the following:

"To hell with them [the EU and the U.S.]. Hell, hell, hell with them whoever told them they are above the people of Zimbabwe that they decide what Zimbabwe should be and by who it should be ruled." Mugabe has yet to publicly remark on the EU's renewal of sanctions, but his party has "embarked on an anti-sanctions campaign and has demanded that executives of British and American companies publicly denounce economic restrictions or risk losing control of their businesses" (euobserver.com, 2011).

In light of the conflicting interests between the EU and Zimbabwe, it is likely that tensions between the two will remain. Although the EU had the opportunity to loosen its sanction regime against Mugabe and the Marange fields, decision-makers firmly stood by the political and social conditions they had originally set out in 2002. Policy implications for the EU and Zimbabwe relationship vis-à-vis diamond trading are vast. Human rights, good governance and market values work together in a way that supercedes decision-making at the KP level. This case therefore highlights the complexity of EU external policies, as decision-makers factor in a

variety of interests and norms when calculating policy outcomes. Of course, international diamond regulation holds a vast array of implications for EU external policy, and therefore, establishing the possible theoretical explanations for implementation is vital for gaining clarity on the motives for diamond regulation in the EU.

## 7.0 EVALUATION OF FINDINGS: A THEORETICAL CROSSROADS

As seen above, the relationship between the EU and diamond stakeholders is immensely complex, which makes for a complex theoretical understanding of the EU's KP implementation. The original hypothesis of this study, that *the implementation of diamond regulation in the EU will illustrate a constructivist approach to policy-making as opposed to rational choice theory*, is only half true based on the above findings. While constructivist ideals are certainly at play, including the process of argumentative persuasion and normative ideas shaping policy outcomes (as described by Checkel) they do not capture the entire picture. That is, rationalist theory must also be calculated into the theoretical equation, as EU leaders seemingly embrace 'functional imperatives' when considering policy outcomes vis-à-vis De Beers, the KP institution and most recently, Zimbabwe bilateral relations.

The EU's implementation of KP standards demonstrates a real-life example of theoretical convergence. In other words, both constructivist and rational choice theories should be considered when accounting for the implementation of diamond regulation in the EU. This is in contrast to a zero-sum understanding of the rationalist-constructivist paradigm, where an application of just one or the other theoretical framework suffices in accounting for policy practice. By tracing the EU's relationship with both De Beers and the diamond-producing nation



of Zimbabwe, it is evident that much complexity lies behind policy practice when it comes to diamond regulation, both from a market and societal standpoint.

The tenets of constructivist theory are evident when analyzing the fundamental shift in the EU's preferences towards the diamond industry from 2000-2009. From 2000-2002, before the KP implementation process began in the EU, EU decision-makers were concerned with the threat the diamond industry posed to competition in the Single Market. By 2009 the press releases were of a different purpose and tone – that is, they targeted the threat of the diamond trade in the context of the KP and human rights. An example of this shift can be seen when looking at the press releases from 200-2002 (before the KP had just been signed into force). These statements were strictly focused on maintaining a liberal economic environment by ensuring that industry policies such as Supplier of Choice and mergers such as those between De Beers and LVMH, did not violate EU competition law. By 2009, the language around the diamond industry dealt instead with implementing the normative framework set out by the Kimberley Process, so as to ensure, for example, that Zimbabwe diamonds were not in violation of KP regulations.

Another consideration to bear in mind when for evaluation is the material cost the Kimberley Process imposes on KP member states. For example, the valuation statistic recorded on each KP certificate has seen discrepancies between exporters and importers. This in turn forces customs officials to conduct further inspection on diamond shipments, either returning parcels to the country of origin or seizing them altogether. The concern over such “valuation methodologies,” has been brought forth by Kimberley Process architect, Mark van Bockstael. He considers such delays in shipments as a result of valuation mechanisms to be a form of “technical barriers to trade,” thus imposing cumbersome costs on KP member governments.

However, despite the risk of such costs the KPCS has proven to sustain buy-in amongst government stakeholders in the EU, including bourses, the Community Authorities and national ministries that carry out implementation. Despite these and other associated costs related to KPCS implementation, the Commission and EU member states have sustained commitment to diamond regulation. This supports the ideals of constructivist decision-making insofar that actors are willing to forgo short-term monetary costs for long-term sustainability of human rights and ethical trading practices. However, without the Kimberley Process diamond industry stakeholders within the EU would be unable to participate in the legitimate diamond trade, losing out on a multi-billion dollar market altogether.

Referring back to Checkel's five criteria for constructivist policy formation, it is evident that the EU, in entering the KP, exemplifies (1) a "persuadee in a novel and uncertain environment and thus cognitively motivated to analyse new information." However, looking at Checkel's second criteria, it would be remiss to dub the EU as an authority with "beliefs that are inconsistent with the persuader's [the KP institution's] message" seeing as the EU has throughout its history worked towards a development policy agenda that also aligns with upholding human rights standards around the world (Holland, 2002). Checkel's third criteria, that "the persuader is an authoritative member of the in-group to which the persuadee belongs or wants to belong" is certainly consistent with policy practice given the EU's desire to join the KP institution in upholding diamond industry regulation internationally. Fourthly, the KP, as a voluntary regulatory mechanism, does not "lecture or demand, but, instead, 'acts out of principles of serious deliberative argument.'" This notion is further compounded by Virginia Haufler's assessment of the KP's role as a global governance system, which represents, "the intersection of multiple global norms with a hierarchical industry structure and strong market

incentives” noting that institutions as such are “particularly effective when they appeal to sentiment based on threats to bodily integrity, as in war and human rights abuses” (2007; 407-408). KP regulation therefore becomes engrained in market operations, which is made possible by KP member states’ implementation of regulatory mechanisms.

The last of Checkel’s criteria, that, “the persuader-persuadee interaction occurs in a less politicized and more insulated [environment]” does not seem to be upheld by the EU’s KP implementation. By 2009 the EU’s motives to sanction Zimbabwe diamonds are largely linked to the political environment that amounted in Zimbabwe, compacted by the failure of the GPA. However, human rights standards remain to play a large role in the sanctions regime that the EU continues to impose on the southern African country in light of the atrocities in the Marange mines.

One of the most provocative incidents that have occurred since the EU joined the KP is the EU’s defiance of the KP’s Zimbabwe clearance in 2009. This divergence of policy between the KP members (minus the U.S. seeing a they too continue to press sanctions on Zimbabwe) may in fact be the strongest example of how constructivist theory lies at the root of diamond regulation in the EU. That is, the EU’s willingness to adhere to human rights standards go beyond KP expectations, foregoing potential profit earnings from the two ‘monitored’ Marange auctions held. As noted, not only do EU decision makers prefer this policy to that of the KP’s, but businesses within Europe have shown support for continued sanctions.

While the EU’s commitment to the Zimbabwe sanctions regime is reflective of endogenous preference formation as well as argumentative persuasion (the underpinnings of constructivism), the rational-choice framework must not go ignored when describing the motivations for EU diamond regulation. Taking a step back and looking at the changes that have

occurred over time between the EU and international diamond stakeholders, rationalist imperatives certainly hold true. Arguably, one could attribute the EU's adherence to KP standards as a byproduct of its interest to simply protect its own diamond market. As noted, diamond transactions bring a phenomenal amount of revenue to EU member states, particularly Belgium, the Netherlands and the UK, and therefore *not* participating in the KPCS would mean billions of dollars in earnings lost for European diamond stakeholders.

From an economic standpoint, norms are traditionally viewed as constraints on state behavior rather than as embodied imperatives (Pollack, 2006). However, when raising the 'bottom-line' for diamond operations – in terms of labor safety, human security, environmental standards etc., - this accrues benefits not only in the form of enhanced societal well-being, but also from an operational standpoint. This is especially true for a company like De Beers, which may in fact *need* the KP for its long-term growth strategy. For example, as De Beers began to lose hold of its monopoly in the early 2000s, they saw the KP as a way to secure its grip on the market for diamonds. That is, when conflict arises in diamond-producing African nations, the diamonds that are pushed onto the world market are out of De Beers' (or any formal market supplier's) control.<sup>31</sup> Thus, a regulation that stems the illegitimate transactions of diamonds means better returns for formal market operations.

According to Moravcsik, the occurrence of KP buy-in and subsequent Zimbabwe sanctions are a product of the EU's commitment to protecting, first and foremost, the economic interests of its member states. Additionally, by defying the KP's auction clearance of Marange diamonds, the EU seems to be adhering to its "need for credible commitments." Although EU

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<sup>31</sup> However, it was alleged that De Beers was buying up conflict diamonds in order to better control their supply (<http://www.people.fas.harvard.edu/~hiscox/Haufler.pdf>)

press releases indicate that the Council's decision to continue the sanctions regime was a reaction to human rights abuses in the region, the decision also aligns with the EU's political commitments in the area and with its international development agenda. According to Article 8 of the Cotonou Agreement – an agreement in place since 2000 that gives the EU the authority to contribute aid<sup>32</sup> to ACP countries – the EU must be committed to a stable political dialogue before moving forward with negotiations such as trade. The article specifically affirms:

“The [political] objective of this dialogue shall be to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognizing existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations and strengthen cooperation between the Parties within international fora as well as promote and sustain a system of effective multilateralism... The dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs, and organized crime or child labour, or discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (European Union, “Second Revision of the Cotonou Agreement”).

Relating this information to the role of ideas, norms and policy change, Moravcsik also attributes the EU's shifting focus from strict economic concerns to those of human rights surrounding the diamond trade to the ‘relative power’ of the EU. The idea that the EU exerts its power in the form of norm diffusion (as opposed to military power) is circumvented by Ian Manners (2002). When making the case that the EU's unique historical context gives rise to a different brand of global power, he states, “...the EU's normative difference comes from its historical context, hybrid polity and political-legal constitution...the creation of Community institutions and policies took place in a context where Europeans were committed to ‘pooling their resources to preserve and strengthen peace and liberty’” (240). According to Manners, other

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<sup>32</sup> In the form of euros through the European Development Fund (EDF) ([http://ec.europa.eu/europeaid/where/acp/overview/index\\_en.htm](http://ec.europa.eu/europeaid/where/acp/overview/index_en.htm))

defining features that make the EU's source of power categorically normative are the way in which norms are diffused. One of the mechanisms that Manners identifies, *transference*, describes the “diffusion [that] takes place when the EU exchanges goods, trade, aid or technical assistance with third parties through largely substantive or financial means. *Such transference may be the result of the exportation of community norms and standards...or the ‘carrot and stickism’ of financial rewards and economic sanctions*” (245).

Though at face value the ‘export’ of norms on behalf of the EU may seem to be a display of constructivist ideals (in that norms and ideas are seen as endogenous to policy change) upholding standards of human rights and good governance in the case of conflict diamonds aligns fittingly with the EU's political development goals as set out by the Cotonou Agreement. However, from a constructivist perspective, this case demonstrates that norms and values are not merely constraints on EU policy, but rather, they are the source of preference change, which in turn “alter the underlying preferences of governments and thereby state behavior” (Moravcsik, 2001; 227).

The role of ideas, norms and values is therefore multifaceted in the case of EU diamond regulation – the socialization of norms vis-à-vis diamond industry stakeholders and diamond-producing third countries confirms a convergence of constructivist and rationalist ideals: norms, values and ideas need not act purely as constraints on the EU's behavior in the context of the KPCS. Rather, standards of human rights, good governance and the rule of law act as double duty in that upholding these norms is in the interest of the EU and its constituents (including diamond businesses).<sup>33</sup>

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<sup>33</sup> Haufler best captures this phenomenon when she writes, “in preserving the market for diamonds, the system also preserves the profits of the industry participants” (2010; 411).

From a rationalist standpoint, the KP may also be seen as a policy instrument that transmits the EU' greater development agenda, principally, Policy Coherence on Development (PCD). The concept of PCD has been explored as means to understand the connection between EU development policies and other policy sectors (Holland, 2010). The KPCS may in fact serve as a trading scheme that enhances the Community's development efforts abroad "by helping governments to manage their natural resources effectively and by reducing incentives for criminality and corruption." Furthermore, the KP, "as a regulatory instrument, can complement other international initiatives that promote good governance of natural resources, such as the Diamond for Development Initiative (DDI), the Extractive Industries Transparency Initiative (EITI) and the World Bank's Community and Small Scale Mining (CASM) initiative" (europea-un-eu.org). While PCD has at times experienced a deficit between EU policy-makers' rhetoric and actual development assistance, the KPCS can be seen as a tool that enhances the development commitments by way of promoting good governance. This is made possible through the EU's implementation of Community Authorities, as they are obliged to install the necessary financial tools<sup>34</sup> to implement KP certificate inspections.

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<sup>34</sup> As noted by Holland, 2010, "policy coordination and multilateralism count for little without adequate financial commitment" (345).

## **8.0 CONCLUSION: THE SIGNIFICANCE OF THEORIES FOR EU DIAMOND REGULATION AND GLOBAL SUPPLY CHAINS**

In answering the question, *What theoretical model explains the implementation process of diamond industry regulation in the European Union?* I reach the conclusion: both constructivism and rational-choice theories matter. Instead of treating the theories of constructivism and rational-choice as mutually exclusive and competing frameworks, the case of EU diamond regulation demonstrates that it is important to apply the teachings of both camps when evaluating different facets of today's globally integrated economy. This study therefore brings forth two important conclusions, the first being that creating theoretical silos for constructivist and rationalist testing presents the danger of revealing a one-sided explanation of world politics. This case demonstrates that integrating both theories is extremely useful, and perhaps essential, for capturing the underlying motives for actor (both state and non-state) behavior and relations in regulating global supply chains.

Second, this study illuminates the significance of international diamond regulation for understanding the nature of the EU's global authority. By analyzing the implementation of the KPCS in the EU, we see that the Community's power as a global authority is a product of both rationalist and constructivist characteristics. However, future studies should employ more empirically-driven methods in order to gain a more accurate picture for how and why EU




decision-makers continue to implement the KPCS the way they do. Empirical evidence as such can then be used to test the conceptions of constructivist and rationalist frameworks found in EU and international relations literature.

Additionally, it is important to bear in mind that the nature of the KP itself appeals to all states' moral willingness to construct policy based on the human rights atrocities that have occurred within diamond-producing countries. Therefore, the generalizability of this claim is contingent on additional studies that probe the nature of the EU's global authority as a normative actor. For example, it would be helpful for future studies to leverage the case of the diamond industry to test the variability of state behavior, comparing the EU's implementation of the KPCS to another global authority such as the U.S. Nevertheless, the convergence of constructivist and rational choice models illuminates this multifaceted supply chain, forming the theoretical bedrock for diamond regulation in the EU.

## APPENDIX A

**Figure 1: EU Kimberley process certificate**

**Specimen Community Kimberley Process Certificate.**



THE EUROPEAN COMMUNITY  
KIMBERLEY PROCESS CERTIFICATE

Unique Number:  
Alpha-2 country code, ISO 3166-1  
Issuing Community authority:  
The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process international certification scheme for rough diamonds.  
Country of Origin: ..... Number of Parcels: .....

Exporter. Name.....  
Address.....  
Importer. Name.....  
Address .....

	Carat	Value (US\$)
7102.10		
7102.21		
7102.31		

Issued on : ..../..../...      Expires on ..../..../...

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Signature / Stamp of Community authority

It is hereby verified that the content of the container accompanying Kimberley Process Certificate of the Community no ..... corresponds with said certificate.

Importing authority:..... Date

**IMPORT CONFIRMATION**  
This is to certify that the rough diamonds accompanied by Community certificate No ..... were imported into ..... and verified in compliance with the Kimberley Certification Scheme for Rough Diamonds. Copy of certificate to accompany Confirmation.  
Date of receipt by importing authority  
Importing authority:  
-----  
Date ..... Signature

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